ORDINANCE NO. 12.19

AN ORDINANCE AMENDING ARTICLE XIV OF CHAPTER 36 OF THE MOUNTAIN VIEW CITY CODE, SECTIONS 36.40 TO 36.40.70, REGARDING THE BELOW-MARKET-RATE HOUSING PROGRAM

Section 1. Article XIV of Chapter 36 of the Mountain View City Code is hereby amended to read as follows:

"ARTICLE XIV. - AFFORDABLE HOUSING PROGRAM

DIVISION 1. - GENERAL

SEC. 36.40. - Council findings.

The cost of housing in Silicon Valley, including the City of Mountain View, is one of the highest in the nation, making the region one of the least affordable places to live. Housing prices and rents have increased at a significantly higher rate than general wages. The lack of affordable housing in Mountain View forces many residents to pay a very high percentage of their income for housing or to move out of the community and creating considerable commute distances, which adds to air pollution and traffic congestion in Mountain View and adjacent communities. The lack of affordable housing has also made it more difficult to recruit workers from out of the area, in general, especially workers in lower-paying jobs, potentially affecting the economic vitality and resilience of the community.

Increasing the diversity, supply, and affordability of housing is a council goal, and the below-market-rate housing program and housing impact fee programs are a necessary part of the city's efforts to meet its own housing goals as well as the regional housing needs of the Bay Area as required by state law, and are supported by the city's General Plan Land Use and Design (LUD) Policy 3.5 because it encourages residential developments serving a broad range of diverse households and incomes; and Housing Element Policies 1.5 and 2.1 because they support the development of both rental and ownership housing serving a broad range of incomes, including extremely low-, very low-, low-, and moderate-income households.

The city's Affordable Housing Program, including the below-market-rate housing program ("BMR Program") and the housing impact fee program, balances the needs of the city and the goals of our general plan while having a minimum impact on the investment interests of the landowners and developers. The program is required by the public necessity and general welfare, and promotes the orderly development of the city.

SEC. 36.40.05. - Definitions.

For purposes of this article only, the following definitions shall be used in the interpretation and construction of this article.

a. "Addition" shall mean an extension or increase in floor area of an existing nonresidential development project subject to this section.

b. "Affordable housing" means housing which costs a very low-, low-, or moderate income household no more than approximately thirty (30) percent of its gross monthly income. Costs included in the calculation of income for ownership housing are monthly mortgage principal and interest payments, homeowners' insurance, property taxes and homeowner association fees, where applicable. Costs included in the calculation of income allocated to rental housing are monthly rent and utilities.

c. "Below-market-rate (BMR) unit" means an ownership or rental unit under the BMR Program which is affordable to households with low or moderate incomes as defined in this chapter.

d. "Density bonus" means an approval of additional dwelling units, reduced parking, incentives and concession, or waivers of development standards under City Code Sec. 36.14-36.14.65 and Government Code Sec. 65915-65918.

e. "Existing floor area" means legally existing gross floor area at the time of application for a zoning permit or legally existing floor area that was demolished not more than one (1) year prior to the filing of the application for a zoning permit.

f. "Gross floor area" means the floor area enclosed within the walls of a building and measured from the outside perimeter of said walls, expressed in square feet and fractions thereof.

g. "Gross household income" means the earned and unearned household income of all adult members of the household:

1. "Above Moderate-Income household" means the level of gross income for Santa Clara County between 120 percent and 150 percent of the AMI, adjusted for household size, as based on the 120 percent AMI level published periodically by the State Department of Housing and Community Development.

2. "Moderate-income household" means a household whose gross income as published periodically by the State Department of Housing and Community

Development is between eighty (80) percent and one hundred twenty (120) percent of the median household income, adjusted for household size.

3. "Low-income household" means a household whose gross income as published periodically by the State Department of Housing and Community Development is between fifty (50) percent and eighty (80) percent of the median household income, adjusted for household size, for Santa Clara County.

4. "Very low-income household" means a household whose gross income as published periodically by the State Department of Housing and Community Development is fifty (50) percent or less of the median household income, adjusted for household size, for Santa Clara County.

5. If the income limit index referenced in this section, or successor indexes, are no longer published by the State Department of Housing and Community Development, then a successor index shall be selected by the city manager. In selecting the successor index, the city manager shall choose an index published by a federal, state or county agency that most closely corresponds with the previous index.

h. "Housing fund" means the City of Mountain View housing funds established pursuant to Sec. 36.40.40 and Sec. 36.40.60.

i. "Housing impact fee" means the fee established pursuant to Sec. 36.40.55 for nonresidential development projects.

j. "In-lieu fee" means a fee paid by a developer into the city's housing fund in place of providing the required below-market-rate units.

k. "Market-rate unit" means a housing unit or the legal lot for such unit offered on the open market at the prevailing market rate for purchase or rental.

l. "Mixed projects" shall mean projects containing both rental units and for-sale units.

m. "Nonresidential development project" means the construction, addition or placement of a structure used for any commercial or industrial purpose as defined in Chapter 36 of the City Code and shall include the nonresidential portion of the gross floor area in a combined or mixed-use project.

n. "Off-site" means that the affordable housing units as required by the BMR Program are not part of the same residential development and not integrated with the project's market-rate units.

o. "On-site" means that the affordable housing units as required by the BMR Program are integrated with the project's market-rate units and dispersed throughout the development according to the BMR Program requirements. Except when required to develop senior housing in compliance with applicable laws, development of the affordable units in a separate, standalone structure, even if that standalone structure were on the same parcel or Assessor's Parcel Number (APN) as a separate market-rate building, does not meet the definition of on-site.

p. "Resale controls" mean legal restrictions by which the price of below-market-rate units and the eligibility of purchasers or renters shall be restricted to ensure that the unit remains affordable to moderate-income households.

q. "Residential development" means any development that includes an application to the city for planning or building permits to create one (1) or more dwelling units, to convert nonresidential uses to residential uses or to convert residential units from rental to for-sale. As used herein, and in the BMR Guidelines, "residential development" includes, without limitation, rental housing; for-sale housing; mixed-tenure housing; mixed-use residential; detached single-family dwellings; duplexes; triplexes; multiple-family dwelling structures; condominium or townhouse developments; condominium conversions; and land subdivisions intended to be sold or rented to the general public. However, accessory dwelling units and licensed care facilities are excluded from the definition of residential development.

r. "Zoning permit" means any of the several discretionary permits described in Chapter 36 of the City Code authorizing land uses, development, construction or alteration of uses or buildings within a zoning district.

DIVISION 2. - RESIDENTIAL DEVELOPMENT: BELOW-MARKET-RATE HOUSING PROGRAM

SEC. 36.40.10. - General requirements.

The words and terms used in this chapter shall have the meaning indicated as follows, unless the context clearly indicates otherwise:

a. **Objective standard.** The basic requirement of the BMR Program is the provision of BMR on-site and integrated with market-rate units for both rental and ownership projects.

b. **Percentage requirement.** All residential development as defined in Sec. 36.40.05 are subject to the BMR Program and shall provide at least fifteen (15) percent of the total number of dwelling units as affordable units.

1. **Ownership units.** All nonexempt ownership residential developments other than rowhouses and townhouses (as defined in Article IV of Chapter 36 of the city code) shall include at least fifteen (15) percent of the total number of ownership dwelling units within the development as units affordable to Moderate-Income households making between 80 (eighty) percent and one hundred twenty (120) percent AMI as required by the BMR Program. The affordable ownership units must be provided at a minimum of two (2) income levels, a resulting income level equal to a weighted average of one hundred (100) percent of the AMI when considering all of the affordable ownership units cumulatively. Rowhouses and townhouses in residential ownership developments shall be subject to a twenty-five (25) percent on-site BMR requirement, with fifteen (15) percent at a one hundred (100) percent AMI weighted average with a range of units between eighty (80) percent and one hundred twenty (120) percent AMI; AND a ten (10) percent on-site BMR requirement at a one hundred thirty-five (135) percent AMI weighted average with a range of units between one hundred twenty (120) percent and one hundred fifty (150) percent AMI. The city does not allow BMR ownership units set at an income level lower than eighty (80) percent AMI to count toward a for-sale project's BMR requirements, unless a reserve is established that can be utilized by lower-income owners to fully pay for future expenses related to increases in homeowners association (HOA) fees or other assessments, such that the overall housing cost of homeownership is maintained at an affordable level.

2. **Rental units.** All rental residential developments shall include at least fifteen (15) percent of the total number of rental dwelling units within the development as units affordable to Low- and Moderate-Income households representing income levels between fifty (50) percent and one hundred twenty (120) percent AMI as required by the Program and Guidelines. The affordable rental units must be provided at a minimum of two (2) income levels, with a resulting income level no greater than a weighted average of sixty-five (65) percent of the AMI when considering all of the BMR rental units cumulatively, except as set forth in this ordinance.

c. **Size of project.** The BMR requirement shall apply to all new residential developments and applicable condominium conversions.

d. **In-lieu fees for fractions of units.** Residential projects with less than seven (7) units shall have the option of paying a fee in lieu of the fractional BMR unit. A residential project with seven (7) units or more may pay an in-lieu fee for fractional units when the BMR obligation results in a fractional BMR unit that is less than 0.5 (i.e., less than half a unit); and a fractional unit equal to 0.5 or greater shall be rounded up and the project must provide one (1) BMR unit on-site to satisfy the fractional

obligation. Payment of an in-lieu fee for qualifying fractional units shall be made in full prior to issuance of the project's first building permit, and shall be based on the feel level equivalent to providing the BMR units on-site and as published in the Master Fee Schedule. The community development director or designee shall be authorized to adjust the rental and ownership fees annually based on the Consumer Price Index (CPI), All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics.

e. **Concurrent development of BMR on-site units.** All BMR on-site units in a residential development and phases of a development shall be constructed concurrently with or prior to the construction of market-rate units.

f. **Location and design of BMR on-site units.** All BMR units shall be reasonably dispersed throughout the project and consistent with federal and state fair housing laws, have a distribution of units by number of bedrooms proportionate to the market-rate units, and be of comparable size based on net habitable square footage of the units, except that affordable units for seniors shall comply with applicable requirements for senior housing. The actual location of a BMR rental unit within a complex shall be permanently assigned to a particular dwelling unit.

The exterior design of the BMR units shall be consistent with the market-rate units in the project and be comparable in terms of interior design, appearance, materials, and quality of finish. However, the BMR units may differ from market-rate units in the project by using lower-cost alternatives to certain amenities considered to be luxury items. . BMR units shall have the same access to project amenities and recreational facilities as market-rate units.

g. **Qualifying households.** All BMR rental units shall be rented only to qualified Low- or Moderate-Income households between fifty (50) percent and one hundred twenty (120) percent AMI, and all BMR ownership units shall be sold only to qualified Moderate-Income households between eighty (80) percent and one hundred twenty (120) percent AMI, except households for rowhouses/townhouses shall qualify based on the BMR requirement as referenced in this Sec. 36.40.10. Rents, sales prices, and eligible household sizes of BMR units shall comply with the requirements pursuant to the BMR Guidelines.

Preference is given to eligible applicants for a BMR unit if they live or work in the City of Mountain View. Preference will not be allowed if not permitted by state or federal law or other fair housing restrictions.

h. **Term.** BMR units shall be maintained as affordable housing in perpetuity.

i. **Density bonus.** Compliance with the provisions of this article may be applied towards a request for a density bonus, provided that the affordable units meet the stricter of the BMR Program Requirements and the density bonus law.

j. **Administrative guidelines.** The city shall adopt, by resolution, BMR administrative guidelines (BMR Guidelines) necessary for the implementation of the provisions of this article.

k. **Administration.** The BMR program shall be administered by the community development department or its designee who may issue written procedures to implement the BMR Program and Guidelines.

SEC. 36.40.15. - Determination of rents for BMR rental units.

The monthly rental rate for each BMR unit shall be within the range of fifty (50) percent to one hundred twenty (120) percent of gross household income, with a cumulative weighted average of sixty five (65) percent AMI, and be based on no more than thirty (30) percent of the qualifying tenant's gross household monthly income, according to the procedures set forth in the BMR Program Guidelines. The rent range of fifty (50) percent to one hundred twenty (120) percent of gross household income may be adjusted annually to reflect adjustments in the gross household income published periodically by the State Department of Housing and Community Development for Santa Clara County.

SEC. 36.40.20. - Determination of sale prices for BMR ownership units.

A project's BMR ownership units shall be sold at prices affordable to Moderate-Income households (approximately between eighty (80) percent and one hundred twenty (120) percent AMI), with a cumulative weighted average of one hundred (100) percent AMI, except sales prices for rowhouses/townhouses shall be based on the BMR requirements for such developments as referenced in this Sec. 36.40.20, and ownership sales prices shall be based on the selected income level for each unit and the presumed household size that corresponds with the various unit sizes as set forth in the BMR Guidelines. The eligible household income range may be adjusted annually to reflect adjustments in the median household income published periodically by the State Department of Housing and Community Development for Santa Clara County. The sales price for each BMR unit shall result in a total monthly payment that shall not exceed thirty (30) percent of the selected household income level for that unit adjusted by unit size and presumed household size, and includes mortgage, taxes, utilities, HOA dues, insurance and private mortgage insurance.

For units sold to households earning less than eighty (80) percent AMI, the developer shall set aside a reserve and describe the reserve in the CC&Rs to cover

future special assessments and increases in HOA dues for those households, and the total housing cost shall not exceed thirty (30) percent of the household's selected income level for the unit over the life of the mortgage. The community development director or designee may establish standards for calculating the amount of the reserve.

SEC.36.40.25. - Resale controls on ownership units.

All BMR units shall be subject to deed restrictions, covenants, resale restrictions, and other applicable conditions and documentation to ensure compliance with the BMR Program, and which includes an option that entitles the city or its designee the first right to purchase a BMR ownership unit at the lower of the following purchase prices:

(1) market value;

(2) the purchase price paid by the seller, plus one-third of the increase (during the period of seller's ownership) in a CPI, All Urban Consumers, San Francisco-Oakland-San Jose, published by the U.S. Department of Labor, Bureau of Labor Statistics; or

(3) an amount equal to the price affordable to household earning the income level specific to the BMR unit.

An exception to the city-imposed restriction that the BMR unit be sold to a city-approved BMR household may be granted if (a) the developer demonstrates the inability to obtain a qualified buyer within a one hundred eighty (180) day period; and (2) the city decides not to exercise its option to purchase the BMR unit. The seller will be entitled to the lowest purchase price listed above. The balance of the proceeds shall be paid to the City of Mountain View to be deposited in the city's housing fund. The deed restrictions shall prohibit sales or transfers of the property except with the written consent of the city and at a price listed above.

Owners of BMR ownership units shall provide the city/designee a notification of intent to sell prior to listing the unit. If an owner intends to refinance, change title, or transfer ownership of the BMR ownership unit, the owner shall notify and receive approval from the city/designee prior to initiating a refinance, title change, or transfer of ownership. The city is entitled to pursue all available remedies against an owner if an owner fails to notify and receive approval from the city/designee, including the city's exercise of its option to purchase the BMR ownership unit or a city action to foreclose on the BMR ownership unit under the city's deed of trust.

The BMR ownership deed restrictions and conditions shall contain such other provisions as are considered necessary by the city to implement the BMR Program and the city may require that additional notices or other document(s) be recorded. A

reference to the deed restrictions and conditions shall be included in all deeds or conveyances of BMR units.

SEC 36.40.30. - Alternative mitigations.

The basic objective standard of the Program is the creation of affordable housing integrated on-site market-rate residential developments. As an alternative to building the affordable housing units on-site, developers of market-rate residential projects may submit a request to meet their BMR Program obligations through other means, such as the dedication of land, the provision of other resources, payment of an in-lieu fee, or other alternatives.

The applicant has the burden of demonstrating that the request for an alternative mitigation meets the findings requirements; however, meeting the findings requirements does not constitute automatic approval of the alternative mitigation request. Such requests may only be granted by the city council, if the city council determines that such alternative will further affordable housing opportunities in the city to a greater extent than providing units on-site based on the standards in the administrative guidelines and/or other procedures promulgated and that the alternative mitigation is preferred to the on-site requirement.

SEC. 36.40.35. – BMR household eligibility requirements.

a. The city or its designee shall select potential occupants of BMR units from a list of those persons qualified on the basis of household income, relationship between household size and the size of available units, and further criteria and procedures to be established by the city in the BMR Guidelines.

b. Each purchaser of a BMR unit shall certify, prior to close of escrow, in a form acceptable to the city or its designee, that said unit is being purchased and shall be maintained as the purchaser's primary place of residence.

c. The household income of each renter of a BMR unit shall be verified annually by the city or its designee to confirm the household's continued income eligibility for the unit as set forth in the BMR Guidelines and other procedures that the city may promulgate.

SEC. 36.40.40. – BMR housing fund.

A housing fund is hereby established for the deposit of all in-lieu fees and other penalties and payments made to the city under the BMR program. The purpose of the fund is to assist in providing housing that is affordable to very low, low- and moderate-income households and cover administrative costs of the BMR program. The city has

sole discretion in determining the income levels(s) that shall be funded with the housing fund, and the housing fund shall not be used to fund units in the above moderate-income category.

SEC. 36.40.45. - Compliance.

Any individual or household that rents, purchases, or sells a BMR unit in violation of the BMR Program requirements or the intent of the BMR Program shall be subject to penalties, and shall be required to forfeit all monetary amounts so obtained in excess of the permitted resale price or rental rates. Such amount shall be deposited in the city's BMR housing fund. If the city/designee undertakes any enforcement action to obtain compliance with the requirements of the BMR Program, the city/designee shall be entitled to recover its attorney's fees and staff costs for such enforcement effort.

SEC. 36.40.50. - Exemptions and appeals.

a. Exemptions—Historic resources. Exemptions from, or credit toward, BMR requirements may be granted for certain historic resources pursuant to this Section.

b. Appeals of determinations based on the administrative requirements of the BMR Program as established in the BMR Guidelines must be in the form of a written request by the appellant and be addressed to the community development director. The community development director or designee shall make the ruling and all rulings shall be final. The city may establish cost recovery fees for appeals.

SEC. 36.40.55. - Grandfather provision.

The provisions of the BMR Program shall become effective on August 24, 2019 and apply to all residential developments, except the following residential developments:

a. Non-Gatekeeper projects with formal applications submitted by June 30, 2019 AND the submittal of all additional information (if any) by August 24, 2019 as requested in the city's thirty (30) day letter responding to the applicant's formal application submittal.

b. "Gatekeeper" developments deemed ready by the city, by December 20, 2019, for a public hearing for consideration of project approval and processed in accordance with City Code Sec. 36.50.90, 36.52.20, and 36.52.55.

DIVISION 3. - COMMERCIAL AND INDUSTRIAL DEVELOPMENT: HOUSING IMPACT FEE PROGRAM

SEC. 36.40.60. - Housing fund.

a. **Housing fund.** Housing impact fees shall be deposited in the City of Mountain View housing fund. The city finance and administrative services director shall maintain the funds in a subaccount separate from other funds in the Mountain View housing fund account.

b. **Administration.** The housing fund shall be administered by the community development director, who shall have the authority to govern the housing fund consistent with this chapter, and to prescribe procedures for said purpose, subject to approval by the council.

c. **Purposes and use of funds.**

1. Moneys deposited in the housing fund, along with any interest earnings on such moneys, shall be used solely to increase and improve the supply of housing affordable to households of very low, low and moderate income; including, but not limited to, acquisition of property and property rights; cost of construction, including costs associated with planning, administration and design, as well as actual building or installation, as well as any other costs associated with the construction or financing of affordable housing; and reimbursement to the city for such costs if funds were advanced by the city from other sources. To the maximum extent possible, all moneys should be used to provide for additional affordable housing and services. Moneys may also be used to cover administrative expenses not reimbursed through processing fees, including consultant and legal expenses related to the establishment and/or administration of the housing fund. No portion of the housing fund may be diverted to other purposes by way of loan or otherwise.

2. Moneys in the housing fund shall be used to construct, acquire, rehabilitate or subsidize very low-, low- and moderate-income housing and/or to assist other governmental entities, private organizations or individuals in the construction, rehabilitation and reimbursement of city-advanced funds. Moneys in the housing fund may be disbursed, hypothecated, collateralized or otherwise employed for these purposes from time to time as the community development director and city council determine is appropriate to accomplish the purposes of the housing fund. The housing fund moneys may be extended for the benefit of rental or owner-occupied housing or housing services.

3. Expenditures by the community development director from the housing fund shall be controlled, authorized and paid in accordance with general city budgetary

policies. Execution of contracts related to the use or administration of housing fund moneys shall be in accordance with standard council policy.

4. Construction projects assisted with housing impact fee funds shall comply with the prevailing wage requirements of the Federal Community Development Block Grant (CDBG) Program or the HOME Investment Partnership (HOME) Program or successor programs. If the project is not assisted with CDBG or HOME program funds, state prevailing wages shall apply.

SEC. 36.40.65. - Fee; Calculation of fee; Alternative to payment of fee; Adjustment and waivers; Exemptions.

a. **Housing impact fee.** A housing impact fee is hereby imposed on all developers of nonresidential projects that involve the construction of new floor area, except as otherwise set forth herein.

b. **Calculation of housing impact fee.**

1. The housing impact fee for nonresidential development projects shall be charged on a per-square-foot basis for all net new gross floor area, including all additions where floor area is increased, with a specific per-square-foot amount set for each nonresidential land use category and amount of floor area identified in Table 36.40-1 below. The amount of the fee shall be computed as follows: (Gross Square Feet Nonresidential Floor Area Minus Existing Floor Area) × (Applicable Fee as listed in Table 36.40-1) = Housing Impact Payment.

2. The amount of each such fee shall be established by resolution of the city council and shall be adjusted annually as a part of the city's annual budget process by the percentage change in the Consumer Price Index for the San Francisco-Oakland-San Jose area for the previous year.

3. In calculating the fee, the chief building official shall use those fees in effect by resolution of the city council at the time of the issuance of the building permit or, if no building permit is required, at the time of issuance of a use or other discretionary permit.

4. The community development director shall determine the appropriate land use category as set forth in Table 1 below for each new nonresidential development project.

TABLE 36.40-1
HOUSING IMPACT FEE REQUIREMENTS

Land Use Category	Fifty Percent (50%) of Full Fee	Full Fee
Office/High Tech/Industrial	New gross floor area between 1 and 10,000 square feet	New gross floor area that exceeds 10,000 square feet
Commercial/Retail/Entertainment	New gross floor area between 1 and 25,000 square feet	New gross floor area that exceeds 25,000 square feet
Hotel	New gross floor area between 1 and 25,000 square feet	New gross floor area that exceeds 25,000 square feet

c. **Alternative to payment of a housing impact fee.** As an alternative to payment of the housing impact fee, a developer of a nonresidential development project may submit a request to mitigate the impacts of such development through the construction of residential units, the dedication of land or provision of other resources. Such requests may be granted in the sole discretion of the city council, if the city council determines that such alternative will further affordable housing opportunities in the city to an equal or greater extent than payment of the housing impact fee.

d. **Adjustment, reduction or waiver.** An adjustment, reduction or waiver of the fees required by this section may be granted by the city council for nonresidential development projects under the following circumstances:

1. Upon the remodeling of a building to add square footage, the appropriate housing impact fee shall be paid only on the additional square footage.

2. If the nonresidential development project is in whole or part a replacement for space previously on the site, but vacated or demolished in the twelve (12) months prior to the filing of the application for a zoning permit for the new construction or remodel, credit shall be given for the space vacated or demolished or to be vacated or demolished at the rate applicable to the prior use of that space.

3. If the nonresidential development project is constructed for a specific use involving no employees or fewer than one (1) employee per two thousand (2,000) square feet of gross floor area, the project may be eligible for a waiver of the fees. To be eligible for a waiver, the building must be designed and built such that it cannot be converted to a use capable of housing a larger number of employees except by major reconstruction. The burden of proof shall be on the applicant. If a waiver is granted, a

"Notice of Conditional Waiver of Housing Impact Fee" shall be recorded in the Santa Clara County Office of the Recorder. If a subsequent change in the use or structure of the building occurs which involves additional employees, the waiver granted herein shall be deemed revoked, subject to a hearing before the zoning administrator, who shall make a recommendation on the revocation to the city council. The decision of the city council shall be final.

4. If, upon evaluation of facts presented by the applicant, there is an absence of any reasonable relationship or nexus between the impact of the development and the need for housing, the project shall be eligible for a waiver of the fees.

e. **Exemptions.** This fee shall not apply to developers of nonresidential projects which fall within one or more of the following categories:

1. Buildings which are owned and at least seventy-five (75) percent occupied by governmental or nonprofit agencies and organizations.

2. Any building which is damaged or destroyed by fire or natural catastrophes so long as the total square footage of the repaired or replaced building remains the same.

f. **Grandfather provision.** The following nonresidential projects shall be exempt from the provisions of this article:

1. Projects for which a complete application has been submitted by December 11, 2001 and final approval for a valid zoning permit has been issued and is in effect as of March 9, 2002; or

2. Projects for which a complete application has been submitted by December 11, 2001 and final approval for a valid zoning permit has been issued and is in effect as of March 9, 2002, and which are subsequently the subject of a revised application except that any increase in the amount of originally approved floor area shall be subject to the provisions of this article.

SEC. 36.40.70. - Processing requirements.

a. **Filing requirements.** The zoning administrator shall develop administrative guidelines for processing applications subject to the requirements of this section.

b. **Payment of fee.** Unless otherwise mandated and preempted by state law, the housing impact fee shall be paid prior to the issuance of the first grading or building permit.

SEC. 36.40.75. - Enforcement.

a. Payment of the housing impact fee is the joint and several obligation of the applicant and/or the property owner for the subject nonresidential development project. In the event of administrative error, the city shall provide the applicant with a written notice and the applicant shall be required to pay the fees within thirty (30) days.

b. The provisions of this article shall apply to all owners of the property, which is the subject of the application, and developers, agents, successors and assigns of an applicant proposing or constructing a nonresidential development governed by this article. No zoning permit shall be issued for a nonresidential development after March 9, 2002, unless it is in compliance with the terms of this article.

c. The city may institute any appropriate legal actions or proceedings necessary to ensure compliance herewith, including, but not limited to, actions to revoke, deny or suspend any permit or development approval. The city shall be entitled to costs and expenses for enforcement of the provisions of article, or any agreement pursuant thereto, as awarded by the court, including reasonable attorneys' fees.

SEC. 36.40.80. - Appeals.

Appeals of a housing impact fee condition in a zoning permit or parcel or subdivision map shall be filed with the clerk of the city council within ten (10) calendar days of the notice of decision. The council shall hold a public hearing to consider any appeals in accordance with the procedures of Sec. 36.56. Appeals of any decision of the community development director pursuant to this program may be made to the city council in accordance with Sec. 36.56."

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the

ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

The foregoing ordinance was regularly introduced at the Special Meeting of the City Council of the City of Mountain View, duly held on the 18th day of June 2019, and thereafter adopted at the Regular Meeting of said Council, duly held on the 25th day of June 2019, by the following roll call vote:

AYES: Councilmembers Clark, Hicks, Kamei, McAlister, Ramirez, Vice Mayor Abe-Koga, and Mayor Matichak

NOES: None

ABSENT: None

NOT VOTING: None

ATTEST:

LISA NATUSCH
CITY CLERK

Date of Attestation: 6/27/2019

APPROVED:

LISA MATICHAK
MAYOR

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 25th day of June 2019, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 21st day of June 2019, and posted in three prominent places in said City.

City Clerk
City of Mountain View

KC/2/ORD
011-06-18-19o