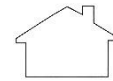


Below Market Rate Ownership Housing Program



ADMINISTRATIVE PROCEDURES AND GUIDELINES

Draft Revised for October 5, 2023
Planning Commission Study Session





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1 IMPLEMENTATION AUTHORITY

Authority for implementation of these Below Market Rate Ownership Housing Administrative Procedures and Guidelines ("Guidelines") is provided by the City of Foster City Municipal Code, Chapter 17.90.020 (E)

Furthermore, Chapter 17.90.110 (E) provides for enforcement of all below market rate housing administrative procedures and guidelines, agreements, resale restrictions, performance deeds of trust, regulatory agreements, and all other covenants or restrictions placed on residential development projects or below market rate dwelling units, by civil action and any other proceeding or method permitted by law.

This document replaces the BMR Administrative Procedures and Guidelines, last updated on March 19, 2020.

2 INTRODUCTION

This document provides procedures and guidelines to implement the Below Market Rate ("BMR") Ownership Program of the City of Foster City ("City"). These Administrative Procedures and Guidelines, and other relevant information, including income limits and attachments to these BMR Guidelines, may be amended and updated from time to time by the Community Development Department Director.

The purpose of these BMR Ownership Guidelines is to provide clear and consistent guidance, procedures, and best practices to implement Chapter 17.90 of the Foster City Municipal Code <https://www.codepublishing.com/CA/FosterCity/> and property covenants and regulatory agreements, as well as to promote the goals of the City's Housing Element 2023-2031, as adopted on May 22, 2023, specifically fair housing and anti-discrimination priorities as stipulated in the Fair Housing Action Plan in Chapter 3, Affirmatively Furthering Fair Housing. <https://engagefostercity.org/housing-element>.

3 FAIR HOUSING

The priorities of the City's Fair Housing Action Plan in the 2023-2031 Housing Element include:

1. Address disproportionate impacts by increasing the supply of affordable housing and providing more housing choices throughout the City.
2. Protect Purchasers from displacement through an anti-displacement strategy.
3. Address housing discrimination through fair housing information and training.
4. Address housing discrimination by providing additional support and opportunities for housing to meet special needs.



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The BMR Ownership Housing Program must comply with AB 686 (https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686_summaryhousingelementfinal_04222020.pdf), which requires all public agencies to administer programs and activities related to housing and community development in a manner that affirmatively furthers fair housing.

4 COVERED PROPERTIES

Foster City Municipal Code section 17.90.040(A) requires residential development projects of 10 units or more to provide BMR units, for both for-sale and rental projects. These Guidelines apply to all for-sale BMR properties ("BMR Ownership Units").

5 DEED RESTRICTIONS

5.1 GENERAL PROVISIONS OF DEED RESTRICTIONS

Generally, the City's deed restrictions for ownership BMR units shall include, but are not limited to, the following key provisions:

1. Property may only be sold to persons and families of very low-income for a 45-year period, or another period of time as required by state law.
2. Non-occupying co-signers are not allowed.
3. Resale price shall be restricted during the deed restriction period.
4. The City shall be entitled to receive a portion of the "net proceeds" from the first sale of the Property or any refinancing following the termination of the restricted period.
5. An owner of a BMR Ownership Unit shall notify the City prior to any Transfer of all or part of the property at least ten (10) days prior to any occurrence of any of the following conditions:
 - a. The owner lists or otherwise advertises the BMR Ownership Unit for sale.
 - b. The owner enters into an agreement for sale or Transfer of the Property.
 - c. The owner ceases to occupy the BMR Ownership Unit as the owner's primary and sole residence.
 - d. A notice of default under the Purchase Money Note is recorded against the BMR Ownership Unit.
6. Owners of BMR Ownership Units or prospective owners are not permitted to own additional residential real estate.
7. Each purchaser of a BMR Ownership Unit shall occupy the property as the principal residence for the duration of its ownership unless the purchaser has obtained the prior written approval of the City. Upon request by the City, the owner of the BMR Ownership Unit shall submit an affidavit to the City certifying that the BMR Ownership Unit is the principal residence.



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5.2 NAMES OF OWNERS

Names of all Owners and Co-Owners shall be listed on the Deed Restriction, Affordability Restriction, Resale Restriction Agreement, and any other agreements for the Property.

6 INCOME RESTRICTIONS

6.1 SOURCE FOR INCOME LIMITS

The City uses the income limits as established by the California Department of Housing and Community Development (HCD), except as noted below or specified by the deed restriction. These income limits are issued in the spring of each year, with the actual issuance date varying from approximately February to June. The income limits are available at: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml> (see the "Official State Income Limits").

6.2 PROCEDURES FOR CALCULATING INCOME

6.2.1 Applicability

The purpose of this methodology is to ensure consistency in calculating income for all Foster City BMR Ownership Units and to ensure compliance with Fair Housing laws. The methodology is based on the HUD standards as stipulated in the HUD Handbook 4350.3 (<https://www.hud.gov/sites/documents/43503HSGH.PDF>) and uses HUD forms and some California Tax Credit Allocation Committee forms.

6.2.2 Multiple or Conflicting Requirements

In the event of multiple requirements or conflicting methodology required by the deed restriction on the BMR Ownership Unit, the strictest rule for calculating income as stated in the deed restriction shall apply.

6.2.3 Household Member Income to Count

Any adult household member aged 18 or over and residing in the household 14 days or more per calendar year (consecutive or non-consecutive days), other than live-in aides shall be counted for income calculation purposes and included in the household size for purchase of the property. See the HUD Handbook for guidance.

6.2.4 Full Set of Forms Required for all Adult Household Members

A full set of forms and associated documents is required for each adult household member, including an Income Questionnaire. Forms Schedule is available from the City.

6.2.5 Rules on Redacting of Information Provided for Income Certification

Buyers are not permitted to redact information, other than Social Security Numbers, that are provided on documents submitted for the income certification process.



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6.2.6 Income Inclusions and Exclusions

The City of Foster City follows the HUD Manual regarding income inclusions and exclusions, with the following clarifications. See https://www.hud.gov/sites/documents/DOC_35699.PDF. However, if the deed restriction references California Code of Regulations, Title 25, Section 6914 for determining income, then CCR Title 25, Section 6914 shall supersede this section.

For temporary, non-recurring, or sporadic income (including gifts), non-recurring is defined as income that appears only one time in any calendar year. For example, sporadic income from the same source that results in multiple deposits to a checking or savings account, even if differing amounts, in a given calendar year, is considered recurring income and must be counted. Assets in foreign or offshore accounts shall be included in the asset section of the certification.

Rent subsidies provided by government programs, such as Section 8, COVID relief, and other sources, are excluded from income. Rent subsidies from any source should be excluded from income if the subsidy is tied to the income of the purchaser, even if it is recurring and not a lump sum single payment and/or temporary in nature. If the subsidy is recurring, not temporary, and is a set amount that is not dependent on the amount of income of the purchaser, the subsidy should be counted as income. The exclusion rule, while not explicitly stipulated in the HUD list of exclusions, is based on the definition of determinable income as stated in the Housing Act of 1937 (https://www.hud.gov/sites/documents/DOC_10010.PDF). For example, Section 8 subsidies paid by the Housing Authority of San Mateo County and temporary emergency rent relief subsidies paid by any source should always be excluded from income.

6.2.7 Three Methods Required to Calculate Income

City staff should use three methods to calculate purchaser's income from employment and take the highest of the three incomes for use in the income certification, except as noted below.

The three methods include: 1) gross income paystub averaging for six months of paystubs using the gross pay; 2) annualized year-to-date income calculation, and 3) pay rate calculation, including overtime. Exceptions: (1) If Staff obtains third-party employment verification, the information provided in the verification shall supersede information from paystubs or other methods of calculation. However, paystubs must still be included in the file even if employment verification is received; (2) for self-employment, see Section 6.2.11.

The City requires six months of paystubs to be submitted by employed adult household members. Employment verification may be substituted for paystubs only if paystubs are not available. For those who have been employed less than three months or are about to start a new position, a letter of employment serves as acceptable verification of employment.

Method 1: Paystub Averaging

For each type of payment schedule, take the sum of the gross pay for each pay stub and divide and multiply as directed below.

- If paid weekly, 26 paystubs are required. Divide the total sum of payments by 26, then multiply by 52.



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- If paid monthly, six paystubs are required. Divide the total sum of payments by six, then multiply by 12.
- If paid bi-weekly (every other week): 13 paystubs are required. Divide the total sum of payments by 13, then multiply by 26.
- If paid semi-monthly (twice a month on the same days each month): 12 paystubs are required. Divide the total sum of payments by 12 then multiply by 24.
- For teachers who are paid ten months out of the year, take the total sum of six months and divide by six then multiply by ten.

Method 2: Year-to-Date Annualization

Take the gross year to date amount and the pay period end date from the paystub. Determine how many days or weeks the end date is in the year. Use either the weeks calculator method or the days calculator method and use one or the other consistently in your calculations for each property.

Calculating annualized YTD income using weeks calculation: If using the weeks method, be sure to use a decimal for partial weeks: one day=.143, two days=.286, three days=.429, four days=.571, five days=.714, six days=.857). Use an online calculator program such as <https://planetcalc.com/7741/>. Divide the YTD amount on the paystub by the number of weeks and then multiply by 52 weeks.

Calculating annualized YTD income using days calculation: If using the days method, divide the paystub amount by the number of days between January 1 and the end date of the pay period to get an average daily rate and then multiply by 365. The Excel DAYS formula can be used to find the number of days.

Note that the pay period end date includes the last date, but the calculators do not, they count the first date, and all dates up to the last date but not the last date, so for accuracy you must add one day when using a weeks or days calculator. For example, If a pay period end date is January 15, that is 15 days or two weeks and one day of pay, but if you use the days or weeks calculator, it is 14 days or two weeks and zero days. Therefore, you must add a day to capture the pay period end date.

In the event that the household member started a job after January 1 of the given year, use the start date as the first date to annualize rather than January 1.

Examples:

Assumptions: YTD pay period end date: June 15, 2023. Pay YTD: \$45,500

Example for Weeks Method:

Using PlanetCalc or another online calculator to determine the weeks between 01/01/2023 and 06/16/2023 (remember to add a day), the answer provided is 23 weeks, 5 days. Note: Excel does not provide decimal points and rounds up, so the Excel weeks formula is not recommended to determine the weeks.



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Convert the days to a decimal. 5 days divided by 7 is .714, so the number of weeks is 23.714.
Divide \$45,500 by 23.714 to get a weekly average pay. $\$45,500/23.714 = \1918.70
Multiply that result by 52 to annualize: $1918.70 \times 52 = \$99,772.40$

Example for Days Method using Excel:

Enter the formula as follows into a spreadsheet using the DAYS formula:
=DAYS("16-JUN-2023", "1-JAN-2023") = 166 days (remember to add a day)
Divide \$45,500 by 166 to get the average daily rate: $45,500/166 = 274.10$
Multiply by 365 to annualize: $\$274.10 \times 365 = \$100,046.50$

Due to rounding, the final values are slightly different. Therefore, the City recommends that Staff use either the weeks method or the days method consistently for all BMR income calculations.

Method 3: Pay Rate Calculation

This method uses the hourly rate or salaried amount that the household member earns and annualizes it. If the household member works overtime, overtime rates should be averaged an annualized as well. For full-time work, use 2,080 hours or 40 hours a week.

Example 1. Full-time work, \$47.50 per hour. The household member works an average of five hours of overtime per pay period and is paid bi-weekly.
Regular pay $47.50 \times 2080 = \$98,800$ or $47.50 \times 40 \times 52 = \$98,800$
Overtime: rate is 1.5 x pay rate or \$71.25. The average of two hours OT per pay period and 26 payments per year (paid bi-weekly) equates to 52 OT hours per year. $\$71.25 \times 26 = \$1,852.50$ additional earnings per year.
Total income from this method is: \$100,652.50.

Reviewing the methods, and, for the purposes of this example, Staff uses the Days method for calculating YTD, and the paystub averaging method resulted in an annual income of \$101,222.22, the amount that should be used for the income certification is the highest of the three, or \$101,222.22.

6.2.8 Lump Sum Payments

See Item See the HUD Manual Income Inclusions and Exclusions for more information on lump sum payments and when to count them as income or assets. In general, single payment lump sums are not counted as income for certifications. See: https://www.hud.gov/sites/documents/DOC_35699.PDF. However, if the Property Covenant references California Code of Regulations, Title 25, Section 6914 for determining income, then CCR Title 25, Section 6914 shall supersede this section.

6.2.9 Tax Returns

The City requires the prior year's tax return from each adult household member to assist with income verification as a reference point for reasonableness. Tax returns and tax transcripts must be signed and dated by the taxpayer. The 120-day rule for dating documents does not apply. Since income is projected forward, taxes are not used for calculating income, except for self-employment income in some cases. See Section 6.2.11 for self-employment income. If the household member does not file taxes, the household member must complete a non-tax filer



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affidavit and Form 4506-T to obtain a transcript or statement of non-tax filing.

Transcripts may be requested by mail, telephone or online. If the household member cannot produce a transcript or statement using the mail, phone or online methods, the City recommends that Staff witness the request by having the Purchaser call, mail, or go online from the Property Management office.

- Use www.irs.gov or the *IRS2Go* app to access [Get Transcript by Mail](#); transcript will be delivered within 10 days to the tax filer's address of record, or
- Submit Form 4506-T or 4506T-EZ to have a transcript mailed to the tax filer at the tax filer's address of record with the IRS. Complete and print the form at <https://www.irs.gov/forms-pubs/about-form-4506-t>
- Call [800-908-9946](tel:800-908-9946) for an automated Get Transcript by Mail feature.

In the event that the household member is still unable to produce a transcript or taxes, and Staff can attest to witnessing the transcript request, an affidavit of non-tax filer status will suffice in the file, along with a clarification of verification.

6.2.10 Self-Employment Income

For self-employment, which includes sole proprietorships with or without employees, single entity LLCs, contract work, “gig” work, and work paid in cash with no paystub, the household member shall complete a Self-Employment Affidavit. The Self-Employment Affidavit shall be used to document projected net self-employment business income for the following 12 months and should be confirmed through tax returns and other documentation, such as business bank statements that may be requested by Staff to clarify income. Net business income is all anticipated revenue for the next 12 months less business expenses. Self-employment income cannot be zero for income certification unless the prior year's income taxes show a loss, and the Purchaser anticipates a continued loss for the next 12 months.

Those who are self-employed must provide their most recent taxes for verification. In the event that the Purchaser does not file taxes, the Purchaser must complete a Non-Tax Filer Affidavit, a Form 4506-T, and provide evidence of the business, such as deposits, receipts, or business bank account statements for verification.

For businesses in which the business owner pays themselves a regular salary, the amount they pay themselves should be included in the business expenses and should not be listed separately as income. For a business owner that pays other household members, the income amount should be included as part of that household member's income. Self-employment should not be third-party verified other than through taxes.

The Self-Employment Affidavit shall include a statement that providing false or misleading information may result in disqualification and be subject to prosecution. The City does not require that the form be notarized.

The business Owner must submit business documentation as needed and the most recent federal



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tax return. Use the amount on the affidavit and collect last year's federal tax return to verify the business and the business income.

Example 1: Uber Driver

- Purchaser anticipates \$35,000 in gross revenue in the next 12 months.
- Business expenses (car washes, gas, insurance, etc.): \$10,000.
- Net Business Income: \$25,000.
- Use \$25,000 as the projected income for the next 12 months for the income certification.
- Have the Purchaser complete the Under Income Affidavit form if there are no other sources of income sufficient to pay the rent.
- Screenshots of payments from Uber are not required.

Example 2: Sole Proprietorship with a Loss

- Purchaser anticipates \$0 for the next 12 months due to higher expenses than revenues.
- Revenues are anticipated at \$25,000.
- Expenses are anticipated at \$30,000 due to recently starting the business.
- Last year's taxes showed a loss.
- Use \$0 as the projected income for the income certification.
- Note: if the last year's taxes did not show a loss, and the Purchaser is claiming \$0 for the next 12 months, use the amount from the prior year's taxes for the income certification.

Example 3: Occasional Cash-Paid Service Worker

(e.g., babysitting in which the employer does not claim the worker as an employee)

- Purchaser anticipates \$3,500 in revenue for the next 12 months.
- Expenses are anticipated at \$0.
- Use \$3,500 as the projected income for the income certification.
- Verify evidence of past payments through deposits to checking account(s), if possible.
- Have the Purchaser complete the Under Income Affidavit form if there are no other sources of income sufficient to pay the rent.

6.2.11 Unemployment and Disability Income

Unemployment and disability benefits shall be annualized unless the household member provides documentation that benefits will cease in the next 12 months.

6.2.12 Social Security and Supplemental Social Security Income

For Social Security Income or Supplemental Security Income (SSI), a benefit verification letter with a date no earlier than 120 days prior to the effective date of certification is required. Refer to the Social Security website on how to obtain this letter. See <https://www.ssa.gov/manage-benefits/get-benefit-letter>. Count the total income before any deductions. If the Benefit Verification Letter is for the prior year and lists payment amounts prior to December of the prior year, you must multiply the benefit amount by the cost-of-living adjustment (COLA) to project benefits for the following year. The current year COLA adjustment can be found here: <https://www.ssa.gov/oact/cola/latestCOLA.html>. Note that if a Purchaser's sole source of income is from Social Security, the Purchaser should also complete a Non-Employment Affidavit. For lump sum social security payments, refer to the HUD Manual, Chapter 5.



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6.2.13 Dates of verifications

All verifications received, including the dated social security benefit letter received should be dated within 120 days prior close of escrow. Written clarifications shall be included in the Purchaser file for any exception to rules or any calculation that needs explanation.

6.3 ASSET ELIGIBILITY AND VERIFICATION

6.3.1 Use of California Code of Regulations, Title 25 for Calculating Income from Assets

For all properties, unless noted in the deed restriction, staff should calculate income from assets in accordance with the requirements set forth in California Code of Regulations, Title 25, Housing and Communication Development, Division 1, Housing and Community Development, Chapter 6.5 Program Operations, § 6914 and as directed in these BMR Guidelines. [View Document - California Code of Regulations \(westlaw.com\)](#), with the exception that the current HUD passbook savings rate for determining income from assets shall apply. See HUD Handbook 4350.3 REV-1.

6.3.2 Third-Party Verification of Assets

The City of Foster City requires third-party verification of assets for purchasers of BMR property. Third-party verifications must comply with current fair housing regulations and the current HUD Handbook, Chapter 5, Section 3, Verifications.

6.3.3 Negative or Blank Asset Verifications

Negative or blank asset verifications, in which City Staff seek to determine if an account is held at a financial institution and for which there is no disclosure of the asset on the TICQ, are not permitted.

6.3.4 Rules on Redacting Information on Documents Provided

The City does not allow redacted information, other than social security numbers, on any documents submitted for the income certification process.

6.3.5 Calculating Income from Assets

Twelve months of bank statements are required for checking and savings accounts and the latest quarterly statement for investment and retirement accounts. For checking accounts, the cash value of the asset is the average of the ending balance for 12 months. For savings accounts, the cash value is the ending balance on the most recent statement. For investment accounts, the cash value is the ending balance on the current statement, less any penalty for early withdrawal (usually 10%), if applicable. Substantial, frequent, or regular deposits of \$100 or more require explanation from the household member, if not included on the Purchaser Income Questionnaire.

6.3.6 Computing Income from Real Estate Assets

Purchasers of BMR ownership units are not permitted to own residential real estate. For commercial real estate assets, in accordance with Section 7.4, Staff should verify the cash value of the asset through three online sources or a recent appraisal that is not more than 120 days old. Take the average of the three values and subtract 6% for average sales costs (or current industry



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standard if not 6%) and subtract any remaining mortgage on the property. To verify the remaining mortgage, obtain a recent mortgage payment statement or use an online source to verify the outstanding balance. The cash value of the asset goes in the asset section of the Purchaser Income Certification. Imputed income will also be added to the income from assets since the cash value of the real estate, combined with other financial assets, will likely trigger the imputed income rule.

6.3.7 Lump Sum Payments

Single lump sums for the following items should be counted as assets rather than income: inheritance, capital gains, lottery winnings made in one payment, cash from sale of assets, insurance settlements, workers compensation, and personal property losses; any other amounts that are received in one-time lump sum payments. Two or more payments of these items shall be counted as income, rather than assets. See HUD Inclusions and Exclusions to Income for more details. See https://www.hud.gov/sites/documents/DOC_35699.PDF.

6.4 LIVE-IN AIDES

The City does not count income from live-in aides as defined by HUD. See HUD Handbook Chapter 3 and Chapter 5: <https://www.hud.gov/sites/documents/43503c3HSGH.PDF> and <https://www.hud.gov/sites/documents/43503c5HSGH.PDF> for more information. For LIHTC properties, refer to CTCAC compliance rules on this issue.

6.5 DOCUMENTING PURCHASER INCOME CERTIFICATIONS

6.5.1 Forms

City Staff shall use the most current forms available from the California Tax Credit Allocation Committee (CTCAC), as provided below, or substantially similar forms created by the City Staff: CTCAC forms are available on the CTCAC website at <https://www.treasurer.ca.gov/ctcac/compliance.asp>. In addition, City Staff shall include a calculation worksheet for each household showing how income was calculated for each household member.

6.5.2 Owner Income Certification File Organization

Income Certifications for Purchaser files shall be organized in the following order.

1. Purchaser Income Certification Form
2. Income calculation worksheet(s), income and rent limits, and Utility Allowance Schedule for the household.

The following Items shall be in order by household member with the head of household first.

1. Purchaser Income Questionnaire
2. Income forms and documents
3. Asset forms and documents
4. Child support forms and documents



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6.5.3 Required Forms

Forms required for Income Certification of purchasers are listed below. Unless otherwise noted, one form is required for each adult household member. Forms marked by an asterisk are available on the CTCAC website at <https://www.treasurer.ca.gov/ctcac/compliance.asp>.

1. Affidavit of Residence Form (required for Foster City residents for new move-ins)
2. Purchaser Income Certification Form (one per household)
3. Income Calculation Worksheet
4. Purchaser Income Questionnaire
5. Self-Employment Affidavit (SEA), if applicable
6. Family Contribution Affidavit, if applicable*
7. Non-Employment Form, if applicable*
8. Zero Income Certification Form, if applicable*
9. Non-Tax Filer Affidavit, if applicable
10. IRS Form 4506-T, if applicable <https://www.irs.gov/forms-pubs/about-form-4506-t>
11. Under \$5,000 in Asset Certification Form, required if value of assets is < \$5000*
12. Substantial Deposits form, (required if bank statements show multiple deposits over \$100 that are not disclosed on Income Questionnaire)
13. Child or Spousal Support Affidavit*
14. Live-In Aide Verification Form, if applicable*
15. Clarification Form, if applicable
16. Asset Verification Clarification Form, if applicable

6.5.4 Signatures on Forms

The Purchaser's Income Certification form must be signed by all adult household members and Staff. All forms must be signed as indicated on the form. Taxes included in the file must be signed by the Purchaser.

6.5.5 Dates on Forms

Forms prepared and/or signed after the effective date of certification shall be signed with the current date and include the following statement "True and Correct as of (insert effective date). The statement must be initialed by the Purchaser(s). Backdating of forms is not permitted.

6.5.6 Mistakes and Corrections on Forms

Forms and documents submitted for certification may not be amended or corrected unless authorized by Staff and initialed by the household member. Errors should be crossed out and initialed. Blacking or whiting out of errors is not permitted.

6.5.7 Conflicting, Incomplete, Insufficient, or Unclear Information Provided on Forms

If Staff determines they have received conflicting, unclear, or insufficient forms or documentation, they have the right to request additional information from the household member pursuant to HUD Guidelines.



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6.6 REQUESTING ADDITIONAL INFORMATION REQUIRED FOR ELIGIBILITY

Additional information and documentation not listed in these Guidelines may be required to review an Owner's eligibility to purchase a unit.

6.7 CITIZENSHIP/RESIDENT ALIEN STATUS VERIFICATION

The City does not currently require verification of citizenship or resident alien status unless required by law.

6.8 SOLE RESIDENCY REQUIREMENT

The BMR Ownership Unit must be the household's sole and primary residence. Exceptions include students who reside elsewhere to attend school and reside in the BMR property 14 or more (consecutive or non-consecutive days per year), children under a shared custody agreement, estranged or separated spouses, and household members in temporary or permanent supportive housing.

7 DETERMINING PURCHASE PRICE

7.1 ELIGIBILITY

Purchase price of the property shall be determined pursuant to the regulatory documents governing the Property as pursuant to California Health and Safety Code Section 50052.5 as follows. Persons and families of very low-income means persons and families whose income does not exceed limits set forth in Section 50105 of the Health and Safety Code or any successor statute thereto. Persons and families of low- or moderate-income means persons and families whose income does not exceed the limits set forth in Section 50093 of the Health and Safety Code or any successor statute thereto. Income shall be calculated as set forth in Section 6.0 of these BMR Ownership Guidelines.

7.2 INITIAL PURCHASE PRICE

The Initial Purchase Price, also called the Affordable Housing Cost, is defined in Section 50052.5 of the Health and Safety Code or any successor statute thereto. Section 50052.5 defines Affordable Housing Cost as:

- (a) For extremely low-income households the product of 30 times 30 percent of the area median income adjusted for family size appropriate for the unit.
- (b) For very Low-Income Households the product of 30 percent times 50 percent of the area median income adjusted for family size appropriate to the unit.
- (c) For lower Income Households whose gross incomes exceed the maximum income for very low-income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 30 times 70 percent of the area median income adjusted for family size appropriate for the unit as defined in Section 50052.5 (h).



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Adjustment for household size is as defined in Section 50052.5 (h) and means two people for a one-bedroom unit, three people for a two-bedroom unit, four people for a three-bedroom unit, and five people for a four-bedroom unit. Section 50052.5 (h) does not include five-bedroom units, but it is assumed that six people shall be used for household size for a five-bedroom unit.

In the event that Section 50052.5 is updated, the most current version of the Code shall apply.

8 RESALE PRICE RESTRICTION

8.1 TERM OF RESTRICTIONS

Owners of BMR Properties are required to sell or transfer their property to households of low and very low income during the deed restriction period pursuant to the deed restriction, other documents governing the property, and the provisions of this section.

8.2 DEFINITION OF TRANSFER

Transfer shall mean any transfer of title to, or rental or sale, of the Property, or judicial sale on execution or other legal process of foreclosure or trustee's sale of the Property (regardless of whether initiated by the lender); provided, however that "Transfer" does not include any of the following: (a) transfer by gift, devise or inheritance to the spouse, issue or adopted child of the Owner of the Property; or (b) a transfer resulting from the death of an Owner where the transfer is to a co-Owner or joint tenant; or (c) a transfer by an Owner to any person who becomes a co-Owner of the Property provided Owner retains at least a thirty-three percent (33%) interest in the Property and the co-Owner agrees to become a Co-Owner under the Resale Agreement; or (d) a transfer resulting from a divorce, a decree of dissolution of marriage or legal separation or from a property settlement agreement incidental to such a decree in which one of the Owners becomes the sole Owner of the Property; or (e) a transfer between co-Owners; or (f) a transfer by Owner into an inter vivos trust in which Owner is a beneficiary and Owner continues to occupy the Property; or (g) acquisition of title to the Property or interest therein in conjunction with marriage.

Owners must notify the City in writing within ten (10) days of offering their house for sale. Owners must disclose deed restrictions to potential buyers. Incomes of potential purchasers must be certified by City Staff prior to execution of a Purchase and Sale Agreement. The resale purchase price must be calculated by the City and provided.

8.3 RESALE PROCEDURES

The Owner shall notify the City prior to any Transfer of all or part of the Property. This notification shall occur prior to the occurrence of any of the following conditions.

- (a) The Owner lists or otherwise advertises the Property for sale.
- (b) Owner enters into an agreement for sale or Transfer of the Property.
- (c) The Owner ceases to occupy the Property as the Owner's sole residence.
- (d) A notice of default under the Purchase Money Note is recorded against the Property.



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The Owner shall have an affirmative obligation to inform the City in writing a minimum of ten (10) days prior to the occurrence of any condition stated above.

8.4 RESALE PRICE

8.4.1 Calculation of Resale Price During the Deed Restriction Period

During the deed restriction period, the City shall determine the Resale Price according to the following method to calculate a price not to exceed the lowest of:

- (a) Median Household Income – the original purchase price plus an amount, if any, equal to the original price multiplied by the percentage increase, from the time of the initial conveyance from the Developer to the Owner until the time of sale, in the median household income for San Mateo County, as published periodically by the United States Department of Housing and Urban Development and the State Department of Housing and Community Development: <https://www.hcd.ca.gov/grants-and-funding/income-limits>. The original purchase price shall be increased by that percentage; provided, however, that the adjusted price in no event shall be lower than the purchase price paid by the Owner when the Owner purchased the Property. This adjusted price shall be increased by the value of any Capital Improvements.
- (b) Consumer Price Index – the original purchase price plus an amount, if any, equal to the original purchase price multiplied by the percentage increase in the housing component of the Consumer Price Index for the San Francisco/Oakland/San Jose Area, Housing Component Index for All Urban Consumers, as published by the United States Department of Labor and Statistics: <https://www.bls.gov/cpi/>. For that purpose, the Consumer price Index prevailing on the date of the purchase by the Owner of said Property shall be compared with the latest Consumer Price Index available on the date of receipt by Agency of notice of intent to sell. The original purchase price shall be increased by that percentage; provided, however, that the adjusted price in no event shall be lower than the purchase price paid by the Owner when the Owner purchased the property. This adjusted price shall be increased by the Value of any Capital Improvements.
- (c) Appraisal – The Owner shall have an appraisal made by a neutral professional appraiser of the Owner's choice and expense to establish the market value. The City or its designee may elect to have an appraisal made by a neutral professional appraiser of its choice, at the City's expense, in the event that the City is not satisfied with the Owner's appraisal. the average of the two appraisals shall be deemed to be the market value.

8.4.2 Adjustments to Resale Price

Any resale price determined through the use of method described in 8.4 (a) or (b) shall be adjusted by decreasing the Resale Price by an amount to compensate for deferred maintenance costs, which amount shall be determined as follows: upon receipt of notice of Owner's intent to sell, the City or its designee shall have an opportunity to determine whether any violations of applicable building, plumbing, electric, fire or housing codes exist or any other provisions of Municipal Code. In the event deficiencies are noted, the City shall obtain estimates to cure the observed



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deficiencies. The Owner shall cure the deficiencies in a reasonable manner acceptable to the Agency or its designee within sixty (60) days of being notified of the results of the inspection, but in no event later than the close of escrow. Should Owner fail to cure such deficiencies prior to the scheduled date of close of escrow, at the option of the City, its designee or assignee, escrow may be closed, title passed and money paid to the Owner subject to the condition that such funds as are necessary to pay for curing such deficiencies (based upon written estimates obtained by the City) shall be withheld from the money due to the Owner and held by the escrow holder for the purpose of curing such deficiencies. The City, its designee or assignee shall cause such deficiencies to be cured and upon certification of completion of work, escrow holder shall utilize such funds to pay for said work. Any remaining funds shall be paid to the Owner. No other payment shall be due to the Owner.

8.4.3 Establishment of Resale Price

The City shall notify the Owner of the Resale Price within ten (10) days of the Owner's notification subject to the determination of those factors establishing price, such as completion of appraisals of the property if necessary; inspection of the property; and determination of the value of capital improvements.

8.4.4 Value of Capital Improvements

The value of capital improvements to the property, if any, shall be determined in accordance with the following provisions:

- (a) Within sixty (60) days of completion of any capital improvements, the Owner shall notify the City in writing of the completion of the capital improvements and shall submit proof of cost, copies of all applicable permits and plans and an estimate of the increase in value of the Property by reason of the improvements (not to exceed actual cost of construction).
- (b) If, within thirty (30) days of receipt of the notice to the City of the capital improvements, the City questions the claimed increase in value of the Property by reason of the Capital Improvement, the City and Owner may, by mutual agreement, establish the value of the Capital Improvement or Owner may require an appraisal of the Property, at the Owner's expense. If the City requires an appraisal to determine the value of the Property, if any, by reason of Capital Improvements, two (2) neutral professional appraisers shall be selected; one chosen by City and one chosen by the Owner. If the appraisals are performed, the increase in value resulting from the Capital Improvement shall be the average increase determined by the two appraisals. The cost of the appraisals shall be divided between the parties.

9 SHARE OF PROCEEDS TO AGENCY

To reimburse the City for the use of its money, the City shall be entitled to receive a portion of the net proceeds from the first sale of the Property or any refinancing following the termination of the deed restriction period. If the Property is owned by persons and families of low to moderate income, the City shall receive twenty percent (20%) of net proceeds, and if the property is owned



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by persons and families of very low income, the City shall receive forty percent (40%) of net proceeds.

Net proceeds shall be determined by the gross receipts from the sale or refinance of the Property less customary and reasonable closing costs, including reasonable and customary brokerage commissions, and repayment of the outstanding principal balance of any first mortgage loan on the Property. The escrow agent or title company handling the closing of the property shall be directed to transfer twenty percent (20%) or forty percent (40%), as applicable, of the net proceeds to the City upon close of escrow.

In order to protect the right of the City to receive the net proceeds, no loan secured by a first deed of trust or mortgage against the Property shall have a loan to value ratio in excess of ninety-five percent (95%), with the value calculated as the most recent Affordable Housing Cost. This restriction on the amount of the loan will remain in effect until the City has received its twenty percent (20%) or forty percent (40%), as applicable, share of the net proceeds.

10 REQUIREMENTS FOR PROGRAM MONITORING AND ADMINISTRATION

10.1 RETENTION OF RECORDS

10.1.1 Storage Time Requirement

Owners must maintain records for at least seven (7) years after transfer of the property.

10.1.2 Electronic Files

Files may be kept electronically or in hard copy. Electronic files must be protected. The City requires all electronic files to comply with California Tax Credit Allocation Committee rules on electronic files. See: <https://www.treasurer.ca.gov/ctcac/compliance/memos/electronic-storage.pdf>.

10.1.3 Additional Requirements

Covenants, local, state, or federal regulation may require additional records management and reporting requirements, or supersede requirements as stipulated in this Section.

10.2 MONITORING

Upon request by the Agency, the owner of the Property shall submit an affidavit to the Agency certifying that the Property is the owners occupy the property as their principal residence or other provisions of the deed restrictions, Affordability and Resale Restrictions, or other Agreements or regulatory documents governing the property to ensure compliance.



11 USE OF HUD GUIDELINES FOR ITEMS NOT COVERED IN THESE GUIDELINES

11.1 USE OF HUD GUIDELINES FOR BMR PROPERTIES

For items not covered in these BMR Guidelines, the HUD Handbook 4350.3 REV-1 shall be considered a reasonable best practice. The handbook is provided on the website of the U.S. Department of Housing and Urban Development at:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/4350.3

Use of HUD Guidelines for Properties Covered by One or More HUD-Funded Programs

For properties covered by one or more HUD-funded Programs, if there is conflicting information in the HUD Handbook, the Covenant in place for a property, or these BMR Guidelines, then the strictest policy shall apply. An overview of HUD Programs can be found at <https://www.hud.gov/sites/dfiles/Main/documents/HUDPrograms2023.pdf>.

11.2 USE OF HUD'S FAIR HOUSING POLICIES

Please note that HUD's policies on Fair Housing are applicable to all BMR Ownership properties. See:

[https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#The Fair Housing](https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#The_Fair_Housing). In addition, the following temporary HUD Programs may apply to the BMR Ownership property if the Owner received federal financial assistance through one of the following programs:

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136, approved March 27, 2020)
<https://www.congress.gov/bill/116th-congress/house-bill/748/text>
- American Rescue Plan Act of 2021 (Public Law 117-2, approved March 11, 2021)
<https://www.congress.gov/bill/116th-congress/house-bill/748/text>

Please note that the State of California Fair Housing laws also apply to all properties. More information about California Fair Housing can be found here: <https://calcivilrights.ca.gov/LegalRecords/>.

12 NON-COMPLIANCE AND REMEDIES

In the event that the City determines that an unauthorized transfer has occurred, or the property is not the primary residence of the owner, Staff will enforce any and all regulatory requirements. The City has enforcement authority pursuant to City of Foster City Municipal Code, Chapter 17.90.110 (E). <https://www.codepublishing.com/CA/FosterCity/>.

12.1 PROCEDURE FOR NON-COMPLIANCE



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City staff may notify the owner with a Notice of Non-Compliance, and remedies and deadlines for correcting non-compliance issues.

12.1.1 Appeal Process

Owners who wish to appeal a notice of non-compliance must submit a request for appeal in writing to the City within ten (10) business days of receipt of the Notice of Non-Compliance. Appeals will be considered by the Community Development Director, in coordination with the City Attorney. In the event of a denial the Owner shall have the time specified in the decision to remedy the non-compliance specific to the circumstance.

12.1.2 Continued or Repeated Non-Compliance

Owners that remain in a state of non-compliance for more than ninety (90) days after the date of a Notice of Non-Compliance or Denial of an Appeal of Non-Compliance or are notified by the City of non-compliance may be subject to fines or legal action by the City pursuant to City of Foster City Municipal Code, Chapter 17.90.110 (E).

12.2 REMEDIES

12.2.1 Unauthorized Sale, Lease or Transfer of Property

In the event that a sale, lease, refinancing, or other transfer of the property occurs without certification by the City that the purchaser/transferee is an eligible household and that the property is being transferred at an affordable housing cost, the sale, lease, or other transfer of the Property in violation of the Deed Restriction, Resale Agreement, or other Regulatory Agreement, the sale, lease or other transfer shall be void and the City may elect to force a sale of the property and exercise right of first refusal.

12.2.2 Violation of Deed Restrictions or Other Regulatory Documents

In the event that the City determines, through documented evidence, that the owner maintains another residence, owns other residential property, committed fraud relating to certification of income, or violates any other restriction of the Deed Restriction, Affordability Restriction, Resale Restriction, or other Regulatory Document pertaining to the Property, the City may require the Owner to provide evidence of curing the violation and/or the City elect to force a sale of the property and exercise right of first refusal.

13 CONFLICT WITH HOUSING ELEMENT OR OTHER REGULATORY INSTRUMENT(S)

These BMR Ownership Guidelines serve as an implementation tool for the Housing Element and property affordability restrictions, Affordable Housing Agreements, Amendments, or other regulatory instruments that are in effect for all properties covered by these BMR Ownership Guidelines. In the event that these BMR Ownership Guidelines conflict with the Housing Element, the Deed Restriction or other instrument recorded for the Property, or other local, state, or federal regulation covering the property, the regulatory instrument(s) in effect for the property shall supersede these BMR Ownership Guidelines.