CITY OF CUPERTINO

HOUSING DIVISION

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HOUSING COMMISSION STAFF REPORT

August 13, 2026

Subject

Study session to examine the City's Below Market Rate (BMR) Housing Mitigation Program Procedural Manual (Housing Mitigation Manual).

Recommended Action

Receive presentation on the Housing Mitigation Program Manual, Inclusionary Housing Requirements, and BMR Fee.

Background

BMR Housing Mitigation Program

The City's Housing Mitigation Program (BMR Program) was adopted in 1992 to generate affordable housing. The ordinance requires developers to provide a specified number of affordable owner-occupied and rental units within their proposed housing developments, known as inclusionary affordable housing. BMR for-sale units are made available to median and moderate-income households at 20% of the total development. BMR rental units are made available to low and very low-income households at 15% of the total development. The general accepted definitions of affordable housing at their various income levels are defined in the table below:

Table 1 City of Cupertino BMR Inclusionary Housing Requirements

Income Level	Area Median Income Level	BMR Program Requirement
Acutely Low Income	0 – 15% AMI	None
Extremely Low Income	15 – 30% AMI	None
Very Low Income	30 – 50% AMI	9% of rental projects
Low Income	50 – 80% AMI	6% of rental projects
Median Income	80 – 100% AMI	10% of ownership projects
Moderate Income	100 – 120% AMI	10% of ownership projects

The development of BMR units and collection of associated fees is governed by the Housing Mitigation Manual (Attachment A). The units are managed in accordance with City Council adopted guidelines, separately known as the Procedures Manual of Administering Deed Restricted Affordable Housing Units (BMR Admin Manual), both of which are available for view on the City's Housing website (www.cupertino.org/housing).

Below Market Rate Affordable Housing Fund (BMR AHF)

The BMR Program also includes a fee that is collected upon issuance of the building permit of applicable developments to be used to create a local affordable housing fund. Eligible uses for this fund include: acquisition, construction, preservation, rehabilitation, operation subsidies, BMR program administration, Fair Housing, and other similar affordable housing related activities for low-income households. In 2025 and 2026, the Housing Commission voted in favor of using the BMR AHF to support low-income housing projects such as the Mary Ave Villas and the Wolfe Rd Educator Housing projects. It is critical to ensuring that the City is able to continue to collect revenues to the fund that are commensurate to the need for affordable housing in order to meet the City's low income housing goals.

Regional Housing Needs Allocation (RHNA) Progress

The Regional Housing Needs Allocation (RHNA) is the City's requirement to produce its fair share of affordable housing at various income levels in accordance with state law. Progress towards the RHNA goals of the 2023-2031 Housing Element has been slow due to pipeline housing projects producing lower than expected density with few low and very low-income units. As a result, it may be beneficial to examine the current inclusionary housing requirements and assess the financial feasibility of increasing the minimum City requirement to produce affordable housing at deeper affordability levels or at higher percentages of the development.

Housing Element

The City of Cupertino is committed to studying the Housing Mitigation Program and its current fee schedule as a potential constraint and to update development fees to ensure that they comply with state regulatory requirements to remain legally defensible. These items are enumerated in the Housing Element as HE – 2.3.3 (Residential Housing Mitigation Program) and HE – 2.3.9 (Review Impact Fees)

Discussion

In its current iteration, the BMR Fee consists of two components: the fractional fee and the commercial linkage fee. Both fees are based on additional square footage of floor area proposed by the development. The current BMR fee schedule is included in Attachment B.

Fractional Fee

The City's inclusionary housing program often results in a non-whole number of required BMR units. For example, a proposed rental project with a total of 22 units would be required to provide 1.98 very low-income units and 1.32 low-income units. In scenarios where the fractional portion of the BMR requirement is greater than 0.50, the developer is required to round up. However, in scenarios where the fractional portion of the BMR requirement is lower than 0.50, the developer is required to pay an equivalent fee in-lieu of the additional unit. The formula to calculate this fee is as follows:

[(Gross Floor Area x Fee Amount per SF by Development Type) / Below Market Rate Inclusionary Requirement (15% or 20% of total units provided)] x Remaining Fraction of BMR Requirement

In this example, if we assume the apartment building is 20,000 square feet, the formula for the BMR Fractional Fee would be (20,000 x $29.94) / 1.32 x 0.32 or $145,163.63. Therefore, the BMR requirement for this project would be to provide 2 very low-income units, 1 low-income unit, and pay $145,163.63 to the BMR AHF fund as a fee.

Commercial Linkage Fee

The City's BMR Fee also includes a commercial linkage component to ensure that economic and job growth is able to be met with equivalent affordable housing supply. The fee schedule contains several categories for non-residential development and separates them by the level of wages the associated jobs created would pay. For example, an office/research park would generate high income wages and thus would require a higher BMR Fee while a retail store would generate low income wages and would have a lower BMR Fee. Current categories include office/research, hotel, self-storage facility, warehouse, and commercial/retail. The possibility of additional categories should be considered to anticipate future types of commercial development that may be proposed.

Request for Proposals (RFP)

In July 2026, staff created and opened an RFP to select a consultant to complete the nexus study and provide a proposal for an updated inclusionary housing requirement and schedule of fees for the BMR program. The goal of the update is to promote the City's ability to meet its remaining RHNA targets in affordable housing production while remaining economically viable in the current development market. The proposal must also be legally defensible according to applicable state law. In addition to updating the inclusionary housing requirement and the two existing components of the BMR Fee, this update will include the addition for a complete fee-out option for developers in-lieu of providing inclusionary units, which is required by Government Code Section 65850.

<u>CEQA Impact</u>
<u>None</u>

<u>Sustainability Impact</u>
<u>None</u>

<u>Fiscal Impact</u>
<u>None</u>

Next Steps

This is the first of multiple public hearings. A future public hearing of the Housing Commission will be held to recommend approval of a new inclusionary housing requirement and BMR fee schedule. The recommendation will be proposed for approval at a meeting of the City Council with a date and time to follow.

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Attachments:
A – Below Market Rate Housing Mitigation Program Procedural Manual