



COMMUNITY DEVELOPMENT DEPARTMENT

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CITY COUNCIL STAFF REPORT

June 17, 2025

Subject

Options on preservation and anti-displacement of Below Market Rate (BMR) units;
Consider approval of BMR Anti-Displacement Policy

Recommended Action

Receive presentation on preservation and anti-displacement for tenants residing in expiring Below Market Rate units in market rate developments for adoption; Adopt Resolution No. 25-000X (Attachment A) approving amendments to the BMR Admin Manual to create an anti-displacement policy for tenants residing in expiring Below Market Rate units.

Executive Summary

Within the City of Cupertino, certain affordable rental units within market rate developments have upcoming expirations. Low-income tenants of these units are facing displacement due to disproportionately high rent increases (approximately 200% - 250%) as the landlords will be able to re-establish market rate rents upon expiration. To address this issue, staff recommends that Council adopt the proposed resolution to enact priority replacement in the BMR waitlist and require relocation assistance from landlords to displaced tenants as a BMR Anti-Displacement Policy. The purpose of the policy is to rehome low-income households and prevent homelessness.

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. BMR for-sale units are made available to median and moderate-income households. BMR rental units are made available to low and very low-income households. The development of BMR units and collection of associated fees is governed by the BMR Housing Mitigation Program Procedural Manual. 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 viewing on the City's

Housing website(<https://www.cupertino.gov/Your-City/Departments/Community-Development/Housing>).

Expiring BMR Rental Units

The City of Cupertino administers BMR inclusionary rental units in seven market rate developments that have an expiration date. Three of the seven properties are set to expire in 2026, potentially leading to displacement of the 39 low-income tenants currently housed in those units within the next two years. The June 7, 1999 update of the BMR Housing Mitigation Program Procedural Manual avoids this issue for new development by assigning the term of affordability to run with either a term of 99 years or for the life of the property. However, there is not a policy in place to address displacement when units built prior to the enactment of the 1999 regulations expire. Overall, the City will see a total of 114 affordable rental units expire by 2040. To avoid displacement of the low-income tenants of these units, the City may consider adopting new policies for expiring rental units. For best practices, any new policy should be enacted by June 2025 in order to provide enough time to notify tenants in preparation of potentially needing to find new housing. Tenants of expiring BMR units face unique challenges being either low income (80% Area Median Income), very low income (50% Area Median Income) or extremely low income (30% Area Median Income). Based on demographic research of the first three expiring buildings, about 61% of the tenants in the program are over the age of 50, the average household size is 2.4 people, and the average household has participated in the program for 6 years. The full list of expiring BMR rental units at risk of converting to market rate upon expiration has been included in Figure 1 below:

Figure 1: BMR Rental Units at Risk of Converting to Market Rate

Property	# of Expiring Units	Total BMR Units	Date of Expiring Restrictions	Property Owner
Aviare	20	22	7/8/2026	Legacy Partners
Forge Homestead	15	15	7/15/2026	De Anza Properties
Park (City Center)	4	4	7/8/2026	Prometheus
Hamptons	34	34	10/20/2027	Irvine Company
Arioso	20	20	1/29/2028	FPI Management
Biltmore	2	2	8/30/2029	Prometheus
Aviare	2	22	7/8/2038	Legacy Partners
Markham	17	17	11/4/2039	Prometheus
TOTAL	119	119	2040	

In October 2024, staff contacted property management of the three properties with units set to expire in 2026 to ensure that proper noticing was sent to tenants to inform them of their expiring affordability restrictions. When it was found that two of the three had not sent out proper noticing to their tenants, staff worked with property owners to ensure that noticing was sent out using approved templates from the California Department of

Housing and Community Development (HCD) and that as injunctive relief to affected tenants, the affordability restrictions would be reimposed with new expiration dates falling three years from the date of notice provided, in accordance with Government Code 65863.10. For the remaining property set to expire in 2026, staff contacted property management to inquire if they had interest in extending the affordability terms, but received a response that they were not interested in exploring that option.

Alternative Strategies Explored

Acquisition Preservation

In accordance with policy requirements of Housing Element strategy HE-3.3.2, staff studied the feasibility of re-restricting expiring units through acquisition preservation. This process involves purchasing expiring units to be owned by the City and maintained as affordable in the BMR program. Inclusionary affordable housing units are required to be provided in market rate projects at a ratio of 15% of total units in the development. Re-restricting BMR units via acquisition would require the purchase of entire apartment buildings to preserve each handful of units, as rental units cannot be bought separately. This exponentially raises the costs of preservation. Acquiring all buildings which contain expiring BMR units would cost an estimated \$523 million dollars, based on the recent McClellan Terrace acquisition as a current local case study. As the City currently has a total balance of \$4.8 million dollars in the Below Market Rate fund, this strategy was determined to be infeasible to prevent displacement of the 114 expiring units. The City is also not able to purchase the affordable units separately from the rest of the building without the property owner first completing a condominium conversion, which in turn cannot be completed without the property owner first completing an anti-displacement/relocation plan for all tenants of the building, as the conversion of apartment buildings to condominiums would also have an effect of increasing housing costs and leading to further displacement.

In summary, the strategy of acquisition preservation was found to be infeasible both due to legal constraints and fiscal impacts. Knowing this, staff began to work on the next action item prescribed by HE-3.3.2, which is to work with tenants and organizations to reduce displacement. During this process, it was recommended by both RISE Housing (the City's BMR administrator) and West Valley Community Services (the City's former BMR administrator) to pursue an BMR Anti-Displacement Policy to protect tenants of units with expiring restrictions in market rate developments. Staff sought legislative feedback from the Housing Commission during the December 19, 2024 meeting in which a study session was held on anti-displacement, with various alternative strategies to be studied were considered. During this session, the commission recommended that staff draft a BMR Anti-Displacement Policy to be presented to the City Council for approval.

Rent Stabilization

As outlined in Housing Element Strategy HE-3.3.6, staff also explored the possibility of preserving affordable housing units through rent stabilization. Upon review, it was found that the stipulations of the Tenant Bill of Rights Act (2019), also known as AB 1482, state

that an owner of an affordable housing unit subject to a regulatory restriction (that is not within an assisted housing development) is authorized to establish the initial rental rate for the unit upon the expiration of the restriction. Therefore, it would not be possible to enact rent stabilization for inclusionary BMR units to preserve them at their respective affordability levels without contradicting state law. However, rent stabilization may continue to be studied as part of a larger Anti-Displacement Strategy for non-deed restricted rental units in the City at-large.

Deposit/Fee Regulations

During the December 19, 2024 Housing Commission study session, a commissioner proposed a potential alternative strategy to consider. The proposal would be to introduce regulations that require landlords to provide primary source documentation prior to charging fees to tenants related to maintenance to the unit, particularly when deducting from deposits. This strategy would not be able to address the displacement faced by tenants of expiring BMR rental units, which is due to disproportionately high rent increases. However, adopting such a policy for all rental units could help reduce housing costs throughout the City. Deposit/fee regulations could continue to be studied as part of the larger Anti-Displacement Strategy.

Eviction/Legal Defense

This strategy is a broad term for protections enacted to prevent eviction or protect tenants that are evicted from their homes. This could involve expanding on just-cause eviction protections of state law, creating protections through municipal code and land-use that reinforce no-net loss provisions, or using local funds to enact agreements with legal defense organizations such as Bay Area Legal Aid to represent tenants served unlawful detainers and enforce these enacted laws. While this strategy would not address the type of displacement faced by tenants of expiring BMR units, it would be an important strategy to include as part of the Anti-Displacement Strategy for renters in the City at-large.

County BMR Waitlist

This strategy would be to add Cupertino BMR Displaced Tenants as a priority for replacement on the County of Santa Clara's BMR waitlist. City staff consulted with County staff during a meeting on May 21, 2025 to discuss this possibility. During discussions, it was found that the County does not manage a centralized BMR waitlist, but rather, allows individual developers to maintain applicant lists for each of their properties. To enact this strategy, the City would need to negotiate with developers with in-progress projects to include Cupertino BMR Displaced Tenants as a priority for applicant intake in exchange for financial contribution to the project. In practice, this policy would only be legally enforceable if the County's project is physically located in the City of Cupertino, as creating a policy that exclusively relocates Cupertino low-income households to a geographic locations outside of the City would raise fair housing concerns as an exclusionary practice. For these reasons, this strategy was not pursued to be part of the BMR Anti-Displacement Policy.

Anti-Displacement Incentives

This strategy would be to negotiate with individual property owners of buildings with expiring BMR units to extend the length of their affordability restriction in return for development concessions in future projects. Success of this strategy is contingent both on each property owner's willingness to negotiate with the City (which is dependent on their current interest in doing further development in the City) and on agreements being enacted prior to the restriction of their units to keep the tenants housed. Overall, this strategy may have the potential to successfully extend some expirations, but due to the time constraints, this would be difficult to enact for many of the units that have earlier restriction expiration dates. Under the Council's direction, this could be a strategy to pursue supplementally as part of staff workplan, in addition to the dual components of the BMR Anti-Displacement Strategy as recommended by the Housing Commission included below.

Anti-Displacement Policy

In the City of Cupertino 2023-2031 Housing Element, Strategies HE-3.3.2 and HE-3.3.6 commit the City to ensuring that all proper legal procedures are followed for expiring rental BMR units, that staff work with tenants and local organizations to prevent displacement if preservation is not feasible, and that a study for an anti-displacement policy is completed and a policy to protect tenants is enacted. For best practices, since the first BMR rental units will expire in July 2026, staff has worked to have a policy enacted by June 2025 to allow tenants to make use of a full 12 months of protections before their unit expires. Staff has met with RISE Housing and West Valley Community Services to discuss and explore different options for addressing the issue of displacement of low-income tenants in expiring units and to satisfy the requirements of the Housing Element. The organizations suggested that the City develop an anti-displacement policy for BMR tenants to be brought to the Housing Commission for study. Multiple options were presented during a study session held at a Special Meeting of the Housing Commission on December 19, 2024, in which the commission voted unanimously (5-0-0) to pursue two options as dual components of a single BMR Anti-Displacement Policy. City Staff consulted with housing staff in other jurisdictions to determine best practices and procedures for anti-displacement around the Bay Area. These cities include but are not limited to: Redwood City, Sunnyvale, Campbell, Mountain View, San Leandro, San Mateo, Santa Clara, Santa Clara County, and more. Staff held public outreach and engaged with the local community during the Housing Resource Fair on April 21, 2025, and received positive feedback in support of the BMR Anti-Displacement Policy.

Component 1: Anti-Displacement BMR Waitlist Priority

The City's BMR waitlist contains a system of awarding priority points to applicants who are already Cupertino residents, who have employment in the City, and are public employees within Cupertino. During the BMR Housing Lottery process, applicants are separated into "rounds" with the applicants with the highest amount of priority points going in the first round, and then randomly assigned numbers. The number would then determine the order in which they are picked for units within that round. Afterwards, a

new round would be completed with applicants with less priority points and the process would repeat until no more units are available. The first component of the BMR Anti-Displacement policy would be to create three additional points awarded to a new category for displaced BMR rental tenants: if a person is or was a tenant of a BMR unit expiring within 12 months. This would allow them to expedite their rehousing process when re-applying into the City's BMR program with the highest priority. In addition to amending the BMR waitlist, staff are simultaneously negotiating to have anti-displacement priority worked into the Conditions of Approval for the Vallco Rise project, to ensure that projects outside of the City's primary BMR waitlist also have anti-displacement measures. This would provide a long-term structural solution to the issue of expiring BMR rental units, but may still result in some short-term displacement, as it would be highly dependent on new BMR units becoming available in time.

Component 2: Anti-Displacement Relocation Assistance

The costs of tenant relocation often exceed the budget of a low-income household. These costs can include paying for movers and storage during the transition while also paying for application fees and deposits to their new place of residence. Furthermore, it is common practice amongst landlords to charge new tenants payment for the first and last month of rent prior to move in. The second component of the BMR Anti-Displacement Policy would be to add a responsibility of property owners of deed restricted affordable units to reimburse displaced tenants through relocation assistance. A displaced tenant would be defined as a household which moves out of a BMR rental unit before or after 12 months of the expiration date into a market rate unit. Relocation assistance would be a payment equal to the amount of (3) three months of Fair Market rent based on the tenant's unit size, and up to (1) additional month for special circumstance households (such as with elderly or disabled members), which is common practice in neighboring jurisdictions. The 2024 Santa Clara County Fair Market Rents have been included in Figure 2 below:

Figure 2: 2024 Santa Clara County Fair Market Rent

Unit Size	Studio	1 Bed	2 Bed	3 Bed	4 Bed	5 Bed	6 Bed
Fair Market Rent	\$2,383	\$2,694	\$3,132	\$4,011	\$4,425	\$5,089	\$5,753
3x	\$7,149	\$8,082	\$9,396	\$12,033	\$13,275	\$15,267	\$17,259

This would allow for short-term intervention for households at risk of experiencing displacement by subsidizing the rehousing process, but only temporarily avoids displacement until the period of assistance ends. It would also incentivize landlords to offer reasonably affordable rents for an additional one-year term after the date of expiration if they wished to avoid paying relocation assistance.

Relocation assistance is a common policy used by neighboring jurisdictions as both a tool for aiding the rehousing process and to disincentivize displacement. Overall, Cupertino's proposed relocation assistance policy would be most similar to San Leandro's, which

triggers upon when a tenant decides to vacate their unit after receiving a disproportionately high rent increase (more than 12%), and requires the landlord to make a direct payment to the tenant of 3 months fair market rent to the tenant. Examples of relocation assistance policies in nearby jurisdictions have been included in Figure 3 below:

Figure 3: Relocation Assistance Nexus Study

City	Term of Assistance	Activation	Notice	Eligibility	Time Available	Service	Agency Service	Enforcement
Redwood City	3 months FMR and 1 month special circumstance	Eviction/Withdraw	30 days after filing application	80% or lower	Within 30 days	3rd-party escrow	60 day subscription	Void Application
East Palo Alto	\$9,444.11 in unit <2 years, \$12,592.14 for 2+ years	Eviction/Withdraw	120 days prior to withdraw	80% or lower	Immediately upon notice	City escrow	None	Void Application
Menlo Park	3 months FMR and 1 month special circumstance	Eviction/Withdraw	30 days after filing application	80% or lower	Within 30 days	3rd-party escrow	60 day subscription	Affirmative Defense
San Leandro	3 months FMR and 1 month special circumstance	Landlord Termination	90 days/at time of rent increase	All AMI	Within 5 days	Direct	None	Affirmative Defense
Mountain View	3 months FMR and 1 month special circumstance	Eviction/Withdraw	30 days after filing application	120% or lower	Within 30 days	3rd-party escrow	60 day subscription	Affirmative Defense
Santa Clara County	3 months FMR and 1 month special circumstance	Eviction/Hazard	Immediately upon application	All AMI	Within 15 days	Direct	None	Affirmative Defense
Sunnyvale	3 months FMR and 1 month special circumstance	Eviction/Withdraw	30 days prior to termination	All AMI	Within 15 days	Direct	None	Affirmative Defense

Reasons for Recommendation

To satisfy deadlines set by the Housing Element and to ensure protections are made for low-income BMR tenants 12 months prior to their expirations, staff recommends adopting the resolution to approve the BMR Anti-Displacement policy as presented while adding direction for staff to continue to study other alternative strategies as part of a larger Anti-Displacement Strategy for the City at-large. Pursuing both options as recommended by the Housing Commission ensures the most comprehensive protection for low-income tenants of inclusionary BMR units in market rate projects. Enacting both options would subsidize the rapid rehousing of low-income households in danger of experiencing displacement and create a structural solution in the priority system of the BMR waitlist that places anti-displacement at the highest level of concern. However, to ensure that displacement is mitigated to the highest degree possible, in addition to enacting both components of the BMR Anti-Displacement Policy, it should still remain a high priority to produce new deed-restricted affordable housing units to permanently re-home the affected tenants.

Throughout development of the policy, several alternative anti-displacement strategies were explored, with some found to be infeasible while others were found to hold opportunities if explored from a broader lens than the BMR program. These other strategies include rent stabilization, eviction/legal defense, and deposit/fee regulations. With the Council's direction, this could continue to be studied as part of staff workplan and brought forth before the Housing Commission as part of a larger Anti-Displacement Strategy. This strategy would address anti displacement with a widened scope for renters throughout the City at-large, (beyond the BMR list) and continue to be explored throughout the sixth Cycle of the Housing Element.

If the policy is not adopted, the affected households may struggle to find housing affordable to their income levels within the area. Those with more means would likely either relocate far outside of Cupertino for housing (becoming displaced) or would use savings while paying over half of their income towards housing (becoming severely cost burdened). Those with less means may potentially face homelessness. The City may fall short of Housing Element obligations to prevent displacement of 100 low income households.

Sustainability Impact

No sustainability impact.

Fiscal Impact

No fiscal impact.

City Work Program (CWP) Item/Description

Yes, FY 24-25

Preserve existing and develop new BMR/ELI Housing: Explore opportunities to preserve existing expiring BMR housing. Develop ELI (Extremely Low Income) and BMR housing

units for Developmentally disabled individuals (IDD) on City-Owned property as well as the County-owned sites.

Council Goal:

Housing

California Environmental Quality Act

No California Environmental Quality Act impact.

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Approved for Submission by: Tina Kapoor, Acting City Manager

Attachments:

A - Draft Resolution No. 25-000X (BMR Anti-Displacement Policy)

B – December 19, 2024 Housing Commission Minutes

C – April 21, 2025 Housing Resource Fair Interest List and Comments Received