



COMMUNITY DEVELOPMENT DEPARTMENT

CITY HALL

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## CITY COUNCIL STAFF REPORT

Meeting: March 20, 2018

### Subject

Amendment of Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.

### Recommended Action

Conduct Public Hearing and adopt the draft resolution approving amendments to the Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.

### Background

The City's Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units (the "Manual") serves as the day-to-day operational administrative manual for both City staff and its Below Market Rate ("BMR") program administrator for BMR units created by the City's Housing Mitigation Program.

The Manual has recently been updated and forwarded to the City Council for a formal amendment. This Manual establishes procedures for the ongoing administration of the inventory of the City's BMR units created by the Housing Mitigation Program. The Manual describes policies for managing the BMR eligibility requirements, priority point placement system, waiting list, income qualification, asset verification, resale restriction calculation, homeownership and rental process, occupancy verification, and rental recertification. This Manual was also reviewed by the City's outside housing legal counsel Goldfarb and Lipman, LLC and the City's current BMR program administrator Hello Housing.

Periodically, language in the Manual is reviewed to improve implementation, follow regional best practices, and conform to legal standards. In addition, minor corrections and edits have been made for consistency, readability, or clarifications. The proposed revisions have been identified with strikethroughs and underlines (as appropriate) in Attachment B. Note that new language is indicated in blue, language that has been moved is indicated in green text, and deleted language is indicated in red.

## *Analysis*

### *Improve Implementation:*

#### ***Section 2.5 BMR Application Waitlist***

- The waitlist will become effective January 1st- December 31st of the following year.
- Current BMR tenants are not eligible to apply for the BMR Rental Waitlist. If current BMR tenants desire to change their BMR units, either within or between buildings, they must first vacate their current unit and then return to the BMR Rental Waitlist. Exceptions will be made for current tenants who request a reasonable accommodation.

#### ***Section 4.10 Annual Monitoring***

- The City or the City's Agent shall monitor compliance of all the requirements of the BMR program, including, but not limited to, occupancy. The owner shall cooperate with the City and provide required certifications and any reasonable requests for supporting documentation to confirm compliance within fifteen (15) days of receipt of a written request by the City.

#### ***Section 5.1 Income Limits***

- In some instances, specific units are restricted to extremely low-income as evidenced in the project's affordable housing agreement.

##### ***Section 5.1.1. Minimum Income Requirements***

- A minimum income, determined by each BMR rental property owner and manager, is required of applicants. The minimum income requirement may not exceed a requirement of gross monthly income of over three (3) times the BMR rental rate.

#### ***Section 5.2 Asset Limit***

- Assets are calculated based on account balances at the time of application.

#### ***Section 5.8 Annual Recertification of Income***

- In the event that a tenant no longer meets the household minimum size requirements (see Section 3.1) for their unit, such tenant's household may be moved to a smaller unit when an appropriately sized unit becomes available in the same property, in accordance with the terms of the tenant's lease.

#### ***Section 6.2 Eligible Prospective Tenants***

- In reviewing each candidate, the apartment owner/property manager may apply the same tenant selection criteria, such as past performance in meeting financial obligations and credit references, as those applied to applicants for non-BMR units

on the property, except for those standards relating to income eligibility (Section 5.1) and minimum income (Section 5.1.1) requirements.

#### ***Section 6.7 Terms of Affordability Covenants***

- The deed restrictions imposed on each BMR unit pursuant to the program shall remain in effect for a specified period from the date of recordation of the Regulatory Agreement.

#### ***Follow Regional Best Practices:***

##### ***Section 3.4 Definition of Residency in Cupertino (City of Sunnyvale's Policy)***

- Residing in Cupertino means: Occupying and renting, at the time of application for at least one month prior to the application date, a bona fide rental dwelling unit (mobile home and SRO units, or) within the Cupertino limits, as evidenced by a valid third-party documentation (e.g. current lease, CA driver's license or vehicle registration card, and/or utility bills showing applicant's name and street address in Cupertino). For homeless applicants, evidence that the applicant's last permanent residence was located in Cupertino and/or documentation from a case manager or homeless service provider may be used to document applicant's current status in Cupertino, which may include places or structures other than a bona fide dwelling unit (i.e. tent, vehicle, etc.)

##### ***Section 4.1.2 Credit Score***

- All applicants and co-applicants must have a minimum middle (3 credit bureau reporting) FICO credit score of 660. Credit score will be verified at the time of application and the applicant(s) will be responsible for all fees associated with the credit report.

##### ***Section 4.2 Asset Limit***

- Households with assets over \$100,000 or 30% of the BMR purchase price, whichever is greater, held in the United States or foreign countries will not be eligible to purchase a BMR home.

##### ***Section 4.2.1 Minimum Cash Available***

- Buyer must contribute a minimum of 3% of their own funds towards down payment. In other words, buyer's Combined Loan to Value Ratio (CLTV) may not exceed 97%. Buyer must contribute a minimum of 5.0% of the BMR purchase price for down payment plus closing costs (gift funds are allowed).

#### ***Section 4.2.2 Gift Funds***

- Gift funds for the purchase of a BMR unit will be counted towards the applicant's overall asset limit. Applicant(s) may receive up to 27% of the BMR purchase price in gift funds as evidenced by a gift letter signed by all parties involved.

#### ***Section 4.4.1 Initial Prices of Newly Constructed Units (City of San Francisco's Policy)***

- Newly constructed initial BMR sales prices will be determined by the City or its agent. The City or its agent will calculate newly constructed initial BMR sales prices for both median- and moderate-income based on the maximum affordable housing cost provisions of Section 50052.5 of the California Health and Safety Code, Section 6920 of the California Code of Regulations, and most recent published HCD income limits. A 10% down payment and a mortgage interest rate that is the ten (10) year rolling average of 30-year interest rate data provided by Freddie Mac will be assumed when calculating initial pricing.

#### ***Section 4.6 Occupancy Conditions***

- All owners of BMR units must occupy the premises as his or her principal place of residence for at least ten (10) months out of each calendar year. Each owner shall provide an annual written certification to the City that the owner is occupying the premises as his or her principal place of residence. Any absence from the premises by an owner for a period of sixty (60) or more consecutive days shall be deemed an abandonment of the premises as the principal residence of owner, and the City may declare a default under the Resale Agreement.

#### ***Section 4.7 Required Pre-Purchase Education***

- After the applicant(s) are placed on the BMR Ownership Waitlist and before closing escrow on a BMR unit, the applicant(s) must attend a BMR pre-purchase education.

#### ***Section 5.3 Qualification as Renter***

- Applicant(s) cannot own a home and/or be on title of a property when applying for the BMR rental program.

#### ***Section 5.6 Occupancy Conditions***

- To qualify as a household member, the Head of Household and Co-Head of Household must occupy the unit as their primary residence for at least 10 months of the year. Any absence from the premises by a Head of Household or Co-Head of Household for a period of sixty (60) or more consecutive days shall be deemed an abandonment of the premises as the principal residence of tenant, and the City may declare a default under the rental restrictions.

### ***Section 7.0 Appeal Process***

- The appellant may further appeal the decision of the Community Development Director or the Executive Director, as applicable, by filing a written appeal with the Community Development Director within ten (10) days of the date of the decision. The appeal will be heard by a Third-Party Hearing Officer within thirty (30) days from the date of receipt of the written appeal. The Third-Party Hearing Officer's decision on the appeal is final.

### ***Conform to Legal Standards:***

#### ***Section 2.6 False Statements***

- During the BMR application process or annual recertification, households that intentionally make false statements or misrepresent any facts on the application to purchase or rent a BMR unit, or on the annual recertification, will be removed from the BMR waitlist and barred from re-applying for a BMR unit in Cupertino in the future.

If the City or its agent should discover that a contract was completed by a purchaser or renter who intentionally made false statements or misrepresented the facts in order to appear eligible or remain eligible, the City will treat this as a breach of the Occupancy, Refinancing, and Resale Restriction Agreement with Option to Purchase (Resale Agreement) or rental restrictions and may exercise any remedies allowed under the Resale Agreement and/or rental restrictions and any and all remedies allowable by law.

### ***Section 6.8 Terms of Lease***

- BMR tenants will be subject to the same conditions of tenancy as other tenants occupying the subject property, except for terms relating to occupancy, income eligibility, annual recertification, and limits on rents. Each BMR unit shall be leased under a form of tenant lease approved by the City. The tenant lease shall, among other matters:
  - Provide for termination of the lease for failure: (1) to provide any information required under the Regulatory Agreement or reasonably requested by the apartment owner/property manager to establish or recertify the tenant's qualification, or the qualification of the tenant's household, for occupancy of the BMR unit, or (2) to income qualify as a result of any material misrepresentation made by such tenant with respect to the income computation or certification;
  - Be for an initial term of not less than one (1) year. After the initial year of tenancy, the lease may be month to month by mutual agreement of the apartment owner/property manager and the tenant, however the rent may not be raised more often than once every twelve (12) months after such initial year. The apartment owner/property manager will provide each

tenant with at least sixty (60) days' written notice of any increase in rent applicable to such tenant;

- Prohibit subleasing of the BMR unit or any portion of the BMR unit, contain nondiscrimination provisions, and include the tenant's obligation to inform the property manager of any need for maintenance or repair;
- Allow termination of the tenancy only for an increase in tenant's household income above qualifying income or for good cause, including violation of the terms and conditions of the tenant lease, violations of house rules, non-payment of rent, violations of applicable federal, state, or local law, or other good cause;
- Include, at the apartment owner's option, the obligation for the tenant to provide a security deposit not exceeding two (2) months' rent; and
- Otherwise conform to this Manual.

### ***Housing Commission Review***

At its February 8, 2018 meeting, the Housing Commission adopted Resolution No. 18-01 on 4-0-1 (Kapil absent) vote recommending that the City Council adopt the Amendment of Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units.

### ***Fiscal Impact***

None

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Prepared by: Kerri Heusler, Senior Housing Planner

Reviewed by: Benjamin Fu, Assistant Community Development Director

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Approved for Submission by: David Brandt, City Manager

### **Attachments:**

A - Draft Resolution

B - Redlined Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units

C - Housing Commission Resolution No. 18-01