



# EMERYVILLE BMR RENTAL PROGRAM GUIDELINES

## ABSTRACT

The BMR Rental Program Guidelines were developed to provide clear, consistent guidance to developers, tenants and property managers on requirements for participating in the City of Emeryville BMR Rental Program.

Adopted July 7, 2020; Revised January 4, 2023

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## 1. INTRODUCTION

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The City of Emeryville Below Market Rate (BMR) Rental Program Guidelines (Guidelines) pertain to units produced as a result of the City's Affordable Housing Program Ordinance as well as any units that are subject to a regulatory agreement with the City of Emeryville. These Guidelines are intended to:

- Assist Developers early in the development process to ensure that rental BMR projects are designed in compliance with the requirements of the Affordable Housing Program;
- Provide Households interested in renting a BMR Unit with an overview of the eligibility requirements, the application and screening process, and the procedures for renting a new or existing BMR Unit; and
- Provide property management entities Guidelines for the monitoring and recertification process for existing units.

These Guidelines should be read in conjunction with the Ordinance (Chapter 5, Article 4 of the Emeryville Municipal Code) and any regulatory agreement or Affordable Housing Agreement applicable to the property. While every effort has been made to ensure that these Guidelines are consistent with the Ordinance, if there is any conflict between these Guidelines and the Ordinance, the Ordinance will prevail. In addition, the provisions of a recorded Affordable Housing Agreement (or like agreement) will prevail over any general requirements of these Guidelines. Other financing sources may have more stringent requirements, in which case the most stringent requirement will prevail.

Section 2 of the Guidelines includes definitions of terms. Section 3 presents information for Developers about the process to develop and lease rental BMR Units. Section 4 provides the requirements with which Applicants and tenants must comply to qualify for a rental BMR Unit. Section 5 contains information about the monitoring and recertification process.

The effective date of the Guidelines is July 1, 2020. The City will review and, to the extent necessary, update the Guidelines as necessary.

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## 2. DEFINITIONS OF TERMS

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Terms used throughout the Guidelines are defined as follows:

**Affordable Housing Agreement:** An agreement that contains the specific covenants with respect to the inclusion of BMR Units within a specific project that may be adopted or entered into by the City and recorded on the title for the property. To the extent applicable, the Affordable Housing Agreement will set forth the Developer's Inclusionary Obligation and the method by which the Developer will comply with the requirements of the Affordable Housing Program Ordinance or other City requirements related to affordability.

**Affordable Housing Program Ordinance:** Chapter 5, Article 4 of the Emeryville Municipal Code.

**Applicant:** The first person listed on a Pre-application and/or Full Application for the Household.

**Area Median Income (AMI):** The Area Median Income for Alameda County adjusted for Household size as published annually by the California Department of Housing and Community Development (HCD).

**Below Market Rate (BMR) Unit:** A unit that is reserved for rent to Extremely Low-, Very Low-, Low-, or Moderate-Income Households. BMR Units are subject to the recorded Affordable Housing Agreement to ensure they remain affordable for a specific period, as set forth in the Affordable Housing Agreement.

**City:** The City of Emeryville including when in its capacity as the Housing Successor to the Emeryville Redevelopment Agency.

**City Council:** The legislative body of the City of Emeryville.

**City Housing Staff:** An employee or designee of the City of Emeryville responsible for administering the Affordable Housing Program Ordinance and these Guidelines.

**Developer:** The owner of the Development and individual/entity responsible for compliance with the Affordable Housing Agreement and/or Affordable Housing Program Ordinance.

**Development:** Any individual multi-family housing property with BMR Units in the City of Emeryville's Affordable Housing Program.

**Extremely Low-Income:** Total Household income that is up to 30% of AMI, adjusted for actual Household size.

**Full Application:** A complete application to qualify for a BMR Unit.

**Guidelines:** Guidelines to the BMR Rental Program of the City of Emeryville.

**HCD:** The California Department of Housing and Community Development.

**Household:** All persons who currently live or who will live in the BMR Unit. Household members that are excluded from the Household count include foster children, children who are not currently living in the Household but for whom legal custody or adoption is being pursued, and children in which the Household has less than 50% custody. Live-in aides will be counted toward the Household size solely for purposes of determining the appropriate size of Unit; however, live-in aides' income will not be used to determine eligibility.

**Housing Affordability Table:** A document that shows the maximum qualifying annual income by Household size for the various affordability levels and the maximum allowable rents by unit size. The Housing Affordability Table is updated annually based on the then-current State of California Income Limits for Alameda County, approved by the City Council and made available on the City's website.

**HUD:** The United States Department of Housing and Urban Development.

**Inclusionary Obligation:** The number of BMR Units a Developer is required to construct in a Development project to comply with the Affordable Housing Program Ordinance.

**Low Income:** Total Household income that is 51% to 80% of AMI, adjusted for actual Household size.

**Marketing and Leasing Plan:** A plan required for Developments that contains the information set forth in **Section 3**.

**Maximum Income:** The maximum annual income that a Household may receive to be eligible to rent a BMR Unit, as determined by income category (Extremely Low, Very Low-, Low-, or Moderate-Income) as updated periodically by HCD, based on AMI and adjusted for Household size. See **Section 4**.

**Moderate-Income:** Total Household income that is 81% to 120% of AMI, adjusted for actual Household size.

**Pre-application:** An application of interest in a BMR unit in order to be eligible for the lottery or entered onto a waitlist.

**Principal Residence:** The home that a Household occupies for a minimum of 10 months out of the year.

**Qualified Household:** A Household that satisfies the requirements listed in **Section 4**. A Qualified Household can include any group of persons, so long as such persons, when viewed as a whole, satisfy the eligibility requirements for occupancy of a BMR Unit.

**Total Household Income:** All gross Household income and assets received (as calculated pursuant to **Section 4**).

**Unit:** An individual dwelling unit, which is defined as one or more rooms including kitchen, designed as a unit for occupancy by one Household for the purpose of cooking, living, and sleeping.

**Very Low-Income:** Total Household income that is between 31% and 50% of the AMI, adjusted for actual Household size.

### 3. GUIDELINES FOR DEVELOPERS

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#### 3.1 OVERVIEW OF THE AFFORDABLE HOUSING PROGRAM REQUIREMENTS

##### A. Background and Affordability Provisions

The City of Emeryville adopted the Affordable Housing Set-Aside (AHSA) Ordinance in 1990 to address a shortage of housing affordable to Moderate-, Low-, Very Low-, and Extremely Low-Income Households. In July 2014, the City adopted the Affordable Housing Program Ordinance, an inclusionary housing ordinance that replaced the City's AHSA program. Refer to Title 9, Chapter 5, Article 4 of the Municipal Code for more information on the Affordable Housing Program Ordinance.

In addition to Developments that are subject to Affordable Housing Program Ordinance, other Developments may be subject to Affordable Housing Agreements due to City financing or other City negotiated agreements.

As required by the Affordable Housing Program Ordinance, all rental residential Development projects of 10 or more Units are subject to an affordable housing impact fee or may instead elect to rent 12% of Units at Below Market Rate (BMR), of which 8% shall be affordable to Low-Income Households and 4% shall be affordable to Very Low-Income Households. The Affordable Housing Program Ordinance establishes an affordable housing fund where affordable housing impact fees will be deposited and authorizes the City to expend the fund for the provision of affordable housing. Rental projects applying for a density bonus must produce on-site affordable housing. Refer to Title 9, Chapter 5, Article 5 of the Municipal Code for more information on density bonuses.

The Affordable Housing Program Ordinance uses the following affordability definitions:

- Extremely Low-Income Households are those with incomes up to 30% of the Area Median Income (AMI).
- Very Low-Income Households are those with incomes between 31% and 50% of the AMI.
- Low-Income Households are those with incomes between 51% and 80% of the AMI.<sup>1</sup>
- Moderate-Income Households are those with incomes between 81% and 120% of the AMI.

These income levels are updated each year by the California Department of Housing and Community Development (HCD) and adopted by the Emeryville City Council. Each of these income levels is connected to a rent threshold. These thresholds are based on a fixed percentage of the applicable income limit and are also adopted annually by the City. Developers may not

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<sup>1</sup> Maximum rent shall not exceed 60% of AMI for Low-Income Households.



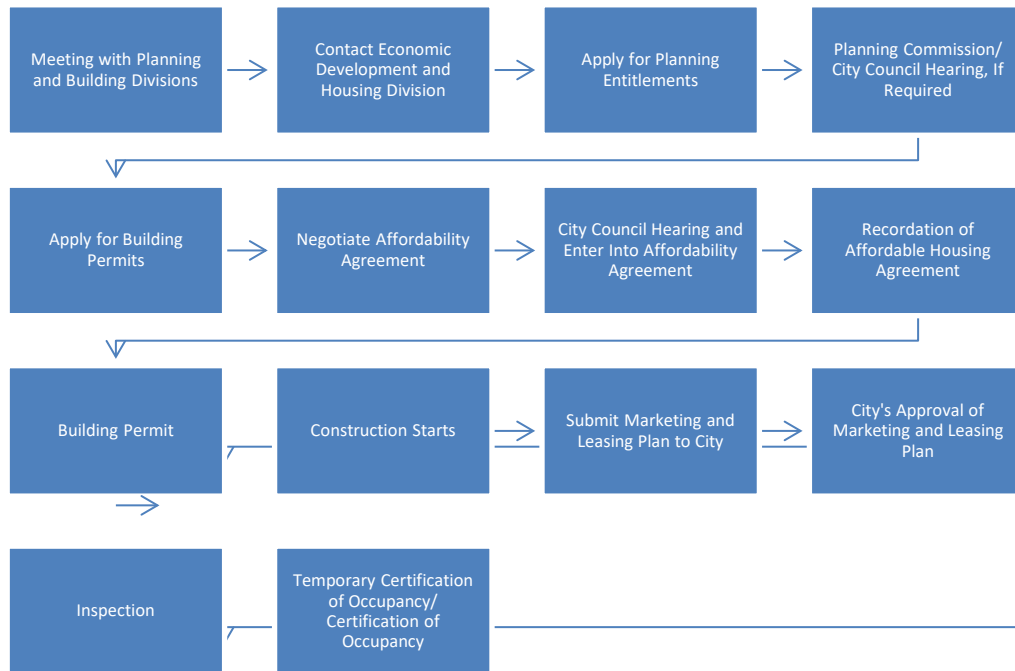
charge more than the applicable rent thresholds. It should be noted that these definitions are for the purpose of determining affordability. Income limits for Household eligibility are approved by the City Council and found in the Housing Affordability Table adopted each year. Refer to **Section 4.3** for more information.

Guidelines for Developments subject to an Affordable Housing Agreement, are outlined in this section. Note however, that to the extent applicable, if these Guidelines conflict with the Ordinance or any Affordable Housing Agreement, the applicable terms of the Ordinance or the Affordable Housing Agreement will control.

### 3.2 PROCESS FOR DEVELOPER COMPLIANCE

The process for Developer compliance is shown in Figure 3-1.

**FIGURE 3-1: PROCESS FOR DEVELOPER COMPLIANCE**



In the early stage of the Development process, Developers will typically meet with the Planning and Building Divisions of the City’s Community Development Department to discuss a potential residential project. At that time, the Developer will be informed as to whether the proposed project triggers the Affordable Housing Program Ordinance. The Developer is encouraged to contact the City’s Economic Development and Housing (EDH) Division regarding the implementation of the Affordable Housing Program Ordinance and to discuss program requirements. After the City determines the proposed project’s Affordable Housing Program requirements, the project will go through the entitlement process with the Planning Division to obtain all necessary entitlements, and the Planning Commission will establish Conditions of Approval for the project. The Developer is then required to pay all required fees and receive approval from the City Council. Other Developers may apply to the City for financial assistance

to construct a Development. In exchange for that assistance, the City will enter into and Affordable Housing Agreement and financing documents with the Developer.

The Developer is required to enter into an Affordable Housing Agreement with the City of Emeryville. This agreement is recorded on the title for the property and contains the specific covenants with respect to the inclusion of BMR Units within a specific project. The process of developing this agreement typically takes 2 to 4 months from initial discussions through City Council approval. The agreement must be approved by the City Council and fully executed and recorded prior to the City's issuance of building permits. In general, the Affordable Housing Agreement will be recorded in a senior lien position. Details on the Affordable Housing Agreement are included in **Subsection 3.3**.

After the Developer fulfills all entitlement requirements, the Developer must pull a building permit to begin construction of the Development. Approximately 5 months before the estimated completion of construction, the Developer is required to submit a BMR Unit Marketing and Leasing Plan. Requirements for the Marketing and Leasing Plan are included in **Subsection 3.4**. City Housing Staff will review this Marketing and Leasing Plan to ensure it includes all required components. City Housing Staff must inspect and sign off on the temporary and final Certificate of Occupancy for the Development with respect to the BMR Units.

Once the Development is fully leased and throughout the term of required affordability, City Housing Staff will regularly monitor the Development for compliance with the Affordable Housing Agreement and the Marketing and Leasing Plan. The monitoring process is described in detail in **Section 5**.

### 3.3 AFFORDABLE HOUSING AGREEMENTS AND CONDITIONS OF APPROVAL

#### **A. Affordable Housing Agreements**

As referenced in **Subsection 3.2**, the Affordable Housing Agreement is an agreement between the Developer and the City for a residential Development project that includes rental BMR Units. Such agreements set forth the Developer's Inclusionary Obligation or other affordable housing requirements and the method by which the Developer will comply with the requirements of the Affordable Housing Agreement. The Affordable Housing Agreement requires, among other things, that the BMR Units are reserved for occupancy by Extremely Low-, Very Low-, Low-, and/or Moderate-Income Households at rents affordable to such Households for a period of not less than 55 years.

The Affordable Housing Agreement is recorded against the property on which the residential Development is being constructed, runs with the land, and survives transfer or sale of the land. The term of affordability is set at 55-years or longer from when the final Certificate of Occupancy is issued for the project. If a Developer executes an Affordable Housing Agreement, but the project is not built and new entitlements are sought for the applicable property, the Developer must execute a new Affordable Housing Agreement, which would replace the existing Affordable Housing Agreement.

Among other things, the Affordable Housing Agreement must contain the following information:

1. A description of how the Developer will comply with its inclusionary or other affordable housing obligation (whether through unit construction or payment of a fee).
2. If constructing Units:
  - a. The number of BMR Units for each income category, listed by number of bedrooms and square footage, as well as their location in the Development.
  - b. Depending on the nature of the Development, the timing of construction to ensure that the BMR Units and market-rate Units are constructed and leased concurrently.
3. Provisions stating that the Developer is:
  - a. Required to provide a Marketing and Leasing Plan to the City for approval (see **Subsection 3.4**); and
  - b. Required to comply with the City's annual monitoring process (see **Subsection 5.1**)

## **B. Conditions of Approval**

Conditions of Approval are requirements placed on the Development by the City of Emeryville during the planning approval process. Developers, property managers, and management entities are responsible for reading and being familiar with the Affordable Housing Agreement and the Conditions of Approval on the Development. Like the Affordable Housing Agreements, Conditions of Approval remain applicable to the Development after completion of construction and in effect following any change in ownership.

### 3.4 INITIAL RENTAL PROCEDURES FOR DEVELOPERS

#### **A. BMR Unit Marketing and Leasing Plan**

Prior to the issuance of Certificate of Occupancy, the Developer must submit a Marketing and Leasing Plan to the City for its approval to ensure a transparent, fair, and equitable tenant selection process. This plan, at a minimum, should be updated every five years to reflect changes in the law, ordinances, regulations, policies or program needs. Prior to submitting the Marketing and Leasing Plan or update, the Developer (or the Property Manager/Management Entity retained on behalf of the Developer) is responsible for checking these Guidelines for current submittal requirements. The Marketing and Leasing Plan must contain all of the following information:

- Procedures for the marketing, leasing, and monitoring of rental BMR Units

- Procedures for how the preference system will be applied in the leasing of rental BMR Units
  - Details on how the Developer will verify the Household's total income, both initially and annually in the recertification process, including verifying non-traditional statements of income, such as cash-sending apps like Venmo, or cash deposits into the Applicant's bank account.
  - Providing a means of verifying when tenants are unbanked.
- Details on how the Developer will review and implement annual rent increases
- Details on rent costs and other details that may differ between market-rate and below market-rate Units
- Procedures and timelines for upgrades, repair, and maintenance of BMR Units and common areas, including inspection schedules and repair or maintenance schedules for the following (*if applicable*):
  - Painting
  - Roof Replacement
  - Fixtures
  - Elevators
  - Parking Areas
  - HVAC
  - Concrete
  - Water Heaters
- Pre-application and Application form with certification of income statement from Applicant
- Grounds for non-acceptance of rental applications
- The property management must demonstrate that no employment relationship with Applicants may exist, and that employees of the property management may live onsite but are not eligible for a BMR home regardless of income.
- Contact information including current property manager's email and phone number
- The names of those individuals responsible for contact and communication with City Housing Staff
- If a Developer wants to disqualify an Applicant for misrepresentation on their application, the Marketing and Leasing Plan must contain a policy describing the disqualification

- Waitlist procedures for new Applicants and existing BMR tenants; refer to **Section 3.5** for additional information
- Reasonable accommodation procedure including form letters and notification system to notify tenants of their rights as described in **Section 3.6**
- Exception and appeals procedure as described in **Section 3.7**, including requiring that all items received be date stamped
- Disclosure forms including:
  - Income certification and recertification
  - Student verification and single parent student affidavit
  - Change in Household composition and/or student status
  - Major life change (including retirement or other change in employment status)

The Marketing and Leasing Plan will also include efforts the Developer and Property Manager/Management Entity will take to comply with Fair Housing Laws to ensure the leasing process provides an equal opportunity for all Applicants and does not discriminate against protected classes. The City will refer all fair housing complaints to regional nonprofits and agencies as needed in accordance with State and federal law. Refer to **Appendix 1: Marketing and Leasing Plan Checklist**.

## **B. Application and Screening Process**

The Developer must retain individuals who are trained to understand and can explain the rental application process to Applicants. Refer to **Appendix 2: Marketing Program Procedures** for more details.

The Developer must require each Applicant to complete and return to the management company a Pre-application in order for the Household to be included in the lottery or waitlist. All Household members must appear on only one application. If a Household member appears on more than one application the Developer will be responsible for determining which applications will be disqualified.

For initial rental of new BMR Units, the Developer must do the following:

1. Begin a marketing and Pre-application period. Marketing shall be consistent with the Marketing and Leasing Plan.
2. Collect Pre-applications for a given time period as outlined in the Marketing and Leasing Plan.

3. Screen Applicants based on the Pre-application to determine whether they satisfy the requirements for Qualified Households set forth in **Section 4**. Qualified Households are mailed a document with a unique identifier, while ineligible Applicants are notified by mail.
4. Hold a lottery to determine a priority list of Qualified Households. There must be a separate lottery for each Affordable Housing Agreement.
5. Send letters to Applicant with results of the lottery within three days of the lottery.
6. Solicit a full Application from each top priority Applicant via phone and email. Process Full Applications as priority Applicants submit them. Complete applications for Qualified Households are reviewed by City Housing Staff prior to final notification of the Applicant. Income verifications and application approvals are valid for 120 days. If after 120 days the tenant has not yet moved in, a new written verification and approval must be obtained.
7. Enter into a lease with approved Applicant.
  - a. The names of all Household members must appear on the lease for the BMR Unit.
  - b. A copy of the signed lease must be provided to the tenant(s).
8. Maintain applications with income verification and recertification for the City to review during annual on-site monitoring, in accordance with the procedures set forth in **Section 5**.

Refer to the Marketing Program Procedures in **Appendix 2** for additional requirements on the application process.

### 3.5 PROCEDURES FOR RENTAL OF EXISTING UNITS

#### **A. Waitlists**

The Developer is required to maintain a waitlist consisting of potential Applicants who are interested in leasing a BMR Unit. This waitlist will be organized by Unit size and income limit, and will be populated using the information obtained from all phone, in -person and email inquiries. The waitlist will be considered valid for 12 months. All Households on the waitlist at the time that it is purged will receive mailed notice of the fact that the waitlist is being purged and the procedures to follow to be added to the new waitlist.

The procedures for the waitlist are required to be outlined and regularly updated in the Development's Marketing and Leasing Plan, including the following:

- The employee responsible for maintenance of the waitlist.
- The location of the waitlist (electronic, paper, or both).

- Procedure for updating the waitlist annually by contacting those listed to inquire whether they are still interested and removing those who are no longer interested or are non-responsive.
- Procedure for responding to changes in Household composition or income of Applicants on the waitlist and for current tenants.
- Procedure for Preference administration when has been given a preference in the lottery but their preference no longer applies when they are called off the waiting list.
- Any other pertinent information about the waitlist management.
- Procedures for the usage of preference, if applicable. Refer to Subsection 4.5 for Applicant preference criteria.
- A waitlist will be closed following the marketing period described in the Marketing and Leasing Plan. The Developer must complete the marketing process including lottery to obtain new Applicants when the waitlist has fewer Applicants than the limits below (or sooner if the Developer wishes):
  - 1-10 BMR Units: 20 interested Applicants
  - 10-25 BMR Units: 50 interested Applicants
  - 25+ Units: 100 interested Applicants

## **B. Upgrades to Units**

The interiors of BMR Units must be upgraded on the same schedule and to the same standard of quality as applied to market-rate Units. These upgrades will be periodically completed based on an assessment, completed by the property management, of the usual life span of all carpets, paint, fixtures, and appliances in individual Units in accordance with the policies of the US Department of Housing and Urban Development’s (HUD). Upgrades are not to be deferred until Units have been vacated. These policies should be detailed in the Marketing and Leasing Plan.

While upgrades to market-rate Units may result in rent increases for existing tenants, upgrades to BMR Units will not justify rent increases beyond the City’s maximum BMR rents, and may not serve as an exception to noticing requirements from the State of California.

## **C. Parking**

For projects developed prior to 2013, the financing, Affordable Housing Agreement or Conditions of Approval will dictate if a BMR units are required to have parking spots and if the cost of parking is required to be included in the maximum rental rate. If the financing, affordable housing agreement or conditions of approval do not dictate the parking requirement, developers may follow the current Unbundled Parking requirements outlined in 9-4.403 (e) of the Zoning Code. Pursuant to 9-4.403 (e) of the Zoning Code, for projects developed after 2013,

all parking is unbundled, and should be rented to tenants separate from rent for their unit. The Community Development Director shall have the authority to grant an exception to this rule if financing dictates that rent and parking should be bundled. BMR Tenants shall have an equal opportunity to rent parking on the same terms and conditions as market rate tenants. If the project has less parking spaces than units, those with larger units should be offered parking first. Developers must charge BMR tenants a proportional rate for parking as charged to market rate tenants. If a developer chooses to change their parking policy to make all parking optional, they must request approval from the City and provide BMR tenants with an equal opportunity to rent parking on same terms and conditions as market rate tenants, upon renewal of their lease. The cost of parking, when provided as an optional amenity to residents, is not included in the maximum rental cap.

### 3.6 REASONABLE ACCOMMODATIONS

The Fair Housing Act is a federal law that protects people from discrimination when they are renting, buying, or securing financing on any housing. The prohibitions specifically cover discrimination based on race, color, national origin, religion, sex, disability, and familial status (families with children under age 18 or pregnant women), and the law includes protections that are specific to renters. Included in this law is a provision that requires landlords to implement reasonable accommodations policies that will afford people with disabilities the right to use and enjoy their housing on equal terms with non-disabled tenants. Reasonable accommodations may include the following policies and exceptions:

- Allowing service and support animals as the exception to pet policies.
- Allowing unit transfers in the event of medical necessity, such as moving a less mobile tenant to a ground-floor apartment.
- Allowing 24-hour caregivers to live in the unit with a tenant without requiring a rent increase or an addition to the lease.
- Allowing tenants whose primary income is from public funding sources (such as Supplemental Security Income) to pay rent later in the month so that it corresponds with the day they receive their checks.

Developers should include reasonable accommodations policies for these and any other applicable circumstances that do not pose undue financial or administrative burden on the Development. Refusal to make reasonable accommodations to physical Units or policies is a violation of the reasonable accommodations component of the Fair Housing Act and California's fair housing laws.

The City of Emeryville requires all Developers of BMR Units to provide a reasonable accommodations policy that is compliant with State and federal law. Details on this policy should be included in the Marketing and Leasing Plan as well as in any other relevant documents.



### 3.7 EXCEPTIONS AND APPEALS

Applicants may appeal any determination letter, including denial of a requested exception, application, or recertification, by submitting a written explanation of the reasons for their appeal, and any supporting evidence they wish to provide. The Developer is responsible for developing and implementing its own appeals process which includes informing Applicants of their right to appeal, receiving and reviewing appeals letters from Applicants, and responding to appeals letters in a written determination letter that is delivered to the Applicant within 10 business days. The appeals process must be outlined in each Development's Marketing and Leasing Plan and provided to Applicants.

The City is not responsible for managing the appeals process, but notes that failure to properly manage the appeals process could lead to violations of these Guidelines or the Affordable Housing Agreement, which the City reserves the right to enforce. Refer to **Subsection 4.7** for additional information on the exceptions and appeals process.

## 4. GUIDELINES FOR APPLICANTS AND TENANTS

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### 4.1 OVERVIEW OF QUALIFICATION REQUIREMENTS

BMR Households are required to meet certain income, occupancy, and size requirements. **Table 4-1** provides an overview of these requirements, and this section provides greater detail on these specific requirements. For student eligibility, refer to **Appendix 3**.

**TABLE 4-1: OVERVIEW OF RENTAL BMR UNIT HOUSEHOLD QUALIFICATIONS**

Qualification Requirement	Description
Household Size	The Household must be of a size meeting the Household size criteria set forth in <b>Subsection 4.2</b> .
Household Income and Assets	The Household's Total Household Income must not exceed the applicable Maximum Income (see <b>Subsection 4.4</b> ).
Occupancy	The Household must occupy the unit as its Principal Residence within 30 days of executing the lease.
Financial Independence	The Applicant must be financially independent at the time of application. More information is provided in <b>Subsection 4.5</b> .

### 4.2 HOUSEHOLD SIZE

The size of the Household for the purposes of determining unit size is determined by the number of people living in a Household. To qualify for a BMR Unit, the size of a Household must be compatible with the size of the unit being rented. The Household size for each BMR unit may not be less than one person per bedroom, unless otherwise permitted by other financing sources, state and federal laws. The Owner may request City approval to assign Households to units of sizes of other than those indicated to meet reasonable accommodations. The City reserves the right to reject this request.

**Table 4-2** shows occupancy limits by unit type. Based on Household composition, Applicants can request an exception to the Household size requirements; please refer to **Section 4.7**.

**TABLE 4-2: MINIMUM OCCUPANCY BY UNIT TYPE**

Unit Type	Minimum Occupancy
Studio	1 Person
1 Bedroom	1 Person
2 Bedrooms	2 People
3 Bedrooms	4 People
4 Bedrooms	5 People

### 4.3 HOUSEHOLD INCOME

Current Household income at time of application must be within the most current income limits as approved by the City Council and found in the Housing Affordability Table. The Housing Affordability Table is approved each year by the City Council and made available on the City's website. Household income includes all income that is derived by all adult Household members, age 18 and above, from all sources, unless identified in the list of exceptions below, whether or not such income is exempt from federal income tax. The City reserves the right to request additional documentation, if needed to accurately assess the Household income.

#### **A. Income Inclusions**

- **Wages, Salaries, Tips:** The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, fringe benefits, tips and bonuses. Includes compensation for services rendered, such as freelance, online businesses, side businesses, consulting and self-employment.
- **Business Income:** The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
- **Interest and Dividends:** Interest, dividends, and other net income of any kind. Expenditures for amortization of capital indebtedness may not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Business Income (above).
- **Retirement and Insurance:** The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum amount or prospective monthly amounts for the delayed start of a periodic amount.
- **Social Security Income (SSI) and Supplemental SSI:** Deferred periodic amounts from Social Security and SSI benefits that are received in a lump sum amount or in prospective monthly amounts.
- **Unemployment and Disability:** Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay (except as provided in One-Time Inheritance and Insurance Income; see Income Exclusions).
- **Welfare Assistance:** Welfare assistance payments made under the Temporary Assistance for Needy Families program are included in annual income, except any amount designated for shelter or utilities, which shall be included in the manner defined by HUD 24 CFR 5.609(b) and (c).

- **Armed Forces Pay:** All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in Armed Forces Hostile Fire Pay; see Income Exclusions).
- **Adoption Assistance, Child Support, and Alimony Payments:** All forms of adoption assistance, child support, and alimony payments.
- **Cash Income:** From all bank accounts held in whole or part from each member of the Household over 18 years old.
- **Periodic Payments:** Periodic payments made on behalf of anyone in the Household by others including but not limited to rent and living expenses such as retirement and insurance income including Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and a lump-sum amount or prospective monthly amount for the delayed start of a periodic payment, alimony and child support payments, or regular contributions or gifts received from organizations or from persons not residing in the dwelling. See Income Exclusions for exceptions to these cases.
- **Certain Assets (or income from Certain Assets?):** Certain assets will be included in the income calculation and are specified in **Appendix 4**.

#### **B. Income Exclusions**

The following sources of income will not be included in the income calculation for rental BMR Units.

- **Income of Children:** Income from employment of children (including foster children) under the age of 18 years and full-time students living elsewhere
- **Foster Care Payments:** Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
- **One-Time Inheritance and Insurance Income:** One-time additions to Household assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains, and settlement for personal or property losses (except as provided in Unemployment and Disability; see Income Inclusions).
- **Medical Expense Reimbursements:** Amounts received by the Household that are specifically for, or in reimbursement of, the cost of medical expenses for any Household member.
- **Student Loans:** The full amount of student financial aid, including grants, scholarships, educational entitlements, work study programs, or financial aid packages. **Armed Forces Hostile Fire Pay:** The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- **Home Care Assistance provided to the Household:** Amounts paid by a state agency to a Household with a member who has a developmental disability and is living at home to

offset the cost of services and equipment needed to keep this developmentally disabled Household member at home. This exclusion does not apply to a Household member that earns income providing home care assistance outside of their Household.

- **Certain Assets:** Certain assets will be excluded in the income calculation and are specified in **Appendix 4**.
- **Periodic Payments:** Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts. See Income Inclusions above for other types of period payments that are included in the annual calculation.

#### 4.4 MAXIMUM HOUSEHOLD INCOME CALCULATIONS

Household income may be calculated differently depending on income sources or variability, as described below. In some cases, multiple calculations may be used, particularly for Households that have multiple sources of income. Applicants are required to submit copies of three months of statements from all bank accounts (savings and checking), certificates of deposit, stocks, bonds, mutual funds, trusts, brokerage, 401(k), retirement accounts, W-2s, tax statements, Internal Revenue Service (IRS) disclosure form, pay stubs, and documents for any other income sources for each member of their Household earning an income. Refer to **Appendix 4** for income inclusions.

##### A. Regular, Full-Time Income

For Households that have regular, full-time income, a year-to-date projection will be used. The Developer will review all recent income and asset documentation, and will project income for a year based on three months of recent pay stubs, bank statements, or a Verification of Employment (VOE) provided by the employer. If any member of the Household receives commissions, overtime, or other benefits, those will also be annualized and included in the calculation.

This projection will be completed according to the regularity of the income, as shown in **Table 4-3**. The Developer may use any of these calculations if they are applicable to the Household. In some cases, income must be calculated multiple ways to ensure Households meet income requirements.

**TABLE 4-3: INCOME CALCULATIONS BY FREQUENCY**

Pay Frequency	Annual Base Income Calculation*
Monthly	Monthly income amount x 12
Twice Monthly	Twice monthly income amount x 24

Every Two Weeks	Biweekly income amount x 26
Weekly	Weekly income amount x 52
Hourly	Hourly income x Hours Worked per Week x 52

\* Prior to adding annualized commissions, overtime, or other benefits.

Table 4-4 shows an example of possible income projections.

**TABLE 4-4: INCOME CALCULATIONS FOR REGULAR, FULL-TIME EMPLOYEES**

<p><b>Example A.</b> The Household member’s pay stub indicates the following:</p> <ul style="list-style-type: none"> <li>• \$1,500 income</li> <li>• Full time (40 hours per week)</li> <li>• Biweekly pay (26 pay periods per year)</li> <li>• No overtime</li> </ul> <p><u>YTD Calculation:</u>  \$1,500 x 26 pay periods per year = <b>\$39,000 annual salary</b></p>
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**B. Variable Income**

If a member of the Household has continuing variable income, the Developer will average the last 24 months’ income. Gross annual income calculations will be based on the previous 2 years’ net income shown on Schedule C of the federal income tax returns, plus net income before taxes from that member’s signed, year-to-date Profit and Loss Statement, overtime and other benefits, and bank statements, divided by the appropriate number of months (not to exceed 12 months) multiplied by 12 to arrive at the annual income. Salary increases and raises are not considered variable income.

**C. Self-Employment Income**

If a member of the Household is self-employed, the Developer will calculate income by averaging the prior 2 years’ net income shown on Schedule C of the federal income tax returns, plus net income before taxes from that member’s signed, year-to-date Profit and Loss Statement. Income is then divided by the appropriate number of months (not to exceed 12 months) multiplied by 12 to arrive at the annual income.

**4.5 FINANCIAL INDEPENDENCE**

Applicants must be considered financially independent at the time of application. Applicants who are considered a dependent on another person’s tax return are not eligible. Spouses are not considered dependents. This requirement does not apply to Household members under the age

of 24 who are considered dependents of another member of the Household, such as an Applicant’s adult children.

#### 4.6 PREFERENCE FOR QUALIFIED HOUSEHOLDS

All Households that inquire about housing opportunities and meet the criteria will be ranked using a preference system that is intended to provide a preference to those who currently live and work in the City of Emeryville or have Household members who currently attend Emeryville Unified School District (EUSD) schools or the Emeryville Child Development Center (ECDC). All Households with one or more of the qualifications at the time of Pre-application in **Table 4-5** will be given equal priority.

**TABLE 4-5: PREFERENCE FOR QUALIFIED HOUSEHOLDS**

Type	Proof Required
Work in Emeryville (at least 50% of weekly hours are worked in Emeryville)	<ul style="list-style-type: none"> <li>• Copy of first and most recent pay stub; or</li> <li>• Letter from employer, on company letterhead, indicating employment; or</li> <li>• If self-employed in Emeryville, then the business must have a current City of Emeryville business license at the time of application and their office must be in Emeryville.</li> </ul>
Live in Emeryville	<ul style="list-style-type: none"> <li>• Copy of two utility bills (PG&amp;E or water), showing at least one member of the Household with an Emeryville address; or</li> <li>• Copy of a current rental agreement. In the event that the rental agreement is more than 2 years old, the rental agreement must be accompanied by a letter from the landlord that the tenant continues to live in the building.</li> </ul>
Have a Child Who Attends EUSD Schools or the ECDC	<ul style="list-style-type: none"> <li>• Letter from EUSD or ECDC, on letterhead, indicating continuous enrollment at time of application; or</li> <li>• Report card no older than 6 months.</li> </ul> <p><i>Please note that Applicants whose children are participants in summer programs but not registered during the school year are not included in this preference.</i></p>

It should be noted that, due to funding requirements, some BMR Units may not be subject to the above preferences.

#### 4.7 APPLICATION PROCESS

Applicants are required to abide by the following application process for BMR Units:

1. View available BMR Units.
2. Begin application process.
  - a. If applying for a newly constructed BMR Unit:
    - i. Submit a Pre-application with income and Household occupancy estimates. All Household members must be listed on the application and no Household member may appear on more than one application.
      1. Pre-application is screened to determine whether the Applicant satisfies the requirements of this section.
      2. Applicant is entered in a lottery, which will be held at City Hall or an alternate location as defined by the City.
      3. Select Applicants are chosen pursuant to the lottery process and invited to submit a Full Application.
  - b. If applying for a BMR Unit at a Development that has completed its initial lease-up:
    - i. Contact the property manager to submit Pre-application to be added to the Development's waitlist.
    - ii. Property managers follow waitlist procedures to select Applicants from the waitlist to submit a Full Application.
3. Submit a Full Application.
  - a. Tenants must submit a Full Application pursuant to requirements from each Development. Incomplete application packages may result in automatic disqualification.
  - b. The Developer selects an Applicant based on application completion, income qualification, and preference status as described in **Table 4-5**.
  - c. Tenants must sign an acknowledgement that they understand the income qualification process and will comply with recertification annually and that they will notify the Developer (or agent) if there is a change in Household composition or student status, which acknowledgement will also be included in any lease for a BMR Unit.
4. Execute a lease contract with the Developer.
  - a. The names of all Household members must appear on the lease for the BMR Unit.
  - b. A copy of the signed lease must be provided to the tenant(s).
5. Move in.



6. Complete after-move-in procedures.
  - a. The Developer will conduct annual monitoring to ensure that the tenant's Household still qualifies for the BMR Unit.
  - b. The tenant must provide income documentation on an annual basis, as described in **Subsection 4.9**.

Application processes may vary between different Developments and funding sources. These procedures will be outlined in greater detail in each Development's Marketing and Leasing Plan as described in **Subsection 3.4** of these Guidelines. **A. Waitlists**

Each Development maintains a waitlist for BMR Units. Applicants should contact each Development in order to complete the Pre-application process. If a change in Household size, composition, or income occurs after the Applicant has completed the Pre-application process, the Applicant must notify the Developer in order to remain eligible. All Household members must be listed on the application and no Household member may appear on more than one application.

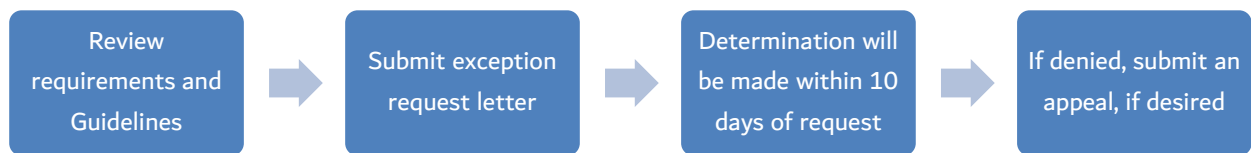
Following the initial leasing period, Developers must either keep the wait list open and add Applicants on a first-come, first-serve basis or if they close the waitlist, the marketing and lottery process will be repeated upon its reopening. In the case of a waitlist reopening, preference points will be applied.

#### 4.8 EXCEPTIONS AND APPEALS

##### A. Exception Requests

Any Applicant believing that their situation warrants an exception to any part of the Marketing Lease Plan or other applicable Developer policies due to circumstances outside of their Household's control, such as refugee status, special needs, or other hardships or special circumstances, may request an exception by submitting a written letter to the Developer prior to submitting an application of any kind. The exception request procedure is outlined in **Figure 4-1**.

**FIGURE 4-1: EXCEPTION REQUEST PROCESS**



The exception request must specify which particular requirement the Household cannot meet for reasons beyond their control or other valid reasons, and/or describe the Household's unique circumstances which warrant one or more specific exceptions to be identified in the letter,

referencing the page(s) and section(s) of these Guidelines and/or application form related to the request.

If the need for an exception arises while an application is being reviewed, a request may be submitted at that time. If the need for an exception arises only after receipt of a determination letter issued by the Developer, an exception request must be submitted as an appeal of such determination, according to the appeal process described below.

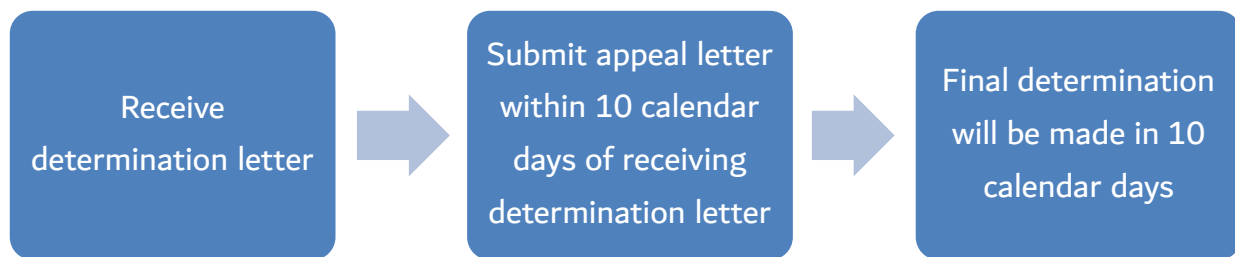
Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure at any time, with a brief description of the exception(s) needed due to a member of the Household's disability. Such requests will be handled in accordance with the Developer's reasonable accommodations procedure and these Guidelines.

The Developer will consider the requested exception and will respond in a letter within 10 calendar days, stating whether the requested exception can be granted in full or in part and the reason for such decision. If denied or asked for additional documentation, Applicants may submit an appeal, as explained below.

## B. Appeals Procedure

Applicants may appeal any determination letter, including denial of a requested exception, by submitting a written explanation of the reasons for their appeal, along with any supporting evidence they wish to provide. The appeals procedure is outlined in **Figure 4-2**.

**FIGURE 4-2: APPEALS PROCESS**



City Housing Staff is not authorized to assist Applicants in drafting appeal letters or in determining appropriate grounds for appeal or appropriate forms of supporting evidence, beyond advising Applicants of the contents of these Guidelines, the Developer's Marketing and Lease Plan, application forms, and other published Affordable Housing Program materials. Applicants may refer to these Guidelines and application forms and/or seek their own advisors/counsel for guidance in determining what types of documentation would be reasonable.

The procedure for the appeals process must be in accordance with the approved Marketing and Leasing Plan and these Guidelines. The appeal letter must be delivered by mail, email, or personal delivery within 10 calendar days of issuance of the determination letter being appealed.

The Developer will review the appeal and make a decision within 10 calendar days. If the Applicant feels that the determination was made unfairly, please contact a local fair housing organization.

#### 4.9 RECERTIFICATION PROCESS

BMR Unit tenants must remain qualified for the duration of their tenancies, as defined in this section. The Developer will request recertification documents from the tenants every year to confirm continued eligibility. Unless otherwise required by the applicable Affordable Housing Agreement, if a BMR Unit tenant Household is found to no longer meet qualifications related to income, the Household may be required to pay market-rate rents.

##### **A. Recordkeeping**

Developers should advise tenants to maintain copies of all bank statements, tax returns, and income documentation each year to submit during the recertification process. This will include tax documentation from all income sources in the year prior to the anniversary of their lease commencement. Tenants may also be required to sign an IRS disclosure form in order for the Developer to obtain tax information. Tenants should also be aware that the Developer will request proof of all forms of income, including recent pay stubs, all bank account statements, investments, and pensions held by tenant(s) or entity such as but not limited to a trust or business entity, in which the tenant(s) has interest or receives income.

##### **B. Reasonable Accommodations**

Tenants may request a reasonable accommodation at any time during the application or tenancy, including during the recertification process. Refer to **Subsection 3.6** for reasonable accommodations procedures.

##### **C. Exceptions and Appeals**

Tenants may request an exception or appeal a determination letter during the recertification process. Refer to **Subsections 3.7 and 4.7** for information on the exceptions and appeals process.

## 5. MONITORING AND RECERTIFICATION REQUIREMENTS

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### 5.1 MONITORING PROCESS

All Developments are obligated to complete an annual monitoring process to ensure they comply with the Affordable Housing Program Ordinance, the Guidelines, the Development's Affordable Housing Agreement, and its City-approved Marketing and Leasing Plan. Procedures and requirements for the monitoring process are outlined in this section. In some cases, procedures will vary depending on each Development's funding source. In circumstances where a project is funded by state tax credits or HOME funds and the City's Guidelines conflict with the requirements for those programs, TCAC or HOME program Guidelines may supersede the City's requirements.

#### A. Annual Report

The City requires an annual report from each Development that includes information on all BMR Units in the Development. **The Developer is responsible for contacting City Housing Staff to ensure the correct forms are completed.** The Developer is responsible to turn in the annual report based on the date in the Affordable Housing Agreement regardless if they are contacted by the City to do so. Refer to **Appendix 5** for Annual Report Checklist. The City will require the following information:

- Cover letter with information on any problems faced this year, any evictions of BMR tenants and why, and progress on addressing the ratio of market-rate Units upgraded versus the BMR Units upgraded. Explain any vacancy in BMR Units of more than 30 days. Provide a calculation of the utility allowances. Describe why any given tenant may be paying more than 70% of their income on rent (i.e., how is it possible that someone might be spending 90% of their income on rent). The cover letter must also include the name and contact information for the Developer including the person assigned responsibility for compliance with the Guidelines and the location of the tenant files for the property.
- Completed Certification of Continuing Program Compliance
- Worksheet, that contains, at a minimum, the following information for each BMR Unit:
  - Unit number
  - Income level of Unit
  - Square footage
  - Unit size (number of bedrooms and bathrooms)
  - Head of Household name
  - Number of occupants
  - Number of minor children
  - Move-in date

- Income limit at move-in
- Household income at move-in
- Recertification income limit
- Gross rent limit
- Utility allowance
- Other required expenses charged to tenants
- Contract rent
- Section 8 or other rental subsidy assistance, if applicable
- Net rent paid
- Date of last rent increase
- Percent of rent versus income
- Move-out date
- Contact information for the tenant, including e-mail address if available.
- Completed Occupant Income Certification Form from each tenant in the same order as the worksheet

Any other requirements as indicated in the regulatory agreement, or requested by the City. The Developer is responsible for submitting the annual report. City Housing Staff will review each Development's annual report for compliance with the Affordable Housing Program, the Guidelines, the Development's Affordable Housing Agreement, and its Marketing and Leasing Plan. The City will issue monitoring findings if the Development is in violation of any requirements. If a Development is not in compliance with applicable agreements, policies, and laws, the City will mandate actions that the Development must take to "cure" the findings. These actions may include, but are not limited to, providing additional BMR Units, reorganizing on-site tenant files, paying to the City any excess rent collected in violation of the Affordable Housing Agreement, or performing necessary maintenance or upgrades to BMR Units.

**The annual report will be due annually on March 30**, starting 1 year after the first certification of occupancy, unless the Affordable Housing Agreement specifies another date to submit the annual report. The City will charge each Development an annual monitoring fee to cover the administrative costs of monitoring, issuing findings letters, and working with Developments to cure findings. Developers should review their Affordable Housing Agreements to determine if they are required to pay fees for the monitoring process. Current fees for the monitoring process can be found in the Master Fee Schedule, available on the City's website.

## B. On-Site Inspection

The City may perform an annual site visit to monitor the records of all BMR Units. The City reserves the right to enter BMR Units and market-rate Units. The Property Manager/Management Entity is responsible to provide prior notification to tenants as required by law.

Files for all BMR Units must be made available for review at the City's request. The purpose of the monitoring is to ensure compliance with the Affordable Housing Program Ordinance or other City requirements related to affordability, if applicable, the Guidelines, the Affordable Housing Agreement, and the Marketing and Leasing Plan. These audits may include review of on-site files for each Unit, inspections of BMR Units, inspections of BMR and market-rate Units, and inspections of common spaces.

## C. Recordkeeping

Prior to move-in, the Developer will create a resident file containing the application, lease agreement and rules, Unit move-in/move-out inspection form, and resident income and asset certification form, and copies of any disclosures provided to the Households required by these Guidelines or otherwise.

Developments are required to maintain records for current tenants for their entire residency and for 4 years following termination of the tenancy. Files must be stored in a secure location to protect tenant's privacy. BMR tenant files should include, but not be limited to:

- Copies of all income documentation, including:
  - Pre-application and Full Application
  - Move-in certification documents
  - Income calculation sheet at time of move-in
  - Recertification sheets for each year the tenant remains in the Unit
  - Recertification compliance documentation, including pay stubs, tax returns, or any other applicable income documentation (detailed below in **Subsection 5.2**)
- Record of all correspondence with the tenant, including complaints, Unit maintenance, and late rent notices
- Copies of lease and documentation proving that tenants were given a copy of this document
- Record of all rent increases

All tenant files must be stored in a secure, locked location and made available to City Housing Staff for review upon request.

## 5.2 RECERTIFICATION REQUIREMENTS

### A. Tenant Recertification Requirements

BMR Unit tenants must remain qualified for the duration of their tenancies, as defined in **Section 4**. The Developer must recertify the income of the tenants every year to confirm continued eligibility.

### B. Recertification Process

The recertification process will begin approximately 90 days prior to the lease renewal for each BMR Unit and on each anniversary thereafter. During this process, the Developer will request documentation on all anticipated income and assets for the next year, including but not limited to:

- Occupant Income Certification Form
- Copies of last three monthly bank statements for all accounts held in whole or part, including business accounts
- Three recent statements from all certificates of deposit, stocks, bonds, mutual funds, trusts, brokerage, 401(k), retirement accounts
- Copies of the last three years of signed complete federal tax returns, including W-2s
- Completed IRS disclosure form (IRS FORM F8821). If Applicant has not filed taxes, completed IRS Verification of Non-filing Letter (IRS FORM 4506-T).
- All pay stubs from three most recent months
- Proof of other forms of income, including but not limited to public subsidies, insurance payments, pensions, and alimony or child support

The Developer should advise tenants to be prepared to provide additional documentation if requested.

The Developer will recertify tenant incomes by obtaining a completed Occupant Income Certification Form and income documentation from tenant Households. Upon recertification, the Developer may then choose to execute a new lease or create an addendum to the previous year's lease pursuant to their internal procedures. The Developer must provide a copy of the lease agreement/extension to tenants.

If a Development's underlying funding requires more restrictive income certification than what the City requires, the Developer is to comply with the more restrictive requirement.

The subsection below describes procedures for scenarios when tenants do not qualify for the Unit they occupy.

### Over-Income Tenants

If a BMR Unit tenant Household is found to no longer meet income qualification Guidelines due to an increase in income or a change in Household size, the Development will follow procedures that are outlined in the Affordable Housing Agreement and/or the Marketing and Leasing Plan. These procedures will vary depending on the requirements of the Development's funding sources.

### Notice to Vacate or Unit Substitution

In some cases, management staff will be required to give disqualified tenants a 60-day notice prior to the Unit converting to market rate. Upon notice given to tenant, the Property Manager/Management Entity is required to obtain approval from the City to substitute another Unit on the property for a BMR Unit that is converting to market rate. A site plan showing each affordable Unit and affordability level on the property will be required to approve the substitution. In addition, with City approval, the management company may transfer the disqualified Household to another Development if a vacant market-rate Unit is available.

If the Development has vacant market rate units, the Household may not be required to move. However, the Household will no longer be considered qualified for a BMR Unit and the rent may be increased to the market rate rent. The Developer will then offer the next available Unit with the same specification (i.e., size, amenities and configuration of Unit) as a rent restricted BMR Unit to maintain the required mix of BMR Units. The City must approve the Unit move and will require a site map showing all BMR units subject to the Affordable Housing Agreement.

### 140% Provision

Some funding sources allow existing BMR tenants to occupy their Units when their income exceeds the applicable income limits. Refer to the regulatory agreement for specific requirements. In these cases, Households remain qualified for their specified income level until their income exceeds 140% of the applicable income limit. This is typically the case in Developments that receive funding from the Low Income Housing Tax Credit program or tax exempt bonds.

### Changes in Occupancy

If a BMR Unit tenant Household is found to no longer meet qualifications due to a smaller Household size, management staff must contact the City. If a BMR Unit tenant Household is found to have a Household size that is too large, the management staff must comply with local or State standards. If the Development has an appropriately sized vacant BMR Unit and meets all other qualifications, the Household may be able to relocate to another Unit.

## **C. Transferring BMR Units**

To the extent feasible, the Developer should maintain the BMR Units as listed in the Affordable Housing Agreement. However, to achieve compliance with the BMR Rental Program, the



Developer may switch BMR Units by obtaining the City's approval. A site plan showing each affordable unit and affordability level on the property will be required to approve the substitution. Substitute BMR Units must be comparable in size, amenities, and upgrades to the existing BMR Unit. The Developer should review the Affordable Housing Agreement to determine whether this is permitted.

If an existing BMR tenant requests to transfer to a unit in a different building, this should be treated as a new move-in and new verifications and certifications must be obtained and the household certified as income eligible at the time of move.

If an existing BMR tenant requests to transfers to a unit in the same building, the tenant is not subject to a new verification or certification of household income.

If an existing BMR tenant transfers to a unit, through no fault of their own, the tenant is not subject to a new verification or certification of household income.

#### **D. Rent Adjustments**

Rent increases are governed by the Affordable Housing Agreement. The Developer should be aware of those requirements and comply with them before increasing the rent for any BMR Unit.

#### **5.3 PROPERTY MANAGER/MANAGEMENT ENTITY**

The Developer may hire a consultant or vendor to assist with the Developer's compliance with the City's Affordable Housing Program and/or Affordable Housing Agreement ("The Property Manager/Management Entity"). The Property Manager/Management Entity....Although the Property Manager/Management Entity may fulfill many of the Developer's obligations as set forth in these Guidelines or the Affordable Housing Agreement, it is the Developer who is ultimately responsible for ensuring the Development complies with the AHP Ordinance, Affordable Housing Agreement, these Guidelines and the Marketing Lease Plan.

## Appendix 1: Marketing and Leasing Plan Checklist

The Marketing and Leasing Plan must contain all of the following information:

- Procedures for the marketing, leasing, and maintenance of rental BMR Units
- Procedures for how the preference system will be applied in the leasing of rental BMR Units
- Details on how the management firm will verify the household's total income, both initially and annually in the recertification process
- Details on how the management firm will review and implement annual rent increases
- Details on amenities, parking, rent costs, and other details that may differ between market-rate and below market-rate units
- Procedures and timelines for upgrades and maintenance of BMR Units
- Pre-application and Application form with certification of income statement from Applicant
- Grounds for non-acceptance of rental applications
- Contact information including current property manager's email and phone number
- The names of those individuals responsible for contact and communication with City Housing Staff
- If a development wants to disqualify an Applicant for misrepresentation on their application, the Marketing and Leasing Plan must contain a policy describing the disqualification
- Waitlist procedures for new Applicants and existing BMR tenants; refer to **Section 3.5** for additional information
- Reasonable accommodation procedure including form letters and notification system to notify tenants of their rights as described in **Section 3.6**
- Exception and appeals procedure as described in **Section 3.7**, including requiring that all items received be date stamped
- Disclosure forms including:
  - Income certification and recertification
  - Student verification and single parent student affidavit
  - Change in household composition and/or student status
  - Major life change (including retirement or other change in employment status)

**APPENDIX 2: MARKETING & LEASING PROCEDURES**

**PROCEDURES FOR MARKETING AND LEASING OF  
RENTAL AFFORDABLE (“BELOW MARKET-RATE”) SET-ASIDE UNITS**

The Developer is required to use these procedures in the marketing and leasing of the affordable units, and to work closely with City of Emeryville staff throughout the marketing and lease-up process.

**Sample Timeline for Initial Marketing and Application Process**

January 1: Submit *draft* Affordable Units Residential Marketing and Leasing Plan and draft Marketing materials to City at least 4 months before units are ready for lease-up.

January 22: City will review and provide comments back to Developer within 30 days of receipt of complete draft Marketing and Leasing Plan and all draft marketing materials.

February 1: Incorporate City comments and revise Plan and Marketing Materials and resubmit to City

February 15: Marketing and pre-application period (at least 3 weeks) begins, with letter , postcard or email to City’s mailing list, weekly (at least 2 weeks) ads in several newspapers, flyer campaign, and other marketing strategies described below.

March 15: Pre-application deadline.

March 29: Eligible Applicant sent postcard/letter/email with unique identifier, ineligible applicants notified.

April 8 Lottery held (lottery must be open to public).

April 11: (1) Letters sent out to applicants with results of lottery within 3 days of lottery  
(2) Developer solicits full application from top priority applicants via phone and email.  
(3) Developer processes applications as priority applicants submit.  
(4) Complete applications for eligible tenants are reviewed by City staff prior to final notification of applicant.

April 30: Top priority eligible applicant selects unit and enters into lease

**The Affordable Units Residential Marketing and Leasing Plan (at least 4 months prior to lease-up)**

- The Developer is required to submit an Affordable Units Residential Marketing and Leasing Plan, incorporating the process described in these Procedures, to the City for review and approval prior to the start of marketing. The Developer must submit its *draft*

Plan to the City for review no later than 4 months prior to the date the units will be complete and ready for lease-up. The Developer is responsible for allowing sufficient lead time between the beginning of this process, including allocating time for revisions, and the execution of the first lease.

- Along with the draft Plan, the Developer must provide the City with a list of the projected dates of completion of each BMR unit.

**Marketing Materials and Initial Marketing Period (at least 4 months prior to lease-up)**

- All marketing materials must be clear and provide accurate information about the affordable units (also known as “below market-rate” (BMR) units). Include as much information about the units as possible on the materials. Submit marketing materials (postcards, letters, flyers, ad copy, pre-applications, full applications, etc.) for City staff review and 4 months prior to dissemination. Allow at least three weeks review time by City staff, not to exceed 30 days. Materials revised per City staff requests will need final review and approval by the City before dissemination.
- Provide a brochure on the BMR units with the following information: A description of the overall project, number of units, BMR unit sizes (number of bedrooms and square footage) and amenities, BMR floor plans, project amenities, rents, income level minimum and maximums for moderate income (and low or very low income, if applicable), developer contact information, marketing/leasing agent, leasing office location and hours, etc.
- Brochure must be sent to Bay Area service organizations that serve the populations eligible for the units. A list will be provided by the City of Emeryville. Developer will be responsible for reviewing list and updating addresses as needed.
- Contact City staff to obtain the City’s up-to-date “Notification Waiting List.” A letter and other marketing materials should be sent to all names/addresses on the list at the start of the marketing period, advising interested parties about the units, informational meetings, how to get an application, and the application deadline.
- Announce availability of BMR units, eligible income levels, and application deadline in local papers through display advertisements (The Oakland Tribune, Tsing Tao (in Chinese), El Mundo (in Spanish), Craig’s List). The ads should run at least once weekly for each week of the marketing period. City will post information on its website. Verification of advertisements must be submitted to the City in the form of clippings from the newspapers. The clippings must include the date on the clipping.
- Press releases to local newspapers are desirable.
- The marketing agent is required to market to those least likely to apply, traditionally underserved, language isolated, disabled and/or minority groups. Details regarding this marketing should be included in the Plan.
- A detailed website describing the BMR units/process is required. The website shall be approved by City staff before it can be made available to the public. Information about the BMR units, application process, and leasing status should be updated frequently.

### **Pre-Application Period**

- The pre-application packet shall include: information about the project and BMR units available, including number of bedrooms, square footages, and rents; income eligibility levels; tenant income certification form; and a description of the application, lottery, and leasing process.
- Priority for BMR units must be given to: a) Emeryville residents; b) Emeryville employees; c) households with current Emeryville Unified School District students. All applicants with one or more of the above qualifications will be given equal priority.
- The pre-application deadline should be clearly noted on the pre-application and cover letter. The deadline must include a time as well as date.
- Pre-applications must be available online at the project's website.
- Pre-applications should be available at several locations, including the leasing office, the Developer's office, and City Hall. All inquiries on applications should be directed to the Developer or marketing agent, not City staff. If a prospective applicant is unable to pick up an application in person or download from the website, the Developer/marketing agent must mail an application to that person within 1-2 days of a request. Developer should maintain a phone number at the marketing agent with a detailed outgoing message so that prospective applicants can leave their mailing information. Otherwise, the phone number must be staffed during normal business hours. The Developer should provide a mailing address for completed applications, although postmarked applications will not be accepted after the deadline. Completed applications should not be turned it to the City by applicants.
- Extremely incomplete applications may not be considered.
- Pre-applications received after the deadline cannot be entered in the lottery, but can be considered as back-ups after the on-time, lottery-prioritized applications are exhausted. Persons submitting back-up applications should be informed by the Developer of this distinction. Back-up pre-applications will be processed on a first-come, first-served basis. For this reason, the Developer should keep close track of the date and time of receipt of all back-up pre-applications.

### **Pre-Application Review**

- Completed pre-applications should be reviewed for eligibility and priority status prior to the lottery, preferably as they are received.
- Completed applications shall be given a unique identifier.
- Applications that have been reviewed and deemed ineligible shall be sent letter stating that they have been denied and describe a process for appeal.
- Applications that have been reviewed and approved for the lottery shall be sent a letter with their unique identifier and information on the process going forward, including the date, time and place of the lottery. It should be noted clearly that the applicant does not need to be present at the lottery.
- A spreadsheet with approved pre-applicants and their priority must be delivered to City staff at least two (2) working days prior to the lottery. Priority for BMR units must be given to: a) Emeryville residents; b) Emeryville employees; c) households with current Emeryville Unified School District students. The spreadsheet should include unique identifier, name of lead applicant, number of people in household, type priority, if

claimed, and current address such that it can be sorted by city.

### **Pre-Application Lottery**

- To ensure a fair and equitable process, the Developer is required to hold a lottery to determine the order of processing by the marketing staff. The lottery will be held at City Hall with City staff in attendance. (Please schedule the lottery during the marketing review process so staff can reserve the Council Chambers).
- The lottery will be conducted by random order from the spreadsheet by the unique identifier and the third sort will be the final order.
- The order will be sorted first by priority and then by random order number.
- The pre-applications will be given their lottery order
- Those present will be given their lottery number, if requested.
- Within 3 days of the lottery, the Developer must send a notification letter out to each applicant informing them of their number in the lottery and the process by which full applications will be processed and units leased.

### **Applicant Contact**

- Prospective BMR renters may have many questions. They should be able to direct questions to one point person as their main contact (such as the leasing agent). The City will not be in this role. Inquiries from prospective tenants must be responded to within two days by the Developer and/or its agents.

### **Processing Full Applications**

- After the pre-application lottery, the Developer should immediately begin processing full applications in lottery number order (priority applicants' first, then all other applicants after all priority applicants).
- Prospective tenants must be given at least 5 days to provide full application materials. All household members of applicant must be present at marketing office with all application materials.
- Once full applications are reviewed by leasing agent, they must be reviewed and approved by the City. The review process will be a meeting with staff and leasing agent and the City will be provided with a full application for their records. Consult City staff as to how applications should be stacked in the applicant folders.
- Applicants that are deemed to be eligible will be allowed to select from among the remaining units and enter into leases.
- The Developer is responsible for keeping applicants posted on where they are in process. A phone hot-line, letters, email bulletins, or constantly updated websites are possible methods of keeping applicants informed about their status.
- Developer will provide monthly written reports to the City on the progress of leasing the BMR units. The report will include a list of tenant households, number of persons in the household by composition of the household (number of adults/minors), priority category (if any), and income for each BMR unit, and a complete copy of the application for each household.
- Once the rent up is complete, the remaining applicant list becomes the waiting list for the

- project.
- If at any time it appears that the number of remaining applications to be processed will not be enough to fill the remaining BMR units, the City may request that the Developer renew its marketing efforts.

For further information about these procedures or the City's BMR program, the Developer may contact City staff at [monitoring@emeryville.org](mailto:monitoring@emeryville.org).

These procedures may be updated from time to time to increase the effectiveness of the Below Market Rate program. Developers and their agents are expected to work closely and in cooperation with City staff to make the BMR marketing and leasing process as efficient and equitable as possible.

### **APPENDIX 3: STUDENT EDIBILITY**

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The applicable definition of student is a full-time student at an educational institution with regular facilities, other than a correspondence or night school, during at least five months of the calendar year for which application for housing has been made. If a single applicant or all applicants are full-time students and not married, then that household is not eligible as a BMR unit.

In order for a household of full-time students to be considered eligible, they must meet one of the following criteria:

- Any member of the household is married and either filing or is entitled to file a joint tax return
- The household consists of a single parent and his or her minor children, and neither the parent nor children are a dependent of a third party. Refer complete a Single Parent Student Affidavit in application materials.
- At least one member of the household receives assistance under Title IV of the Social Security Act. (AFDC, TANF, CalWORKS, etc. Please note: SSA or SSI do not qualify)
- At least one member is enrolled in a job training program receiving assistance under the Work Investment Act (WIA) formerly known as the Job Training Partnership Act, or similar federal, state or local laws as defined by HUD 4350.3 REV-2.
- The household consists of a tenant who recently exited the Foster Care system. Please Note – CTCAC caps this at ages 18-24.

Students must complete a Student Verification Form when applying.



## APPENDIX 4: HOUSEHOLD INCOME AND ASSETS

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This appendix provides a detailed description of the Household income inclusions outlined in **Subsection 4.3** of the Guidelines.

### 1. INCOME INCLUSIONS

The following sources of income are included in the income calculation for rental BMR Units.

**Wages, Salaries, Tips:** The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, fringe benefits, tips and bonuses. Includes compensation for services rendered, such as freelance, online businesses, side businesses, consulting and self-employment.

**Business Income:** The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of Assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or Assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or Assets invested in the operation by the family.

**Interest and Dividends:** Interest, dividends, and other net income of any kind. Expenditures for amortization of capital indebtedness may not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in Business Income (above).

**Retirement and Insurance Income:** The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount.

**Social Security Income (SSI) and Supplemental SSI:** Deferred periodic amounts from Social Security and SSI benefits that are received in a lump sum amount or in prospective monthly amounts.

**Unemployment and Disability Payments:** Payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation, and severance pay (except as provided in Inheritance and Insurance **Income** under Income Exclusions).

**Welfare Assistance Payments:** Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income except any amount designated for shelter or utilities.

**Armed Forces Pay:** All regular pay, special pay, and allowances of a member of the Armed Forces (except as provided in Armed Forces Hostile Fire under Income Exclusions).

**Adoption Assistance, Child Support, and Alimony Payments.** All forms of adoption assistance, child support, and alimony payments.

**Cash income:** From all bank accounts held in whole or part from each member of the Household over 18 years old.

**Periodic Payments:** Periodic payments made on your behalf by others including but not limited to, rent and living expenses such as retirement and insurance income including Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and a lump-sum amount or prospective monthly amount for the delayed start of a periodic payment, alimony and child support payments, or regular contributions or gifts

received from organizations or from persons not residing in the dwelling. See Income Exclusions for exceptions to these cases.

**Certain Assets:** Certain Assets will be included in the income calculation and are specified in **Section 3** of this Appendix, below.

## 2. INCOME EXCLUSIONS

The following sources of income will not be included in the income calculation for rental BMR Units.

**Income of Children:** Income from employment of children (including foster children) under the age of 18 years and full-time students living elsewhere.

**Foster Care Payments:** Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant, who are unable to live alone).

**One-Time Inheritance and Insurance Income:** One-time additions to Household Assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains, and settlement for personal or property losses (except as provided in Unemployment and Disability in Income Inclusions).

**Medical Expense Reimbursements:** Amounts received by the Household that are specifically for, or in reimbursement of, the cost of medical expenses for any Household member.

**Student Loans:** The full amount of student financial aid, including grants, scholarships, educational entitlements, work study programs, or financial aid packages.

**Armed Forces Hostile Fire Pay:** The special pay to a Household member serving in the Armed Forces who is exposed to hostile fire.

**Home Care Assistance:** Amounts paid by a state agency to a Household with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled Household member at home. This exclusion does not apply to a Household member that earns income providing home care assistance outside of their Household.

**Certain Assets:** Certain Assets will be excluded in the income calculation and are specified in **Section 3** of this Appendix, below.

## 3. ASSET CALCULATIONS

In some cases, liquid Assets will be included in Income calculations. A Household that has Assets that exceed \$30,000 will have the following amounts added to their total Household income:

- 10% of Assets between \$30,001 and \$130,000
- 30% of Assets over \$130,000

The maximum amount of allowable Assets is \$250,000.

In determining whether a Household's Assets are within the Asset limits, the average of each account's balance from the prior six monthly statements for each monetary Asset (bank, credit union, non-retirement investment account statements) will determine the current value of each Asset. Non-monetary Assets, such as stock options, mobile homes, commercial real estate, etc., will be valued based on a current valuation (not less than 90 days old)

## **APPENDIX 4: HOUSEHOLD INCOME AND ASSETS**

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to be provided by a qualified third-party appraiser or estimator, which must be included in the Applicant's Full Application. The Household's current total combined Household Assets, both on the application date (most recent monthly statements/valuations in application) and using the average balance over the preceding 6 months, must be within these Asset limits.

The Director of Economic Development and Housing or their designee reserves the right to request additional documentation, if needed, to accurately assess the value of Assets.

### **Asset Inclusions**

1. Cash held by a member of the Household in savings accounts, checking accounts, safe deposit boxes, etc. Includes all custodial accounts held for minors. For savings accounts, the current balance is used. For checking accounts, the average 3-month balance is used.
2. Cash value of revocable trusts available to a member of the Household.
3. Cash value of stocks, bonds, Treasury bills, certificates of deposit, and money market accounts.
4. Cash value of life insurance policies available to the individual before death (e.g., the surrender value of a whole life or universal life policy).
5. Personal property held as an investment such as gems, jewelry, coin collections, antique cars, cars owned in excess of one per driver, etc.
6. Lump sum or one-time receipts, such as inheritances, capital gains, lottery winnings, victim's restitution, insurance settlements, gifts, and other amounts not intended as periodic payments.
7. Mortgages or deeds of trust held by a member of the Household
8. Equity in cooperatives.
9. Assets in IRS-recognized retirement accounts (IRAs, 401(k)s, 403(b)s, etc.), that the Applicant can access prior to terminating employment or retiring, regardless of penalty (while Applicant is employed). If Applicant is retired, any amount they elects to receive as a lump sum will be counted as an Asset.

### **Asset Exclusions**

1. Necessary personal property, such as clothing, furniture, cars, and vehicles specially equipped for persons with disabilities.
2. Interest in Indian trust lands.
3. Assets not effectively owned by a member of the Household; that is, when Assets are held in an individual's name, but the Assets and any Income they earn accrue to the benefit of someone else who is not a member of the Household and that other person is responsible for income taxes incurred on Income generated by the Asset.
4. Assets not accessible to and that provide no Income for the Household, e.g., a battered spouse who owns a house with her husband but, because of the domestic situation, receives no income from the Asset and cannot convert the Asset to cash.
5. Term life insurance policies (i.e., where there is no cash value).

6. Assets that are part of an active business including business equipment and vehicles.
7. Future/potential pension benefits or insurance proceeds held in accounts not currently owned and controlled by the Applicant or co-Applicant(s). (However, amounts must be listed on application, and documentation provided, as described on the application.) IRA, Keogh, and similar retirement savings accounts where benefits are being received through periodic payments will also be excluded from the calculation of Assets.
8. 529 college savings accounts.

## **APPENDIX 5: Annual Report Checklist**

The City requires an annual report from each development that includes information on all BMR Units in the development. **The annual report will be due annually on January 30**, starting 1 year after the first certification of occupancy. The management entity is responsible for contacting City Housing Staff to ensure the correct forms are completed.

The City will require the following information:

- Cover letter with information on any problems faced this year, any evictions of BMR tenants and why, and progress on addressing the ratio of market-rate units upgraded versus the BMR units upgraded. Explain any vacancy in BMR units of more than 30 days. Provide a calculation of the utility allowances. Describe why any given tenant may be paying more than 70% of their income on rent (i.e., how is it possible that someone might be spending 90% of their income on rent). If someone is over income, please state the process that will be using to come into compliance.
- Completed Certification of Continuing Program Compliance (Please request current version from City Housing Staff)
- Worksheet (Please request current version from City Housing Staff), that contains, at a minimum, the following information for each BMR Unit:
  - Unit number
  - Income level of unit
  - Square footage
  - Unit size (number of bedrooms and bathrooms)
  - Head of household name
  - Number of occupants
  - Number of minor children
  - Move-in date
  - Income limit at move-in
  - Household income at move-in
  - Recertification income limit
  - Gross rent limit
  - Utility allowance
  - Contract rent
  - Section 8 assistance, if applicable
  - Net rent paid
  - Percent of rent versus income
  - Move-out date
- Completed Occupant Income Certification Form from each tenant in the same order as the worksheet (Please request current version from City Housing Staff)
- Any other requirements as indicted in the regulatory agreement
- Annual report fee paid to City of Emeryville