

# Inclusionary Affordable Housing Program Monitoring and Procedures Manual

CITY AND COUNTY OF SAN FRANCISCO

MAYOR'S OFFICE OF HOUSING AND COMMUNITY DEVELOPMENT



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## I. INTRODUCTION

### A. What is the Inclusionary Housing Program?

There is a need for housing in San Francisco that is affordable to low, moderate and middle-income Households, as those terms are defined in the San Francisco Planning Code (“Planning Code”). To meet this need, the City and County of San Francisco (City) has adopted the Inclusionary Housing Program (“Program”) as set forth in Sections 415 through 415.11 of the Planning Code.<sup>1</sup> The Program requires all developers of market rate housing (Project Sponsor or Project Owner) to create housing (referred to as “Below Market-Rate Units,” or “BMR Units”) that is affordable to qualifying Households by:

- Paying an Affordable Housing Fee (Section 415.5); or
- Building BMR Units “on-site” within the market-rate development (Section 415.6); or
- Building BMR Units “off-site” at another location in the City (Section 415.7); or
- In some neighborhoods, dedicating land to the City for affordable housing development (Section 415.5(a)(2)); or
- Paying a fee for the Small Sites program established by the Mayor’s Office of Housing and Community Development (MOHCD)( Section 415.7-1); or
- A combination of these options.

Several other sections of the Planning Code contain additional affordable housing requirements, including:

- The Market and Octavia Area Plan (Section 416)
- The Eastern Neighborhoods Area Plan (Section 417)
- The Eastern Neighborhoods UMU districts (Section 419)
- The Mission NCT district (Section 419)
- The SOMA Youth and Family Special Use district) (Section 249.40A)
- The Rincon Hill Downtown Residential district (Section 827)

### B. How is the Affordable Housing Fee Calculated?

Project Sponsors who pay the Affordable Housing Fee to satisfy the Program requirements are charged on a per-unit size basis under a fee schedule that is updated annually and posted on the San Francisco Planning Department website. The Affordable Housing Fee is based on the affordable housing percentage requirements that are in Planning Code Section 415.5 and is calculated by multiplying the gross square footage of the development by the applicable percentage requirement. Please visit <http://sf-planning.org/inclusionary-affordable-housing-program> for specific requirements and information on the methodology for calculating, indexing, and applying the Affordable Housing Fee.

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<sup>1</sup> Unless otherwise noted, all Section references are to the San Francisco Planning Code, as amended from time to time.



### **C. What is the Purpose of this Manual?**

Planning Code Section 415 requires MOHCD and the San Francisco Planning Department to periodically publish a Procedures Manual (this “Manual”) containing procedures for monitoring and enforcing the policies and procedures for implementation of the Program. This Manual must be made available on the Planning Department's web site. This Manual is meant to provide compliance guidance to all Program users – including buyers and renters, Project Sponsors and property managers, and City staff.

Participants in some other programs are also required to comply with this Manual. These programs include, but are not limited to, (1) the Condo Conversion Below Market Rate Program<sup>2</sup> (visit <http://sfmohcd.org/bmr-condo-conversion-program> for more information), (2) programs which provide for the development of “density bonus” units, such as those described in Planning Code Sections 206 and 124(f), and (3) new affordable units that are required to replace affordable units that have been demolished.

Additionally, in some cases, the City may enter into Development Agreements with Project Sponsors that include affordable housing requirements or developers of housing units that voluntarily agree to record affordability restrictions on certain Units. These Agreements are often governed in whole or in part by this Manual.

### **D. How Does this Manual Relate to Other Documents?**

This Manual implements the Planning Code and must be read together with several other important documents that impose unique restrictions on individual projects or BMR Units. For example:

- Sections of the Planning Code
- Planning Department Conditions of Approval
- A Notice of Special Restrictions (NSR)
- Declaration of Restrictions

### **E. What if the Requirements in These Documents Conflict?**

While every effort has been made to align the information in this Manual with the requirements of the Planning Code, if a conflict exists:

- The terms of the Planning Code prevail over the Manual
- The terms of an individual project's or unit's recorded BMR Use Restrictions prevail over any general requirements in this Manual or the Planning Code.

Program participants may request an interpretation of the applicable provisions of the Planning Code by contacting the City's Zoning Administrator (<http://sf-planning.org/zoning-administrator>).

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<sup>2</sup> San Francisco Subdivision Code Sections 1341, 1344 and 1385, as amended from time to time.

Users of this Manual are encouraged to seek legal advice from their own counsel to aid in understanding of the requirements of their specific Program. Users may call the MOHCD at (415) 701-5500, or visit its website at [www.sfmohcd.org](http://www.sfmohcd.org), for answers to general questions regarding the Manual.

**F. What are the consequences of not following the policies and procedures in this Manual?**

The Planning Code includes penalties for failure to comply with the requirements of Section 415, any project Use Restrictions, or the Procedures Manual. The City may exercise any available right or remedy at law or in equity to enforce Program rules and all of the City's rights and remedies are cumulative. Planning Code Section 174 provides that every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any Planning Code provision, including failure to comply with any condition of project approval, constitutes a violation of the Planning Code and is subject to an enforcement process under Code Section 176.

**G. Is there a limitation to information I have to provide to MOHCD?**

MOHCD reserves the right to request additional documentation from developers, applicants, tenants, owners, etc. to confirm applicant and/or Household eligibility and compliance with Section 415, Use Restrictions, and this Procedures Manual.

**H. Will my information be shared with outside agencies?**

Program users – including buyers and renters, Project Sponsors and property managers – should be aware that under certain circumstances information provided in connection with the Program may be considered to be public records and subject to disclosure in accordance with the California Public Records Act and the San Francisco Sunshine Ordinance<sup>3</sup>. However, MOHCD does not give, share, sell or transfer any personal identifying information to any third party that is not affiliated with an application for housing. For more information on MOHCD's Privacy Policy, please visit <https://housing.sfgov.org/privacy>.

**I. Where can I find the definitions of some of the terms used in this Manual?**

Capitalized terms used in this Manual and not otherwise defined are defined in Section IX of this Manual.

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<sup>3</sup> San Francisco Administrative Code, Chapter 67.

## II. DETERMINING PROGRAM PARTICIPANT HOUSEHOLD SIZE AND ELIGIBILITY

### A. Definition of Household

Any group of people can apply for a BMR Unit, regardless of family relations, marital status or previous living arrangement. Individuals may jointly apply to rent or purchase a BMR Unit so long as:

- All applicants will live in the BMR Unit.
- All Household members appear on the Lottery and Program application.
- All Household members report their income and other qualifying information.

All Household members are counted toward “Household size” and the number is used to determine the size of the BMR Unit for which an applicant’s Household is eligible.

Exceptions or special circumstances to the rules above include:

- Long-term Live-in Assistants, as verified by MOHCD, must appear on the Lottery and Program application and may be counted toward Household size to determine the number of bedrooms for which applicants are eligible, but their incomes are not counted for purposes of determining income eligibility, and they are not added to title on a BMR ownership Unit or added to the lease on a BMR rental Unit. Additionally, long-term Live-in Assistants do not have the right to continue living in a BMR rental Unit after the BMR Renter/leaseholder has vacated the Unit. MOHCD may require documentation to verify the need for a long-term Live-in Assistant on an annual basis at the time of recertification.
- Foster children, as verified through legal documentation, must appear on the Lottery and Program application and may be counted toward Household size to determine the number of bedrooms for which applicants are eligible, and income received to care for foster children is counted toward total Household income.
- A fiancé, Spouse or Domestic Partner or any other person who has any combined finances with the applicant or a member of the applicant’s Household is considered a Household member whether they appear on the application or not.
- Children not claimed as dependents on an applicant’s Federal Tax return may be considered part of the Household if there is a court ordered custody agreement allowing the child’s time with the applicant to be 30% or more.
- Unborn children are not counted into household size.
- Children under the age of six (6) will not be counted towards maximum Household size.

### B. Minimum and Maximum Household Size

The size of a Household must be compatible with the size of the BMR Unit. Households must have at least one person per bedroom (e.g., no less than two people can live in a 2-bedroom unit). In addition:

- Regardless of size, BMR Units priced for middle-income Households at 110% of AMI for BMR Rental Units or 130% of AMI for BMR Ownership Units must consist of no fewer than two people in the Household.

- Any maximum Household size requirement enforced by the Project Owner must comply with this Manual and be applied fairly and evenly to all residents in the building. Maximum Household size requirements must also adhere to maximum occupancy requirements of the San Francisco Building Code.

### **C. Non-homeowner/First-time Homebuyer Requirement**

In the three years prior to the date of application, no member of an applicant Household can own any interest in any Residential Unit, as that term is defined in the Planning Code, regardless of:

- Whether or not that Residential Unit produces a financial gain to the applicant; or
- Where the Residential Unit is located ; or
- Whether the Residential Unit was ever used as the applicant's Primary Residence.

The following exceptions may apply:

- Timeshares
- Loan co-signers from previous real estate transactions if the applicant was not on title and there was no financial gain to the applicant
- Acting solely as a trustee with no beneficiary interest for a trust that includes housing, subject to MOHCD verification of income and assets from the trust
- Being a named beneficiary of a trust that includes a Residential Unit, but only if the trustor is living at the time
- Ownership of shares in a not for profit limited equity co-op (rental income, if any, will be included when determining eligibility)
- An individual who was divorced or legally separated in the past 3 years and had no ownership in any type of residence , other than the marital residence that was awarded to the spouse through a legal marital settlement.

### **D. Non-Student Household Requirement**

100% student Households are ineligible for BMR rental or ownership Units. A full-time student is defined as a person who attends an educational institution with regular facilities including enrollment in on-line classes, other than a correspondence or night school, during at least five months of the calendar year during the BMR application and eligibility review. Certain exceptions apply and student Households should note those exceptions carefully.

Households with full-time students may be BMR-eligible if one or more of the following applies:

- Any member of the Household is married or in a Domestic Partnership 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.

- At least one member of the Household receives assistance under Title IV of the Social Security Act such as AFDC, TANF, CalWORKS, etc. (SSA or SSI do not qualify).
- At least one member is enrolled in a job training program receiving assistance under the federal Workforce Innovation and Opportunity Act, or similar federal, state or local laws.
- The Household consists of a member who recently exited the Foster Care system who is no older than 24 years old.
- The Household consists of one or more United States Veterans.

## **E. Immigration Status**

MOHCD does not require proof of citizenship or immigration status as criteria for qualifying for a BMR Unit. Moreover, California Civil Code 1940.3(b) prohibits Project Owners from discriminating against applicants based on immigration status and from making inquiries into the immigration status of an applicant or requiring applicants to provide proof of legal residency.

However, all applicants for BMR Ownership Units must qualify for first mortgage financing from a MOHCD-Approved Lender and many lenders are unable to approve applicants without proof of legal immigration status.

With respect to BMR Rental Units, Project Owners who require Social Security Numbers from applicants in order to run a credit and/or criminal background check are advised to accept alternatives to traditional credit such as payment histories from utilities, rent, tuition, etc. Those requiring proof of identity must accept any government-issued identification, including the San Francisco City Identification Card.

### III. DETERMINING INCOME AND ASSETS

Each year, the City sets the income limit for BMR Units based on San Francisco's Area Median Income (AMI). AMI is the median income; half of San Franciscan Household incomes earn above the median and half are below. MOHCD sets Income Limits determined by the United States Department of Housing and Urban Development (HUD) for the local area (San Francisco, Marin, and San Mateo Counties combined). Incomes are adjusted solely for Household size and not for high housing cost area. MOHCD lists incomes by Household size at <http://sfmohcd.org/income-limit-rent-limit-and-price-level-information-mohcd-programs>.

Calculating total Household income is key to determining whether the applicant Household is income and assets-eligible for the BMR Program. Total Household income consists of all sources of income of ALL Household members age 18 or older that will occupy the BMR Unit, regardless of dependency status.

#### A. Income Sources

##### 1. Income Inclusions

Income includes, but is not limited to, the following sources:

- Gross compensation for services, including all wages and salaries, overtime pay, commissions, fees, tips, bonuses, and similar items;
- The full, gross amount of periodic payments received from social security, annuities, insurance policies, IRA distributions, retirement funds, pensions, disability or death benefits, CalWORKs, TANF, unemployment and other similar types of periodic receipt including a lump sum payment for the delayed start of a periodic payment; include amounts received by adults on behalf of minors, or by minors intended for their own support;
- Payments received from the care of foster children or adults, or adoption assistance;
- Payments in lieu of earnings, such as unemployment and disability compensation, and worker's compensation;
- Welfare/public assistance income (excluding food stamps);
- Alimony/maintenance and child support payments;
- All regular pay, special pay, and allowances of a member of the Armed Forces;
- Income from salaries, and other amounts derived from operation of a business or profession;
- Income from the use, lease or sale of assets;
- Income from an interest in an estate or trust;
- Interest; dividends; Capital Gains; Rents and Royalties;
- Lottery/gambling winnings paid in periodic payments;
- Allowances paid by a non-Household member for housing, auto, food, etc.; and,
- Recurring contributions or gifts regularly received from entities or from persons not residing in the dwelling.

## 2. Income Exclusions

The following sources of income shall be excluded from the total Household income, but may be included when calculating total assets (see *Income Calculated from Assets - Asset Test* on page 12 of this Manual for additional guidance):

- Income from the employment of any Household members under the age of 18 unless such income producing Household member is a borrower on the loan;
- Lump sum additions to family assets (e.g., inheritances, capital gains, insurance policy, death benefit payment, stock options payout);
- Medical expense reimbursement received specifically for the medical expense of a Household member;
- Income of a live-in aide; and
- Amounts of educational scholarships paid directly to a student or an educational institution, and the amount paid by the government to a veteran for use in meeting the cost of tuition, fees, books, and equipment.

## 3. General Income Information and Regulations

### a) Wages and Salary

MOHCD will use the most current paystubs for applicants to determine income for the current year. The paystub must be dated no earlier than 30 days prior to the application date and it must include all Year-to-date (YTD) earnings. Additional documentation, such as verification of employment on a form approved by MOHCD from the applicant's employer, may be required.

### b) Overtime, Tips, Bonuses and Commission

When calculating income based on paystubs, overtime pay, tips, bonuses and commission will be annualized unless the applicant can provide documentation from the employer verifying that such income was a one-time occurrence. In this case, the amount will be removed from the annualization of the income and added in one time to the total annual income that is determined.

### c) Seasonal Workers

Income for Household members employed as seasonal workers who provide a verification of employment from their employer(s) verifying that the work does not occur year-round, will not be annualized.

### d) Child Support

Income from Child Support may be excluded with evidence that the child support is scheduled to be terminated within 3 months of the date of application.

**e) Government Income**

For applicants receiving income from a governmental entity of any type, the income is derived by annualizing a regular monthly statement or by referring to an award letter. Government income includes, but is not limited to, government paid retirement, annuity or pension income.

**f) Self-employed or Income from Business**

All self-employed applicants must submit a Self-Employed Declaration provided by MOHCD in addition to the income documentation required for all applicants. The Self-Employed Declaration must be submitted along with a Profit and Loss (“P&L”) statement from any period of time not covered by the most recently filed federal income tax returns. The P&L statement must be formatted and contain the information set forth in Internal Revenue Service (“IRS”) form 1040, Schedule C, and must be dated within 60 days of the application date. Negative business losses are not counted and will not be deducted from income. MOHCD can provide a template P&L as needed.

A self-employed applicant receiving income other than from a sole proprietorship is required to provide copies of the three (3) most recent years of business federal income tax returns. Positive business cash flow will be added to the applicant’s income for qualification.

All income from self-employment at any point over the 12-month period prior to application will be considered, even if an applicant has subsequently sold or closed a business.

**g) Income from Capital Gains, Dividends and Interests**

MOHCD will apply the income calculation standards to the income from capital gains, dividends and interests and add it to the Household’s total annual income. Negative losses are not counted and will not be deducted from income.

**h) Other Income**

Any source of regular income, whether in cash or recurring deposits to a bank account over the 12-month period prior to application, will be treated as income, and may be annualized.

In the case of an applicant who is paid in cash for employment, MOHCD will consider the applicant to be self-employed. Please see *Self-employed or Income from Business* (clause f) above) for additional guidelines.

**i) Unemployed Applicants**

Unemployed applicants who are receiving no income at all will submit an Unemployed Declaration as provided by MOHCD in place of income statements as well as a State of California Employment Development Department Authorization for Release of Records or the equivalent form from another state. Applicants receiving unemployment benefits do not need to complete the Unemployed Declaration as unemployment benefits are considered income.



***j) Income from Commercial Property or Land Owned***

The net annual income from any commercial property or land owned by any applicant shall be counted toward the annual Household income.

***k) Public Assistance Income***

When qualifying for a BMR Ownership Unit, public assistance income will be counted toward the Household's total annual income. MOHCD will require documentation to show the Household's receipt of public assistance income with letters or exhibits from the paying agency that state the amount, frequency and duration of the benefit payments. Public assistance income includes, but is not limited to, Section 8 vouchers and similar local, state or federal assistance programs.

***l) Verification of Employment***

At MOHCD's discretion, an official verification of employment on a form approved by MOHCD that is signed by both the applicant and the applicant's employer may be used as documentation of an applicant's income.

***m) Employment Offers or Contracts***

If the applicant is scheduled to begin employment, MOHCD may use the applicant's offer letter or contract as documentation for income qualification. However, the applicant must begin employment no later than 30 days of program qualification. If the start date specified on the applicant's offer or contract occurs outside of the 30-day window, the application may be disqualified for insufficient income documentation.

***n) Wage Reductions***

Applicants whose income from employment has declined over the 12-month period prior to application must provide documentation that verifies that the applicant did not quit a job or choose to reduce hours in order to qualify.

The following are exempt from the voluntary quit provisions:

- Reducing hours in one job while working more hours in another job;
- Quitting a job and subsequently beginning a new job with similar or better rate of pay.

***o) Discontinuance of Non-Employment Income***

Applicants whose income from non-employment sources (such as trust income, annuity income, capital gains, dividends and interests, etc.) has declined or discontinued over the 12-month period prior to application must provide sufficient documentation that verifies the discontinuance of the income and demonstrates that the income is unlikely to re-occur for the foreseeable future.

***p) Non-Taxable Income Adjustments***

MOHCD may give special consideration to regular sources of income that may be nontaxable, such as child support payments, Social Security benefits, workers' compensation benefits, certain types of public assistance payments.

MOHCD must verify that the particular source of income is nontaxable. Documentation that can be used for this verification includes tax returns, award letters, policy agreements, account statements, or any other documents that address the nontaxable status of the income.

If the income is verified to be nontaxable, and the income and its tax-exempt status are likely to continue, MOHCD may add an amount equivalent to 25% of the nontaxable income to the borrower's income for qualifying purpose.

**q) Student Income**

If a full-time student is a dependent, only \$480 of the full-time student's income will be counted toward total Household income eligibility if all of the following criteria are met:

- Student cannot be Head of Household, Co-head, or Spouse of Household;
- The student's full-time status must be 3rd party verified by their school/college; and
- The student wages must also be 3rd party verified by their employer;
- Student must be claimed as a dependent, or on student's tax filings s/he must show that s/he is a dependent.

**B. Calculating Household Income**

The following are the two methods adopted by MOHCD to calculate each Household's income for program qualification. MOHCD will use the greater of:

- Current total Annual Income from all sources projected 12 months forward; or
- Total Gross Annual Income from all sources earned in the immediate past tax year

Income qualification is generally determined by one or both of the above methods. If documents provided by an applicant demonstrate that there has been a decrease in income by more than 20% from the prior years, MOHCD may require additional documentation to analyze the income change and may average the income reflected on the immediate past 2 years of tax returns.

**1. Method #1: Calculating Current Total Annual Income**

This section describes the procedures and requirements for determining a Household's current total gross annual income based on different sources of income including income calculated from assets.

**a) Income from Paystubs**

To calculate income from paystubs, MOHCD will use one of the following two methods as appropriate and use the greater of the two to determine the Household's current annual income.

**Year-to-Date Method**

From the most current paystub, divide the year-to-date Gross Income by the current pay period income to get the pay period income-average. Then, multiply the pay period income-average by the total number of pay periods received in one year.

In cases where an employer-paid health insurance costs are included within the Gross Income on a paystub, the employer-paid insurance costs may be excluded from total income.

**Example: Calculating Income with Paystubs Using Year-To-Date Method:**

YTD Gross Income as stated on the most recent paystub = \$20,000

Current pay period on most recent paystub = Pay period #10 (aka the 10<sup>th</sup> paycheck of the year)

Estimated pay period income amount = \$2,000 (\$20,000 divided by 10)

Total number of pay periods in one year = 24

Annualized Gross Income = \$48,000 (\$2,000 x 24)

**Straight Pay Method:**

From the most current paystub, calculate the income based upon the rate of pay and frequency of pay indicated on paystubs as shown on the table below.

| <b>Frequency of Pay</b>   | <b>Determining Annual Income</b>                              |
|---|---|
| Annually –paid one time per year  | Annual gross income   |
| Monthly –paid one time per month  | Monthly gross income amount x 12                              |
| Semi-Monthly –paid two times per month (receives 24 pay periods a year)           | Semi-Monthly gross income x 24                                |
| Biweekly –paid every two weeks (receives 26 pay periods a year)                   | Biweekly gross income x 26                                    |
| Weekly –paid every week   | Weekly gross income x 52                                      |
| Hourly –paid based on an hourly wage (the number of hours paid per week can vary) | Hourly gross income x average # of hours worked per week x 52 |

**Example: Calculating Income with Paystubs Using Straight Pay Method:**

Hourly rate of pay as stated on the most recent paystub = \$22

Total number of hours per pay period = 87.5

Total number of pay periods in one year = 24

Annual Gross Income = \$46,200 (\$22 x 87.5 x 24)

In the above examples, the income calculated from year-to-date method is greater than the straight pay method, and therefore will be used to determine the applicant Household’s income eligibility.

**b) Income from a Sole Proprietorship (for Self-employed)**

MOHCD will use a P&L statement for a self-employed applicant to determine an applicant's business income for the current year.

MOHCD will use the following steps to calculate an applicant's Income from a P&L statement:

Step 1: Use the YTD net profit shown on the P&L statement, adding back any of the allowable adjustments used in analyzing the tax returns for the business, such as non-recurring loss and expenses, depreciation, depletion, meals and entertainment, and amortization (the result of step 1 is the YTD adjusted Gross Income).

Step 2: Divide the adjusted Income by the number of months on the P&L statement to get the average monthly income. Multiply this number by 12 to annualize.

**Example: Calculating Income with P&L Statement:**

YTD net profit as stated on P&L statement = \$20,000

Allowable adjustments = \$10,000

YTD adjusted Gross Income = \$30,000 (\$20,000 + \$10,000)

Number of months = 10

Average monthly income = \$3,000 (\$30,000 divided by 10)

Annualized income = \$36,000 (\$3,000 x 12)

**c) Income from Non-Employment**

Non-employment income, such as trust income, pension and retirement income, dividends/interest, etc., is calculated from the most current monthly or quarterly official statement of such income. If no official statement or proof of current income documentation is available for the current year, MOHCD will use the immediate past year's income to project current year income. Generally, the last year income documentation for non-employment income should include annual statements or IRS 1099 forms.

**Example: Calculating Non-Employment Income with a Monthly Statement:**

Monthly income as stated on the most recent statement = \$500

Total number of pay periods in one year = 12

Annual income = \$6,000 (\$500 x 12)

**d) Income Calculated from Assets – Asset Test**

MOHCD adjusts actual Household income based on the level of savings, investments and other assets.

**BMR Rental Units**

Up to a cap of \$30,000 of Household liquid assets will not be counted toward Household income. Ten percent (10%) of the value of Household liquid assets that exceeds \$30,000 will be added to the total Household income.

**Example: Asset adjustments to Household Income:**

Household of 4 earns \$50,000 a year

Total Household assets = \$40,000

First \$30,000 of assets is excluded:  $\$40,000 - \$30,000 = \$10,000$  remaining

10% of remaining \$10,000 is added to income:  $\$10,000 \times 10\% = \$1,000$

Total amount added to income = \$1,000

New total Household income:  $\$50,000 + 1,000 = \$51,000$

**BMR Ownership Units**

Up to twenty percent (20%) of a Household's contribution of the BMR purchase price towards the down payment will be excused from the asset test. Any remaining liquid assets will be imputed at ten percent (10%) and added to the total Household income.

If a Household contributes less than twenty percent (20%) of a BMR purchase price, only the first \$60,000 will be excused from the asset test. Any remaining liquid assets will be imputed at ten percent (10%) and be added to the total Household income.

**Example: Asset adjustment to Baseline Household Income with 20% down payment:**

BMR purchase price = \$450,000

Household contributes 20% towards the down payment = \$90,000 ( $\$450,000 \times 20\%$ )

Total Household assets = \$140,000

First \$90,000 of assets is excluded:  $\$140,000 - \$90,000 = \$50,000$  remaining

10% of remaining \$50,000 is added to income:  $\$50,000 \times 10\% = \$5,000$

Total amount added to income = \$5,000

**e) Asset Exemption for Seniors**

For any person aged 62 and older, the first \$150,000 from total assets will be excused from total assets prior to calculating income. For married seniors, MOHCD will reduce total assets by \$250,000 (rather than 2x the single rate) from total assets prior to performing imputed income calculations. Balances held in retirement accounts are counted as liquid assets if the money is accessible to the Household member without a withdrawal penalty.

**f) Income from All Sources**

Once all sources of income from each adult Household member are verified and calculated, MOHCD will calculate the current total Household income.

**Example: Adding all income to arrive at the current total income:**

As shown in the above examples, a Household of 4 applying for an ownership Unit receives a salary income of \$48,000 [paystub on year-to-date method], self-employed income of \$36,000 [P&L statement], non-employment income of \$6,000 [official statement], and income from assets of \$5,000.

Method #1 Result: The Household's current total income = \$90,000 (\$48,000 + \$36,000 + \$6,000 + \$5,000).

**2. Method #2: Calculating Previous Year's Income**

This section describes an alternate procedure for determining a Household's total annual income earned in the last tax year.

Step 1: Use the total income from the immediate past year's federal income tax return (line 22 of IRS form 1040, or line 4 of IRS form 1040EZ, or line 15 of IRS form 1040A);

Step 2: Add back any losses set forth on the immediate past year's federal income tax return. If there are no losses, skip this step.

Step 3: Add back any of the allowable adjustments for a business or self-employment, such as non-recurring income and expenses, depreciation, depletion, meals and entertainment, and amortization. If there is no self-employment income for a sole proprietorship reported on line 12 of IRS form 1040, skip this step.

**Example: Calculating Last Year's Total Annual Income:**

Total Income (line 22 of IRS Form 1040): \$80,000

Capital loss (line 13 of IRS form 1040): -\$5,000

Business income Schedule C (line 12 of IRS form 1040): \$30,000

Depreciation on Schedule C: \$3,000

Method #2 Result: The Household's last year's total income: \$88,000 (\$80,000+\$5,000+\$3,000)

### 3. Income Increase Tolerance and Re-Calculation Criteria

Any change in Household income during application review must be reported to MOHCD. Non-disclosure of any material fact or misrepresentation of information will result in disqualification. If an applicant Household's income has been determined and verified by MOHCD, the verified income calculation is valid for a maximum of 6 months. However, during the 6-month period, income will be recalculated if there is an increase in Household income of more than five percent (5%). In addition, income will be recalculated if the BMR purchase transaction has not been closed within the 6-month period.

## C. Determining Assets

### 1. Liquid Assets

When calculating a Household's assets, all Household liquid assets must be considered and documented with statements dated no earlier than 45 days from the application date. Household liquid assets include, but are not limited to, the following: savings accounts, checking accounts, Certificates of Deposit, the total balance of any joint accounts, money market or mutual fund accounts, trust accounts (only the amount accessible with or without penalty), stocks or bonds, gifts, cash on hand, amount used or borrowed from a life insurance policy, IRA or retirement accounts, and other investments held by any member of an applicant's Household. Custodial accounts owned by a guardian for minors will also be included as Household liquid assets. Evidence that liquid assets have been transferred to another individual or into an unavailable asset account, or have been spent to avoid use in the purchase may result in denial of the applicant's application.

Assets in business accounts may be considered liquid assets if one of the following criteria is met:

- Assets in business accounts are used as a source of funds for the down payment, closing costs or financial reserves; or
- The applicant is 100% owner of the business, such as a sole proprietor; or
- Assets in business accounts are comingled with personal accounts.

MOHCD may require additional documentation regarding business accounts to determine an applicant's assets.

The following assets will be excluded from the calculation of liquid assets: the cash surrender value of a life insurance policy, the value of an IRA account, the value of retirement accounts (including but not limited to 401K and 403B accounts), or the value of a 529 college savings may be excluded from an applicant's liquid assets.

## 2. Gifts

If applicable, funds for use as down payment, closing costs or financial reserves to purchase a BMR Unit can be provided by a relative (defined as an individual who is related by blood, marriage, adoption or legal guardianship and who is not part of the Household). Gifts are not allowed from a fiancé who will not be part of the Household. In the case of home purchase, there is a minimum 3% (see *Purchase Contract and First Mortgage Financing* on page 23 of this Manual) of the purchase price down payment requirement. If necessary, the entire 3% can come from gifts and grants.

## 3. Retirement Accounts

### a) Using Retirement Assets as Reserves

Funds from retirement accounts can be used to meet the reserve requirement of three months housing expenses available after purchasing a BMR Unit. However, they do not have to be liquidated. The applicant must provide a complete copy of the most current quarterly, or three consecutive monthly, retirement account statement(s) identifying the applicant's vested amount and the terms of the retirement plan that permits the applicant to make withdrawals. Funds in a retirement account should not be considered as reserves when the retirement account only allows withdrawals in connection with the applicant's employment termination, retirement, or death.

To account for income taxes and any early withdrawal penalties, MOHCD will count only sixty percent (60%) of retirement account funds towards reserves.

### b) Borrowing from Retirement Accounts

When an applicant borrows against their retirement account, there is a monthly repayment amount. MOHCD will include this monthly payment as part of the applicant's recurring monthly debt obligations when determining the applicant's total Debt-to-Income ratio.

### c) Withdrawal from Retirement Accounts

Withdrawal of funds from unrestricted retirement accounts toward down payment and closing costs is generally allowed with proof of liquidation. If an applicant uses a portion of the retirement account toward the purchase of the BMR Unit, then that portion of the retirement account withdrawn or liquidated will be counted as an asset. The applicant should consider all options before using a retirement account, and consult a tax advisor to fully understand the potential tax consequences of a withdrawal in addition to any applicable early withdrawal penalty. Any required repayment of retirement accounts will be added to the Household's debt to income ratio.

## 4. Annuities

In the case of annuities, if an applicant has begun receiving annuity payments, then these payments are counted as income. If the applicant has the option of withdrawing the balance in an annuity, either with or without penalty, the annuity will be treated like any other liquid asset account. To account for income



taxes and any early withdrawal penalties, sixty percent (60%) of the full value of the annuity will be counted as the cash value of the annuity and applied toward the liquid asset income calculation.

## **5. Lump Sum Receipts**

Lump sum payments will be counted toward assets. Example of lump sum payments include: inheritances, capital gains, lottery winnings paid in one payment, cash from the sale of assets; insurance settlements; and any other amounts that are received in one-time lump sum payments.

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## IV. BELOW MARKET RATE (BMR) OWNERSHIP PROGRAM

The BMR Ownership Program creates homeownership opportunities for Low Income, Moderate Income and Middle Income Households in San Francisco. This section explains the rules for:

- Qualifying for a BMR Unit
- Applying for a BMR Unit
- Purchasing a BMR Unit
- Owning and Occupying a BMR Unit
- Reselling a BMR Unit

### A. Qualifying to Purchase a BMR Unit

In addition to Household size and income requirements listed in Sections II and III of this Manual, the following are qualification requirements for a BMR Ownership Unit.

#### 1. Income Requirements

For every BMR Unit:

- A BMR sales price is determined according to Planning Code Section 415 and/or the Project's or BMR Unit's Use Restrictions.
- BMR sales prices are calculated using AMI (see Section III of this Manual).
- A "Maximum Allowable Income" will apply for eligible Households, which means that some Households might earn **too much** to qualify for a BMR Unit.
- BMR applicants must also have enough income to qualify for a first mortgage with a bank approved by MOHCD, which means that some Households might earn **too little** to qualify for a BMR Unit.

The following table explains the most common pricing and qualifying AMI levels for BMR Units.

**Pricing and Income Levels for BMR Units**

| <u>Pricing Level of a BMR Unit</u> | <u>Allowable Household Income Range</u> |
|------------------------------------|---|
| 80% of AMI                         | up to 100% of AMI                       |
| 105% of AMI                        | 95% to 120% of AMI                      |
| 130% of AMI                        | 120% and 150% of AMI                    |

To see all AMI levels with Household size, please visit <http://sfmohcd.org/income-limits-and-sales-price-levels-mohcd-homeownership-programs>.

MOHCD publishes a new AMI chart each year, with updated numbers provided by HUD. Project Sponsors that have begun marketing Units must use the published AMI and sales price information applicable to their Project, even if AMIs change in the middle of a marketing period.

**Example:**

A project has 6 BMR Units for sale:

- 2 priced at 80% AMI
- 2 priced at 105% AMI
- 2 priced at 130% AMI

*Scenario 1:* My Household income is 121% of AMI. My Household only qualifies for the 130% AMI Units.

*Scenario 2:* My Household income is 70% AMI. I qualify for all of the Units; however, it is unlikely that my Household will be able to secure a mortgage for the higher priced BMR Units.

**2. Title Requirements**

All Household members aged 18 and older must appear on the title for a BMR Ownership Unit and be co-borrowers on the mortgage for the Unit. The following exceptions apply:

- Legal dependents of titleholders as claimed on the two (2) most recent federal income tax returns (spouses and domestic partners are not considered dependents).
- A Household member younger than age 24 who is the child of a titleholder and will reside in the BMR Unit as their Primary Residence, regardless of being named as a dependent on the federal tax form.
- Household members that do not count toward the BMR Unit size and their income does not change the applicant's Household income eligibility. Household members falling into this category are usually those who do not intend to live in the BMR Unit as their Primary Residence for the entire duration of ownership of the Unit.

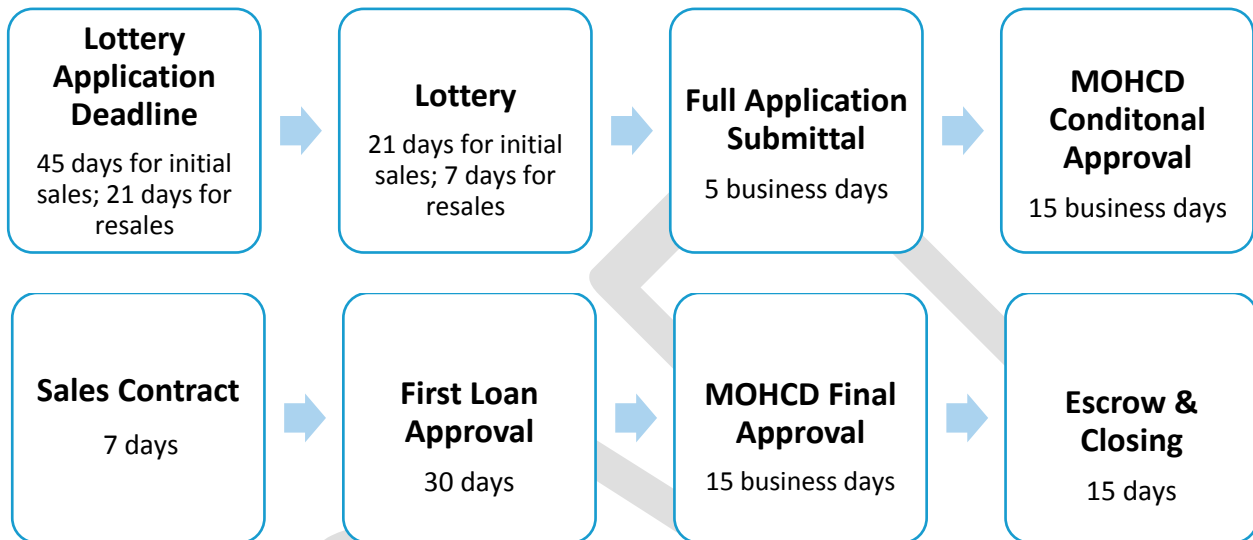
**3. Mortgage Readiness**

All applicants for BMR Units that will be on title must complete homebuyer education and counseling from a MOHCD-approved and HUD certified housing counseling agency (See Section B.1 below) and must establish that they are likely to qualify for first mortgage financing by submitting a Loan Pre-approval Letter from a MOHCD-Approved Lender.

Applicants who are selected by lottery to purchase will have a limited period of time to obtain full loan approval from a MOHCD-Approved Lender.

## B. Applying for a BMR Ownership Unit

Below is an estimate timeline for the purchase of a BMR Ownership Unit. The entire process can take up to 6 months from the day the Project Sponsor announces newly constructed BMR Units and 4 months from the day a BMR Owner offers their home for sale. All times listed are approximate; the processing times can vary depending on many reasons including first mortgage loan approval, construction delays and additional information required to determine an applicant's eligibility.



### 1. Before Applying for a BMR Unit

Each Household member that appears on title must complete a total of 8 hours of homebuyer education and demonstrate that they are mortgage-ready before submitting a lottery application.

#### a) *First-time Homebuyer Education Requirement*

All adult applicants aged 18 and older must attend 8 hours of a combination of group workshops and one-on-one counseling sessions, available in multiple languages, through a HUD and MOHCD-Approved First-Time Homebuyer Education Provider. A list of the education providers is available on MOHCD's website at [www.sfmohcd.org](http://www.sfmohcd.org). When all required members of an applicant Household have completed the Homebuyer Education requirement, their education provider issues a Verification of Homebuyer Education form to be submitted with a lottery application for a BMR Unit. The form must be issued within 12 months from the date of the lottery application. The education provider may renew the form for an additional year if necessary. When an applicant has entered into contract to purchase, both the first mortgage lender and MOHCD require a valid Certificate of Completion of Homebuyer Education from the MOHCD-Approved First-Time Homebuyer Education Provider. The Certificate must be dated within 12 months of the MOHCD final approval.

### ***b) Mortgage Pre-Approval***

Applicants must submit a loan pre-approval Letter from a MOHCD-Approved Lender. The pre-approval letter must:

- Be issued by a MOHCD-Approved Lender listed at [www.sfmohcd.org](http://www.sfmohcd.org).
- Name all adults age 18 and older in the applicant's Household unless qualified for the exceptions as described on page 4 of this Manual.
- Be dated within 120 days of the applicant's application.
- Contain a maximum loan amount.
- Include an estimated monthly Homeowners Association (HOA) dues and maximum sales price that meets or exceeds the actual HOA Dues and sales price of the BMR Unit.

## **2. Lottery Application**

New BMR Units have an application period lasting at least 45 days and resale BMR Units lasting at least 21 days. Applicants must submit a MOHCD application by a specific deadline for each BMR Unit, either through the Project Owner's sales agent, DAHLIA San Francisco Housing Portal (<https://housing.sfgov.org/>), or by mail through MOHCD's Post Office Box as listed on the DAHLIA San Francisco Housing Portal.

## **3. Housing Lottery**

The Project Owner and MOHCD will hold a public lottery for each BMR Unit. Every applicant that submits a complete application for a BMR Unit will receive a lottery ticket number. Applicants do not need to attend the lottery.

While every applicant must meet the City's basic eligibility requirements, San Francisco law gives some Households a lottery preference that increases the chance that they will be offered a BMR Unit. The specific preferences available may change from one project to another. The property listing in DAHLIA San Francisco Housing Portal or on the City's website [www.sfmohcd.org](http://www.sfmohcd.org) will indicate which preferences are applicable to a particular Project. Applicants may need to submit proof of eligibility for any available preferences when applying for the housing lottery.

The MOHCD Housing Preferences and Lottery Procedures Manual, available at <http://sfmohcd.org/sites/default/files/Documents/MOH/Preferences%20Manual%20-%202011.2.2016.pdf>, as revised from time to time, contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines and appeals.

## **4. Submission of a Full BMR Application**

After the lottery, the Project Owner will contact applicants in lottery rank order and invite them to submit a full application within 5 business days. Typically, a Project Owner contacts several Households for every available Unit. It is important to note that being asked to submit a full application is not a guarantee that an applicant will be given the opportunity to purchase a BMR Unit, because higher-

ranked applicants may be offered and accept all available Units before a particular applicant's application is considered.

Project Owners must notify applicants by phone, mail, text, and by email to request a complete application and documentation.

BMR applicants should be prepared to provide the full application by the date of the lottery to ensure their ability to meet the short turnaround time. BMR applicants who want assistance from their housing counselor or another third party during the sales process can list an additional person on their application to receive notices from the Project Owner and assist in submitting the full application.

All members of the applicant's Household that are 18 years or older must supply the following documentation to the Project Owner within 5 business days:

- Past 3 years Federal income tax returns with all schedules;
- Past 3 years W-2 and/or 1099 forms;
- 3 current and consecutive pay stubs, or if self-employed, a year-to-date P&L statement;
- 3 current and consecutive statements from all checking, savings, and any other liquid asset accounts, trusts or personal cash holdings, including all custodial accounts held for minors;
- California Driver's License, State or City and County of San Francisco ID or other Government issued photo ID;
- Completed Gift Letter and evidence of donor availability of funds (if applicable); and
- Applicable Lottery Preference Documentation.

Incomplete applications, or applications with known false, misleading or inaccurate information, will be disqualified from consideration.

## 5. Application Changes after Submission

Changes to an application after submission are only allowed in the following limited circumstances:

- Removal of an applicant in the case of divorce or dissolution of marriage or domestic partnership;
- Addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of a legal adoption or new legal guardianship;
- Update of income qualifications, such as a new job or a job that has ended; and/or
- Correction of technical errors, such as current phone number or other non-qualifying information.

An applicant must ensure the completeness and accuracy of their application before submission. MOHCD has sole discretion to approve any changes, and, except as mentioned in this Manual, will not permit any changes that affect the Household size, income or assets for qualifying purposes.

## 6. Inability to Find an Eligible Household

If no applications are received for a lottery during the marketing period or if all applicants have been considered after a lottery is conducted but one or more BMR Units remain vacant, MOHCD will take the following steps:

- a) Review the Project Owner's marketing performance to ensure all aspects of the required marketing plan have been carried out. If MOHCD determines that a Project Owner has not adequately followed the marketing plan, the application period will be extended to the original marketing period timeline to allow for adequate marketing.
- b) Extend the application deadline for eligible buyers and accept applications through MOHCD on a first-come-first-served basis. Applications will be considered strictly in the order that they are received.
- c) Allow the Project Owner to market the BMR Unit again for a minimum of 14 business days at a reduced price set by the Project Owner.

If, after following all of the steps above, the Project Owner is still unable to find an eligible buyer, the purchase price must be further reduced.

## 7. Inability to Obtain Financing

Under extenuating circumstances, MOHCD may, in its sole discretion, consider a request from a BMR Owner or a Project Owner to accept an all-cash offer or waive certain eligibility requirements for a BMR applicant. Such circumstances may include a Project with pending litigation, or a Project not conforming to lending standards. In order to consider such a request, MOHCD must have sufficient documentation to prove that:

- Financing through any MOHCD-Approved Lenders is not available;
- The extenuating circumstances are expected to last for a minimum of 6 months;
- Any further reduction of sales price will not improve the BMR applicant's ability to obtain financing.

## 8. Sales Contract and First Mortgage Financing

Eligible applicants will receive a Conditional Approval Letter from MOHCD which starts the purchasing and finance process. During this process, applicants should contact their housing counselor before making any large purchases or increasing regular income. Changes to liquid assets, employment status or levels of income could impact the ability to qualify for a first mortgage loan and the applicant's eligibility for the BMR purchase.

### a) Sales Contract

An applicant has 7 calendar days from the date of the MOHCD Conditional Approval letter to enter into a purchase contract with the seller of a BMR Unit. The sales contract must include:

- at least a 45-day financing contingency period; and
- at least a 60-day close of escrow period.

It is important to note that BMR sales transactions are sometimes extended beyond the 60-day period to accommodate both the buyer and the seller. Applicants must remain income-qualified throughout the close of escrow period.

BMR applicants of newly constructed Units have the opportunity to choose among appropriate Units in lottery rank order.

The MOHCD Housing Preferences and Lottery Procedures Manual (see <http://sfmohcd.org/sites/default/files/Documents/MOH/Preferences%20Manual%20-%20%2011.2.2016.pdf>) contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines, appeals and Unit selection.

**b) *Realtor Representation***

All realtors in a BMR transaction must:

- Be licensed by the California Bureau of Real Estate;
- Represent a BMR buyer in all aspects of the transaction; and
- Be compensated by the Project Sponsor at the same rate as fees paid to realtors of market rate units in the Project.

Instead of compensating BMR buyer's realtor, the Project Sponsor may choose to enter into a contract with a MOHCD-approved community-agency to assist with additional homebuyer education, timely application submittals and outreach activities. In such case, the Project Sponsor's realtor, with proper disclosure and authorization, shall act as the dual agent and represent all parties in the transaction.

**c) *Financing***

Once an applicant is in contract, the MOHCD-Approved Lender will prepare and submit a mortgage loan commitment and provide ALL of the following documentation to MOHCD:

- Completed MOHCD Lender Checklist
- Sales Contract
- Lender Loan Application and Underwriting Transmittal Summary ( mortgage forms 1003 and 1008)
- Final Fair Market Appraisal
- General Home Inspection Report (not required for newly constructed Units)
- Preliminary Title Report
- Mortgage Loan Commitment Letter
- Loan Estimate
- Copy of applicant's most recent Credit Report
- Certificate of Completion of Homebuyer Education



- Federal Income Tax Transcript
- Estimated Combined Settlement Statement

All loans in a BMR transaction must meet the following financing criteria:

- Minimum Loan to Value Ratio 50%
- Maximum Combined Loan to Value Ratio of 97%
- Co-signing is not allowed
- BMR applicants can only obtain financing from MOHCD-Approved Lenders listed at [www.sfmohcd.org/lender-list](http://www.sfmohcd.org/lender-list)
- 30-year loan term
- Fixed rate loans only
- Minimum 3% down payment
- Front end or housing ratio (PITI plus HOA Dues) no higher than 40%
- Back-end ratio or total debt-to-income ratio not to exceed 45%
- First mortgage interest rate and other fees associated with the transaction must be usual, customary and reasonable
- No upfront fees (except third party credit reporting, appraisal and inspection fees)
- Credits and contributions from a third party, such as seller, realtor, lender, are allowed for non-recurring closing costs and/or prepaids. All credits must be used in escrow
- Taxes and insurance impound account required
- A Fair Market Appraisal report using only market rate units as comparable, no more than 90 days old
- 3 month's housing payments (principal, interest, property taxes, hazard insurance and homeowners association dues) in reserves after purchase

Upgrades, storage units, and additional spaces, including second parking spaces:

- Must be financed separately from the financing of the BMR Unit
- Cannot be added to the resale price when the owner sells
- Must be sold separately from the BMR condo when the owner sells
- Are the sole responsibility of the BMR Unit Owner
- Are not allowed when purchasing with City provided down payment assistance funds

**d) *City and Other Government Financing Assistance***

Applicants are encouraged to work with the MOHCD-Approved Lender to determine eligibility for MOHCD and other first-time homebuyer assistance programs that may assist with the purchase of a BMR Unit. While these programs may add processing time to the BMR transaction, they can be invaluable in helping an applicant qualify for a mortgage. A MOHCD-Approved First-Time Homebuyer Education Provider can provide more information on other first time homebuyer assistance programs.

When financing with MOHCD first time homebuyer assistance programs, such as Below Market Rate Downpayment Assistance Loan Program (BMR DALP), Teacher Next Door (TND), an applicant must meet all of the eligibility requirements for the particular City loan program. In the case of any conflicting requirements, the more restrictive will apply.

BMR Buyers that use the MOHCD-administered down payment assistance program should consult the BMR DALP Program Manual for additional program guidelines. The BMR DALP Program Manual can be found on the DALP general website page at <http://sfmohcd.org/DALP-DETAILS>.

## **9. MOHCD Final Approval**

If no further information is required from the BMR applicant or the MOHCD-Approved Lender, within 15 business days of receipt of the full and complete lender package, MOHCD will determine final eligibility. Once eligibility is determined, MOHCD will proceed with escrow closing and release program documents along with escrow instructions to the title company.

## **10. Closing the Sale**

### ***a) Transaction Fees for BMR Sales***

The Project Sponsor or BMR Owner shall pay all usual, customary and reasonable transaction costs normally borne by the seller in a residential real estate transaction, with the following requirements:

- For BMR Initial Sales, the Project Sponsor shall pay realtor fees (see page 24 of this Manual for other options for Realtor Representation) in an amount commensurate with fees being paid for market rate buyer representation in the Project and pay City and County Transfer Tax in all cases.
- For BMR Resales, realtor fees up to 5% of the BMR resale base purchase price are added to the BMR Owner's Maximum Resale Price, which shall be split 50-50 between listing-selling agents; and City and County of San Francisco Transfer Tax shall be paid by the BMR Owner in all cases.

### ***b) Pre-Closing Buyer Meeting***

Once MOHCD has issued a final approval for the purchase of a BMR Unit ("Purchase Commitment Letter"), all Household members that will appear on the title are required to attend a pre-closing meeting at MOHCD. MOHCD staff will review the Acknowledgement of the Declaration of Restrictions, this Manual and other applicable documents, the Post Purchase Education requirement described in on page 28 of this Manual, and answer any questions about BMR Unit ownership.

### ***c) Title Company***

BMR Unit sales transactions are more complicated than traditional home sales and require additional steps on the part of title companies. While BMR Unit sellers may select any title company, MOHCD recommends choosing one with experience in BMR transactions. MOHCD

conducts an annual training event for title companies and title officers to ensure timely and accurate closings. MOHCD can provide applicants, Project Sponsors and BMR Unit Owners with the names of title companies and title officers with experience in San Francisco BMR transactions.

Once a buyer and seller have executed documents and before proceeding with closing, the Title Company must send the following to MOHCD:

- Original borrower's signed BMR Note
- Certified copy of signed City and County of San Francisco Deed of Trust
- Certified copy of signed City and County of San Francisco Declaration of Restrictions and Option to Purchase Agreement
- Certified copy of signed Acknowledgement of the Declaration of Restrictions, Procedures Manual and Planning Code Ordinance
- Certified copy of signed Request for Notice of Default
- Estimated Combined Master Settlement Statement
- Copy of signed first mortgage Note & Deed
- Copy of first mortgage lender escrow instructions
- Certified copy of signed Grant Deed
- HO-6 homeowners insurance policy or other homeowners insurance policy approved by MOHCD
- Closing Disclosure (CD)

#### **11. Documents that Enforce Program Restrictions**

Before the issuance of the First Construction Document (as defined by Planning Code Section 401) by the Department of Building Inspection, a Notice of Special Restrictions reflecting conditions of project approval, and other appropriate documentation, is recorded with the Office of the Recorder of the City and County of San Francisco on each BMR Unit. Such restrictions and other recorded documents include language restricting the sale or rental of the BMR Unit in accordance with Use Restrictions.

Key documents include:

##### ***a) Promissory Note, or "BMR Note"***

MOHCD prepares the BMR Note in an amount equal to the difference between (i) the appraised fair market value of the BMR Unit without regard to the sales restrictions on BMR at the time, and (ii) the Maximum Purchase Price of that Unit at the time pursuant to the Use Restrictions. All BMR Notes contain restrictions on resale and rental of a BMR Unit.

The BMR Note provides for a stated rate of interest and is due and payable, in full, on either: (1) the date of a sale or transfer of the Unit that is not in compliance with this Manual and/or the Use Restrictions; or (2) the date of an event of a default of any of the conditions, obligations or covenants contained in the BMR Note (including without limitation the covenant to sell the BMR Unit in compliance with the Use Restrictions).

The BMR Note is terminated, and no amount is due, upon a resale of the BMR Unit performed in compliance with this Manual and the Use Restrictions.

**b) *Deed of Trust***

The BMR Deed of Trust is subordinate to the first mortgage deed of trust, executed by the Buyer as trustor, for the benefit of the City to secure the BMR Note. The BMR Deed of Trust will not be subordinated to any other liens or restrictions affecting the Project or a BMR Unit.

**c) *Declaration of Restrictions and Option to Purchase Agreement***

BMR Owners execute a Declaration of Restrictions and Option to Purchase Agreement that, among other things, requires the BMR Owner to comply with the Use Restrictions and grants the City an option to purchase the BMR Unit in the event that the Owner does not comply with the Program terms.

**d) *Buyer Acknowledgment of Special Restrictions***

Each BMR Owner shall execute and deliver to the City an acknowledgement that s/he has thoroughly read this Manual and the recorded Declaration of Restrictions and Option to Purchase Agreement for the BMR Unit.

At the Close of escrow for an individual BMR Unit, the acknowledgement of the Declaration of Restrictions, and the City and County of San Francisco Deed of Trust are all recorded against the BMR Unit with the Office of the Recorder of the City and County of San Francisco. When a BMR Owner sells a BMR Unit in compliance of this Manual and the Use Restrictions, the BMR Owner's BMR Deed of Trust will be reconveyed or terminated by the City, and the new Buyer will enter into a new Declaration of Restrictions and Option to Purchase Agreement, a new BMR Note, a new BMR Deed of Trust, and any other documents required by the City.

**12. *Post-Purchase Education***

All BMR Owners are expected to attend at least 6 hours of Post-Purchase Education workshops within 24 months of purchase of a BMR Unit. Homeowner education workshops cover topics such as HOA rights and responsibilities, refinancing a BMR Unit, and property home maintenance. As part of the closing costs, BMR Owners pay a fee to ensure attendance at a "Post Purchase" workshop, which will be provided by a nonprofit agency. This fee shall not exceed \$200 and will be authorized by MOHCD in the City's escrow instructions. The fee will be refunded in full to BMR Owners who complete all 6 hours of post purchase education within 24 months of purchase. After 24 months of the date of purchase, any unclaimed deposit will be retained by the designated nonprofit agency. MOHCD will provide information about the date, time, and location of post-purchase workshops on its website at [www.sfmohcd.org](http://www.sfmohcd.org), and will send regular announcements to new homeowners via mail and email.

**C. *Requirements of Owning a BMR Unit***

Owning and selling a BMR Unit differs in many ways from owning and selling a market rate home. As a result, it is important that BMR Owners understand the rules and procedures of the Program fully. Any violation of the Program rules and regulations, Use Restrictions, and applicable sections of the Planning

Code may result in the City declaring the BMR Owner to be in default of the Program and may lead to the immediate sale of the BMR Unit as well as monetary and other enforcement actions.

The following restrictions apply to all BMR Owners for the Life of the Project:

### **1. Owner Occupancy**

The BMR Unit must be the Owner's Primary Residence. Everyone on title must live in the Unit at least 10 out of 12 months of each calendar year and must begin occupying the BMR Unit within 60 days of the purchase.

### **2. No Renting**

Except as provided in this Section, BMR Owners are prohibited from renting or subleasing any part of a BMR Unit. No part of a BMR Unit can be rented or subleased as a short-term rental or listed on short-term rental or vacation rental sites at any time. Renting of a parking space or any other space purchased with the Unit is also prohibited.

In its sole discretion, MOHCD may grant consent to a BMR Owner to rent all or part of their BMR Unit for up to 12 months. Circumstances considered include:

- The Household is forced to temporarily relocate due to documented employment requirements;
- The BMR Owner is experiencing temporary financial hardship where the Households monthly housing costs exceed 50% of the total Household income; or,
- For other reasons deemed acceptable by MOHCD in its sole discretion.
- MOHCD will consider allowing the temporary rental only if all of the following conditions are satisfied:
  - BMR Owner is in compliance with all Program requirements and has not previously been out of compliance.
  - Total period for which the BMR Unit is leased does not exceed 12 months and is not offered as a short-term rental.
  - Tenant satisfies the income and other eligibility requirements placed on the BMR Unit.
  - Tenant acknowledges, in writing, that the rental is temporary.
  - Initial rent does not exceed the Maximum Annual Rent that MOHCD would allow for a BMR Rental Unit with the same Maximum Household Income restriction or the BMR Owner's total documented housing expenses, (including Mortgage principal and interest, property taxes, HOA Dues, and insurance) whichever is lower.
- Owners experiencing temporary financial hardship are required to reside in the BMR Unit and provide MOHCD with written confirmation from a HUD-approved counseling agency that temporarily subletting of a portion of the BMR Unit will lead to long-term financial stability.

### **3. Maintenance**

BMR Owners will maintain (i) the BMR Unit in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and (ii) all appliances in good and working order. The

Maximum Resale Price of a BMR Unit may be reduced as necessitated by abnormal or excessive wear and tear or because of neglect, abuse or insufficient maintenance by the BMR Owner.

#### **4. Insurance**

The BMR Unit must be covered by an insurance policy for a minimum of its replacement value. MOHCD must be named as an additional insured or loss payee on the insurance policy. If HOA master policies do not cover replacement of the interior of the BMR Unit, the BMR Owner must obtain and maintain separate HO-6 condominium or other homeowner insurance policy that lists MOHCD as an additional insured or loss payee during the Owner's term of ownership.

#### **5. Annual Monitoring**

MOHCD requires occupancy certification on an annual basis. BMR Owners are required to provide information and documentation regarding occupancy status, insurance and any other information deemed necessary by MOHCD to determine compliance with the Program. At its discretion, MOHCD may require additional documentation after submittal of the initial documentation. MOHCD will not consider requests for subordination, capital improvements, title change or other requests if an Owner is non-compliant with any Program rule.

#### **6. Title Changes**

MOHCD will not permit changes in title except as provided below. BMR Owners must get written permission from MOHCD before making any changes to title. MOHCD requires documentation to approve any title change, and BMR Owners must be compliant and current with Annual Monitoring requirements in order to be considered for requested title changes. Mutually agreed to amendments to title documents will be recorded. MOHCD permits a change in title only for one of the following reasons:

##### ***a) Marriage or Domestic Partnership***

No sooner than 12 months after the original purchase, the Spouse or Domestic Partner of a BMR Owner may be added to title and assume the same rights and responsibilities as the original BMR Owner.

##### ***b) Dissolution of Marriage or Domestic Partnership***

Submittal to MOHCD of proof of death, dissolution of marriage or Domestic Partnership is the only way to remove a BMR Owner from title.

##### ***c) Owner's Death***

When one BMR Owner dies, any surviving co-Owners previously approved by MOHCD continue to hold title. Surviving Owners must notify MOHCD within 6 months and provide all requested documentation prior to removing a deceased owner from title.

When all BMR Owners on title die, the BMR Unit may be transferred by inheritance, will, or any other function of law to a child, Spouse or Domestic Partner not on title provided that the child or Spouse otherwise qualifies for the Program. Within one year of the death of the BMR Owner, the proposed transferee must submit a full standard BMR application with financial and other qualifying information (including loan pre-approval and completion of the First Time homebuyer

education requirement) to verify eligibility. If qualified, within 90 days, the child, Spouse or Domestic Partner shall execute a Note, City Deed of Trust, and any other City documents related to the BMR Unit and assume the same rights and responsibilities as the deceased Owner. If not qualified or not interested in retaining the BMR Unit, within 30 days following the disqualification or within 12 months of the death of the BMR Owner, the child, Spouse or Domestic Partner must begin the sales process by following the resale timeline and procedures to sell the BMR Unit to a qualified buyer meeting all eligibility requirements of the Program. The heir(s) of the BMR owner is/are entitled to receive the deceased Owner's proceeds after the sale.

**d) Living Trust**

MOHCD will consider requests to transfer title to an inter vivos (living) revocable trust from all Owners on title whose income and assets were used to qualify for the original purchase only if the following conditions are met:

- The trust complies with and is governed by the laws of California.
- The trustor, trustee and primary beneficiary of the trust are all members of the BMR Owner Household.
- There is no unusual risk or impairment of the City's rights, including the right to have full title to the property in the case of default or foreclosure.
- The proposed Living Trust documents contain language approved by MOHCD that a transfer of the BMR Unit to a remainder beneficiary under the living revocable trust triggers the City's Right of First Refusal or option to purchase the BMR Unit, and other rights under the Program.
- The BMR Unit owners agree that any changes to a MOHCD-authorized Trust must be approved in advance.

**7. Refinancing a BMR Unit**

BMR Owners must obtain MOHCD's prior written approval of any refinancing of a loan and the addition of any lien on the BMR Unit regardless of lien position. At all times, the City's lien position must be maintained and will only be subordinated pursuant to the MOHCD Subordination Policy. BMR Owners must follow the MOHCD Subordination Policy (see: [https://sfmohcd.org/sites/default/files/MOHCD%20Subordination%20Request%20Package%20Dec%202016\\_0.pdf](https://sfmohcd.org/sites/default/files/MOHCD%20Subordination%20Request%20Package%20Dec%202016_0.pdf)). A minimum of 12 months after purchase, BMR Owners may submit a request to MOHCD to refinance their first mortgage for the following purposes:

- Lower interest rate
- Shortened first mortgage loan term
- Lower monthly payment

When requesting approval to refinance, BMR Owners must:

- Use a MOHCD-Approved Lender
- Be up to date with Annual BMR Unit Monitoring and in compliance with Program rules
- Pay an administrative fee posted on MOHCD's website
- Have no delinquent mortgage payments, property taxes, HOA payments, unauthorized loans, or liens
- Satisfy any other requirements outlined in MOHCD's Subordination Policy

Cash equity withdrawals on BMR Units are allowed only under the following circumstances and must be preapproved in writing by MOHCD:

- Approved capital improvements to the BMR Unit;
- Educational expenses of a Household member;
- Medical expenses of the BMR Owner or the Owner's immediate family member; and
- Funds required to implement a marriage dissolution agreement or domestic partnership dissolution agreement.

Documentation supporting the expense will be required. Under no circumstances can the new loan amount exceed the original loan amount, and the Combined Loan to Value cannot exceed 95%.

BMR Owners with down payment assistance loans from MOHCD may not access cash equity from refinancing until the down payment assistance loan is repaid in full.

## **8. Default and Foreclosure**

BMR Owners are encouraged to contact MOHCD as soon as possible if they are at risk of a loan default, or a foreclosure, or if HOA Dues or Special Assessments become unaffordable. MOHCD supports HUD-approved Housing Counseling Agencies to help negotiate loan modification at no cost to the homeowner.

Use Restrictions will survive foreclosure, and any BMR Units purchased by an ineligible buyer through foreclosure must be immediately resold through MOHCD's resale process to a Qualified Buyer.

## **D. Reselling a BMR Unit**

A BMR Owner may only sell their Unit to a Qualified Buyer. All Transfers shall take place through an escrow account with a title company mutually acceptable to seller and buyer. No Transfer shall be permitted unless the selected title company complies with escrow instructions provided by MOHCD.

The following table describes the major steps and approximate processing times BMR Owners can expect for most resales. All processing times listed are estimates, and transaction times may vary depending on unique circumstances presented by a particular BMR Unit.



| <b>Resale Processing Timeline</b>   |                               |
|---|-------------------------------|
| <b>Steps</b>  | <b>Time Estimate</b>          |
| Notice of Intent to Sell Packet Submittal – Issuance of Pricing Letter      | 30 calendar days              |
| Marketing Plan Submittal – BMR Unit Posting                                 | 14 calendar days              |
| Marketing – Application Deadline (Application Period)                       | 21 calendar days              |
| Lottery for Resale Buyer (7 days after Application Deadline)                | 7 calendar days               |
| Full Application Submittal  | 5 business days               |
| MOHCD Application Review – Issuance of Conditional Approval                 | 15 business days              |
| Sales Contract Ratification (45-day financing contingency & 60-day closing) | 7 calendar days               |
| First Loan Approval – Lender Package Submittal to MOHCD                     | 30 calendar days              |
| MOHCD Final Review – Issuance of Full Approval                              | 15 business days              |
| Escrow & Closing  | 30 calendar days              |
| <b>Total Calendar Days</b>  | <b>Approximately 180 days</b> |

When selling a BMR Unit, BMR Owners must adhere to the following procedures.

### **1. Notice of Intent to Sell**

A BMR Owner that is ready to sell must notify MOHCD in writing at least 30 days prior to marketing the BMR Unit. MOHCD shall provide the Maximum Resale Price only upon receipt of all of the following documents:

- a Resale Pricing Request on a form provided by MOHCD;
- an executed Listing Agreement with a licensed realtor who has a local office in San Francisco to accept paper applications;
- Proof of monthly HOA Dues in the form of an invoice or payment coupon; and
- A statement of all reimbursement credits approved by MOHCD.

Within 30 days of receipt of a complete request, MOHCD shall issue a pricing letter with the Maximum Resale Price of the BMR Unit and any other conditions of sale. No more than one pricing letter may be requested in any calendar year and any pricing requests received within twelve (12) months of another request may be subject to a fee as determined by MOHCD. The pricing is valid for 30 days from the date of the letter. No separate terms can be required within a sales agreement that require the BMR Buyer to purchase appliances, furnishings, storage units or other items. All amenities and parking spaces that were purchased with the BMR Unit originally must be sold with the Unit upon resale. Repricing may be subject to a fee as listed on MOHCD's website at [www.sfmohcd.org](http://www.sfmohcd.org)

### **2. Maximum Resale Price**

The Maximum Resale Price will be calculated according to a formula designed to ensure that BMR Units remain affordable. The specific Resale Pricing Formula for determining the Maximum Resale Price for BMR Units where the most recent sale is after the effective date of this Manual will be contained in a Declaration of Restrictions and Option to Purchase Agreement recorded against the specific BMR Unit.

A BMR Owner is not guaranteed that a new buyer will purchase the Unit at the Maximum Resale Price. As in any real estate transaction, a BMR Owner may have to lower the price in order to attract a buyer.

Owners with deferred maintenance or excessive wear and tear should expect to negotiate a lower sales price. The Maximum Resale Price is simply the maximum amount that a BMR owner may advertise for the Unit.

### **3. Cost Reimbursement in Resale Price**

While the resale price of BMR Ownership Units is strictly limited in order to preserve affordability, BMR Owners have the opportunity to increase the Maximum Resale Price in order to reflect pre-approved documented costs associated with capital improvements, repairs, and Special Assessments.

In order to maintain the affordability for subsequent BMR Owners, MOHCD will cap all eligible capital improvements and eligible replacement and repair costs, combined, at 10% of the resale price. BMR Owners may begin claiming all eligible capital improvements, repairs and replacements made ten (10) years or more after the initial sale of the Unit. All improvements that are credited in the resale price must remain in the BMR Unit at resale. Note, that there is no cap on the amount of credit that can be claimed for Special Assessments, however the amount is depreciated over time.

BMR Owners must obtain MOHCD's approval for all eligible capital improvements, eligible replacement and repairs, and Special Assessments when the costs are incurred, and all City code requirements must be followed. No credit will be provided for improvement costs that are not approved within 6 months of completion of work, for work performed without required permits, or for work that does not comply with applicable San Francisco or California codes.

#### **a) Eligible Capital Improvements**

Eligible capital improvement costs include major structural system upgrades, new additions to the BMR Units and improvements related to increasing the health, safety and energy efficiency of the property. Improvements that meet these criteria will be given 100% credit. Examples of such improvements include:

- Major Electrical Wiring System Upgrade
- Room Additions
- Alarm System
- Smoke Detectors
- Major Plumbing System Upgrade
- Installation of Additional Closets and Walls
- Removal of Toxic Substances, such as asbestos, lead, or mold/mildew
- Upgrade to Double Paned Windows
- Insulation
- Upgrade to Energy Star Built-In Appliances as follows: furnace, water heater, stove/range, dishwasher and microwave hood.

**b) Eligible Replacement and Repair**

These costs include in-kind replacement of existing amenities, repairs and general maintenance that keeps the property in good working condition. Costs that meet these criteria will be given 50% credit for repairs.

- Electrical maintenance and repair, such as switches and outlets
- Countertops
- Built in cabinets
- Plumbing maintenance and repair, such as faucets, supply line and sinks
- Bathroom tile
- Bathroom vanity
- Flooring
- Replacement of Built in appliances as follows: furnace, water/heater, stove/range, dishwasher, microwave hood, garbage disposal
- Window sash
- Heating system
- Lighting system (Recessed)

**c) Ineligible Costs**

These costs include cosmetic enhancements, installations with limited useful life spans, non-permanent fixtures, improvements with special features that are for personal needs, and alterations that are matters of personal preference. BMR Owners may undertake these projects for their own enjoyment to the extent they obtain all required permits and the proposed alterations comply with applicable codes; however, the cost will not be added to the resale price. Ineligible Costs can include, but are not limited to, the following:

- Fireplace tile and mantel, gas fireplace installation, decorative wall coverings or hangings, window treatments, installed mirrors, shelving, refinishing of existing surfaces
- Health spa, special entrances, built in stereo system
- Track lighting, doorknobs, handles, locks, portable appliances (refrigerator, microwave, stove/oven, etc.)
- Carpet, painting of existing surfaces, window glass, light bulbs
- Remodeling of a specific room, changing floor plan

**d) Special Assessment Costs**

As a building ages, an HOA may find it necessary to impose a fee on its owners to cover the cost of repairs or improvements to the building. The HOA Board of Directors must follow California Bureau of Real Estate laws when deciding to initiate a Special Assessment. All owners in a building, including BMR owners, must share the burden of a Special Assessment. The cost of a Special Assessment will be added to the resale price of the BMR Condo at the depreciation rate of 7% per year from the date that the Special Assessment payment was made. Monthly HOA Dues cannot be counted as Special Assessments.

MOHCD has a program to assist with a Special Assessment that is not affordable to a BMR Owner. BMR Owners are encouraged to contact MOHCD for more information.

**e) *Procedure for Submitting Cost Reimbursement in Resale Price***

BMR Owners must submit a request for cost reimbursement in resale price to MOHCD for review within 6-months of the completion of the project or payment of a Special Assessment, whichever is earlier. Each BMR Owner must submit a written request on a form provided by MOHCD that includes the following items:

For Capital Improvements, Replacement and Repairs:

- The receipt and invoice for each eligible improvement.
- Proof of payment, such as a cancelled check, bank account statement or credit card bill.
- A copy of site or building permits, if required.
- Contractor's license number for Projects exceeding \$500.
- Before and after photos.

For Special Assessments:

- An invoice for the Special Assessment.
- Proof of payment, such as a cancelled check, bank account statement or credit card bill.

At its discretion, MOHCD may arrange a site visit to inspect the completed project or require further information to substantiate improvements to BMR Units or payment of Special Assessments. Once the improvements have been verified, MOHCD will provide written documentation of the resale credit for cost reimbursement at resale.

**4. *Marketing at Resale***

The BMR Units must be marketed for at least 21 calendar days preceding an application deadline. MOHCD will announce the available BMR Units on its Email Housing Alert System and, when available, on the DAHLIA San Francisco Housing Portal. Among other requirements, the BMR Owner's realtor must:

- Hold 3 open houses - including at least one weeknight and one weekend day.
- Advertise the BMR Unit on the Multiple Listing Service (MLS) to promote public awareness.
- Accept applications and distribute lottery ticket numbers in accordance with the most recent MOHCD application policies and procedures.
- Have a local office in San Francisco.
- Field all questions regarding the BMR Unit.
- Enter applicant information into a MOHCD-provided applicant tracking system within 24 hours of application deadline.
- Ensure completeness of all paper applications.
- Be in compliance with all applicable federal, state and local laws relating to Fair Housing.

- Attend and assist with the BMR public Lottery.

## 5. Lottery Process

The MOHCD Housing Preferences and Lottery Procedures Manual

<http://sfmohcd.org/sites/default/files/Documents/MOH/Preferences%20Manual%20-%202011.2.2016.pdf>, as revised from time to time, contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines, and application denial appeals.

## 6. Closing

Broker fees are paid by the BMR Owner and must be shared in a commission agreement with the BMR buyer's Realtor. Such fees are based on the MOHCD-calculated Resale Base Price before the addition of any Cost Reimbursement credits or the Realtor commission.

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## V. BELOW MARKET RATE (BMR) RENTAL PROGRAM

Renting a BMR Unit differs in many ways from renting a market-rate apartment. As a result, it is important that applicants fully understand their rights and responsibilities under the Program. Any violation of the restrictions, policies and procedures set forth in this Manual and in applicable sections of the Planning Code may result in the City declaring the BMR Renter to be in default of the Program and may lead to the immediate termination of the BMR lease as well as monetary and other enforcement actions.

### A. Rent and Income Levels

The City restricts the rental of BMR Unit Rentals to Households that are Low- to Middle-Income. Each BMR Unit has its own rent level and income limit. A legal document called a Notice of Special Restrictions (NSR) includes the specific income level for calculating the Maximum Annual Rent that may be charged for each BMR Unit. Applicants can review the listing information in DAHLIA San Francisco Housing Portal (<https://housing.sfgov.org/>) for details on the actual rent levels and income limits for each BMR Unit.

Most BMR Rental Units have rent levels that are affordable to Households earning either 55%, 80% or 110% of AMI, as amended by the City through the Planning Code over time.

Due to changes to the Planning Code over time, many older BMR rental Units are available to Households at one income level, while newer BMR Units are available to Households ranging in income. For projects governed by this Manual, the following table sets forth the most common rent and income levels for BMR Units:

**BMR Rental Program Rent Amounts and Income Limits by AMI Level**

| <u>Target Rent Levels</u> | <u>Allowable Household Income</u> |
|---------------------------|-----------------------------------|
| 55% of AMI                | At or below 65% of AMI            |
| 80% of AMI                | Between 65% and 90% of AMI        |
| 110% of AMI               | Between 90% and 130% of AMI       |

### B. Household Requirements for a BMR Rental Unit

In addition to Household size and income requirements discussed in Section II of this Manual, the following qualification requirements apply for each BMR Rental Unit.

## 1. Permissible Reasons for Project Owners to Deny BMR Renter Applicants

If an applicant Household meets the Program qualifications, Project Owners may only deny a rental application based on the criteria described below. Each Property will have its own “Resident Selection Criteria” within these guidelines. MOHCD reviews and approves each Property’s criteria before the Project is listed on DAHLIA.

The Project must adhere to all applicable federal, state and local standards for “Resident Selection Criteria” and all reasons for applicant denials must be based on documented proof. Any credit, eviction, or criminal history reviews conducted for prospective BMR Unit renters must be evenly applied to all renters in the Project, including market-rate renters.

### **a) Inability to Pay Rent**

The Project Owner may require a minimum income for BMR Renters but must not require any applicant to have a minimum Gross Income of more than 2 times the annual Maximum Annual Rent. If an applicant is using a rent subsidy such as a Housing Choice Voucher, the minimum Gross Income will be based on the BMR Renter’s monthly share of rent rather than the Maximum Annual Rent amount, which will be partially covered by the voucher. For example, if the BMR Unit’s rent is \$1,200 and an applicant is responsible for a rent payment of \$400, then to qualify the applicant must earn a minimum of \$800 per month.

### **b) Credit**

While the Program has no minimum credit standard, the Project Owner may require adult Household members to clear a credit check. However, Project Owners may only review and apply that credit standard after the Household has income qualified. MOHCD reviews each Project’s credit requirements to ensure that the credit review is limited to negative credit within the past 24 months and that the following mitigating circumstances are considered:

- An applicant that can document on-time rent payments of equal or greater value for the last 24 months shall meet the building’s credit standard regardless of credit score.
- Low credit ratings due to outstanding medical or student loan debt or unpaid balances below \$2500 should not be taken into consideration.
- Alternate forms of credit history such as rent payments, insurance, utilities and childcare paid on time, especially in the case where an individual has no credit, should always be taken into consideration.

### **c) Eviction History**

The Project Owner may require adult Household members to clear an eviction history review. Eviction review is limited to the last three years from the date of an application and “No fault” may not be considered as a basis for denial. When a Project Owner discovers a previous eviction judgment for non-payment of rent or other lease violations, it must give the applicant an opportunity to present any mitigating circumstances before issuing a denial. Project Owners shall consider the following mitigating circumstances:

- Relocation/escape from a domestic violence situation or escaping or evading an abuser.
- Having had insufficient or interrupted income in a non-subsidized residence.
- Successful enrollment in money management or payee services after a non-payment eviction.
- Circumstances that will be unlikely to recur with stabilized housing costs.

**d) Criminal History**

Project Owners must comply with the provisions of San Francisco's Fair Chance Ordinance (San Francisco Police Code Article 49). Among other things, the Fair Chance Ordinance prohibits a Property Owner from considering criminal records that occurred over 7 years before the date of review of a BMR Unit rental application. It also requires Property Owners to review income and all other eligibility qualifications before performing a criminal background check. For more information on the Fair Chance Ordinance and applicant rights when it comes to criminal background checks, contact the San Francisco Human Rights Commission. See: <http://sf-hrc.org/fair-chance-ordinance>.

**e) Use of Guarantors**

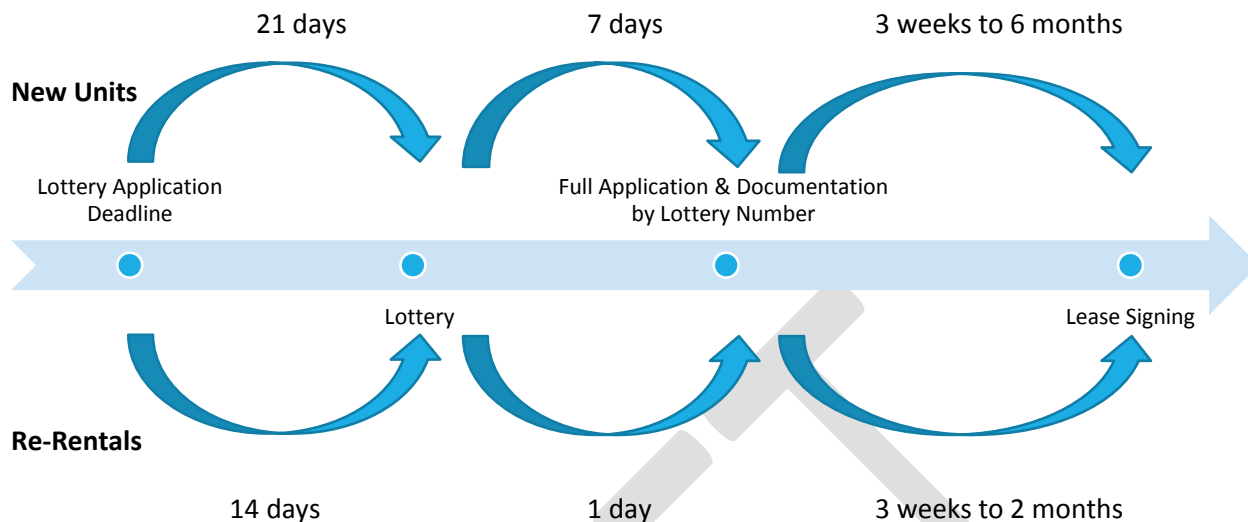
If an applicant's income, credit or rental history does not meet the Project's standards or "Resident Selection Criteria," the Project Owner shall allow the applicant to use a lease guarantor. While a lease guarantor is not entitled to live in the BMR Rental Unit, it is guaranteeing that the rent will be paid by the guarantor if the tenant is not able to pay. Specific clauses of the lease or rental agreement will outline the responsibilities of the lease guarantor and must be approved by MOHCD.

If the BMR Unit tenant is able to demonstrate good standing for their rental payment history over the previous 12-month lease period, then upon recertification the Property Owner may not require a guarantor for renewal of the lease.

**C. Application Process for BMR Rental Units**

Below is an estimated timeline for applicants to apply for and rent a BMR Unit. The entire process can take up to 7 months from the day the Project Sponsor announces the availability of newly constructed BMR Units and 2 months for a re-rental. The processing times listed below are estimates; actual times may vary depending on many reasons including the number of BMR Units, the Project Owner's staff capacity, construction delays and additional information required to determine an applicant's eligibility.





**1. Application, Marketing, and Lottery**

New BMR Rental Units shall be marketed for a minimum of 21 calendar-days. The Unit(s) shall be listed on DAHLIA San Francisco Housing Portal and advertised in local newspapers, online sources and other venues as required by MOHCD.

Applicants must submit a MOHCD application by a specific deadline for each new BMR Unit, either through DAHLIA San Francisco Housing Portal or by paper through MOHCD’s Post Office box, as listed on DAHLIA. DAHLIA can be translated into many languages and the paper BMR application is available in the City’s official languages, as amended from time to time. Currently these languages are Chinese, English, Spanish and Filipino.

When BMR Units become vacant, the re-rental of the Unit shall be listed on DAHLIA San Francisco Housing Portal for a 7 calendar-day period.

All applications submitted by the deadline listed on DAHLIA are entered into a lottery. MOHCD may allow the use of an existing lottery list if a new vacancy in the same building takes place within 6 months of a previous lottery and if the vacant Unit has the same allowable maximum income level and same bedroom count as the previous lottery.

For more details on the marketing requirements for BMR Rental Units upon re-rental, see page 61 of this Manual.

**2. Full BMR Rental Program Application**

After the lottery, the Project Owner will contact applicants in lottery rank order with an invitation submit a full housing application within 5 business days. Typically, a Project Owner contacts 10 Households for every available Unit. Project Owners must offer leases to qualified applicants in lottery rank order. Applicants should note that the request to provide a full housing application does not always result in a lease offer, since higher-ranked applicants may sign leases for all available Units.

Project Owners must notify applicants in lottery rank order by phone, mail, text and email to request the complete application and documentation within the 5 business day period. Project Owners or their agents must adhere to the application review guidelines outlined in this Manual and the MOHCD Housing Preferences and Lottery Procedures Manual.

A full housing application and required documents (listed below) for all Household members age 18 and older must be provided:

- Most recent Federal tax return with all schedules, forms, W2s and 1099s.
- 3 current and consecutive pay stubs or if self-employed, a year to date P&L statement.
- 3 current and consecutive statements from all checking, savings, and any other liquid asset accounts, trusts or personal cash holdings, including all custodial accounts held for minors.

### **3. Fees for Applying**

After the lottery, Project Owners are allowed to charge an application fee and fees to cover the costs of running background checks that have been approved by MOHCD in the Marketing Plan as listed on DAHLIA.

### **4. Alternative Contact**

BMR applicants who want extra help applying and providing documents may choose to list someone else to receive communication during the application process. This can be a case manager, family friend or even a local agency that provides language assistance. If an alternative contact is listed on your housing lottery application, Project Owners will include the 3rd party in all communication regarding the Unit and the applicant Household, including but not limited to communications relating to deadlines, requests for more information and application approvals and denials.

### **5. Changing an Application after Submission**

Changes to an application after submission are only allowed in the following cases:

- Removal of an applicant in the case of divorce or dissolution of marriage or domestic partnership
- Addition of an applicant's Spouse or Domestic Partner or a new Household member in the case of a marriage, legal adoption or new legal guardianship.
- Update of data relating to income qualifications, such as a new job, salary increase or decrease, or a job that has ended.
- Correction of technical errors, such as current phone number or other non-qualifying information

Changes to a BMR Unit application are not permitted after an applicant's Household eligibility has been determined.

### **6. Affordable Rents**

The Maximum Annual Rent for a BMR Rental Unit is set assuming a Household size and income level that follows Planning Code and HUD rules. The actual Households that qualify for BMR Rental Units might,

and usually do, have slightly different incomes or Household sizes. For example, if the maximum rent for a 2-bedroom BMR Unit is \$1300, any qualified BMR renter must pay this amount. The rent does not vary by Household income or size. This rule differs from some other affordable rental programs.

To calculate the rent for a BMR Rental Unit, MOHCD refers to the Use Restrictions for the Unit. The Use Restrictions state the maximum "Area Median Income" level for calculating the rent for every BMR Unit within the Project. MOHCD then follows the affordable rent set forth by HUD for the applicable unit size and income restriction. HUD's calculation assumes that Household sizes are one person larger than the number of bedrooms in the Unit and that Households pay no more than 30% of their Annual Gross Income on rent. For certain Units that are considered "Single Room Occupancy" and Group Housing units, however, the rent is based on 75% the rent of a studio unit.

MOHCD uses two Maximum Annual Rent levels for BMR Rental Units, one "with utilities and building charges" and one "without utilities and building charges." Project Owners that pay for all garbage, water and sewer charges for a BMR Rental Unit shall charge the rent level "without utilities." Project Owners who also pay gas and electricity in addition to garbage, water, and sewer, shall charge the higher rent "with utilities." In the case that a Project Owner applies a universal utility payment system to all tenants in the building, the Project Owner may directly charge a BMR Renter for utilities only if the Unit is separately metered and the property is able to track the unit's actual consumption. The amount of rent charged cannot exceed the published Maximum Annual Rent without utilities. In the case where a Project Owner applies a Ratio Utility Billing System to all tenants in the building, the Project Owner may charge the higher rent "with utilities" but cannot charge the BMR Renter any additional fees for utilities. At no time can a Project require a tenant to pay building charges or other mandatory charges above the "with utilities" rent.

|  | Rent without Utilities & Building Charges | Rent with Utilities & Building Charges |
|--|---|--|
| Property Owner pays water, sewage, garbage<br>BMR Renter pays PG&E   | X   |  |
| Property Owner pays water, sewage, garbage, and PG&E but is able to track actual consumption by unit and bill the tenant<br>BMR Renter pays utility bill to the property                           | X   |  |
| Property Owner pays water, sewage, garbage and mandatory service fees<br>BMR Renter pays PG&E  | X   |  |
| Property Owner pays water, sewage, garbage<br>BMR Renter pays PG&E and mandatory service fees  |   | X                                      |
| Property Owner uses a Ratio Utility Billing System (RUBS) to pay water, sewage, garbage, PG&E<br>BMR Renter pays no other utilities and the property cannot bill the tenant for additional charges |   | X                                      |
| Property Owner pays all utilities including water, sewage, garbage, and PG&E<br>BMR Renter pays no other utilities or mandatory service fees   |   | X                                      |

### 7. Rent Subsidies

San Francisco law prevents Project Owners from refusing to accept rental subsidies from a tenant, including but not limited to the San Francisco Housing Authority Section 8 Housing Choice Voucher Program. When a BMR Renter uses a rent subsidy, the Project Owner must enter into a lease agreement with the BMR Renter that only requires the tenant to be responsible for the Maximum Annual Rent Amount as determined by MOHCD. Project Sponsors must provide MOHCD with documentation that demonstrates that the rental subsidy amount is limited to the Maximum Annual Rent.

### 8. Additional Fees or Rent Required of Renters

Project Owners must inform MOHCD in advance of any additional required fees or rent, such as renters insurance, that will be required of BMR Renters. Such fees will be allowed only if applied to all renters in the Project and only if the fees or rent do not increase the Maximum Annual Rent under the Program. Certain optional fees may be allowed outside of the Maximum Annual Rent, such as a pet fee, but only if approved by MOHCD through the Marketing Plan and Resident Selection Criteria review.

### 9. Application Approval and Disqualification

When Project Owners approve applicants, they must contact the approved Household through email, text, mail, **and** telephone. The approval letter will include information on next steps to be taken in the process of renting a BMR Rental Unit.

When Project Owners disqualify applicants, they must notify the applicant in the same manner described above for approvals. The disqualification letter will explain the reason(s) for the disqualification and provide information on the appeal process.

#### **10. Applicant Appeals**

If a disqualified applicant believes the disqualification decision was reached in error and has additional information and documentation that could reverse the decision, they can ask for reconsideration. Appeal requests must be made in writing and must clearly state the basis for the applicant's belief that the Project Owner made an error in disqualifying the application. To ensure it is received in time, it is best to send an appeal request electronically, but it can also be sent through the US Postal Service. The appeal request must include supporting documentation that corrects the error. Applicants must submit an appeal request to the Project Owner within 5 calendar days from the date of the disqualification letter. The disqualification letter will include the actual deadline for appeal and a link for secure electronic submission of sensitive documents.

MOHCD will work to respond to an appeal for reconsideration within 5 business days from the date of receipt of the appeal request. Project Owners will hold one appropriately sized BMR Rental Unit for the disqualified Household during the 5 business day appeal period; however, they are not required to hold the applicant's preferred BMR Rental Unit. Once MOHCD makes a decision on an appeal request, that decision is final.

#### **D. Restrictions on BMR Rental Units and Renters**

Because renting a BMR differs from renting a Market Rate unit, it is important that BMR renters understand the rules of the Program. Violation of these restrictions could result in an Owner's decision not to renew a lease, eviction and/or penalties. The following requirements apply:

##### **1. Occupancy**

All members of the Household that applied must move into the BMR Rental Unit within 60 days of the start of the lease and occupy the BMR Unit as their Primary Residence for at least 10 out of 12 months of each calendar year.

##### **2. No Subletting**

BMR Renters may not sublet any part of the BMR Rental Unit to anyone that is not a part of the Household at any time. BMR Rental Units cannot be subleased for long-term or short-term vacation rentals at any time. There is also no renting or subletting of a parking space or any other space provided with the BMR. Any violation of this rule will lead to the termination of the lease and fines enforced by the Planning Department and/or City Attorney's Office.

##### **3. Household Size**

BMR Renter Households must maintain a minimum Household size of at least one person per bedroom. Any violation of this rule, including changes in Household size after commencement of the lease term, could result in non-renewal of the lease for a BMR Household. In the case of BMR Units with rents

priced for Middle-Income Households (110% AMI), the minimum Household requirement is two people per bedroom, including studio units.

#### **4. Household Changes**

A Project Owner must not allow any changes to a BMR lease within the first lease year, except in following situations: in the case of death, dissolution of marriage or domestic partnership within the Household and only with the written consent of MOHCD and the Project Owner.

Should MOHCD approve the Household composition change, the new Household must submit a new application for the BMR Rental Unit and meet the current qualification standards. If a Household adds or removes anyone within the first 12 months, the new Household income must be at or below the limit that was applicable at the time the continuing members of the Household initially applied. After the first 12 months, if the Household composition changes, the new Household income must remain at or below the allowable recertification limits.

#### **5. Transferring BMR Rental Units**

BMR Renters may apply for other BMR Rental Units by participating in the full application and lottery process for any available BMR Rental Units, but are not given a priority to such units. BMR renters in one building may not transfer to another BMR Rental Unit in the same building once they have begun their lease term unless specifically authorized by MOHCD to address compelling circumstances such as death of a Household member, divorce or separation, or mobility accessibility needs of one or more Household members.

#### **6. Rental Unit Maintenance**

BMR Renters are responsible for making sure that their BMR Rental Units is not damaged and for maintaining the Unit in compliance with the terms of their lease. Project Owners are responsible for maintaining the BMR Unit in the same manner they maintain their Market Rate Units.

#### **7. Annual Recertification**

Each year, BMR Renters must provide Household income documentation and other applicable Household information to the Project Owner. BMR Renters who fail to timely provide the required documentation are in violation of the Program and will not have their lease renewed.

### **E. Lease Requirements for BMR Rental Units**

#### **1. Unit Selection**

Successful applicants have the opportunity to choose among appropriately-sized BMR Units in their lottery rank order. For more information on the Unit selection process, see the San Francisco Housing Preferences and Lottery Procedures Manual.

#### **2. Lease**

MOHCD provides lease guidelines to be used by the Project Owner for each BMR Rental Unit. Each lease will include a BMR Renter acknowledgement of the restrictions and recertification procedures that govern the occupancy of the BMR Rental Unit. The Project Owner may also include an addendum that

details building rules not covered in the standard lease. BMR leases and any addendum to the lease must be pre-approved by MOHCD.

### **3. Lease Execution and Commencement**

The Project Owner allows a BMR Renter a minimum of 7 calendar days from the date of the Program approval letter to enter into a lease. That lease should commence no sooner than 10 calendar days from the signing unless the BMR Renter prefers to begin the lease sooner. These deadlines will be clearly outlined in the Project Owner's approval letter for the BMR Renter Household.

### **4. Minimum Term and Early Lease Termination**

All leases must have a 12-month term. The material terms of the lease shall not change from year to year, except for the Maximum Annual Rent and other changes required or approved by MOHCD. Should a BMR Renter have the need to terminate their lease, the BMR renter will be responsible for notifying the Project Owner in writing of their intentions and will be financially responsible for any fees associated with an early termination. Project Owners however, may not assess, charge or collect fees from BMR renters for any period in which the BMR Unit has been re-rented.

### **5. Household Members on the Lease**

All Household members age 18 and older must sign the lease for a BMR Rental Unit. There is no "master leaseholder". In other words, all Household members who appear on the lease have equal status.

The following Household members are not required to sign the lease:

- Legal dependents of leaseholders as claimed on the two most recent federal income tax return or minor children of leaseholders. Spouses or Domestic Partners are not considered dependents.
- Household members younger than age 24 who are the child of a leaseholder who will reside in the BMR Rental Unit as their Primary Residence, regardless of whether they are named as a dependent on the federal tax form or not.
- Recent immigrants who cannot produce a credit score and who are unable to demonstrate alternative forms of credit. To qualify for this exception, a person must provide entrance documentation reflecting that the person has been in the United States for two (2) years or less.

### **6. Deposit Requirement**

Deposits charged to BMR Renters cannot exceed one month's rent, with the following exceptions:

- An additional 1 month's rent may be charged as a deposit if the BMR Renter has negative or no credit history.
- Project Owners that allow pets may charge an additional refundable pet deposit that is reasonable and in line with the same deposit paid by Market Rate renters, but in no instance may the pet deposit exceed one month's rent for the BMR Rental Unit. Pet deposits should be refunded, less any documented damage costs attributed to the pet. Project Owners may not collect a deposit for documented service animals.

## **7. Late Payment Fees**

Late payment fees may be charged for BMR Renters who fail to pay rent in full by the due date defined in their lease. Under no circumstances can BMR Renters be required to pay late payment fees higher than 5% of the BMR Rental Unit rent in any given month.

## **8. Third Party Notice**

BMR Renters who want extra help following the requirements of their leases may choose to list someone else to also receive the recertification information or any legal notices from the Project Owner. This can be a case manager, family friend or even a local agency that provides language assistance. If a Third Party is listed on a BMR Renter's Lease Addendum, Project Owners must inform BMR Renters who designate a third party notice that personal information will be shared with the third party. Until notified by a BMR renter to stop communication to the third party, Project Owners must include the third party in all communication regarding the Unit and the BMR Renter Household, including but not limited to lease violations, evictions and other actions.

## **F. Annual Monitoring and Recertification of BMR Rental Units**

On an annual basis, MOHCD provides training on the form, contents, and procedures for the annual monitoring and recertification of BMR Rental Units. Project Owners will be responsible for satisfying the following recertification requirements every year:

### **1. Annual Renter Household Recertification**

BMR Renters are recertified on an annual basis to determine the continued Program eligibility of the Household, including Household size, occupancy, income, and non-ownership of a housing Unit. Approximately 120 days before lease expiration, Project Owners are required to provide existing renters with a recertification application. Renters must complete the recertification form and provide annual Household income documentation specified in that application.

### **2. Allowable Income Increases upon Recertification**

Within the first 12 months of occupying a BMR Rental Unit, the income of the BMR Renter Household cannot exceed the income level of the Unit when it was first rented. After the first 12 months of occupying a BMR Rental Unit, the income of the BMR Renter Household can increase up to a maximum 175% of AMI, adjusted for Household size. If upon recertification the Household's income exceeds 175% of AMI, the Household must vacate the Unit within 90 calendar days.

### **3. Permissible Rent Increases for BMR Rental Units**

Property Owners that are in compliance with the annual recertification of all BMR renters on the Property are allowed to increase BMR Rents no more than once in a 12-month period up to the Maximum Allowable Rent published by MOHCD for the AMI(s) that apply to their BMR Units (see <http://sfmohcd.org/income-limits-and-rent-limits-below-market-rate-rental-units> for the published rent charts). The typical annual rent increase is less than 5%. Between 2008-2017, rent increases averaged 3.2% each year. However, some years see bigger rent increases than others. In 2017, the BMR Unit rent increased 7%. In 2018, however, the rent increase was 2.68%. Some years, AMI declines and rent stays the same as the prior year.



Rent adjustments may only occur upon or after recertification, and only in the case where a BMR Renter has reached the end of an annual lease. The Project Owner must follow all applicable federal, state and local laws when increasing rent.

## **G. Eviction or Non-renewal of Lease for BMR Rental Units**

### **1. Non-renewal of Leases**

Some BMR Renters may find themselves in a situation where they need counseling and/or legal services to prevent lease non-renewal or eviction. MOHCD expects Project Owners to refer BMR Renters to housing assistance listed on the MOHCD website and to communicate potential lease violations or other issues to MOHCD before taking any action against a BMR Renter.

Possible reasons for terminating or not renewing the lease of a BMR Renter may include the following:

- Documented non-payment of rent, meaning that the BMR Renter or the guarantor, if any, has failed to pay the rent to which the landlord is lawfully entitled under the lease agreement.
- Documented illegal use of the BMR Unit, meaning that the tenant is using or permitting it to be used for any illegal purpose
- Documented subleasing of the BMR Unit or offering it as a short-term rental.
- Documented breach of the lease agreement.
- Overcrowding of the BMR Rental Unit. The Project Owner must adhere to the San Francisco Housing Code, which includes a formula for calculating the allowable number of occupants per bedroom by the square footage of each bedroom.
- City-approved conversion of a BMR Rental Unit to a BMR Ownership Unit where the tenant is unable or unwilling to purchase the Unit in accordance with Section VIII of this Manual.
- Documented violation of BMR Program rules, for example, exceeding the maximum allowable income for recertification; not meeting the minimum Household size requirement; not submitting annual income recertification documentation, or not occupying the BMR Unit as the Household's primary residence.

### **2. General Procedures for Non-renewal of Lease**

Any decision not to renew the lease of a BMR Renter based on the rules of this Manual must be reviewed and approved by MOHCD before the Project Owner can take action.

### **3. Eviction Procedures**

If a Project Owner is seeking to evict a tenant, the eviction process must comply with all applicable Local, State and Federal laws. MOHCD shall not prevent a Project Owner from evicting a BMR Renter who has a documented lease violation(s).

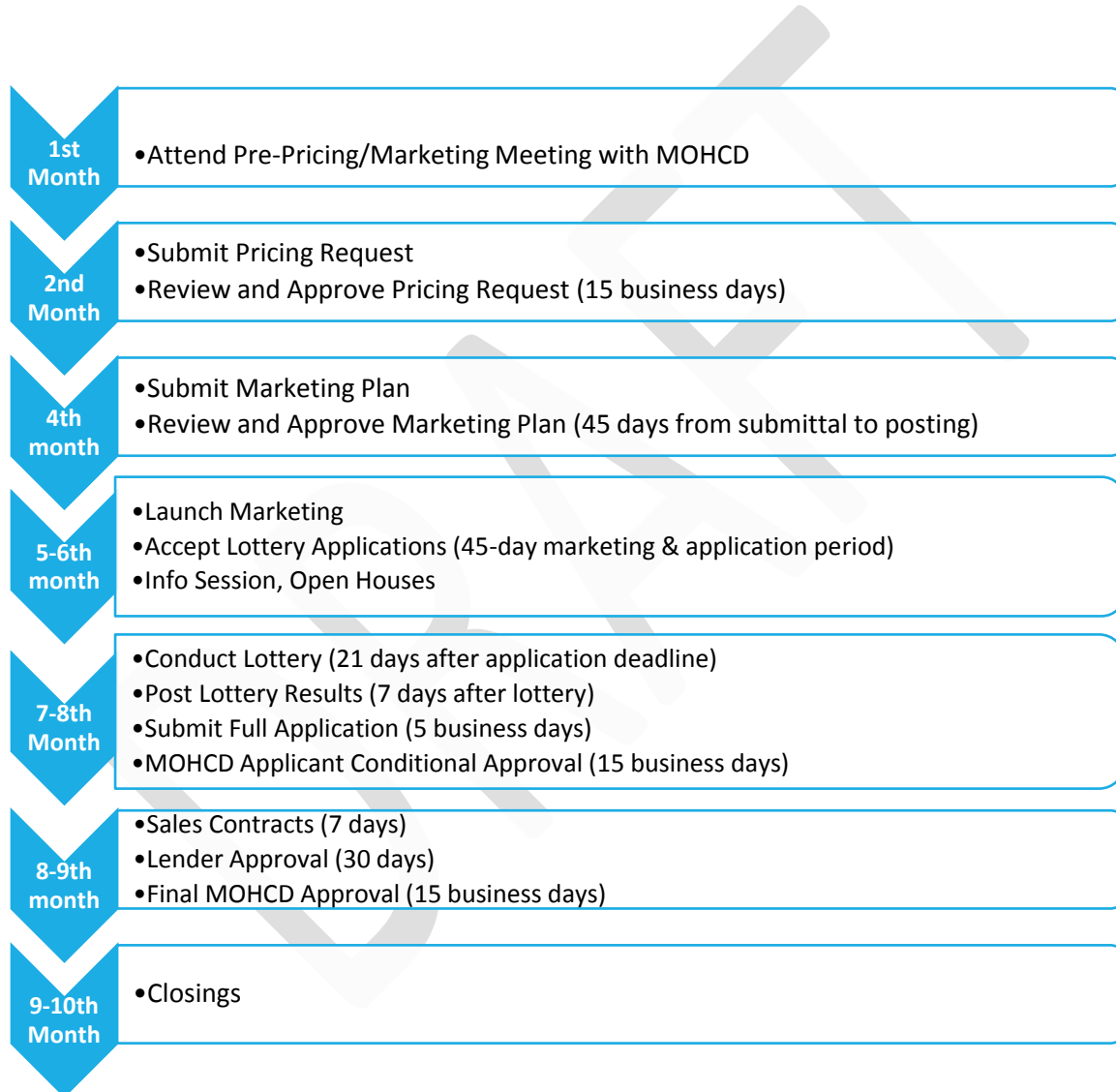
## **H. Renovation of BMR Rental Units**

Any upgrades or renovations a Project Owner makes to the building must be implemented comparably between BMR and Market-Rate Units, including services related to relocation during renovations.

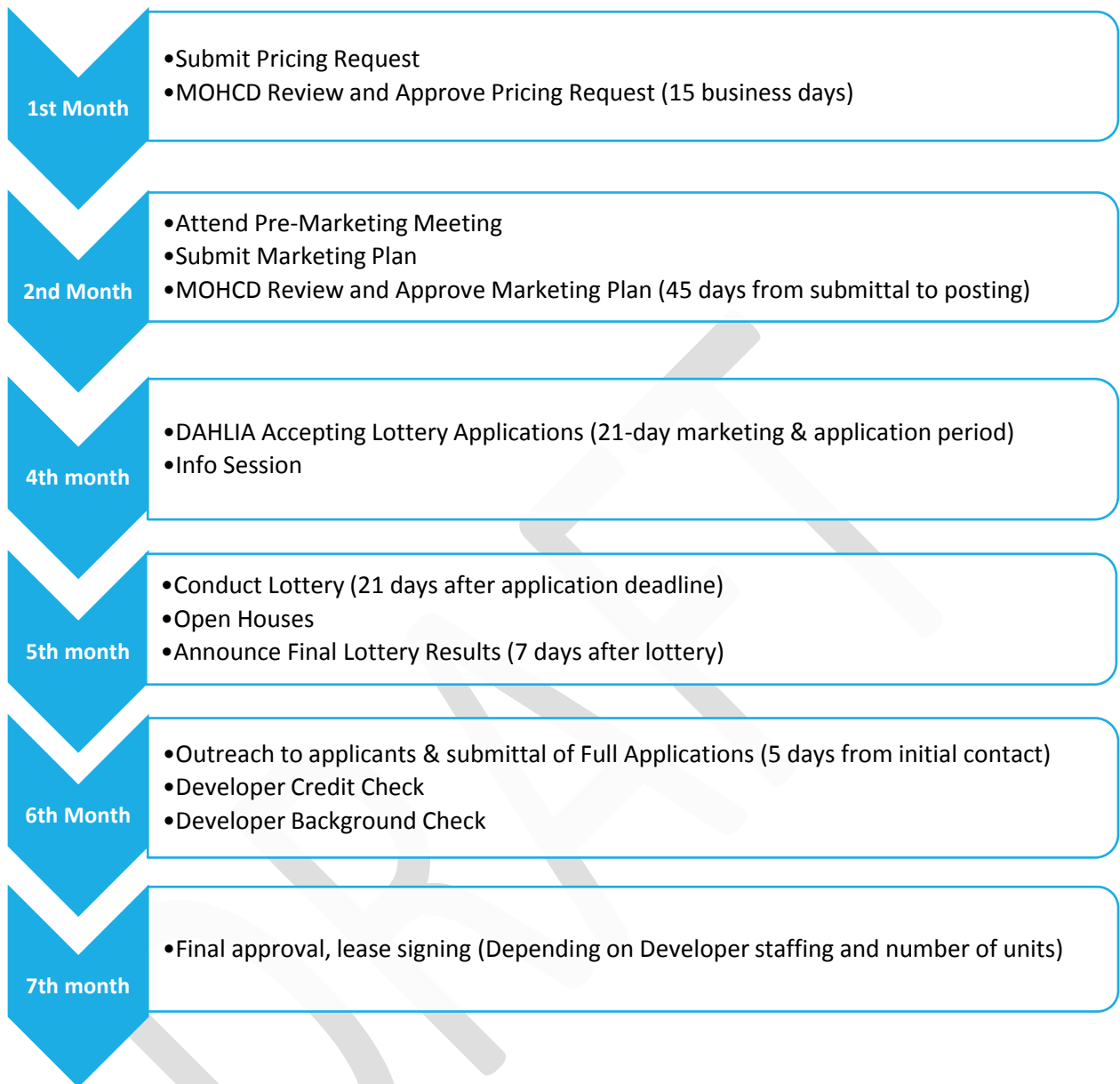
## VI. DEVELOPER REQUIREMENTS

Project Sponsors work with Planning Department staff to determine the method by which they will satisfy their Program obligation as part of a larger entitlement process through one of the means described in the Planning Code. Page 1 of this Manual provides more information on the Program.

Depending on the number of BMR Units in a building, a Project Sponsor should expect a minimum of 10 months from start to closing for the sale of BMR Ownership Units. The following is an overall process and timeline for Developers of BMR Ownership Units:



Depending on the number of BMR Units in a building, a Project Sponsor of BMR Rental Units should expect a minimum of 7 months from start to lease signing. The following is an overall process and timeline for Developers of BMR Rental Units.



### A. Developer Project Approval Process

The Program approval process generally proceeds as follows:

- Project Owners work with Planning Department staff to execute an Affordable Housing Plan, which details the Program requirements applicable to that specific project and is a required condition of a project’s entitlements.
- Following entitlement approvals, the Project Sponsor records an NSR on the property, which memorializes the Project’s specific Program obligations, no matter what method of Program compliance the Project Owner has selected.

- For projects opting for the On-Site option, NSRs will be subsequently amended to identify which units will be designated as BMR Units.
- Sponsors must send copies of the recorded NSR to MOHCD and Planning.
- DBI issues additional project approvals, such as building permit or Certificate of Occupancy, to fulfillment of the Affordable Housing Plan obligations.

## B. Requirements for both On-Site and Off-Site Units

### 1. Size of BMR Units

Although BMR Units do not need to be the same square footage as market-rate units, they must at least meet the following square footages as defined by California Tax Credit Allocation Committee Regulations (May 16, 2017) or the Planning Code:

| <u>Unit Type by Bedroom Count</u> | <u>Minimum Unit Size</u> |
|-----------------------------------|--------------------------|
| Studio unit                       | 300 square feet          |
| 1-bedroom unit                    | 450 square feet          |
| 2-bedroom unit                    | 700 square feet          |
| 3-bedroom unit                    | 900 square feet          |
| 4-bedroom unit                    | 1000 square feet         |

### 2. Marketing and Lotteries

Project Sponsors must meet MOHCD’s requirements regarding marketing and lotteries for BMR Units.

### 3. Preferences

Project Sponsors must comply with the statutory occupancy preferences provided in Chapter 47 of San Francisco’s Administrative Code.

### 4. Timing

MOHCD will make every effort to ensure that Projects proceed through the MOHCD procedures in a timely manner while Project Sponsors must make every effort to ensure BMR Units are leased-up or sold at the same time as the market rate units. Unnecessary delays in leasing or sale of BMR Units by Project Sponsors will result in enforcement actions by the City.

### 5. Document Retention Policy

Project Sponsors of BMR Units shall retain initial application forms and Household income documentation for the greater of (a) five (5) years from the date of a BMR Renter or BMR Owner’s occupancy of a BMR Unit, or (2) the duration of the tenure of the BMR Owner or BMR Renter occupying the BMR Unit, whichever is longer.

## C. Additional Requirements for Developing On-Site BMR Units

Planning Code Sections 415.3 and 415.6 and Zoning Administrator Bulletin No. 10 (see [http://sf-planning.org/sites/default/files/ZAB\\_10\\_DesignationPrioritiesInclusionaryAffordableHousingProgram.pdf](http://sf-planning.org/sites/default/files/ZAB_10_DesignationPrioritiesInclusionaryAffordableHousingProgram.pdf)) set forth the rules regarding On-Site Inclusionary Housing development. Project Sponsors should review those sections carefully (in addition to Section 415's requirements generally) to answer these questions regarding On-Site Units:

- Number of Units required (varies by size of Principal Project, type of project (rental vs. ownership) and project location).
- Affordability levels of BMR Units.
- How or whether the State Density Bonus applies (see below for more information on this issue).

Planning Code Section 415.6 also provides important information regarding these elements of On-Site development:

### 1. Equivalency of Units

#### (a) Exterior Features and Size

BMR Units should be comparable in number of bedrooms, exterior appearance and overall quality of construction to market-rate units in the same project.

#### (b) Interior Features

BMR Units should generally include same interior features as market-rate units in the same building, but appliances need not be the same make, model or style, so long as they are new and of good quality.

#### (c) Location of BMR Units

BMR Units should be evenly distributed throughout the building, except for buildings over 120', in which case they should be evenly distributed in the building's lower 2/3rds. Project Sponsors should also consult Planning Department Zoning Administrator Bulletin No. 10 for further information concerning BMR location requirements regarding issues such as adjacency and comparable access to building and neighborhood amenities, (balconies, views, light, etc.) as well as income tier distribution.

### 2. Public Subsidies

Project Owners may not use any local, state, or federal public subsidies to fund BMR Units, except for tax-exempt bonds coupled with 4% low-income housing tax credits, applied in conformance with Planning Code Section 415.6(i).

### 3. Local Density Bonus (HOMESF)

HOME-SF is San Francisco's local density bonus program. In exchange for increased affordability, a HOME-SF project is entitled to form-based density, certain zoning modifications, and height increases. HOME-SF projects are not required to provide BMR units at the rates and income levels described in Planning Code Section 415.6. Instead, a HOME-SF project must choose one of three tiers to provide

between 20% and 30% on-site affordable units, known as HOME-SF units, at various income levels. Unless otherwise specified in Section 206.3, HOME-SF units are subject to the provisions of Section 415 and this Manual.

#### **4. State Density Bonus**

On-Site BMR Units can be used to qualify for a density bonus under California Government Code Section 65915 (State Density Bonus) or one of the Affordable Housing Bonus Programs contained in Planning Code Section 206 et seq. Project Sponsors who receive additional density under the State Density Bonus must pay the Affordable Housing Fee on the additional Units or square footage authorized under the State Density Bonus program, as specified in Planning Code Section 415.5(g)(1)(D).

#### **D. Additional Requirements for Developing Off-Site Units**

Planning Code Sections 415.3 and 415.7 govern the rules regarding Off-Site Inclusionary Housing development. Project Sponsors should review those sections carefully (in addition to Section 415's requirements generally) to answer these questions regarding Off-Site Units:

- Number of Units required (varies by size of Principal Project, type of project (rental vs. ownership) and project location).
- Bedroom count and size of Off-Site Units.
- Affordability levels of BMR Units.

Planning Code Section 415.7 also provides important information regarding these elements of Off-Site development:

##### **1. MOHCD and Planning Pre-Approval**

Project Sponsors wishing to develop Off-Site BMR Units must notify MOHCD and the Planning Department as early as possible, but no less than 120 days before any required Planning Commission hearing for the Principal Project. MOHCD and Planning will evaluate the Off-Site proposal's conformance with Section 415.7 prior to seeking any formal Planning Commission approvals.

##### **2. Location**

Off-Site BMR Units must be located within one mile of the Principal Project.

##### **3. Delivery of BMR Units**

Off-Site Units must be delivered no later than the market rate units in the Principal Project, and the Principal Project may not receive its first Certificate of Occupancy (COO) until all Off-Site BMR Units have received a first COO.

##### **4. Equivalency of Units**

Off-Site Units must be comparable in exterior appearance and overall quality of construction as Principal Project units.

## **5. Public Subsidies**

Project Owners may not use any local, state, or federal public subsidies to fund BMR Units, except for tax-exempt bonds coupled with 4% low-income housing tax credits, applied in conformance with Planning Code Section 415.7(g).

## **E. Quality Standards for Off-Site Inclusionary Housing**

In addition to the requirements listed above, as required by Planning Code Section 415.7(d), all Off-Site Inclusionary Housing must meet the following quality standards:

### **1. Square Footage**

The total square footage of the off-site BMR Units may not be less than the total square footage of market-rate units in the Principal Project, multiplied by the applicable Inclusionary Housing On-Site percentage requirement for the project that applies under Planning Code Section 415.6.

### **2. Unit Mix**

The mix of bedroom sizes among the BMR Units must be proportional to the bedroom sizes for the market-rate units in the Principal Project.

### **3. Room Sizes**

- No bedroom may be smaller than 100 square feet.
- At least one bedroom in every Unit, except for studios, must be at least 144 square feet.
- The minimum horizontal dimension for any bedroom, excluding alcoves not included in the minimum square foot calculation, shall be 10 feet.
- Primary rooms in studios shall be no less than 165 square feet, excluding any contiguous kitchen area.
- The minimum horizontal dimension for any such primary room, excluding alcoves not included in the minimum square foot calculation, shall be 11 feet.
- No living room shall be smaller than 144 square feet, with a minimum dimension excluding alcoves not included in the minimum square foot calculation, of 11 feet.
- At least one bathroom shall meet ADA size requirements, and all other full bathrooms required by this section must be at least 40 square feet in size.

### **4. Minimum Required Kitchen Amenities**

Each BMR Unit must include at least the following kitchen amenities:

- full-size, four-burner cook top and full-size oven with built-in exhaust hood/microwave oven unit (or an equivalent)
- Full-size sink with electric disposal
- Full-size dishwasher
- Full-size refrigerator/freezer
- Full-size, good quality, upper and lower cabinets with doors
- Comparable counter top surface
- Comparable floor surface

- Appliances that are new (or fully restored and operational vintage) and of good quality in terms of performance, durability and appearance (while not needing to match the appliances installed in the Principal Project)

#### **5. Minimum Required Bath Amenities**

- At least one bathroom in each Unit shall have a sink, toilet, and both a shower stall and standard-size tub or a combination tub-shower unit.
- Generally, bathrooms shall include a shower stall, sink, and toilet

#### **6. Closet Requirements**

- At least one coat closet, with minimum dimensions of 4'x2'.
- At least one linen closet, with minimum dimensions of 36"x18".
- At least one closet for each bedroom.
- First/master bedroom minimum closet size is 16 square feet, with a minimum depth of 2 feet.
- Additional bedroom minimum closet size is 12 square feet, with a minimum depth of 2 feet

#### **7. Laundry Requirements**

- Comparability to the Principal Project's laundry facilities.
- If Principal Project provides in-unit laundry, so must the Off-Site units.
- Common laundry rooms on every floor of the Principal Project shall have one full-size washer and one full-size dryer for every four units per floor.
- Common laundry rooms serving the whole building shall have one full-size washer and one full-size dryer for every eight units.
- Laundry machines shall be new and of good quality and durability

#### **8. Zoning Administrator Discretion**

The Planning Department, through the Zoning Administrator, may approve variations or exceptions to the Off-Site Inclusionary Housing Standards described in this section if, the Zoning Administrator determines, in his/her discretion:

- The variation is appropriate given particular conditions applicable to the Principal Project.
- A variation is required to preserve the character defining features of historic or older buildings undergoing rehabilitation.
- A substantially superior outcome is achieved for the Off-Site BMR Units.
- Production of good quality, durable, and industry-standard housing units are still produced that remain generally equivalent to the Principal Project.

In addition, the Off-Site Inclusionary Housing Standards are subject to change at the discretion of the Planning Department to allow for market standard or technological changes that affect building elements and design.



## **F. Pricing New BMR units**

### **1. Pricing and Maximum Income Levels**

Pricing a BMR unit begins once a Project's NSR is finalized with the Planning Department confirming the number, type, location, and permissible pricing levels and income limits of purchasers or tenants.

Per the Planning Code, the maximum income levels specified in the NSR for the Project are the required income limits for the pricing and qualifying of BMR units for the Life of the Project. However, BMR Ownership units can be sold to Households earning 10% more than the income limit used to establish pricing.

At no time shall the Maximum Annual Rents or Sales Prices be higher than 20% of the median rents or sales prices for the neighborhood within which the project is located. In accordance with the American Community Survey Neighborhood Profile Boundaries Map, MOHCD shall adjust the allowable rents and sales prices, accordingly. MOHCD shall review the updated data on neighborhood rents and sales prices on an annual basis.

### **2. Income Table**

Each BMR Ownership Unit is typically priced between 80% and 130% of AMI in accordance with the Planning Code, as amended from time to time. This means that the sales price is calculated to be Affordable to Households at these income levels. BMR Rental Units are typically priced between 55% and 110% of AMI.

The income table used for pricing all BMR Units is the table published annually by MOHCD. It takes the middle income for all Households in our local area (San Francisco, Marin and San Mateo Counties combined) according to the Housing and Urban Development Department (HUD) and adjusts those incomes by Household size. The table is called the "Maximum Income by Household size derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that contains San Francisco". It is posted at [www.sfmohcd.org](http://www.sfmohcd.org) once those numbers are released by HUD within in the first 5 months of each calendar year.

### **3. Pricing Request Process**

In preparation for the pricing and marketing of BMR Ownership or Rental Units, Project Owners are required to meet with MOHCD staff to review the documents needed. This meeting takes place approximately six months prior to pricing to ensure sufficient time should a document require revisions.

To begin the pricing process, the Project Sponsor must submit a request for determination of initial sales or rental pricing on a form provided by MOHCD, together with electronic copies of at least the following:

- Completed Affordable Housing Plan.
- Planning Motion from the Planning Commission Or in the case of smaller projects, the approved building permit application.
- NSR with the Program Conditions of Approval per Planning Code Section 415 and the final approved floor plans (high resolution copy) designating the BMR Units in the Project.

- A schedule listing the final HOA Dues for each Unit (Ownership Units only).
- The Project's Affidavit of Compliance with the Program.
- Density Bonus regulatory agreement, if applicable.

MOHCD will make a pricing determination within (15) business days after receiving a complete request. Because interest rates and other factors may change, each pricing determination is only valid for 60 days.

Project Sponsors or BMR Owners shall begin marketing in the same calendar year the Maximum Affordable Purchase Price is established. Once a Project Sponsor or Owner begins marketing, the sales price cannot be adjusted even if a new calendar year's AMI limits has been released.

MOHCD determines the allowable sales price or rental amount for BMRs based on the target percentage of the AMI and standard assumptions about affordable housing costs.

#### 4. Pricing BMR Ownership Units

The initial sales price of BMR Ownership units is calculated according to the following assumptions:

- The income limits specified in Use Restrictions based on the income level for a Household that is one person larger than the total number of bedrooms except:
  - Studio units which assume a one-person Household;
  - SRO units which are calculated at 3/4 of the price of a studio.
- The final HOA Dues for each unit upon initial sale. HOA Dues will be adjusted for units with and without parking spaces, if applicable.
- The tax rate as published by the San Francisco Assessor and Recorders Office each calendar year.
- A mortgage interest rate that is the 10 year rolling average of 30-years of interest rate data provided by Freddie Mac.
- Total payments of no more than 33% of the gross monthly income, including payments for taxes, insurance, homeowner or association's fees, Community Facilities District Fees (if any), and related costs.
- A 10% down-payment.
- Whether or not Parking is included in Maximum Purchase Price.

#### 5. Unit Upgrades for BMR Ownership Units

Project Sponsors may offer upgrades to BMR Ownership buyers provided that the upgrades are:

- Optional
- Not financed as part of the purchase
- Not added to the resale price
- Not offered to Buyers using down payment assistance or other financial assistance from the City

#### 6. Establishing Initial Rent Levels for BMR Rental Units

MOHCD shall calculate initial rent levels according to the following assumptions:

- A Household that is one person larger than the total number of bedrooms except:
  - Studio units which assume a one-person Household;
  - SRO units which are calculated at 3/4 of the price of a studio.
- 30% of the monthly income required by the Use Restrictions

## G. Parking for BMR Ownership and Rental Units

### 1. Number of Parking Spaces

Parking spaces must be assigned to BMR Units at the same ratio of parking spaces to Housing units in the Project overall regardless of the total number of parking spaces available. See the chart below for an example.

|                   | Units      | Parking Spaces | Percent of Total |
|-------------------|------------|----------------|------------------|
| Market Rate       | 80         | 48             | 80%              |
| Below Market Rate | 20         | 12             | 20%              |
| <b>Total</b>      | <b>100</b> | <b>60</b>      | <b>100%</b>      |

### 2. Price of Parking Spaces

#### a) Bundled Parking

In Projects where parking is included in the sales price or monthly rent amount of a Market Rate unit, then parking spaces must also be granted to BMR Owners or Renters within the Maximum Affordable Purchase or Maximum Annual Rent. These parking spaces are sold and re-rented with the BMR Unit at no extra cost.

#### b) Unbundled Parking

##### Ownership Unit Parking

In Projects where parking for the Market Rate Units is sold separately, the price of parking for BMR Units shall be calculated by taking the Maximum Purchase Price that is 10% AMI above the maximum income level specified in the NSR and subtracting the Maximum Purchase Price at the maximum income level specified in the NSR. All parking spaces granted to BMR Owners shall be resold with the BMR within the Maximum Resale Price.

##### Example:

|   |                     |
|---|---------------------|
| Maximum income level from NSR                   | 90%                 |
| 10% AMI above maximum income level              | 100%                |
| Maximum Allowable BMR Sales Price for 1 bedroom | \$340,000 @100% AMI |

|   |                   |
|---|-------------------|
| Maximum Allowable BMR Sales Price for 1 bedroom | \$300,000 @90%AMI |
| Parking Price                                   | \$40,000          |

Project Sponsors choosing this option must provide proof that they have marketed their Market Rate Units as having separately priced parking and list two respective sales prices for every Housing unit, one price with parking and one price without parking.

**Rental Unit Parking**

In rental buildings, the BMR parking spaces designated for BMR Units shall remain exclusively for the use of BMR Renters for the Life of the Project. When leasing BMR Units, Project Owners shall create a Parking Waitlist consisting of the BMR Households that were not granted a parking space, in lottery rank order. All parking spaces granted to BMR Renters shall be offered to the next Household on the Parking Waitlist when a BMR Renter moves out. As new BMR Renters move into the building, they shall be added to the end of the Parking Waitlist.

Project Owners may charge a monthly parking rental rate equal to the difference in Maximum Annual Rent at 10% AMI above the maximum income level specified in the NSR, minus the Maximum Annual Rent at the maximum income level specified in the NSR.

**Example:**

|                                   |                   |
|-----------------------------------|-------------------|
| Maximum income level from NSR     | 55%               |
| Maximum Annual Rent for 1 bedroom | \$1,300 @ 55% AMI |
| Maximum Annual Rent for 1 bedroom | \$1,540 @ 65% AMI |
| Monthly Parking Rental Rate       | \$240             |

**3. Parking Selection**

The opportunity to purchase or lease a parking space will be offered in lottery rank order until all required BMR parking spaces are purchased or leased. For BMR Ownership buildings, if there are still remaining parking spaces assigned to BMR Units, Project Sponsors may sell the remaining spaces to Market Rate buyers. If available, BMR Households may purchase or lease a second parking space outside of the lottery system, at market price. However, the selling of this second parking space becomes the responsibility of the BMR Owner upon resale and the price cannot be added to the Maximum Resale Price. Subsequent buyers are not required to purchase it.

In BMR Rental buildings, if there are remaining parking spaces assigned to BMR Units, Project Sponsors must receive written approval from MOHCD to lease the remaining spaces at market rate on a month-to-month basis until a Parking Waitlist Household requests a parking space originally restricted to BMR Units.

#### **4. Bike Parking**

BMR Ownership and Rental Units that are initially sold or rented with a designated bike parking space must be resold or re-rented with bike parking spaces included at no additional cost.

### **H. Marketing New BMR Units**

#### **1. Goal of Marketing and Outreach Requirements**

The overall goal of MOHCD in its marketing and outreach requirements is to ensure that the diverse groups of people living in San Francisco have knowledge of and access to the affordable housing opportunities offered through the Program. Project Sponsors are required to conduct various activities and use every good faith effort to engage in targeted outreach that attracts income qualified Households from communities that have been historically disenfranchised from City sponsored housing. This includes, without limitation, members of the following racial, ethnic, gender or otherwise underserved through current market rate housing:

- African-Americans
- Latinos
- Asians – defined as persons of Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Southeast Asian or Asian Indian origin
- Native Americans
- Women
- Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Individuals
- Families with dependents
- People with a physical or mental impairment that substantially limits one or more major life activities or is regarded as having such an impairment
- Seniors – defined as persons over the age of 62 years

Marketing of BMR Units must be in compliance with all applicable federal, state and local laws related to Fair Housing laws and must not have the effect of excluding or discriminating against any person on the basis of race, religion, national origin, sex, sexual orientation, health status, source of income such as disability insurance, social security, TANF, or any other basis prohibited by federal, state or local law.

It is the Project Sponsor's responsibility to ensure that all sales or rental staff of the project receive and review a copy of this Manual and the Restrictions applicable to the BMR Unit.

#### **2. Minimum Qualifications for Marketing Firms**

When selecting a marketing sales and leasing firm for new BMR Units, Project Sponsors must require all of the following minimum qualifications:

- Documented experience in marketing to first time homebuyers, if applicable
- Language capacity in all City official languages (Spanish, Chinese, Filipino, English)
- Cultural sensitivity and demonstrated awareness of the needs of San Francisco's diverse populations

- Experience with Microsoft Office and similar technology

### **3. Marketing Timeline**

Project Sponsors cannot submit a marketing plan before MOHCD Pricing approval. For BMR Ownership Units, the Marketing Plan cannot be submitted prior to 9 months before the first BMR Unit is ready for move-in; for rental housing, the Marketing Plan cannot be submitted prior to 7 months before the estimated issuance of the Temporary Certificate of Occupancy (TCO). Sponsors prepare and submit for approval; a Marketing Plan in a format prescribed by MOHCD. No applications, marketing or advertising material can be distributed or published without prior written approval by MOHCD.

The following timelines are recommended to Project Sponsors for completion of MOHCD marketing and outreach activities:

- Ownership: New BMR Ownership units must be advertised, and applicants must have an opportunity to apply, for at least 45 days prior to the application deadline.
- Rental: New BMR Rental units must be advertised by the Project Sponsor for at least 21 days prior to an application deadline.

See the Housing Preference and Lottery Procedures Manual for more information on Lottery timelines.

### **4. Marketing Meetings & Trainings**

In preparation of lease up and sales, Project Sponsors and/or their leasing agents are required to attend a series of Marketing and Outreach in-person and telephone meetings/trainings with MOHCD staff.

These include:

#### ***a) Pre-Marketing Meeting***

This is an in-person meeting with Project Sponsors to discuss the overall marketing expectations, actual timelines, process, roles and responsibilities for a successful, timely lease up and sales process. The Pre-Marketing meeting occurs after Pricing is finalized and prior to submitting a Marketing and Outreach Plan to MOHCD.

#### ***b) Marketing and Outreach***

After the Marketing and Outreach Plan has been submitted and before final approval, this meeting of the leasing agent and MOHCD staff is used to finalize any outstanding issues within the Plan.

#### ***c) DAHLIA Training***

This training is for First Time leasing and sales agents using the DAHLIA Salesforce system.

#### ***d) Pre-Lottery Meeting***

The purpose of the telephone pre-lottery meeting is to discuss the logistics of the public lottery and the roles of the leasing agent and MOHCD staff in attendance.

***e) Pre-Lease Up Training for Rental Projects***

This is an in-person training for leasing agents to learn how to use MOHCD income calculation tools and how to use DAHLIA during lease up.

**5. Advertising and Community Outreach**

***a) Print and Electronic Newspapers***

BMR Rental Units and BMR Ownership units must be advertised in at least 5 local newspapers that reach diverse Low and Moderate-income communities in San Francisco for a continuous period of at least the first 2 weeks of the required marketing period.

***b) Physical and Electronic Flyers***

Project Sponsor must provide a flyer for the BMR Units that includes specific information (and in the required languages) prescribed and approved by MOHCD prior to distribution.

***c) Community Outreach***

The Project Sponsor must conduct community outreach to the surrounding neighborhoods including outreach through identified local nonprofit community based organizations. Community Outreach activities must target diverse low to moderate-income Households.

***d) Open Houses***

Potential buyers and renters of BMR Units must be allowed to inspect the available units in the same fashion as market rate applicants. Project Sponsors shall hold at least 3 open houses. At least one open house should be held on a weekday evening and one on a weekend. Each open house should be no shorter than 2 hours and provide information on the application process.

***e) Information Sessions***

Project Sponsors must hold at least 1 information session and conduct virtual and/or actual tours. Project Sponsors offering larger quantities of BMR units may be required, at MOHCD's discretion, to hold additional information sessions in a public, accessible location that is arranged and paid for by the Project Sponsor.

***f) Building Signage***

Project Sponsors shall prominently display MOHCD prescribed and approved signage on the construction site of any project that will include On-site or Off-site BMR units. The signage should be no smaller than 5' by 5' and indicate the number and type (tenure) of BMR homes in the project and include a web address and/or telephone number for interested applicants to learn more.

***g) Certificate of Preference Outreach***

Please see the Housing Preference and Lottery Procedures Manual for details on the required targeted outreach to Households previously displaced by government action in the 1960's and 70's. Project Sponsors shall pay for a mailing to Certificate of Preference Holders to announce new BMR Unit offerings.

## 6. Fair Chance Ordinance

For BMR Rental Units, Project Owners must comply with the provisions of San Francisco Police Code Article 49 (the Fair Chance Ordinance) which sets forth activities and requirements that must be met when leasing City sponsored affordable housing. For more information about the Fair Chance Ordinance, contact the San Francisco Human Rights Commission. <https://sf-hrc.org/fair-chance-ordinance>

## 7. Marketing Plan Content

The Marketing Plan Template provided by MOHCD will guide Project Sponsors through the marketing plan submittal process. In preparation, Project sponsors should plan to provide MOHCD with the following information as part of the Marketing Plan submittal:

- Marketing Launch, Open Houses, Information Session(s), Application Deadline, Lottery Dates.
- A strategy for marketing to residents of the immediate neighborhood.
- A comprehensive strategy for reaching out to diverse Low-income, Median-income, moderate-income communities in San Francisco including the names of local community based organizations with contact information for the individual representing the organization that will be engaged in the outreach effort.
- A social and print media plan.
- Marketing flyers and COP postcards that include a description of the BMR Units in the Project, Maximum Income Limits, and all important dates.
- Listing of BMR Ownership Units with the San Francisco Multiple Listing Service (MLS).
- A comprehensive plan for how the Project Sponsor and their agents will ensure that every applicant's language and/or cultural needs are met throughout the application, sales/lease up process.
- A written Resident Selection Criteria for all Rental buildings (for BMR Rental Units only).
- A list of community housing organizations that will receive written notification regarding the availability of the BMR Units prior to commencement of advertising or marketing of the Units.
- A list of organizations that the Project Sponsor or the Project Sponsor's marketing representative must work with in order to meet language or cultural needs of Minority Communities.
- A plan for obtaining and displaying the banner to be hung on-site during construction announcing the development of BMR Units.

The MOHCD Housing Preferences and Lottery Procedures Manual contains detailed procedures for application tracking, lottery preference qualifications, application review guidelines, appeals and unit selection.



## **I. Conversion of BMR Rental Units to Ownership Units**

### **1. BMR Renter Right to Purchase**

When authorized by local and State laws and the Project's conditions of approval, and the Planning Department through a Zoning Administrator Letter of Determination process, a BMR Rental Unit may be converted to BMR Ownership Unit. Project Owners must offer the opportunity to purchase the BMR Unit to the existing tenant Household before it is marketed for sale through the MOHCD lottery process. The following conditions apply:

- The BMR Unit must be in good physical condition as evidenced by a Home Inspection paid for by the owner and performed by a state-licensed and independent third party. The inspection should identify and describe physical deficiencies that could affect the health and safety, soundness, or structural integrity of the unit or inhabitants. All reported deficiencies that pose health and safety hazard or are the direct result of deferred maintenance, must be corrected by the Owner prior to final approval of the conversion.
- Existing BMR renters have at least one year from the time of official notice from the Project Owner to exercise the right to purchase.
- The sales price for Existing Renters will be either at the level of affordability determined by the Planning Department or affordable to the actual income level of the current BMR Renter Household, whichever is higher.
- The existing BMR Renter Household must be a qualified buyer under the Program and the gross annual Household income of the BMR Renter at the time of purchase shall not exceed the 120% Area Median Income.

### **2. Sale to Other Qualified BMR applicant**

If the existing BMR Renter decides not to purchase the BMR unit, it will be priced at the level of affordability dictated by the Use Restrictions and according to MOHCD's BMR sales pricing rules. The Owner must also ensure that the unit meets the physical conditions outlined above and must adhere to MOHCD's marketing requirements including a MOHCD lottery. The prospective purchaser must meet all of the requirements of a BMR applicant described in this manual.

### **3. Relocation Allowance**

If the existing BMR Renter decides not to purchase the BMR unit, the Project Owner shall provide a relocation allowance to the current BMR Renter that complies with relocation allowances required under the San Francisco Rent Ordinance. (See Administrative Code Section 37.9A: [http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca))

## **VII. CHANGES IN PROPERTY MANAGEMENT OR OWNERSHIP OF BMR UNITS**

For rental projects, the Project Owner must notify MOHCD in writing within 30 days of any change in the property management of BMR Units. The notification to MOHCD shall contain the name(s) and contact information of the new entity and the personnel involved in the management of the BMR Units.

Project Sponsor wishing to sell a building that contains BMR Rental Units must notify MOHCD in writing within 30 days of the completion of an ownership Transfer and must provide the buyer's name and contact information.

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## VIII. OTHER PROGRAMS AND UNITS GOVERNED BY THIS MANUAL

### A. Density Bonus Programs

#### 1. State Density Bonus

On-Site BMR Units can be used to qualify for a density bonus under California Government Code Section 65915 (State Density Bonus) or one of the Affordable Housing Bonus Programs contained in Planning Code Section 206 et seq. Project Sponsors who receive additional density under the State Density Bonus must pay the Affordable Housing Fee on the additional units or square footage authorized under the State Density Bonus program, as specified in Planning Code Section 415.5(g)(1)(D).

#### 2. HOME SF

In certain neighborhoods and under certain building conditions, Developers may opt to participate in San Francisco's HOME SF program, a local density bonus program, codified in Planning Code Section 206.3. Developers must be compliant with the requirements of Planning Code Section 415.6 regarding on-site BMR Units, except that the required affordable sales price or rents, percentage of affordable units, and unit amenities are specified in Section 206.3, as follows:

- Tier One (fewer than 25 units)
  - On-site affordability requirement: 20%
  - Ownership: 10% at 80% AMI; 5% at 105% AMI; 5% at 130% AMI
  - Rental: 10% at 55% AMI, 5% at 80% AMI; 5% at 110 AMI%
- Tier One (25 or more units)
  - On-site affordability requirement: 23%
  - Ownership: 10% at 80% AMI; 8% at 105% AMI; 5% at 130% AMI
  - Rental: 10% at 55% AMI, 8% at 80% AMI; 5% at 110 AMI%
- Tier Two (all projects)
  - On-site affordability requirement: 25%
  - Ownership: 10% at 80% AMI; 8% at 105% AMI; 7% at 130% AMI
  - Rental 10% at 55% AMI; 8% at 80% AMI; 7% at 110% AMI
- Tier Three (all projects)
  - On-site affordability requirement: 30%
  - Ownership: 10% at 80% AMI; 10% at 105% AMI; 10% at 130% AMI
  - Rental: 10% at 55% AMI; 10% at 80% AMI; 10% at 110% AMI
- Notwithstanding other Planning Code requirements regarding HOME SF unit pricing, all HOME SF units must be priced at least 20% below the market-rate rents or sales prices for that unit size and neighborhood.
- MOHCD will use generally available, third-party market data to determine market-rate rents and sales prices. In cases where such readily available data is not determinative or the HOME SF unit pricing is close to or exceeds the specified cap of 20% below market, MOHCD may require the Project Sponsor to conduct a market survey to demonstrate appropriate pricing. Such surveys

must be conducted by third party, independent real estate market analysts, and MOHCD reserves the right to reject market studies that are not procured from independent parties.

- HOME SF projects must provide a minimum dwelling unit mix of (A) at least 40% two- and three-bedroom units, including at least 10% three-bedroom units, or (B) any unit mix which includes some three-bedroom or larger units such that 50% of all bedrooms within the HOME-SF Project are provided in units with more than one bedroom.
- HOME SF developments should incorporate family-friendly amenities, such as open space and rear yards designed for children, stroller storage space, and bathtubs.

## **B. Planning Code Section 124(f) Middle Income Housing units**

### **1. Eligible Projects**

San Francisco Planning Code Section 124(f) provides a density bonus for projects in the “C-3-G and C-3-S Zoning Districts” that provide Middle Income units Affordable to Households earning no more than 150% of Area Median Income (AMI) for owned units or 120% of AMI for Rental units in zoning districts in San Francisco. Per Planning Code Section 124(f), such units will not count toward a Project’s Floor Area Ratio requirements, thereby allowing for more units to be built in a Project. Sponsors must work with the Planning Department to determine eligibility for the 124(f) Program.

Units designated as 124(f) units shall meet all of the procedures, pricing methodology, marketing, monitoring obligations and other requirements of this Manual, including a requirement that all 124(f) units be sold or rented at a price that is at least 20% below the Market Rate sales price or rent for the area.

### **2. Restricted Income units**

Section 124(f) units that also satisfy a Project’s requirements under Planning Code Section 415 et seq must follow the Maximum Allowable Income requirements of the Program and be sized and located according the rules of Planning Code Section 415 et seq and this Manual.

Per Planning Code Section 124(f), 124(f) units that do not satisfy any Program obligation will follow the Maximum Allowable Income requirements of Section 124(f) and be family sized, meaning that each 124(f) unit contains at least 2 or 3 bedrooms.

### **3. Income Tiers/Income Mix**

In the event that the 124(f) unit is not also an On- or Off-site unit under Section 415, 124(f) units shall not be used to determine the required unit size mix for purposes of the Program.

### **4. Affordability Period**

Section 124(f) units must remain Income Restricted for the Life of the Project.

### **5. Combination with Other Density Bonus Programs**

124(f) units may not be counted toward any other Density Bonus allowance.

### **C. Condo Conversion Below Market Rate Program Units**

This Manual is adopted in its entirety for units subject to Section 1344 of the San Francisco Subdivision Code under the Condo Conversion Below Market Rate (BMR) Program (“Condo Conversion BMR Units”). This includes all owners who purchased a Condo Conversion unit on or after the effective date of the Ordinance No. 320-08 (File No. 080520) [“Condo Conversion Ordinance”] which was January 18, 2009, and all Condo Conversion BMR owners who purchased prior to the effective date of the Condo Conversion Ordinance who have agreed through a contract with the City under San Francisco Subdivision Code Section 1344 (i) (b) to opt into an alternative for compliance with Section 1344 and to be bound by the Procedures Manual in place at the time of purchase. Pursuant to the Subdivision Code, all such Owners of Condo Conversion BMR Units must comply with the terms and guidelines set forth in this Manual, including but not limited to the procedures regarding marketing, monitoring and enforcement.

### **D. Replacement units**

San Francisco Planning Code Section 415.6(a)(3) requires projects that demolish, convert or remove affordable units to replace these units with affordable units of a comparable number of bedrooms even where that would result in more than the otherwise required percentage of affordable units. All such replacement units shall meet all of the procedures, pricing methodology, marketing, monitoring obligations and other requirements of this Manual, including that all such replacement units be sold or rented at a price that is at least 20% below the Market Rate sales price or rent for the area.

## **IX. DEFINITIONS**

The definitions contained in Section 401 of the San Francisco Planning Code shall apply to this Manual. Defined terms are capitalized throughout this Manual.

### **Affordable Housing Fee**

The fee paid to the City under Section 415.5 of the Planning Code.

### **Affordable Housing Plan**

A document setting forth the scope of development, leasing and marketing plan and schedule of performance for completion of the Affordable Units.

### **BMR Owner**

Owner of a BMR Unit.

### **BMR Renter**

Renter of a BMR Unit.

### **BMR Unit, BMR Rental Unit or BMR Ownership Unit**

A Below Market Rate Unit, either ownership or rental, also defined in Planning Code Section 401 as an “Affordable unit” or “affordable housing unit,” that is restricted pursuant to Planning Code Section 415.

### **BMR Renter Acknowledgement**

An acknowledgement requiring the Household’s signature at the time of lease signing agreeing to the restrictions on the BMR Rental Unit and the policies and procedures of the BMR program.

### **Bundled Parking**

Parking that is sold and re-rented with the BMR Unit at no extra cost.

### **DAHLIA**

San Francisco Housing Portal Database of Affordable Housing Listings, Information and Application. A web accessible data system used by MOHCD to manage applications and related data.

### **Declaration of Restrictions**

A Declaration of Restrictions and Option to Purchase Agreement recorded against the title for a BMR Ownership unit.

### **Domestic Partner/Partnership**

Any local, Federal, State registered Domestic Partnership.

### **Fair Market Appraisal**

The value of a BMR Unit determined without regard to sales or rental restrictions on that unit pursuant to an independent appraisal conducted by a State licensed appraiser acceptable to MOHCD.

**Fair Housing**

State or federal laws that govern the fair and unbiased treatment of buyers and renters when selling or renting a housing unit.

**First-Time Homebuyer**

Someone who has not owned or gained interest in a housing unit in the past 3 years.

**Gross Income**

Income received before any deductions for taxes, expenses or other items.

**Head of Household**

Head of Household is the primary applicant as defined by the IRS and/or first mortgage loan application. There cannot be more than one Head of Household on a given application.

**HO-6**

A homeowners insurance specifically for condominiums. It covers the interior walls, fixtures, and personal property inside a condominium.

**HOA or Homeowners Association**

An association that manages the common areas of a condominium or planned unit development (PUD).

**HOA Dues**

Monthly payments due to a Homeowners Association for the upkeep, maintenance and improvement of common areas in a residential building.

**HOME-SF Unit**

An on-site income restricted residential units provided within a HOME-SF project that meets the requirements set forth in Planning Code Section 206.3.

**Household**

Any person or persons who reside in or intend to reside in the same Residential Unit.

**Household liquid assets**

Generally, an asset that can be converted into cash with little or no loss in value.

**Inclusionary Housing**

Includes both BMR Ownership Units and BMR Rental Units.

**Letter of Determination**

The Zoning Administrator issues determination letters resulting from inquiries about the zoning regulations applicable to specific development proposals. These letters offer guidance to requesting parties as to whether a proposed project, such as a new building, an addition to an existing building, or a use change, conform to the Planning Code.

Once these letters are issued, applicants still must obtain all applicable required building permits and/or certificates before a use can commence or a building can be built. Please see the links below for those letters issued by the Zoning Administrator for the most recent time period, which are identified by address. To view archived Letters of Determination, use the navigation on the right to search letters by year.

**Life of the Project**

As long as the building stands or exists. See Planning Code 401.

**Loan to Value Ratio**

The percentage of a property's value that a lender can or may lend to a borrower.

**Lottery**

Random selection process that provides qualified applicants the opportunity to rent or buy Units.

**Maximum Household Income**

The maximum income allowed for a Household applying for a BMR Unit as determined by Household size through the income table named Maximum Income by Household Size Derived from the Unadjusted Area Median Income (AMI) for HUD Metro Fair Market Rent Area (HMFA) that Contains San Francisco.

**Maximum Income by Household Size**

Derived from the Unadjusted Area Median Income (AMI) For HUD Metro Fair Market Rent Area (HMFA) That Contains San Francisco. The table produced by MOHCD annually to announce AMI levels for that calendar year as published on the MOHCD website at [www.sfmohcd.org](http://www.sfmohcd.org).

**Maximum Annual Rent**

The monthly consideration paid by a BMR Renter for use of the designated BMR Unit as the Household's principal residence, as defined in Planning Code Section 401.

**Maximum Purchase Price**

The highest allowable price for any given BMR Ownership Unit, as defined in Planning Code Section 401.

**Maximum Resale Price**

The purchase price to be paid by a new buyer of BMR Ownership unit to a previous owner.

**MOHCD-Approved First-Time Homebuyer Education Provider**

A HUD approved housing counseling agency and certified by MOHCD as listed at [www.sfmohcd.org](http://www.sfmohcd.org)

**MOHCD-Approved Lender**

A Nationwide Mortgage Licensing System (NMLS) lender who has attended annual trainings for all MOHCD homeownership programs, signed the BMR Lender Agreement, and is a part of an approved lending institution that pays an annual participation fee to MOHCD. Certified Lenders are listed at [www.sfmohcd.org](http://www.sfmohcd.org).



**Notice of Special Restrictions or NSR**

As defined in Planning Code Section 401, a document that details the affordability restrictions on BMR Units.

**Parking Waitlist**

A list maintained by the Project Owner of BMR Households in BMR Rental Units who are waiting for a parking space. The lottery ranked list shall consist of BMR Households who were not granted a parking space at initial lease-up followed by BMR renters who later move into the building.

**Planning Code**

The City and County of San Francisco Planning Code.

**Planning Commission**

As defined in Planning Code Section 401, a governing body of the Planning Department that among other things, reviews a Conditional Use Permit or PUD.

**Post-Purchase Education**

A course designed to provide basic education for new homeowners offered by a HUD approved counseling agency certified by MOHCD as listed at [www.sfmohcd.org](http://www.sfmohcd.org).

**Primary Residence**

Household members on title or lease who live in the Unit at least 10 out of 12 months of each calendar year.

**Principal Project**

A housing development on which a requirement to provide affordable housing is imposed.

**Profit and Loss Statement**

A financial statement that summarizes the revenues, costs and expenses incurred during a specified period.

**Project**

Development where BMR Units are located.

**Project Approval**

Approvals of a Project by the City's legislative bodies.

**Project Owner or Project Sponsor**

The owner of a Project.

**Qualified Applicant**

Person that has been determined by MOHCD to meet the eligibility requirements for a particular BMR Unit.

**Qualified Household**

Household that has been determined by MOHCD to meet the eligibility requirements for a particular BMR Unit.

**Resale Pricing Formula**

A legal provision outlining the specific steps necessary to determine the Maximum Resale Price for a BMR Ownership unit. Generally contained in a unit’s Declaration of Restrictions or, in some cases, in prior versions of this Procedures Manual.

**Resale BMR Units or Resales**

All BMR units sold after the initial sale.

**Restricted Affordable Unit (as applied to the State Density Bonus Program)**

A dwelling unit within a Project which will be Affordable to Very Low, Lower or Moderate Income Households, as defined in Planning Code Section 206.2, for a minimum of 55 years. Restricted Affordable Units shall meet all of the requirements of California Government Code 65915, except that Restricted Affordable Units that are ownership units shall not be restricted using an equity sharing agreement.

**SRO or Single Room Occupancy Unit**

As defined in the Planning Code Section 890.88.

**Section 8 Or Section 8 Housing Choice Voucher Program**

A federal housing program administered locally by the San Francisco Housing Authority. In which a subsidy is paid to the landlord directly by the public housing agency on behalf of the participating family.

**Special Assessment**

A proportional fee charged to a BMR Owner by the Homeowners Association (HOA) to cover the cost of physical improvement to the entire building.

**Spouse**

A partner in a legal marriage.

**Transfer**

Any voluntary or involuntary sale, assignment or transfer of title in a BMR Unit.

**Transfer Tax**

Tax on the passing of title to property from one person (or entity) to another.

**Unbundled Parking**

As defined in Planning Code Section 167, parking that is not sold or rented with a unit.

**Use Restriction**

Any restrictions imposed by the Program or the City on the use or conveyance of a BMR Unit, as set forth in the NSR, Conditions of Approval, Declaration of Restrictions, and/or other recorded documents or associated Planning Code provisions in effect at the time of Project Approval.

**Zoning Administrator**

The Zoning Administrator for the City and County of San Francisco.

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