

**CITY OF BERKELEY
BELOW MARKET RATE RENTAL PROGRAM
PROGRAM GUIDELINES & OPERATIONAL MANUAL**

Inclusionary Housing Ordinance
Affordable Housing Mitigation Fee Ordinance
State Density Bonus

**Department of Health, Housing & Community Services
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I. INTRODUCTION

The Council of the City of Berkeley (“City”) passed an **Inclusionary Housing Ordinance** (“Ordinance”) in 1986 in response to the substantial need for affordable housing documented in the City’s General Plan, Housing Element, and Consolidated Plan. The Ordinance was codified in Chapter 23C.12 of the Berkeley Municipal Code (“BMC”), and, through it, hundreds of affordable housing units are now available to Berkeley residents.

In 2009, the California Court of Appeal ruled in *Palmer/Sixth Street Properties v. Los Angeles* (“*Palmer*”) that inclusionary housing requirements applicable to rental housing violated the Costa-Hawkins Rental act of 1995, thus prohibiting the City from requiring inclusionary units in new rental developments. The Court did not suggest that new development had no impact on a community’s housing needs, however. Accordingly, the City quantified the housing demand generated by new market-rate development, and enacted its **Affordable Housing Mitigation Fee** in 2011 (“AHMF”). Codified in BMC Chapter 22.20, the AHMF is a per-unit payment levied on new rental developments. In lieu of paying the AHMF, developers can include permanent affordable housing in their developments.

While the Court’s various opinions over the years have changed the way the City seeks to create housing opportunities for households of all income levels, the need for affordable housing continues unabated. This Below Market-Rate Rental Housing Program Guidelines and Operations Manual offers guidance to all stakeholders regarding the administration of below market-rate units provided in market-rate developments pursuant to the requirements of City ordinances, including:

- Rental and for-sale units built under the Inclusionary Housing Ordinance;
- Below Market-Rate Units built in lieu of AHMF payments; and
- Units created under the State Density Bonus law.

The beneficial effects of safe, decent, affordable housing built within market-rate developments are many. Most notably for the City of Berkeley, it promotes the economic, social, and ethnic diversity that gives the City its unique and valued character, while also eliminating the detrimental effects to families, individuals and the environment caused by long commutes for workers otherwise forced out of the local housing market.

City of Berkeley staff look forward to working closely with developers, owners, and renters to ensure that implementation of this Below Market-Rate (BMR) Rental Housing Program Guidelines and Operations Manual is clear and easy.

Each project’s recorded agreement (Notice of Limitation on Use of Property) includes the requirements to comply with the BMR Program. In addition, these guidelines provide more details on how to comply. In the case of a conflict between these guidelines and the recorded agreement, the recorded document will prevail.

II. DEFINITION OF TERMS

Affordable Housing Mitigation Fee	The fee required by City and codified in the Affordable Housing Mitigation Fee Ordinance to mitigate the demand for affordable housing generated by new market-rate developments.
Affordable Housing Mitigation Fee Ordinance	Chapter 22.20.065 of the Berkeley Municipal Code, as amended from time to time.
Affordable Rents	Generally (unless otherwise specified), 30% of a household’s Gross Income.
AMI	Area Median Income.
Annual Gross Income	Anticipated Gross Income for the twelve-month period following income determination, based upon documentation of the Household’s Gross Income in prior years.
Area Median Income (AMI)	The gross median income published annually by HUD for the Oakland-Fremont, CA HUD Metropolitan Statistical Area (“MSA”).
Assets	The value in equity of savings, stocks, bonds, and other forms of capital investment. Specifically excluded are lump-sum additions such as inheritance, insurance settlement payments, or settlements for personal or property losses.
BMC	Berkeley Municipal Code.
BMR	Below Market-Rate. For purposes of these Guidelines, BMR is used to describe rent- and income-restricted units provided under the Inclusionary Housing Ordinance, the Affordable Housing Mitigation Fee, and the State Density Bonus law.
BMR Renter	Below Market-Rate Renter or current tenant of a BMR rental unit, including all members of the Household. Throughout the Rental Section of these Guidelines, may also be referred to as BMR Household and BMR Tenant.
BMR Unit	For the purpose of these guidelines, a BMR unit describes a rental housing unit that is subject to rent and income limits under the City’s Inclusionary Housing or Affordable Housing Mitigation Fee Ordinances.

City	City of Berkeley
City of Berkeley BMR Program Income and Rent Limits	Table produced annually by City that is derived from HUD AMI values and which establishes rents and income limits for BMR units for the calendar year.
City Data Services (CDS)	The City’s online compliance monitoring tools. All property managers will have a CDS account and submit monitoring reports to the City primarily using CDS.
Density Bonus Law	California Government Code Section 65915, which sets forth Owners’ rights to exceed established housing density limits defined in local planning regulations in exchange for the provision of BMR or Moderate Income units, as specified in Government Code Section 65915.
Density Bonus Units	A specific number of Units allowed in a Project in excess of the Base Project, pursuant to the Density Bonus Law.
Head of Household	A person within a household responsible for paying more than half the cost of meeting household expenses in any given year.
HHCS	The City of Berkeley Health, Housing & Community Services Department. HHCS Department manages the Below Market Rate Program for the City.
Household	Any person or persons residing or intending to reside in the same Unit, whether related or not.
Household Assets	Something of value that can generate income, including but not limited to: cash in savings/checking accounts, trusts, stocks, bonds, Treasury bills, certificates of deposit, mutual funds, money-market accounts, retirement accounts, pension funds (periodic receipts from retirement accounts are counted as income, lump sum payments are counted as assets), cash value of life insurance policies, lump sum receipts (monetary gifts, inheritance, settlements, insurance claims, one-time lottery winnings).
HUD	United States Department of Housing and Urban Development.
Inclusionary Housing Ordinance	Chapter 23C.12 of the Berkeley Municipal Code, as amended from time to time.
Life of the Project	The entire duration of a Project’s useful life, typically a minimum of 50 years, but meant to extend in perpetuity. BMC

	Chapters 23C.12 and 22.20.065 impose restrictions for the Life of the Project.
Live-In Aide	HUD’s definition as established in 24 CFR 5.403: A person who resides with one or more elderly persons, near-elderly persons or persons with disabilities and who: (1) is determined to be essential to the care and well-being of the person(s); (2) is not obligated to provide support for the person(s); and (3) would not be living in the unit except to provide the necessary supportive services. [Note that a Live-In Aide may or may not be related to the disabled or elderly BMR Renter, but, to qualify as an Aide, s/he must establish that there is no other reason to reside in the Unit except to provide essential care.]
Marketing Plan	Written documentation provided in a City-prescribed format containing information on Project advertising, Owner outreach, and other means by which the Owner will attract and select BMR residents for occupancy.
Maximum Household Income	The maximum income allowed for a Household applying for a BMR Unit as determined by Household size, derived from annual AMI values published by HUD and republished in the City of Berkeley BMR Housing Program Income and Rent Limits table.
Maximum Monthly Rent	The maximum monthly monetary consideration allowed for BMR units and paid by a BMR Renter Household for use of the designated BMR Unit as the Household’s principal residence; published annually in the City of Berkeley BMR Housing Program Income and Rent Limits.
MSA	Metropolitan Statistical Area.
Net Monthly Rent	Maximum Monthly Rent applicable to a BMR Unit less the value of the City-published utility allowance provided for Tenant-paid utilities and any other mandatory fee imposed by a BMR Owner as a condition of tenancy.
Notice of Limitation on Use of Property	A restrictive agreement between the City and an Owner recorded against a Project and containing the specific occupancy and use restrictions applicable to the Project, as defined in the Project’s Use Permit, pursuant to the requirements of the BMC. (In some developments, these restrictions are prescribed in the Regulatory Agreement.)

Owner	The person or entity financially and legally responsible for construction and operation of the Project and fulfillment of the Project's Conditions of Approval.
Primary Residence	A dwelling, such as a rental unit or single family home, where a Household lives for at least ten months out of the year.
Program	As the context requires, the City of Berkeley Inclusionary Housing program defined in BMC Chapter 23C.12, or the Affordable Housing Mitigation Fee program defined in BMC Chapter 22.20.
Project	A specific housing development that includes in its Conditions of Approval a requirement to construct BMR Units.
Qualifying Household (Renter)	An applicant for a BMR Rental Unit who meets the BMR Renter Qualifications specified in Section III B of this manual.
Qualifying Units	Affordable residential units included in a development for the purpose of obtaining a Density Bonus under the Density Bonus Law.
Section 8 or Section 8 Housing Choice Voucher Program	A federal housing program administered locally in which a public housing authority pays a portion of a participating renter Household's rent directly to an Owner.
Shelter Plus Care	A federal housing program administered by the City of Berkeley in which the City pays a portion of a participating tenant Household's rent directly to an Owner and a local social services agency provides supportive services to the tenant.
Unit	A portion of a building designed for, or intended for the exclusive use of, persons living as one household.
Use Permit	A permit issued by the City of Berkeley pursuant to the requirements of Title 23 of the BMC that identifies, among other things, all applicable occupancy and use restrictions for a particular Project.
Utility Allowance	A dollar amount established periodically by the City based on HUD standards for the cost of basic utilities for Households that is paid by tenants. Currently the City uses the Berkeley Housing Authority's schedule.

III. GENERAL REQUIREMENTS

A. Project Types.

BMR obligations apply to:

- a. Developments of 5 or more Units
- b. Rehabilitation Projects for buildings constructed after August 14, 1986 that add Units to produce a new Unit count of 5 or more
- c. Residential housing projects proposed on lots whose size and zoning designation allow construction of five or more Units.

B. Section 8 and Shelter Plus Care Requirements.

Projects approved after September 20, 2016 must provide 40% of the 50% AMI units to holders of Section 8 vouchers and 40% of the 50% AMI units to Shelter Plus Care certificate holders. Requirements will be incorporated into regulatory documents as applicable.

C. Annual Monitoring Fee.

Effective July 1, 2018, every building Owner is subject to an annual monitoring fee for BMR rental units per the requirements under the Inclusionary Housing Ordinance (BMC Chapter 23C.12.100) and Affordable Housing Mitigation Fee Ordinance (BMC Chapter 22.20.065, Section E). Each year in June, Owners will receive a notice for the annual monitoring fee that includes the amount due and the due date.

City Council approved the adoption of the fees and the first fee schedule on December 19, 2017 (Resolution No. 68,277-N.S.). The current fee schedule includes a per BMR unit fee with surcharges for late payment and a fee to lien the property for unpaid fees. From time to time, the City Council may update the fee schedule. Owners will be notified of any changes to the fee amount.

D. Regulatory Documents. The obligations of every building Owner subject to the Inclusionary Housing or Affordable Housing Mitigation Fee Ordinance will be incorporated into City-issued regulatory documents, including:

- a. Use Permit
- b. Notice of Limitation on Use of Property and/or Regulatory Agreement

Relevant provisions include:

- a. The number of restricted units required
- b. The number of Density Bonus Units required, as applicable
- c. The applicable AMI level that will determine the value of Affordable Rents
- d. The type and approximate size of restricted units (i.e., number of bedrooms, approximate square footage of the unit)
- e. The location of BMR Units within the development, as applicable.

The Regulatory Documents listed in Section III.C establish the Owners' affordable housing obligations, and City staff will rely on them in implementing these Guidelines. Inclusionary Housing Ordinance and Affordable Housing Mitigation Fee Ordinance obligations last for the Life of the Project, while State Density Bonus law obligations last for 30 or 55 years depending on when the project was developed.

IV. RENTER QUALIFICATIONS AND RESTRICTIONS ON BELOW MARKET RATE RENTAL UNITS

A Qualifying Household must:

A. Meet the income limits defined in the Project's Notice of Limitation Agreement

1. *Income Certification:* Income limits, expressed as a percentage of Area Median Income. The City produces a table starting on June 1 of every year showing the Gross Income for each relevant AMI category for BMR units. ("City of Berkeley BMR Rental Housing Program Income and Rent Limits for [the Current Year]"). A Qualifying Household's income must not exceed the published income limits effective at the time of application for the BMR unit.

2. *Density Bonus, Affordable Housing Mitigation Fee, and Inclusionary Units:* Each project's agreement states which units were created under the Inclusionary Housing Ordinance, Affordable Housing Mitigation Fee, and/or the State Density Bonus law. The incomes and rents for density bonus and Affordable Housing Mitigation Fee units are based on the number of bedrooms in each unit and the corresponding household sizes. The BMR units created under the Inclusionary Housing Ordinance are subject to income and rent limits based on the square footage size of the unit. In the event that a unit is subject to both state and local requirements, and the applicable rent and income limits differ, the more stringent (lower) standard applies.

B. Reside in the BMR Unit at least 10 months of the year as the Household's permanent, sole residence.

1. BMR-renters may sublet their Units for up to 12 months if unexpected circumstances require a temporary relocation out of the area with pre-approval in writing by the City. Examples of conditions permitting subletting include:

- i. Temporary work assignment.
- ii. Health care assistance required for family member living beyond commuting distance.

2. The City will approve a sublet only upon the provision of appropriate documentation. BMR Renters should submit a sublet request to the City, indicating:

- i. Length of sublet, up to a maximum of 12 months
- ii. Reason for sublet, with appropriate documentation, such as: (1) a letter from employer for work-related assignment; or (2) a letter from a physician, hospital or hospice confirming the need for care and the location of the family member's residence.
- iii. Sublease terms

Sublessor Households must notify the City upon their return and resumption of occupancy in the Unit. Failure to do so will trigger non-compliance with the applicable regulatory restrictions and the City will be entitled to take all action necessary to enforce the BMR restrictions.

C. Occupy the Unit as his/her sole, permanent residence within 60 days of lease execution.

D. Have no ownership interest in any residence, either as an investment or alternate domicile.

E. Have a member of the household who is legally able to execute contracts (i.e., is at least 18 years old)

F. Document that the Head of Household, including full-time students, cannot be claimed as a dependent on another person's tax returns. Eligible BMR Renter households may be comprised of more than one full-time student if each full-time student satisfies all of the eligibility requirements. The Gross Income of each member of such households must be documented individually, and applicable income restrictions must be met for the household.

G. Demonstrate that no employment relationship with the property owner or property management company exists. Employees of the property management company are not eligible for BMR units regardless of their income.

V. MARKETING AND LEASE UP PROCEDURES FOR OWNERS, PROPERTY MANAGERS AND LEASING CONSULTANTS

A. Initial Lease Up

1. *Marketing Plan.* At least 45 days prior to marketing the BMR Units, the Owner must submit a draft marketing plan to the City for review and approval. The City will approve or reject the marketing plan in writing within 10 business days of submission. Rejections will be based upon an Owner's failure to include the minimum components in the marketing plan described below and/or the City's determination that the marketing plan insufficiently reaches a wide cross-section of Berkeley citizenry potentially eligible to participate in the Program. If the City rejects the marketing plan, the City will cite the reasons for withholding approval in writing. The Owner shall then submit a revised plan for City approval, which the City shall approve or reject in accordance with the procedures stated above. This process shall continue until the City approves the plan.

The marketing plan must include at least the following:

- Narrative of development, including overall description of the project, location, total number of units, amenities, and other descriptive features

- Overview of BMR Units, including the Unit count at the Project, breakdown by affordability level, unit square footage, number of bedrooms, and proposed BMR Rent
- List of newspapers and/or other publications where Units will be advertised
- List of civic groups, churches and other non-profit organizations to which Owner will transmit electronic or hard copy information for distribution
- Berkeley local businesses, community areas and other key City locations to which Owner will transmit electronic or hard copy information for distribution
- List of websites where Units will be advertised (i.e., Craigslist, Owner/property-specific website)
- Sample of flyer, electronic notices, and print advertisements
- Start date and duration of marketing period. BMR rental units shall be marketed for at least a 28-day period at initial lease up and for any subsequent marketing required to fill vacancies or to update the BMR waiting list at a specific site when the list has been exhausted. Owners must advertise the units for the duration of the 28-day period. They may begin accepting applications or pre-applications from prospective applicants during the 28-day period. Whether they choose to start receiving applications during or after the 28-day period, Owners must provide prospective applicants at least 2 weeks to submit their applications or pre-applications.
- How random selection of applicants will be ensured (i.e. lottery)
- How the Section 8 and Shelter Plus Care requirements will be met, if your project was approved after September 20,2016, including timing and process for notifying the Berkeley Housing Authority and City Shelter Plus Care program of available units

The marketing plan must also include procedures for the following activities both at initial lease up and during ongoing operations:

- Distributing and accepting applications, including a description of criteria that will be used for evaluating both BMR and market-rate applicants, e.g. credit history, rental history, criminal background, income history and references
- Notifying accepted applicants
- Notifying rejected applicants
- Placing applicants on a waiting list, including policies and procedures for updating the waiting list and removing applicants from waiting list. Transferring BMR tenants between units in the development to accommodate tenant needs, such as transferring tenants to higher or lower income units if their income changes or transferring households to a more appropriately sized unit if family composition changes

[Note: If an Owner desires to amend the approved marketing plan, s/he must submit proposed revisions to the City for approval. Whenever revisions are proposed, the City will approve or reject the revised marketing plan in writing within 10 business days of submission. If the City rejects the revised marketing plan, the City will cite the reasons for withholding approval in writing. The Owner must then submit a revised plan for City approval, which the City will approve or reject in accordance with the procedures set forth in Section IV. A.1. above.]

B. BMR Unit Waiting List/Ongoing Marketing

1. Following the initial lease-up of the BMR Units, and if demand for the BMR Units has exceeded supply, Owner must establish and maintain a BMR Unit Waiting List, and refer to the waiting list first to fill vacancies.
2. If, for whatever reason, waiting-list applicants cannot fill vacancies as they occur, Owners must use their City-approved marketing plan as a guide to market vacant units and/or add to the waiting list
3. During the annual online monitoring and during the onsite monitoring, Owners must inform the City if BMR Units are vacant and document steps taken to fill the vacancy from the waiting list.
4. If the property transfers to a new Owner, the current Owner must provide a copy of the waiting list to the new Owner. The new Owner must use the existing waiting list to fill vacancies and maintain the BMR applicants' place on the waiting list. The new Owner may implement procedures to update the waiting list, including properly notifying all BMR applicants of the Owner's process for updating the waiting list.

C. Application Process and City Approval at Initial Lease Up

1. The Owner is responsible for all elements of marketing and lease-up, including management of the BMR application process. The Owner may designate an agent to coordinate these activities, such as a property management company or leasing consultant. Owner is responsible for collecting and reviewing initial applications for the BMR units at their specific site.
2. At the time that the property is first rented, Owners must submit complete documentation of applicant income and eligibility and allowable rent calculations to the City for review and approval. The Owner cannot lease a BMR unit until the City provides the final approval of applicants.
3. The Owner is also responsible for recertifying every BMR tenant's eligibility and calculating the allowable rent on an annual basis after initial lease up, and for maintaining documentation consistent with these Guidelines.

Effective January 1, 2017, after a property has been leased the first time, the Owner is not required to obtain the City's approval for new tenant income certifications or annual income recertifications for existing tenants after the building's initial lease-up, although the Owner will still be responsible for completing initial income certification of new BMR applicants and annual re-certification of existing tenants as described in more detail in the following section of these Guidelines. Owners should maintain this documentation on file but are not required to submit it to the City for review.

4. The Owner may not subject BMR applicants to any additional screening, acceptance criteria, or other application procedures not also imposed upon market-rate applicants, with the exception of actions related to certifying income eligibility under the BMR Housing Program.

5. The Owner must provide in writing the reasons for denial to each applicant and keep the documentation on file. Once the Owner has determined that an applicant is not eligible for a certain BMR unit, the City will not entertain appeals of the Owner's decision.

VI. Establishing Tenant Eligibility and Calculating Rents

A. Determining Initial Eligibility

1. Owner Documents Tenant Income and Proposed Rent Using Tenant Approval Form. Provided by City and completed by Owner, this form requires the following information:
 - Property address and Unit number
 - Unit Square Footage and Unit Type (i.e., Studio, 1-Bedroom, 2-Bedroom, etc.)
 - Applicable Affordability Level (i.e. 50% AMI)
 - Proposed Rent, including breakdown of tenant-paid utilities
 - Utility allowances are based on the unit type (i.e., Studio, 1-Bedroom, 2-Bedroom, etc.) Each specific type of utility and its allowance must be listed separately to show the calculation clearly
 - Annual Gross Income for the BMR Renter Household (see "Gross Income" definition), including a list of 3rd party income documentation reviewed by Owner

Every household member's income must be included and documented. Documentation includes:

- Completed Tenant Approval Form (Each form may contain income and asset information for each member of the household)
- 3 most recent pay stubs
- Other non-wage income as listed on the Source Documentation Form
- Most recent tax return
- Most recent W-2

- 2 months of the most recent bank statements
- Letters of explanation for unusual circumstances
- Additional documentation as requested by the City to clarify or confirm information

Owners must use the income and asset information submitted at the time of the application. Owners may accept additional information only if they need clarification on household information and before they submit the application to the City for review/approval. Once Owners submit the application to the City for review and the City confirms household eligibility, Owners will not accept further documents from applicants.

2. Owner Determines Eligibility and Submits Eligible Tenants to City for Review/Approval of BMR Applicants (at Initial Lease-Up Only).

Owner determines applicant's income, eligibility, and allowable rent by reviewing the following documentation (See below for Section 8 and Shelter Plus Care procedures). During the first lease up process, Owner must submit the application back-up documents listed above to the City for approval.

3. Student Applicants.

Owners must determine a student's eligibility at move-in, initial and annual recertification. In order for a student to be eligible for a BMR unit, each individual student must meet the student eligibility requirements, including instances where two or more students are applying for one unit. Each student must meet all the following criteria to be eligible. The student must:

- a. Be of legal contract age under state law (or 18 years old in California);
- b. Have established a household separate from parents or legal guardians for at least one year prior to application for occupancy;
- c. Not be claimed as a dependent by parents or legal guardians or other individual pursuant to IRS Regulations; and
- d. Obtain a certification signed by his/her parent(s), legal guardian(s) or any individual providing financial support and confirming the amount of financial assistance that will be provided. This certification is required even if no assistance will be provided.

Note: Any financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts going towards tuition and fees is included in annual income.

4. Section 8 and Shelter Plus Care Tenants.

Owners are strongly encouraged (or required for projects approved after September 20, 2016) to rent available BMR Units to Section 8 Voucher and Shelter Plus Care certificate holders. To do so, Owners must work with the Berkeley Housing Authority (BHA) to qualify eligible applicants from the BHA waiting list, and with the City of Berkeley or its designee to qualify eligible Shelter Plus Care certificate holders. Owners

may not otherwise restrict occupancy of BMR Units to Households with Section 8 Vouchers or Shelter Plus Care certificates. The City of Berkeley will monitor marketing and outreach procedures to ensure Units are made available in an equitable manner to all eligible applicants.

Owner will accept the subsidy programs' calculation of tenant income and are responsible for checking the calculated income against the applicable income limit for the unit.

Upon receipt of documentation of the Section 8 or Shelter Plus Care program tenant approval—including the tenant's income, the contract rent and the tenant portion of rent—and before approving a tenant, the Owner must also:

- a. Complete the Tenant Approval Form.
 - b. For all tenants with Section 8 or Shelter Plus Care, collect the tenant's most recent tax return to check whether the tenant owns a home or a residential rental property. The Section 8 and Shelter Plus Care programs do not check whether participants own a home or other real estate. Although this is very rarely the case, tenants who own a home or other residential real property are ineligible for a BMR unit.
5. Retention of eligibility documentation.
Owner must retain each applicant's original eligibility documentation for as long as the tenant lives in the unit. Owner must make files available to the City for review upon request.
6. Submission of Participation Agreement and Lease to City.
Once Owner approves applicant, the Owner and applicant sign the Participation Agreement and lease. Owner uploads Participation Agreement and signed lease into City Data Services.

B. Annual Income Recertifications

BMR Renters must remain income-eligible, as further defined below, for the duration of their tenancies in BMR Units. To confirm continued eligibility, Owners and BMR Renters must proceed as follows:

1. Recertifications. Owner must re-certify Annual Gross Income of the Household.
 - a. On the first anniversary of the lease date and then every 5th year of the anniversary of the lease, the BMR Renter must provide the third-party documentation to verify income (i.e. if the initial lease was signed in 2010, full income documentation is required in 2011, 2015, 2020, 2025, etc).
 - b. Other years of the lease term, the BMR Renter may self-certify on the City-provided form.

Note: If a project's underlying funding requires more restrictive income certification than what the City requires, then Owner must comply with the more restrictive requirement. (Please see Appendix B for the City's Recertification Policy)

Once Owners have complete documentation of income and have determined the income of households, Owners may not accept further documents from households found ineligible in an effort to reduce income and make the household eligible for the Program. Owners must use the income submitted at the time of the initial recertification request.

2. Section 8 and Shelter Plus Care Recertification – Special Requirements. The Section 8 and Shelter Plus Care programs recertify household income on an annual basis, and the Owner must keep that documentation in the recertification documents maintained in the project's files. Owners must complete the Tenant Approval Form and review the BHA or City approval letter that includes documentation of contract rent and the tenant portion of rent. On full documentation years, the owner must also review the tax return to determine if the tenant owns a property.
3. Over-Income Tenants. Except if the Notice of Limitation for the property has requirements different than what is described below, Owners must use the following guidelines to determine if a tenant is over-income. The recertification incomes are double the initial certification incomes and are provided annually by the City. If, upon re-certification, the Owner determines that the BMR Household's Annual Gross Income exceeds the recertification income limits, the following conditions apply to the Household's continued occupancy:

For a BMR Renter whose gross income is more than twice the Program's income limit for the unit at recertification—meaning more than 100% AMI for a 50% AMI unit or 160% AMI for an 80% AMI unit—the Household is no longer eligible under the BMR Housing Program. For such Households, the Owner:

- i. Must provide the BMR Renter with written notice of his/her over-income status and provide the tenant a 60-day notice to vacate the unit.
- ii. Owner must then rent the unit to another BMR-eligible household.

4. Retention of eligibility documentation. In addition to the original eligibility documentation described in section VI.5 above, the owner must retain the three most recent tenant income recertifications, as applicable, as long as the tenant lives in the unit.

C. Setting BMR Rents

1. Initial Rents. The City's BMR rents are based on income limits set annually by HUD for the Oakland-Fremont MSA. The City takes those income levels and produces a table on June 1 of every year. The table sets the maximum Gross Income and Maximum Monthly Rent for each relevant AMI category for BMR

Units.

BMR Tenants pay Net Rents, which are the Maximum Monthly Rents published by the City, as described above, less the value of the applicable tenant-paid Utility Allowance and Additional Fees, as described below. The City also publishes a table providing the range of Utility Allowances applicable to tenant-paid utilities.

2. Annual Rent Increases.

a. *Annual Rent Increase Limits.* Owners may, but are not obligated to, increase the rent annually on the BMR Tenant's lease anniversary date. The rent increase is limited to the rent limits published by the City of Berkeley at the time of each tenant's annual recertification and lease renewal by the Owner. The City will monitor the Owner's compliance with the rent limits through the annual reporting process and on-site visits.

i. Where not inconsistent with the Regulatory Documents for a property, the annual rent increase for any tenant may not exceed 10%.

b. *Rent Increase Notices.* Owners must provide a minimum 30-day notice for any rent increase. All notices must be provided in writing and delivered to the BMR Tenant via U.S. mail. If the rent increase is greater than 10%, then Owner must provide a minimum 60-day notice of rent increase.

c. *Hold Harmless Policy.* If income limits decrease for any year-to-year period, Owners will be allowed to use the existing, higher income and rent limits from the previous year when recertifying existing BMR Tenants.

3. Additional Fees above Affordable Rent Limit

a. *Usage Fees.* Some Owners may charge mandatory fees, such as usage fees for amenities. Any mandatory fees will reduce the BMR Rent by the amount of the mandatory fee. If Owner provides "unbundled" amenities or services to tenants, such as parking, BMR Renters may opt to participate in these amenities for an additional fee or opt not to participate. Owners must make such amenities and services available to BMR Renters in the same manner as they make them available to market-rate tenants, and in proportion to the number of BMR units to market-rate units. (Example: if 10% of total units are BMR units, then 10% of unbundled parking spaces must be made available to BMR Renters)

b. *Pet Security Deposits.* Owners may charge a refundable security deposit for pets in addition to the standard security deposit that is collected at the time of lease execution. The pet deposit value must be reasonable, correlate to actual required maintenance expenses, and be applied similarly to both BMR and

market-rate Tenants. The City may request documentation verifying these conditions.

c. *Renter's Insurance.* The City deems any insurance requirement imposed on BMR Tenants by Owners as a condition of tenancy (whether for personal property or general liability) to be a mandatory fee, which shall reduce the Net Monthly Rent value accordingly, as shown in the chart published by the City.

4. *Section 8 and Shelter Plus Care Tenants.* Owners may receive the contract rent determined by the Section 8 and Shelter Plus Care program even if it exceeds the applicable BMR Program rent limit for that unit. The tenant's portion must be less than or equal to the applicable rent limit. Owners must include the tenant's portion of rent in the certification documents provided to the City at initial lease-up. Owners must contact the City to request approval to receive higher contract rent payments for any other similar, publicly funded rental subsidy for low income households.

D. Occupancy Requirements

1. Household Size. In order to ensure fair distribution of BMR housing opportunities, the City requires a minimum number of people per household based on unit size. Owners must rent vacant units to households with no less than the number of people specified in the following schedule:

Unit Size	Minimum Number of Persons in Household
SRO	1
0-BR	1
1-BR	1
2-BR	2
3-BR	4
4-BR	5
5-BR	7

*Based on Berkeley Housing Authority Family Unit (Voucher) Size, *Administrative Plan Part II, 5-II.B., 2015-16*

2. Household Size Waivers. The Owner may request City approval to assign Tenant Households to units of sizes other than those indicated as appropriate under special circumstances. The City reserves the right to reject Owner's request.

3. Live-In Aides.

- (a) If a BMR Renter is disabled and requires the service of a Live-In Aide, then Owner must give priority to such Tenant for the next available two-bedroom BMR Unit (or the appropriate-sized BMR Unit requested by Tenant to accommodate BMR Tenant and Live-In Aide), if any, and if BMR Tenant can demonstrate the ability to pay the higher BMR Rent standard. The BMR Renter should make this request at the time of application and will be required to provide certain documentation of the condition(s) requiring the aide.
- (b) If a BMR Renter requires live-in assistance after initial occupancy, the Owner should assist the Household in relocating to a larger BMR Unit within the Project if such a Unit is available. The BMR Renter must provide the documentation described above.
- (c) The Live-In Aide's income is not counted towards the total Household Gross Income when establishing the BMR Renter's eligibility for the BMR Housing Program.
- (d) Residency in a BMR Unit by a Live-In Aide does not establish a right of occupancy or rights under the lease for the Aide, and, upon vacancy of the Unit by the BMR Renter, for whatever reason, the Live-In Aide must also vacate the Unit. Live-In Aides must acknowledge their acceptance of this condition on a City-provided form.

E. Lease Requirements

1. BMR leases must be subject to the terms and conditions listed below:
- a. A one-year term is required for initial occupancy; as provided under state law, Owners and BMR Renters may agree to month-to-month terms thereafter.
- b. Rent increases may only occur once in any 12-month period.
- c. Leases must include:*
- The City-approved, monthly BMR Rent value
 - The party responsible for utility payments and, if Tenant, specifically which utilities Tenant must pay
 - The value of the security deposit and the conditions for obtaining a refund of the deposit at vacancy
 - The terms of any additional fees, such as pet security deposits or insurance requirements. (Any fee imposed by Owner above rent that is characterized as a condition of tenancy must have an attached value that will reduce the BMR Renter's Net Rent.)

- Parking policies and procedures, if any
- Terms related to BMR Renter’s voluntary breakage of lease
- Terms under which Owner may lawfully evict the BMR Renter
- House Rules
- Pet Rules
- Move-in Inspection Report, dated and signed by both the Owner and BMR Renter
- Live-In Aide Addendum (if applicable)
- BMR Housing Program – Participation Acknowledgment Form (See Appendix C), including signed/dated acknowledgement by both BMR Renter and Owner of each party’s annual income recertification responsibilities

**The list provided above addresses Program requirements only and is in no way meant to be a comprehensive list of lease requirements required for full conformance to all applicable laws.*

2. Lease and Household Changes

- a. If a new member of the Household that has not been approved for the BMR unit is being added to the lease, the income and asset documents must be submitted for all members of household as listed in Section IV B.2, and Owner must review the household’s continued eligibility for the BMR program.

If the new household member is added to the lease within the first year of tenancy, the household would need to qualify at the *initial income limits* that are effective at the time the new household member moves in.

If the change in household make-up occurs at least one year after initial income eligibility has been established, then the household could qualify at the recertification income limits effective at the time the new household member moves in.

F. Changes to the Units Designated as BMR Units

Owners may submit a written request to the City that the City allow a change the units designated as BMR Units in the Notice of Limitation if not prohibited by the applicable Notice of Limitation. In general, changes should be proposed for the purpose of BMR program compliance and assisting tenants, for example, to designate a different BMR unit if an existing BMR tenant’s income increases beyond the allowable limit, or to provide access to an accessible unit for a disabled tenant. Newly designated BMR units must be comparable in size and amenities to those in the Notice of Limitation. Such changes are allowable only with the City’s prior written approval.

G. BMR Tenant Transfer to Other BMR Unit

If an eligible BMR Renter requests to transfer to a vacant BMR unit at the same property—whether existing or newly designated under section F above—before the unit is advertised or offered to applicants on the waiting list, the Owner may allow the transfer as long as all of the following conditions are met:

- The Owner has a written policy on this type of transfer that is applied consistently to all BMR Renters.
- The Household is income-qualified under the applicable recertification income.
- The Owner completes a Tenant Approval form and alerts the City of the change.

In situations where the Owner operates multiple buildings with separate waiting lists, the Owner may not allow the BMR Renter to transfer to a vacant BMR unit in another building. The BMR Renter must be placed on the waiting list at the other building and their application would be reviewed in order of the waiting list.

H. Record Keeping

Owners must keep on file: (1) initial tenant income certification documentation for the length of tenancy; and (2) all other BMR tenant records, including tenant Income, rent and inspection information for the most recent two (2) years.

VII. MONITORING AND REPORTING REQUIREMENTS – BMR RENTAL UNITS

A. Owner Reporting Responsibilities

1. Submit an Annual Compliance Report (ACR) on a City-approved form or via the City's database system (City Data Services) The report documents rents, household income, physical condition of the property, planned improvements, and any other information the City may reasonably require for monitoring compliance with the BMR Housing Program. Unless otherwise directed, these reports are due every year on February 15th.
2. Recertify BMR Renters annually for continued eligibility under the Program as required under the section titled, "Annual Income Recertifications". Owner must keep documentation of income certification in BMR Tenant's file, and provide recertification documentation upon HH&CS request.

3. Maintain BMR units and common areas in decent, habitable condition, free of health and safety hazards and up to the standards contained in local codes.
4. Inspect units annually and complete the City of Berkeley Schedule A form as required by BMC 12.48.050. Copies of the Schedule A forms for each unit must be kept on file at the property.
5. Cooperate in City onsite monitoring, which includes physical inspections, interviews, and tenant file reviews

B. City Monitoring Actions

In order to ensure full compliance and proper implementation of the Program, the City will:

1. Conduct a site visit for each property and on-site tenant file review at least every 3 years
2. Review Owners' Annual Compliance Reports and work with Owners to address any issue regarding Program compliance
3. Maintain documentation related to each BMR property. Each project file should include the following:
 - a. The Inclusionary Housing Agreement / Regulatory Agreement, and all relevant BMR Unit information (e.g., affordability levels, Unit square footage, bedroom count)
 - b. The last three years' of Annual Compliance Report Forms
 - c. Records of approval or rejection of BMR Applicants
4. Answer questions of Owners, property managers, tenants, and the general public regarding the City's Program
5. Refer interested, potential BMR Renters to Owners so that they may apply for tenancies or be included on Projects' waiting lists.

APPENDIX A-ANNUAL REPORTING INSTRUCTIONS

The City has contracted with City Data Services (CDS) to monitor compliance of the BMR units. Compliance reports are to be submitted through CDS and are due annually on February 15th. The City will send out a reminder and instructions to the Owner representatives listed in City Data Services.

The Owner and the owner's property management and compliance staff can access CDS by logging onto www.citydataservices.net. Any Owner or Owner's property management agent who needs a login and password may contact CDS by emailing them at citydataservices@yahoo.com with a copy to AffordableHousing@cityofberkeley.info. There are two components to the online report: the narrative and the occupancy report that updates the unit/tenant information. Below are instructions on how to submit the report.

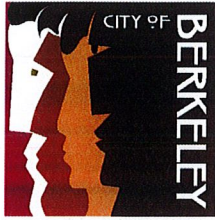
To submit the narrative Annual Compliance Report:

- (1) Go to www.citydataservices.net to log in using your assigned LOGIN and User Password
- (2) Click on **Multifamily Tab** under headings
- (3) Click on your specific **Property Name/Address** on left column, i.e. "ARTech Building"
- (4) Click on **Go To Reports** tab
- (5) Under Reports Currently Due, click on "**Click To Complete**"
- (6) Fill in empty fields and answer questions regarding the property
- (7) When completed, click on **Submit to Berkeley Program Manager**

To submit the occupancy report:

- (1) Return to Main Page, where the property listing resides
- (2) Click on your specific **Property Name/Address** on left column, i.e. "ARTech Building"
- (3) Click on **Project Info**
- (4) On far left column, click on unit number
- (5) Fill in empty fields and update information for the specific unit
- (6) When completed, click on **Submit Data**

Prior years' reports are stored in City Data Services and will remain available to the Owner's representatives with CDS accounts.



Department of Health, Housing
& Community Services

CITY OF BERKELEY BELOW MARKET RATE PROGRAM Initial Income Certifications and Annual Re-certifications

This memorandum clarifies the current Department policy on initial income certifications of new Below Market Rate (BMR) applicants and annual income re-certifications of existing BMR residents in Berkeley.

Below Market Rate Housing – Affordability Requirements

Affordability restrictions for properties that have BMR units are enforced through a Regulatory Agreement, sometimes called *Notice of Limitation*, which is executed by the Owner and the City of Berkeley at the time the project is approved by the City of Berkeley. The affordability levels for each project may vary and specific requirements are provided in the individual agreements. Owners are required to submit an annual report to the City, confirming the BMR tenants' household income and the rents for each BMR unit. The City is responsible for ensuring that Owners conduct annual re-certifications to verify tenant eligibility.

Income Certification of New BMR Applicants & Annual Re-certification of Existing BMR Tenants

The requirements for conducting income certifications are provided in detail in the *City of Berkeley Program Guidelines and Operational Manual for the Below Market-Rate Rental Housing Program*. This memorandum provides a general summary for conducting income certifications for BMR applicants/tenants:

- (1) **Initial Income Certification to Establish Tenant Eligibility, prior to execution of the lease:** Full income certification required, including review of 3rd party documentation of income and assets. City approval needed at project's initial lease-up only¹.

¹ As of January 2017, the Department implemented a new policy which provides that the City will review and approve BMR applicants at Initial Lease-Up only. This means the City will no longer review/approve initial income certifications of new BMR applicants after the original BMR tenants have been approved at initial lease up. However, Owners must keep all documentation re: certifications on

- (2) **First Year Income Re-certification, at least 60 days prior to renewal of lease and at least 30 days prior to increase in rent:** Full income certification, including review of 3rd party documentation of income and assets. City review and approval not required.

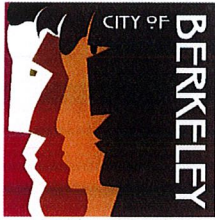
Note: Owners must give tenants at least 30 days' notice of rent increase. Therefore, it is recommended that Owners initiate the re-certification process at least 60 days prior to the lease anniversary date. City review and approval not required.

- (3) **Years 5, 10, 15, etc. of the Lease Term:** Full income re-certification, including review of 3rd party documentation of income and assets. City review and approval not required.
- (4) **Abbreviated Re-certifications for Reporting in Interim Years or every fifth year of the lease term** (Years 2,3 and 4 of the Lease Term; Years 6, 7, 8 & 9; Years 11,12,13 & 14, etc): Completion of household income self-certification form signed by the tenant and a representative from the property owner/management company, confirming BMR tenant's eligibility (see attached form). City review and approval not required.

Record Keeping

Owners must keep on file: (1) initial tenant income certification documentation for the length of tenancy; and (2) all other BMR tenant records, including tenant Income, rent and inspection information for the most recent two (2) years.

file, including self-certification forms and 3rd party documentation when required (i.e., initial, first year and every 5th year of tenancy). We will review the tenant files as part of our on-site monitoring visits. If we find any compliance issues during the monitoring visits, we may impose new requirements for the project to obtain City review and approval of new BMR applicants until compliance with requirements is deemed satisfactory by the City.



Department of Health, Housing & Community Services

**PARTICIPATION IN THE CITY OF BERKELEY
INCLUSIONARY HOUSING/BELOW MARKET RATE PROGRAM**

ACKNOWLEDGEMENT FORM

[Note to Property Owner: Please attach this form, signed by Property Owner or Representative and BMR Renter, as an addendum to the executed lease]

Dear BMR Renter:

You are eligible to participate in the City of Berkeley's Inclusionary Housing/Below Market Rate program and have been approved by the City of Berkeley and the Property Owner to live in a Below Market Rate (BMR) Unit located at

_____ (Address of Property/Unit Number).

The City's BMR Units are rent-restricted and are available at a rent that is affordable to very low and low-income households, as defined by the City of Berkeley Inclusionary Housing Ordinance and accompanying Inclusionary Housing/BMR Program Guidelines.

In order to participate in the program, you were required to certify your income to determine if you met the income limit for this particular unit. To ensure your continued participation, you will be required to meet the BMR requirements and to recertify your household income annually before your lease anniversary date. Refusal to comply with this requirement may result in your being disqualified from the program, and the rent for your unit may be increased to market-rate rent.

Please review the list of general program parameters and BMR Renter responsibilities below. Initial each line acknowledging you understand the program requirements.

General Program Parameters

_____ BMR Renter must comply with the executed lease, including House Rules for the Property.

_____ The initial lease term must be one year. Subsequent terms may be month-to-month, depending on the terms of the original agreement reached by the Property Owner and BMR Renter.

_____ Your unit may be subject to an annual rent increase on or after the original lease anniversary date, and only after the Property Owner has received City approval of your income recertification.

_____ Rent increases may only be implemented at the end of a 12-month period, regardless of the lease term, and are capped at the BMR Rent as approved by the City.

BMR Renter Responsibilities, Eligibility, and Annual Recertification

_____ I understand that the purpose of the Below Market-Rate Program is to provide housing for low- and moderate-income households.

_____ I understand that I must maintain eligibility for the entire period I have a BMR lease. Eligibility requires that I:

- Reside in the Inclusionary Unit at least 10 months of the year as my permanent, sole residence.
- Occupy the Unit as my sole, permanent residence within 60 days of lease execution and as long as I have the BMR lease.
- Have no ownership interest in any residence, either as an investment or alternate residence.
- Am legally able to execute contracts (i.e., at least 18 years old).
- Document that the Head of Household, including full-time students, cannot be claimed as a dependent on another person's tax returns.
- Demonstrate that I am not employed by the property owner or property management company.
- Meet minimum occupancy standards (meaning the number of people for the unit size).
- Report changes in the members of my household and be recertified based on my new household composition.

_____ I agree to accurately report my income on the City-provided form every year, and I acknowledge that failure to do so is a substantial violation of a material term of my lease.

_____ I agree that for the first year and every five years thereafter, I will provide documentation of my income as part of my certification, and that failure to do so is a substantial violation of a material term of my Lease. I also agree to provide income documentation as may be requested by the City and/or Owner related to the annual recertification during the in-between years, if needed.

I understand that at the time of my annual recertification, my income may rise up to 200% of the limit at which I was originally certified and I will still be eligible for the Program (i.e., for 50% AMI units, household income may increase to 100%; for 80% AMI units, household income may increase up to 160%).

I understand that at the time of my annual recertification, if my income exceeds the BMR income limits of the level at which my BMR unit is designated, I am considered "Over-Income", and it is a substantial violation of a material term of my Lease.

I understand that I may be evicted pursuant to [BMC 13.76.130A2](#) for a substantial violation of a material term of my lease including, but not limited to, those listed in this Agreement, ("Participation In The City Of Berkeley Inclusionary Housing/Below Market Rate Program").

I understand the following procedures apply to Over-Income Households:

1. At the time of my annual income certification and finding that I am Over-Income, the Owner must give me notice of my Over-Income status.
2. The Owner will give me a 60-day notice to vacate the Unit so that s/he can return the building to compliance with his/her BMR contractual obligations to the City. I must then vacate the Unit within the 60-day period. The Owner may offer me a market-rate unit in the building, if available.

Print Name of Head of Household

Signature of Head of Household

Date

Property Address / Unit Number

For Property Management Staff Use Only

I have received the signed statement from the Head of Household and confirmed s/he understands the BMR Renter responsibilities per the City's Inclusionary Housing/BMR Program.

Signature of Owner or Representative

Date