



Office of the City Manager

July 24, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager *Dee Williams-Ridley*

Subject: Below Market Rate Housing Rent Increases

In the last few weeks, some tenants in apartments regulated under the City's Below Market Rate (BMR) housing program (BMC 23C.12 and 22.20) have contacted Council members and City staff with concerns about significant and challenging rent increases at lease renewal. Unfortunately, rent increases are allowable under the program's requirements.

Unlike rent controlled housing, BMR (and most subsidized affordable housing) rent levels are set by a formula based on the Area Median Income established by the U.S. Department of Housing and Urban Development (HUD). The agency sets different amounts for different regions, reflecting the higher costs of housing in a region like ours, which while difficult for some clients, also increases access to housing for other low-income programs. If the rent charged is less than or equal to the current maximum allowable rent minus a utility allowance, it is in compliance with the BMR program requirements, regardless of the prior year's rent.

Tenants are experiencing larger than typical rent increases because HUD income limits have increased at a high rate since 2017 as the region's housing costs have continued to climb. In 2017, the increase was about 7%; in 2018, the increase was about 11%; and in 2019, the percentage increase is 6.7%. An owner that did not increase rents in 2018 is still permitted to charge the allowable 2019 rent. If in any year, the rent increase is greater than 10%, the owner must provide the tenant with a 60-day advance notice of rent increase; rent increases of 10% or less require a 30-day notice.

Rental rates on BMR units, at 2019 levels, are still substantially below market, though absorbing significant increases can be difficult for tenants. The maximum allowable rent on a 2 bedroom at 50% of AMI under BMC 22.20 is \$1,395 minus a utility allowance.<sup>1</sup> By comparison, Berkeley 2-bedroom apartments advertised on Craigslist today range from \$2,395 plus utilities to \$4,800 per month, with the majority in the \$2,600 to \$3,400 range.

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<sup>1</sup> Rents are set differently for units created under the Inclusionary Ordinance and the Affordable Housing Mitigation Fee Ordinance, and depending on the requirements in place when the project was approved. This rent is not generalizable for all 2 bedroom BMR units.

The increased HUD-defined rents do benefit some low-income households in Berkeley: the more than 1,500 Section 8 voucher holders in the city. By increasing the amount that can be covered by a Section 8 voucher, those voucher holders have access to a greater number of available units.

In regards to the BMR units, staff are aware of several buildings that did not implement rent increases in 2017 or 2018 and are bringing BMR rents up to the 2019 levels now. After several years of no rent increases, tenants in these buildings are now getting larger rent increases. The City previously included a requirement in the BMR Guidelines to limit rent increases to 10% per year, even if that meant rents were below the otherwise allowable limit. After being challenged by a property owner this year, staff, in consultation with the City Attorney's office, determined this requirement is not enforceable because it is inconsistent with the Ordinance and Regulatory Agreements. Staff are in the process of revising the Guidelines to eliminate that requirement and will post a revised version soon. Staff are also researching whether an ordinance imposing a limit on annual rent increases, when doing so is not authorized under existing regulatory agreements, would be legally defensible. Staff are also researching whether it is possible to include a provision limiting annual rent increases in future regulatory agreements for BMR units.

Since many apartment buildings in Berkeley lease up in the spring and summer, a significant number of BMR lease renewals happen in this season, leading to increased tenant and property manager requests for assistance during this time frame. The City is in the process of hiring a new BMR program monitoring staff person. This addition will substantially increase our monitoring capacity for this program, but the 1.0 FTE staff will still have limited capacity to work directly with the more than 400 households in this program while also monitoring the units and working with the property managers to ensure compliance.

cc: Paul Buddenhagen, Deputy City Manager  
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