



**DUBLIN**  
CALIFORNIA

# GUIDELINES TO THE INCLUSIONARY ZONING REGULATIONS ORDINANCE

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# 1 INTRODUCTION

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This document constitutes the Guidelines (these “Guidelines”) to the City’s Inclusionary Zoning Regulations Ordinance (the “Ordinance”) set forth in Chapter 8.68 of the City’s Municipal Code. The City Council’s purpose in adopting the Ordinance is to increase the diversity of housing prices/rents in the community and ensure that the range of prices/rents continues over time.

The purpose of these Guidelines is to assist the layperson in interpreting the Ordinance. The Guidelines are intended to:

- Assist developers early in the development process to ensure that Residential Development projects are sensitively designed from the beginning in compliance with the requirements of the Inclusionary Zoning Ordinance;
- Inform developers, management firms, and owners of BMR Units and BMR Secondary Units of the procedures for selling and renting BMR Units and BMR Secondary Units; and
- Provide households interested in renting or purchasing a BMR Unit with an overview of the eligibility requirements, the application and screening process, the restrictions on ownership, and the procedures for reselling a BMR Unit.

These Guidelines should be read in conjunction with the Ordinance. While every effort has been made to ensure that these Guidelines are consistent with the Ordinance, if there is any conflict between these Guidelines and the Ordinance, the terms of the Ordinance shall prevail. In addition, the provisions of a Housing Agreement or Resale Restriction Agreement (or like Agreement) recorded against a BMR Unit shall prevail over any general requirements of the Ordinance.

Users of these Guidelines are encouraged to seek their own legal counsel to aid in understanding the requirements of the City’s Inclusionary Program. For any general questions regarding the Guidelines, users may call the City’s Housing Division at (925) 833-6610.

The effective date of these Guidelines is June 2, 2015. The City will review and to the extent necessary, update these Guidelines annually. The Community Development Director may make interim revisions, interpretations, or clarifications to these Guidelines, provided that he or she considers the revision, interpretation, or clarification to be minor and consistent with the purposes of the Inclusionary Zoning Ordinance and the Guidelines. Any such revision, interpretation, or clarification shall not become effective until posted on the City’s website.

## 2 DEFINITION OF TERMS

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As used in these Guidelines, the following terms shall be defined as follows:

### **Administration Fees:**

- A \$1,500 fee charged by the City to the BMR Unit Owner for all sales and re-sales of BMR Units;
- An \$826 fee charged by the City to the developer/property manager for the annual review of rental developments;
- A \$200 fee charged by the City to the BMR Unit Owner for requests to subordinate the Resale Restriction Agreement and/or Performance Deed of Trust or requests to refinance a BMR Unit.
- An \$872 fee charged by the City to the owner for the sale and/or resale of a BMR Secondary Unit.

Fees may be adjusted from time to time by the City.

**Affordable Housing Agreement:** An agreement between the developer and the City for an ownership Residential Development project which is recorded against the property containing the BMR Units; sets forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Ordinance; and requires, among other things, that the developer require purchasers of BMR Units to execute and record a Resale Restriction Agreement and Option to Purchase and Performance Deed of Trust.

**Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants:** An agreement between the developer and the City for a rental Residential Development project which is recorded against the property containing the BMR Units; sets forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Ordinance; and requires, among other things, that the BMR Units are reserved for occupancy by Very Low-, Low-, and/or Moderate-Income households at rents affordable to such households for a period of not less than 55 years.

**Approved Capital Improvements:** Capital improvements to BMR Units that have been approved by the City pursuant to the procedure set forth in **Section 6.1**. The cost of such improvements may be added to the resale price of the BMR Unit.

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

**Below Market Rate (BMR) Units:** A Below Market Rate or BMR Unit is a unit that is reserved for rent or for sale to Very Low-, Low-, or Moderate-Income households. BMR Units have restrictions recorded against them to ensure they remain affordable for a period as set forth in the Housing Agreement or Resale Restriction Agreement. Owner-occupied units are deemed affordable if the sales price results in annual Housing Expenses that do not exceed 35% of the maximum income level for Low- or Moderate-Income households, as applicable, adjusted for household size.

**BMR Unit Owner:** A household that owns a BMR Unit.

## 2 DEFINITION OF TERMS

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**CalHFA:** The California Housing Finance Agency.

**City:** The City of Dublin.

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

**City Staff:** An employee or designee of the City of Dublin responsible for actions related to the Ordinance or these Guidelines.

**Consent Agreement:** An agreement between the City and a Qualified Household which authorizes the City to access and review the Qualified Household's credit reports or other personal or financial information to verify a Qualified Household's compliance with the Resale Restriction Agreement, the Ordinance, and these Guidelines. This agreement must be executed by purchasers of ownership BMR Units prior to the close of escrow.

**Domestic Partner:** A legal or personal relationship between individuals who live together and share a common domestic life, but are not joined in a traditional marriage or a civil union as formalized through a local or state registry.

**First-Time Homebuyer:** A person who has not owned any interest in real property during the three-year period prior to the date of the household's application to qualify for purchase of a BMR Unit, including without limitation, real property in which a household member's name appears on title regardless of whether the member's interest in such property results in a financial gain, such property is located in another state or country, or the member has occupied such property as his or her primary residence. If any person has had his or her name on title of a property, but the property was sold more than three years ago from the date of application, the person is considered a First-Time Homebuyer.

**Gross Household Income:** All income, from whatever source derived, of all adult household members (18 years of age and older), whether or not such income is exempt from federal income tax. Refer to **Section 4.2.2** for a list of income sources and exceptions.

**(These) Guidelines:** These Guidelines to the Inclusionary Zoning Regulations.

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

**HOA:** Homeowners Association.

**Homebuyer Education Workshop for Below Market Rate Buyers:** A HUD-approved 8-hour course designed to provide basic education specific to BMR Homebuyers. Refer to the City's website ([www.dublin.ca.gov](http://www.dublin.ca.gov)) for organizations that may offer this course. The date on the completion certificate for the class must be within 6 months of the date of application for a BMR Unit.

**Housing Agreement:** An Affordable Housing Agreement, an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants, or a Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants or other Agreement that relates to housing that may be adopted from time to time by the City.

**Housing Expenses:** Principal, interest, private mortgage insurance, taxes, insurances, and HOA dues.

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

**Immediate Family Member:** A mother, father, brother, sister, child, grandparent, or grandchild.

**Inclusionary Obligation:** The number of BMR Units a developer is required to construct (or pay fees in lieu thereof) in a Residential Development project to comply with the Inclusionary Zoning Regulations.

**Inclusionary Zoning Regulations Ordinance:** Chapter 8.68 of the City of Dublin Municipal Code.

**In-Lieu Fee:** A fee paid by a developer in lieu of constructing BMR Units to satisfy up to 40% of its inclusionary obligation.

**Legal Resident:** A citizen or other national of the United States or a qualified alien as defined by the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”).

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

**Management Plan:** A plan required for rental Residential Developments that contains the information set forth in **Section 3.6.1** of these Guidelines.

**Marketing Plan:** A plan required for ownership Residential Developments that contains the information set forth in **Section 3.5.2** of these Guidelines.

**Maximum Income:** The maximum income for an income category (Very Low, Low, or Moderate Income) determined periodically by HCD based on AMI. See **Section 4.2.2** of these Guidelines for Maximum Incomes.

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

**Performance Deed of Trust:** A deed of trust recorded against a BMR Unit by the City which secures a BMR Owner’s compliance with the Resale Restriction Agreement and Option to Purchase.

**Preference Points:** Points assigned to persons employed within the City of Dublin, public service employees working within the City of Dublin, Dublin residents, seniors (62+), veterans, persons who are permanently disabled (with written verification from a physician or show receipt of SSI or SSDI), persons who are immediate family members of a Dublin resident, and persons who are required to relocate from a Dublin residence due to demolition of the residence or conversion of the residence from a rental to an ownership unit. Persons with Preference Points are given priority over other Qualified Households in the rental or purchase of a BMR Unit.

**Principal Residence:** The place where a person resides on a substantially full-time basis during not less than 10 months per year. Children attending college and not living at home as their Principal Residence may not be counted as a household member.

**Priority List:** A list that ranks Qualified Households based on the number of Preference Points received.

**Program:** Activities related to the development, rental, sale, and occupation of BMR Units developed under the City’s Inclusionary Zoning Regulations Ordinance.

## 2 DEFINITION OF TERMS

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**Qualified Household:** Can include any group of persons, so long as such persons, when viewed as a whole, satisfy the eligibility requirements for a household. For an ownership BMR Unit or for a rental BMR Unit, a “qualified household” means a household that satisfies the requirements listed in **Section 4** of these Guidelines.

**Resale Restriction Agreement and Option to Purchase, also known as “Resale Restriction Agreement”:** An agreement between the City and a BMR Unit Owner that is recorded against the BMR Unit and, among other restrictions, requires that the unit remain affordable to Low- or Moderate-Income households usually for a period of 55 years **or** as outlined in the Housing Agreement, restricts the resale price of the BMR Unit, requires the BMR Unit Owner to notify the City upon refinancing, reselling, or changing the title of a BMR Unit, and provides the City with an option to purchase or transfer the BMR Unit upon the occurrence of certain events.

**Residential Development:** Includes, without limitation, detached single-family dwellings, multiple-dwelling structures, groups of dwellings, condominium or townhouse developments, condominium conversions, cooperative developments, mixed-use developments that include housing units, and residential land subdivisions intended to be sold to the general public.

**Secondary Unit:** A legal secondary dwelling unit that has been approved by the City and that is reserved for occupancy by Very Low-, Low-, or Moderate-Income households at rents affordable to such households.

**Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants:** An agreement between the City and the owner of a Secondary Unit which is recorded against the property containing the Secondary Unit and requires, among other things, that the Secondary Unit be reserved for occupancy by Very Low-, Low-, or Moderate-Income households for an amount of time specified in the Affordable Housing Agreement or Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.

**Senior:** A person 62 years of age or older for the purpose of qualifying for preference points.

**Special Assessment:** A proportional fee charged to the BMR Unit Owner by an HOA to cover the cost of physical improvements to the entire building or common areas.

**Total Household Income:** All Gross Household Income and assets received (as calculated pursuant to **Section 4.2.2**).

**Very Low Income:** Total Household Income that is 50% or less of AMI, adjusted for actual household size.

**Veteran:** A person who served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable, for the purpose of qualifying for Preference Points.

## 3 GUIDELINES FOR DEVELOPERS

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### 3.1 Overview of Inclusionary Zoning Requirements

Residential Developments consisting of 20 residential units or more must comply with the Inclusionary Zoning Ordinance (Section 8.68.030.A). In general, the Ordinance requires that 12.5% of the units constructed in a Residential Development be reserved for occupancy by Low- and Moderate-Income households in for-sale units or Very Low-, Low-, and Moderate-Income households in rental units. Such restricted units are referred to as BMR Units (Section 8.68.030.A). In addition to these Guidelines, developers should thoroughly review the Inclusionary Zoning Regulations Ordinance (Chapter 8.68 of the City’s Municipal Code).

While the Ordinance requires that 12.5% of the units in the Residential Development be BMR Units, the Ordinance permits the developer to meet up to 40% of this obligation by paying an In-Lieu Fee (subject to approval by the City Council). Thus, there is a “must-build” requirement of 60% of the BMR Units in the Residential Development. BMR Units must remain affordable for a period of 55 years, through affordability restrictions recorded against the property.

In addition, the Inclusionary Zoning Ordinance requires that BMR Units:

- Be constructed concurrently with the market-rate units in the Residential Development;
- Have a similar range of bedrooms to the market-rate units in the Residential Development;
- Not be distinguished by design or materials from the market-rate units in the Residential Development; and
- Be reasonably dispersed throughout the Residential Development.

A developer may also satisfy its Inclusionary Obligation by dedicating land or constructing BMR Units off-site if the City Council makes the required findings. See Section 8.68.040 of the Inclusionary Zoning Regulations for alternate methods of complying with the requirements of the Ordinance.

### 3.2 Inclusionary Zoning Process

Developers should address how to comply with the Inclusionary Obligation when submitting an application to the City for a Residential Development that includes 20 or more residential units. City Staff is available to discuss options for meeting the Inclusionary Obligation with developers. For example, if a developer intends to build only the minimum number of BMR Units and to pay an In-Lieu Fee for the remaining units, staff can, for planning purposes, provide the developer with the preliminary number of BMR Units the developer would be required to build, the income levels and sizes of the required BMR Units, and the amount of the In-Lieu Fee under the then-current fee schedule.

### 3 GUIDELINES FOR DEVELOPERS

After a Residential Development application is submitted to the Community Development Department for review, a Project Review Committee (PRC) meeting is generally held. In this meeting, City Staff and interested agencies involved in the development process review the Residential Development and give preliminary comments to the developer.

Prior to or following the PRC meeting, City Staff will send a letter to the developer indicating the developer's Inclusionary Obligation for the Residential Development as preliminarily proposed. A copy of this letter will also be directed to the City's Project Planner responsible for the Residential Development. The purpose of this letter is to provide the developer information on the Inclusionary Obligation as early as possible in the development process. The City recognizes that the Residential Development is likely to evolve over time and that the Residential Development will likely change prior to obtaining City entitlements. However, this information is provided early in the process as a service to the developer for planning purposes.

The developer's final Inclusionary Obligation will be formalized in an Affordable Housing Agreement (or alternate satisfaction of the obligation as approved by the City Council) between the City and the developer, prior to the recordation of the first final map or the issuance of the first building permit, whichever occurs first, for the development.

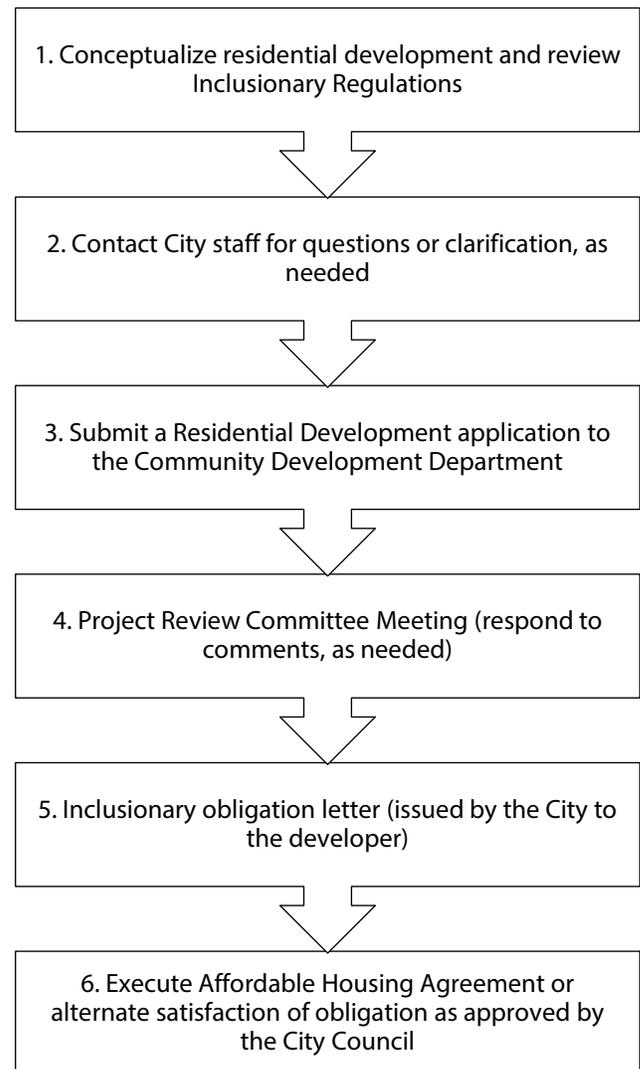
#### 3.3 Inclusionary Obligation

Developers of residential projects subject to Section 8.68.030.A of the Inclusionary Zoning Ordinance must meet an Inclusionary Obligation equivalent to 12.5% of the total number of proposed dwelling units, unless subject to an exception approved by the City Council. **Example 1** shows a sample calculation of the Inclusionary Obligation.

##### Example 1. Inclusionary Obligation Calculation

The developer proposes a 224-unit subdivision. 12.5% of 224 is 28. The Inclusionary Obligation is 28 of the 224 total units proposed.

**Figure 1. Inclusionary Zoning Process**



### 3.3.1 Rounding

In making this calculation, any decimal fraction less than or equal to 0.50 is disregarded and a decimal fraction greater than 0.50 is construed as a unit. An example of the treatment of fractions in calculating the Inclusionary Obligation is shown in **Example 2**.

#### Example 2. Treatment of Fractions in Calculating the Inclusionary Requirement

The developer proposes a 316-unit subdivision. 12.5% of 316 is 39.5. Rounding the decimal fraction down, the Inclusionary Obligation is 39 of the 316 total units proposed.

### 3.3.2 Portion of the Obligation That Must Be Constructed

The Ordinance requires that the developer provide 60% of the Inclusionary Obligation by constructing affordable units. The developer may opt to pay an In-Lieu Fee for up to 40% of its Inclusionary Obligation. Using the scenarios from **Example 1 and Example 2**, **Example 3** illustrates the calculation of the number of BMR Units that must be constructed.

#### Example 3. Determining the "Must-Build" Obligation

**Example 3.A** The developer proposes a 224-unit subdivision, for which the Inclusionary Obligation is 28 of the 224 proposed units.

***Must-Build (60%)***

60% of 28 units = 16.8 units

The ***must-build*** obligation is 17 units.

***In-Lieu Fee Option (40%)***

40% of 28 units = 11.2 units

The developer may pay an In-Lieu Fee for up to 11 units.

**Example 3.B** The developer proposes a 316-unit subdivision, for which the Inclusionary Obligation is 39 of the 316 units.

***Must-Build (60%)***

60% of 39 units = 23.4 units

The ***must-build*** obligation is 23 units.

***In-Lieu Fee Option (40%)***

40% of 39 units = 15.6 units

The developer may pay an In-Lieu Fee for up to 16 units.

### 3.3.3 In-Lieu Fee Calculation

The amount of the In-Lieu Fee is set by Resolution of the City Council. Resolution No. 56-02 provides that the In-Lieu Fee per BMR Unit is adjusted annually on July 1 to reflect the greater of the percentage change either in (a) the Bay Area Urban Consumer Price Index (CPI) as of February of each year, or (b) the United States Department of Housing and Urban Development (HUD) Fair Market Rent limits for the Oakland Primary Metropolitan Statistical Area (PMSA) that are in effect at the time. The fee as of July 1, 2014, was \$127,061 per BMR Unit.

**The entire In-Lieu Fee amount for the Residential Development is due and payable upon issuance of the first building permit for the Residential Development or a time otherwise specified by City Council.**

### 3 GUIDELINES FOR DEVELOPERS

Using the scenarios from **Examples 1, 2, and 3**, **Example 4** illustrates the calculation of the amount of the In-Lieu Fee as of July 1, 2014.

<b>Example 4. In-Lieu Fee Calculation</b>
<p><b>Example 4.A</b> The developer proposes a 224-unit subdivision. In-Lieu Fees may be paid for 11 units.  <math>11 \times \\$127,061 = \\$1,397,671</math></p> <p><b>Example 4.B</b> The developer proposes a 316-unit subdivision. In-Lieu Fees may be paid for 16 units.  <math>16 \times \\$127,061 = \\$2,032,976</math></p>

#### 3.3.4 On-Site BMR Unit Requirements

##### 3.3.4.1 BMR Units Requirements by Income Level

Pursuant to Section 8.68.030.B of the Inclusionary Zoning Ordinance, the BMR Units included in each Residential Development project must be allocated to Very Low-, Low-, and Moderate-Income households in the manner described in **Table 1**.

**Table 1. Required BMR Units by Income Category**

Income Level	For-Sale Units	Rental Units
Moderate	60%	50%
Low	40%	20%
Very Low	—	30%

If the allocation calculations result in a decimal fraction, the rounding rules contained in Section 8.68.030.A and explained in **Section 3.3.1**, above, apply. In addition, if the allocation calculation results in fewer units than would otherwise be required; one additional unit should be allocated to the lowest income level with the decimal fraction closest to 0.50 (Section 8.68.030.B). **Example 5** illustrates the calculation of the number of units that must be provided at each income level and how the rounding requirement is implemented.

<b>Example 5. Rental Development BMR Unit Composition</b>
<p>A Residential Rental Development includes 200 units. The Inclusionary Obligation is 25 BMR Units. The developer chooses to pay an In-Lieu Fee for 40% of the Inclusionary Obligation, which equals 10 units. The <i>must-build</i> requirement (60% of the BMR Units) is 15 BMR Units. The number of units per income category is calculated as follows:</p> <p>Moderate-Income households: 50% of 15 = 7.5            Low-Income households, 20% of 15 = 3            Very Low-Income households, 30% of 15 = 4.5</p> <p>Since two of these numbers are fractions at exactly .5, the additional required unit must be provided in the lower-income category. Thus the unit income mix would be:</p> <p>7 Moderate-Income units            3 Low-Income units            5 Very Low-Income units</p>

### 3.3.4.2 BMR Unit Size Requirements

The Ordinance requires that the same proportion of bedrooms be reflected in the BMR Units as are in the market-rate units. The rounding conventions described in Section 8.68.030.A and explained in **Section 3.3.1**, above, are used if the allocations result in decimal fractions. **Example 6** illustrates the determination of the number of BMR Units that must be provided at each unit size.

#### Example 6. BMR Unit Bedroom Requirements

A developer proposes a 200-unit rental Residential Development and is paying In-Lieu Fees for 40% of the BMR Units. The **must-build** obligation is 15 units. The overall Residential Development includes:

- 50 one-bedroom units (25% of total)
- 100 two-bedroom units (50% of total)
- 50 three-bedroom units (25% of total)

Therefore:

- 25% of the BMR Units are to be one-bedrooms
- 50% of the BMR Units are to be two-bedrooms
- 25% of the BMR Units are to be three-bedrooms

#### **To determine bedroom requirement per income category:**

If 5 of the units are Very Low-Income units, using the percentages above the requirement for bedrooms are:

- 25% of 5 = 1.25 one-bedroom units
- 50% of 5 = 2.5 two-bedroom units
- 25% of 5 = 1.25 three-bedroom units

Therefore, the development would be required to provide:

- 1 one-bedroom unit
- 3 two bedroom units
- 1 three bedroom unit

The same calculation is performed to determine the bedroom sizes of the Low- and Moderate-Income units.

### 3.3.4.3 Location of BMR Units Within the Development

The Inclusionary Zoning Ordinance requires that BMR Units be reasonably dispersed throughout the Residential Development. The purpose of this requirement is to avoid concentration of the BMR Units in a particular location within a development, effectively segregating them from the rest of the Residential Development. There are many ways in which to implement this requirement, and consultation with Community Development Department staff is recommended prior to developing the final site plan.

### 3 GUIDELINES FOR DEVELOPERS

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#### 3.4 Housing Agreements

Section 8.68.50 of the Inclusionary Zoning Ordinance requires the developer to execute one of the following Housing Agreements with the City:

- **Affordable Housing Agreement.** An agreement between the developer and the City for a Residential Development project that includes ownership BMR Units (and potentially BMR Secondary Units). Such Agreements are recorded against the property on which the Residential Development is being constructed; set forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Inclusionary Zoning Ordinance; and require, among other things, that the developer require purchasers of BMR Units to execute a Resale Restriction Agreement and Option to Purchase with the City. The Affordable Housing Agreement is effective until all of the In-Lieu Fees are paid; all of the BMR Units are constructed and sold; and all of the BMR Units are subject to a Resale Restriction Agreement.
- **Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants.** An agreement between the developer and the City for a Residential Development project that includes rental BMR Units. Such agreements are recorded against the property containing the BMR Units; set forth the developer's Inclusionary Obligation and the method by which the developer will comply with the requirements of the Inclusionary Zoning Ordinance; and require, among other things, that the BMR Units are reserved for occupancy by Very Low-, Low-, and/or Moderate-Income households at rents affordable to such households for a period of not less than 55 years.

The two Housing Agreements described above set forth the legal requirements for certain Residential Development projects for compliance with the Inclusionary Zoning Ordinance. The Housing Agreements are recorded against the property on which the Residential Development is being constructed, run with the land, and survive transfer or sale of the land. If a developer executes a Housing Agreement for a particular Residential Development project but the project is not built and new entitlements are sought for the applicable property, the developer must execute a new Housing Agreement, which would replace the existing Agreement.

Among other things, the Housing Agreements must contain the following information:

1. A description of how the developer will comply with its Inclusionary Obligation (whether through unit construction and/or payment of an In-Lieu Fee).
2. Whether the BMR Units will be ownership or rental units.
3. The number of BMR Units the developer will construct for each income category.
4. The size of the BMR Units the developer must construct for each income category.
5. Depending on the nature of the development, the timing of construction of the units to ensure that the BMR Units are constructed concurrently with the market-rate units.
6. If the development proposes ownership BMR Units, a requirement that the developer prepare and obtain City approval of a Marketing Plan, prior to issuance of any building permits in the Residential Development, indicating how the developer plans to sell the BMR Units. This requirement is discussed in additional detail in **Section 3.5.2** below.

7. If the development proposes ownership BMR Units, there is a requirement that the developer require the purchasers of such units to execute a Resale Restriction Agreement or a Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants and a Performance Deed of Trust. A sample Resale Restriction Agreement is attached as **Exhibit 1**. A sample Performance Deed of Trust is attached as **Exhibit 2**. A sample Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants is attached as **Exhibit 5**.
8. If the development proposes rental BMR Units, the developer is required to provide a Management Plan as described in **Section 3.6.1** to the City for its approval and prepare the Annual Report described in **Section 3.6.3**.

### 3.5 Procedures for Initial Sale of BMR Units

#### 3.5.1 Maximum Sale Price of BMR Units

Pursuant to Section 8.68.020A.2 of the Inclusionary Zoning Ordinance, owner-occupied units are deemed affordable units if the sales price results in annual housing expenses that do not exceed 35% of the maximum income level for low- and moderate-income households, adjusted for household size.

The maximum sale price for BMR for-sale units is based on a designated income percentage that is intended to be affordable to a greater range of households in each applicable income category.

- For Low-Income households (household income of between 51% and 80% of Area Median Income), the maximum sales price is determined based on a total monthly housing payment equivalent to 35% of one-twelfth of 70% of the AMI for Alameda County.
- For Moderate-Income households (household income of between 81% and 120% of Area Median Income), the maximum sales price is determined based on a total monthly housing payment equivalent to 35% of one-twelfth of 110% of the AMI.

In addition, the maximum sales price is based on the number of bedrooms in the home instead of the number of persons in the particular household. For example, if a developer is selling a two-bedroom unit, the sales price would be calculated under a “number of bedrooms, plus one” rule for the assumed household size. The assumed household size is based on the size of the residential unit, as shown in **Table 2**.

**Table 2. Household Size Assumption for Maximum Sales Price Calculations**

Unit Size (Number of Bedrooms)	Assumed Household Size (Number of Persons)
1	2
2	3
3	4
4	5

### 3 GUIDELINES FOR DEVELOPERS

The following assumptions are used to calculate the maximum sale price for BMR Units. Note, however, that a Qualified Household’s actual Housing Expenses may differ from these assumptions.

- *Interest* – The greater of the prevailing rate (fixed rate for 30 years) or the average annual commitment rate for 30-year fixed rate mortgages for the previous five-year period, as published by Freddie Mac.
- *Mortgage Term* – fixed rate for up to 40 years.
- *Taxes* – 1.25% of the estimated sale price of the unit.
- *Insurance* – homeowners insurance. The cost of homeowners insurance may be calculated based on an estimate provided by the developer. (If the homeowners insurance is covered by an HOA structure, homeowners insurance need not be included, but it must be documented that the HOA will provide adequate insurance.)
- *PMI* – private mortgage insurance. Because most BMR Unit buyers will have a down payment of 3.5%, they will be subject to private mortgage insurance, which is estimated at 1.25% of the sale price of the unit.
- *Other* – may include special assessments or fees for special assessment districts.
- HOA dues, if any.

**Example 7** shows how the sale price is calculated.

<b>Example 7. BMR Unit Sales Price Calculation (3-bedroom home for a 4-person Moderate-Income household)</b>	
<b>Price of home</b>	<b>\$373,500</b>
Buyer’s mortgage amount	\$360,428
Buyer’s down payment amount (3.5%)	\$13,073
<b>Buyer’s monthly costs</b>	
Mortgage payment <sup>1</sup>	\$1,935
Property tax	\$389
Insurance	\$50
HOA	\$250
Mortgage insurance	\$375
Other	\$0
<b>Total monthly housing cost</b>	<b>\$2,999</b>
Total annual housing cost	\$35,992
Buyer’s annual income <sup>2</sup>	\$102,850
<b>Buyer’s maximum monthly housing cost (35%)</b>	<b>\$3,000</b>
Buyer’s maximum annual housing cost (35%)	\$35,998
<b>Percentage of AMI for housing costs above</b>	<b>35%</b>

1. Assumes a 30-year fixed rate loan at 5%.

2. For 2015, the maximum income for a four-person Moderate-Income household is \$112,200 (120% of AMI). As previously noted, the calculation is based on an assumption of income at 110% for Moderate-Income households.

**3.5.2 The Marketing Plan for Ownership BMR Units**

Prior to the issuance of building permits for any ownership BMR Units, the developer must submit a Marketing Plan to the City for approval. The Marketing Plan must contain the components described in **Table 3**.

**Table 3. Required Marketing Plan Contents**

Component	Description
Narrative Summary	A 1-page narrative summary suitable for advertising the availability of the BMR Units on the City web page and other locations. The summary must include: <ul style="list-style-type: none"> <li>• A description of the total number of BMR Units and market-rate units in the Residential Development;</li> <li>• The HOA dues for each BMR Unit;</li> <li>• The amenities included in the unit; and</li> <li>• Contact information for sales representatives (including a name, telephone number, address, and e-mail address).</li> </ul>
Application Process Explanation	An explanation of the application process and the deadline for submitting applications. If the development is phased, the developer must establish deadlines for each phase of the development that includes BMR Units.
Selection Process Explanation	An explanation of the buyer selection process, including an explanation of the Preference Point system.
Sales Training Timelines	Timeline for the developer’s sales staff to meet with the City’s Housing staff to receive training on the sale selection and application process.
Application Timelines	Timelines for application submittals buyer selection. If the development is a phased project, information must be provided on the number of phases and the timelines for those phases.
Marketing Materials	Copies of materials that will be used to market the BMR Units.
Application Packet	The application packet must include: <ul style="list-style-type: none"> <li>• Application for Inclusionary Unit</li> <li>• Disclaimer for BMR Units</li> <li>• Credit Authorization and Release</li> <li>• Signed Sample Resale Disclosure Statement</li> <li>• Required Supporting Documentation Checklist</li> <li>• Highlights of Dublin Resale Restriction Agreement</li> </ul>

No marketing of the BMR Units shall begin until the developer has received written approval of the Marketing Plan from the City and the developer’s sales staff has met with City Staff for training so that the sales staff understands and can explain the application process.

**3.5.3 Application and Screening Process**

The developer must require each applicant to complete the application that has been approved by the City as part of the Marketing Plan and to provide the required supporting documentation by the deadline set forth in the Marketing Plan. The developer should plan accordingly to ensure that applicants are not qualified more than 6 months before the move-in date for the unit.

### 3 GUIDELINES FOR DEVELOPERS

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Complete application packets should include at a minimum:

1. Complete application;
2. Income and asset documentation set forth in **Section 4.2.2**;
3. Reservation instrument showing the address, number of bedrooms, and sales price;
4. A loan pre-approval letter with a Good Faith Estimate and Truth in Lending Statement;
5. A signed Disclosure Statement (Exhibit F of the Resale Restriction Agreement);
6. A signed credit report authorization and release or other consent and verification letter;
7. Copy of tri-merge Credit Report; and
8. Evidence of 3.5% available funds to be used as a down payment.

The developer must comply with the following process to sell the BMR Units (see **Figure 2** for an overview):

1. **Application Collection and Screening.** Developer collects applications for the period of time set forth in the approved Marketing Plan. Developer screens applicants to determine whether they satisfy the requirements for Qualified Households set forth in **Section 4.1.1**.
2. **Preference Points/Priority List.** Developer sorts and ranks the Qualified Households based on the Preference Points and creates a Priority List with those applicants with the most Preference Points at the top, followed by all other applicants in descending order based on the number of Preference Points received. If more than one qualified applicant receives the same number of Preference Points or if some applicants receive no Preference Points, the developer will rank the Qualified Households based on other objective criteria outlined in its approved Marketing Plan. For example, the developer may date stamp all applications and, in the case of a tie, rank the Qualified Households based on who applied first, or the developer may choose to hold a lottery to break ties. However, whichever criteria the developer uses must be set forth in its approved Marketing Plan.
3. **Priority List and Application Packets Submittal.** Developer completes the Priority List within 30 days of the application deadline. Developer submits **complete** application packets of Qualified Households, (including supporting documentation) to the City within 45 days of the planned close of escrow.
4. **City Review and Verification.** The City reviews the application packets to verify the applicants are Qualified Households. The City will make every effort to review the applications within 7 working days of receiving a complete application packet.

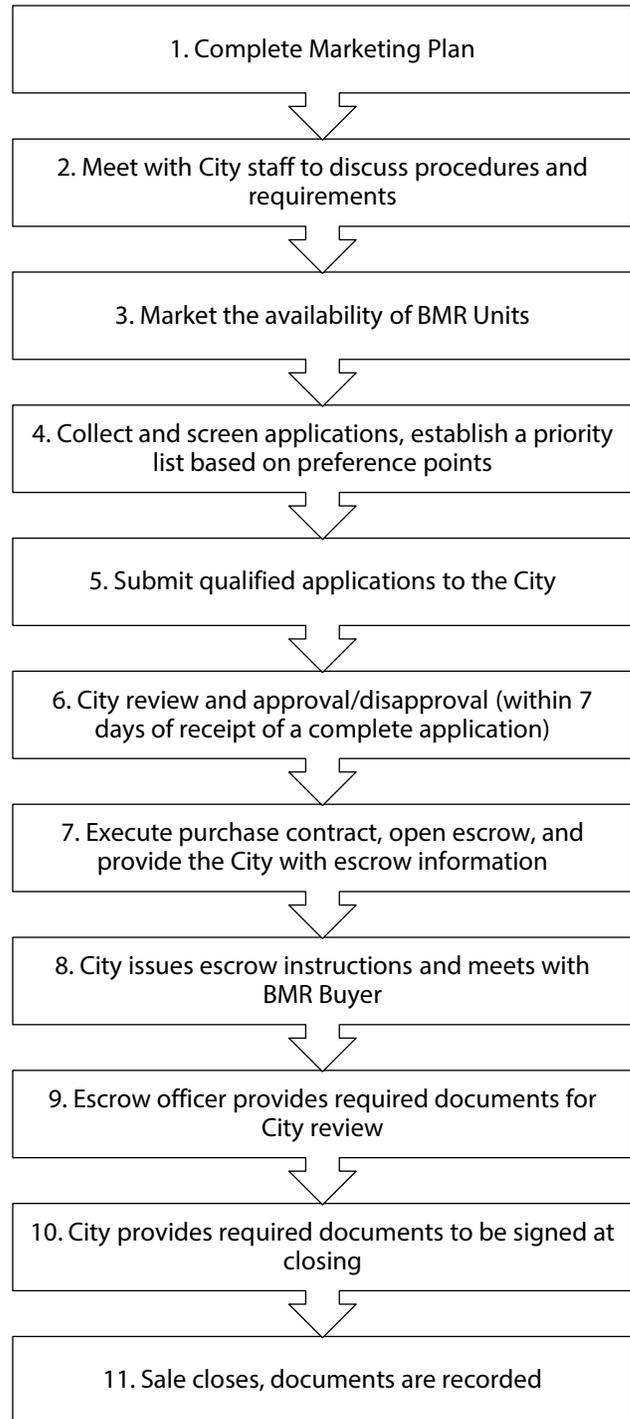
5. **Qualification/Disqualification.** Once the City has verified that the applicant is a Qualified Household, the City will send the developer a conditional qualification letter (or similar document) indicating the applicant’s name and income level, the maximum sale price of the unit (see **Section 3.5.1** for more detail on establishing the sale price), and any requirements that must be met before moving forward with the applicant. The conditional qualification letter is valid for 6 months from the date of the letter. A copy of the application packet, along with income verification for the household, will be retained by the City as proof of the buyer’s qualification to purchase the BMR Unit. If the City determines that the applicant is not a Qualified Household, the City will send the developer an ineligibility letter. An applicant who has been deemed to be ineligible may not reapply for a period of one year from the date of the ineligibility letter.

The developer bears the responsibility of ensuring that applicants are not qualified more than 6 months before a unit becomes available and closes escrow. Applicants must be requalified if occupancy is to take place more than 6 months from the date of the conditional qualification letter. Applicants may or may not qualify to purchase a BMR Unit upon requalification. In addition, the price of the BMR Unit may change upon requalification. If, upon requalification, an applicant does not qualify, it is the responsibility of the developer to notify the applicant.

Conditional approvals are based on information supplied to the City by the developer or their agent. If any material changes to the financial conditions, marital status, employment status, or other information is made known prior to loan closing, the developer, their agent, or the lender must notify the City of Dublin in writing of these changes. The City expressly reserves the right to reverify the applicant(s) and may void or cancel this conditional approval or other approval at any time prior to the loan closing if material changes affect the qualification status of the buyer(s).

Qualification determinations may be appealed in accordance with the procedures described in **Section 8.2**.

Figure 2. Initial BMR Unit Sale Process



### 3 GUIDELINES FOR DEVELOPERS

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**The sale cannot proceed until all required documents are provided to the City and the developer receives a written qualification letter from the City.**

6. **Offer to Purchase/Purchase Agreement.** The developer will offer the unit to Qualified Households based on the Priority List, offering the BMR Unit first to those applicants with the most Preference Points, then to other applicants in descending order. The developer and applicant will enter into a purchase agreement. A copy of the signed agreement must be provided to the City.
7. **Escrow Instructions.** The developer will provide the City with the name and address of the title company closing the sale and the name of the escrow officer. The City will prepare and send escrow instructions to the escrow officer.
8. **Receipt of Documents.** The escrow officer will submit the following documents to the City:
  - Completed and Signed Residential Loan Application;
  - Completed Truth in Lending Statement, Good Faith Estimate, and an estimated HUD-1 statement;
  - Completed, executed, and notarized Resale Restriction Agreement and Option to Purchase; and
  - Completed, executed, and notarized Performance Deed of Trust.
9. **Compliance Review.** Prior to the City sending the Resale Restriction Agreement and Option to Purchase and Performance Deed of Trust to the Title Company for signing, the City will review all final documents for completeness and compliance with Program requirements.
10. **Prepare and Record Documents.** When all documents have been received and are deemed to be in compliance with Program requirements, the City will prepare and send the Resale Restriction Agreement and Performance Deed of Trust to the escrow officer to be reviewed and signed by the BMR buyer. Once signed by the buyer, the escrow officer will send the original documents to the City. The City will prepare the Request for Notice of Default for each of the buyer's loans and secure the signature of the City Manager or his/her designee on the necessary documents. The City will send the original signed Resale Restriction Agreement, Performance Deed of Trust, and Request(s) for Notice of Default to the escrow officer for recording.

If at any time during the application, screening, or sale process, an applicant requires translation services, the developer shall provide such services at the developer's sole cost and expense.

**3.6 Procedures for Rental BMR Units**

After the Housing Agreement is executed, and prior to the issuance of any building permits, the developer of a project that includes rental BMR Units must prepare and submit a Management Plan to the City of Dublin Housing Division for approval. After the Management Plan has been approved by the City, and prior to the rental of any units, the developer must screen, rank, and qualify eligible tenants and send a priority list to the City of Dublin’s Housing Division. This should happen within 30 days, if possible. **Figure 3** provides an overview of the BMR Unit rental process.

**3.6.1 The Management Plan for Rental BMR Units**

Prior to the issuance of building permits, the developer must submit a Management Plan to the City for its approval. The Management Plan must contain the following information:

- A plan outlining how the management firm will market and maintain the rental BMR Units;
- How the firm will maintain a waiting list for the BMR Units;
- How the management firm will verify applicants’ Total Household Income, both initially and annually;
- Information on the units to be made available for publication on the City’s website;
- A contact telephone number; and
- The names of those individuals responsible for contact and communication with the City.

**3.6.2 Application and Screening Process**

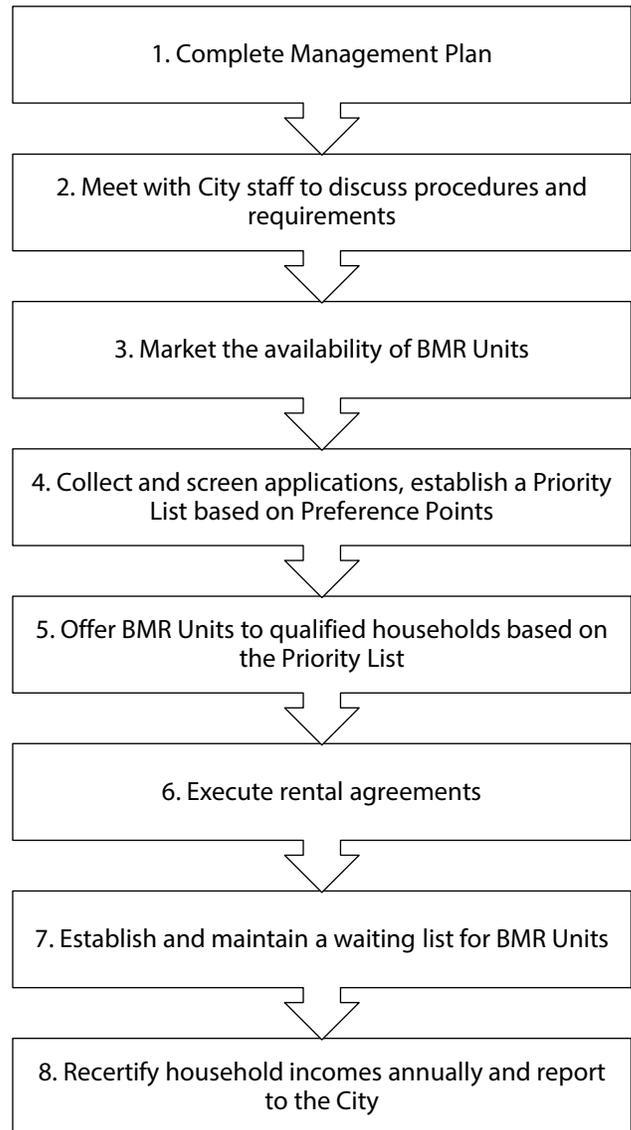
The management firm (which could be the owner or builder) is the entity that will be responsible for occupant selection and documentation of rental BMR Units. The management firm’s leasing staff should be trained so the staff understands and can explain the rental application process to applicants.

The management firm must require each applicant to complete and return to the management company a Rental BMR Unit Application packet.

To lease the BMR Units, the developer/management company must do the following:

1. Collect applications for a given time period.

**Figure 3. BMR Rental Process**



### 3 GUIDELINES FOR DEVELOPERS

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2. Screen applicants to determine whether they satisfy the requirements for Qualified Households set forth in **Section 4.1.2**.
3. Sort and rank the applications of Qualified Households based on the Preference Points and produce a Priority List with those applicants with the most Preference Points at the top, followed by all other applicants in descending order based on the number of Preference Points received. If more than one applicant receives the same number of Preference Points or if some applicants receive no points, the developer will use other objective criteria set forth in the approved Management Plan to select occupants. For example, the management firm may date stamp all applicant applications and, in the event of a tie, offer the unit to the applicant that applied first, or the management firm may choose to hold a lottery to break ties. However, whichever criteria the management firm uses must be set forth in the approved Management Plan.
4. Complete the Priority List within 30 days of the application deadline and submit to the City for approval.
5. Offer the BMR Units to applicants based on the Priority List, offering first to those applicants with the most points, then to other applicants in descending order.
6. Execute a Rental Agreement with the tenant that notifies the tenant that he or she may not sublease the unit and that annual certification is required.
7. Maintain applications with income verification and recertification for the City to review at annual on-site monitoring.

Qualification determinations may be appealed by the developer in accordance with the procedures described in **Section 8.2**.

#### 3.6.3 Annual Report and Monitoring

Pursuant to Section 8.68.050.B of the Inclusionary Zoning Ordinance, the management entity for the development must provide the City an annual report. The annual report must include the following information:

- Total Household Income for the prior year for each BMR Unit;
- Number of people residing in each BMR Unit;
- Monthly rents charged and proposed to be charged for each BMR Unit; and
- Vacancy of BMR Units during the previous year.

The management firm must submit the report annually by October 31. City Staff will send a reminder letter to the management firm, with a copy of the Annual Report form for completion and certification, at least one month prior to the due date.

The City may perform an annual site visit to monitor the records of all BMR Units. The City will provide at least two weeks' notice to the developer and/or management firm as to the date of the site visit. Files for all BMR Units must be made available for review at the request of the City. The purpose of the monitoring is to ensure compliance with the City's Inclusionary Zoning Ordinance, these Guidelines, and the City approved Management Plan.

If, during the course of monitoring, a BMR Unit tenant household is found to no longer meet qualification guidelines due to an increase in income or change in household size, the household will not be required to move; however, the household will no longer be considered qualified for a BMR Unit and the rent may be increased to market-rate rent. The developer/landlord will then offer the next available unit with the same specifications (i.e., bathrooms and bedrooms) as a rent-restricted BMR Unit.

If a Residential Development is financed through a government program that has stricter occupant selection or occupant documentation requirements than the City, the City may elect to rely on those requirements and associated documentation and not require additional documentation. The City will require tenant income verification and restriction of the BMR Units for 55 years; however, the management firm may send to the City copies of the documentation that is required and produced for other monitoring agencies.

## 4 BMR UNIT BUYER AND RENTER QUALIFICATIONS

### 4.1 Household Qualifications

#### 4.1.1 BMR Unit Buyers

A household is qualified to purchase a BMR Unit if it satisfies the requirements stated in **Table 4. Section 4.2** provides additional detail on certain requirements.

**Table 4. Ownership BMR Unit Household Qualifications**

Qualification Requirement	Description
Income	The household's Total Household Income must not exceed the applicable Maximum Income set forth in <b>Section 4.2.2</b> .
First-Time Homebuyer	No member of the household may have owned any interest in real property during the three-year period prior to the household's BMR Unit application date.
Owner Occupancy	The household will occupy the unit as its Principal Residence within 30 days of the close of escrow on the unit.
Size	The household is of a size meeting the household size criteria set forth in <b>Section 4.2.1</b> .
Homebuyer Education	All title holders of the property must take a HUD approved or City approved 8-hour homebuyer education workshop and receive a certificate of completion. The certificate of completion must be dated within 6 months of the date of application.
Credit Score	All applicants have a minimum FICO credit score of 620 (see <b>Section 4.2.3</b> ).
Residency/Citizenship	The City will require all household members to be either a citizen or national of the United States or a qualified alien defined by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).
Loan Preapproval	Homebuyers must be preapproved for a home loan that conforms to the requirements established in <b>Section 5.5</b> .
Debt to Income Ratio	Homebuyers' proposed debt (based on current liabilities and proposed housing payment) may not exceed a certain percentage (contact the City for the current maximum percentage).

Qualification determinations may be appealed. Refer to **Section 8.2** for appeal procedures.

Qualified Households with Preference Points will receive priority over other Qualified Households. For information on the application and screening process, see **Section 3.5.3**.

Qualified households are subject to specific requirements and restrictions regarding BMR Unit financing and title and loan structure. Refer to **Section 5** for procedures and regulations relating to ownership BMR Units.

#### 4.1.2 BMR Unit Renters

A household is qualified to rent a BMR Unit if it satisfies the requirements shown in **Table 5. Section 4.2** provides additional detail on certain requirements.

**Table 5. Rental BMR Unit Household Qualifications**

Qualification Requirement	Description
Household Income	The household’s Total Household Income must not exceed the applicable Maximum Income (see <b>Section 4.2.2</b> ).
Household Size	The household must be of a size meeting the household size criteria set forth in <b>Section 4.2.1</b> .
Residency/Citizenship	All members of the household must be Legal Residents.
Occupancy	The household must occupy the unit as its Principal Residence within 30 days of executing the lease.
Real Property Interest (not allowed)	No member of the Qualifying Household must own any interest in any real property, including but not limited to, any dwelling unit, commercial real estate, or land.

The names of all non-dependent household members must appear on the lease for the BMR Unit.

Qualified Households with Preference Points will receive priority over other Qualified Households. For information on the application and screening process, see **Section 3.6.2**. Qualification determinations may be appealed. Refer to **Section 8.2** for appeal procedures.

## 4.2 Description of Qualification Requirements

### 4.2.1 Household Size

The size of the household is determined by the number of people living in a household at the time of application. To qualify for a BMR Unit, the size of a household must be compatible with the size of the unit being rented or purchased.

The household size for each BMR Unit may not exceed two people for each bedroom and may not be less than one person per bedroom, unless otherwise permitted by special financing sources. Consult with the City of Dublin for further clarification. **Table 6** contains the household size permitted for each BMR Unit based on the number of bedrooms.

**Table 6. Allowable Household Size per BMR Unit**

Unit Size (Number of Bedrooms)	Household Size (Number of Persons)
0 (studio)	1–2
1	1–2
2	2–4
3	3–6
4	4–8

## 4 BMR BUYER AND RENTER QUALIFICATIONS

### 4.2.2 Household Income

#### 4.2.2.1 Maximum Total Household Income

To be eligible for a BMR Unit, the applicant's Total Household Income must not exceed the applicable Maximum Income. Total Household Income means the household's Gross Household Income (see **Section 4.2.2.2**) plus assets calculated pursuant to **Section 4.2.2.4**. Maximum Income is determined annually by HCD based on Area Median Income. **Table 7** shows the Maximum Incomes for Alameda County for 2015.

**Table 7. Income Limits per Income Category (2015)**

Income Category	Household Size (Number of Persons)							
	1	2	3	4	5	6	7	8
Very Low	\$32,750	\$37,400	\$42,100	\$46,750	\$50,500	\$54,250	\$58,000	\$61,750
Low	\$ 50,150	\$ 57,300	\$ 64,450	\$ 71,600	\$ 77,350	\$ 83,100	\$ 88,800	\$ 94,550
Moderate	\$78,550	\$89,750	\$101,000	\$112,200	\$121,200	\$130,150	\$139,150	\$148,100

*Source: HCD State Income Limits for 2015*

#### 4.2.2.2 Gross Household Income

Gross Household Income means all income from all adult household members (18 years of age and older) derived from all sources as provided in the Internal Revenue Code (Title 26, Subtitle A, Chapter 1, Subchapter B, Part I, Section 61), whether or not such income is exempt from federal income tax. Such income includes, but is not limited to, the following:

- Compensation received from an employer
- Compensation includes, but is not limited to, salary, overtime pay, and other pay
- Other pay can include, but is not limited to compensation for special working conditions or one-time pay-out of unused vacation and sick leave
- Alimony, spousal and child support
- Cash
- Pensions, if at an age where pension is being received as income
- Public benefits including, but not limited to, CalWorks, SSI, and disability income
- All interest, dividends, and royalties
- Income derived from private businesses
- Rental income
- Income from pensions
- Compensation for services rendered including fees, fringe benefits, commissions, tips, and bonuses
- Stipend received for participation in a mentor, learning, or education opportunity
- Gains from dealings in private and/or commercial property

- Gambling winnings
- Annuities, life insurance, and endowment contracts
- Income from discharge of indebtedness
- Gross partnership contributions or distributions
- Income from an interest in an estate or trust

**Exceptions:**

1. Gross Household Income does not include income earned by a household member who is between the ages of 18 and 26 and meets **both** of the following criteria:
  - Is claimed as a dependent of a household member on such member's federal income taxes; and
  - Is a full-time student (12+ units; school transcript must be provided).
2. Gross Household Income does not include payments to a household member from a governmental fund if **all** of the following requirements are satisfied:
  - The payments are based on the recipient's or the recipient's family's financial need;
  - The payments do not represent compensation for services rendered; and
  - The payments are part of a governmental housing subsidy program including, but not limited to, so-called Section 8 federal housing assistance payments.

For purposes of determining Gross Household Income, each person 18 years of age or older must present the following:

- A complete set of federal and state income tax returns for the past three years, including all schedules (signed and dated) and W-2 forms (in the case where taxes have not been filed for any of the past three years, a letter of verification of non-filing from the Internal Revenue Service is required);
- Four most recent and consecutive pay stubs; and
- Three recent and consecutive statements for all financial accounts, including, but not limited to, savings accounts, checking accounts, retirement accounts, 401(k) accounts, stock accounts, and another accounts held in the applicant(s) name(s), whether held individually or together.

If a household member is self-employed, in addition to the information above, the member must submit profit and loss statements for the past three years (if applicable), and a current profit and loss statement for the year.

## 4 BMR BUYER AND RENTER QUALIFICATIONS

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### 4.2.2.3 Income Calculation

- a. **Wage and Salary.** If an applicant is a full-time employee (usually 30 to 40 hours per week) or an employee with consistent regular hours or income, or income with overtime or adjustments as a regular part of their job, one of the-formulas listed in **Table 8** will be used to determine the applicant's salary. Bonuses, commissions, and limited overtime may be calculated into the annual income calculation. In the case of unclear income or income that is somewhat difficult to calculate, please contact the City. The City will make the final determination as to which Income Calculation formula to use.

**Table 8. Annual Income Calculations by Pay Frequency**

Pay Frequency	Annual Income Calculation
Monthly	Monthly income amount x 12
Twice Monthly	Twice monthly income amount x 24
Biweekly	Biweekly income amount x 26
Weekly	Weekly income amount x 52
Hourly	Hourly income x 40 (or whatever normal hours per week may be) x 52

- b. **Variable Income.** For applicants who are part-time employees or employees with variable hours every pay period (or variable hours less than 40 hours per week), inconsistent income or hours, frequent overtime, bonuses and commissions, etc., their annual salary will be calculated using year-to-date income, plus the previous year's income (from same income source or employer), divided by the number of months reviewed (UP TO BUT NOT EXCEEDING 12 MONTHS) times 12 to arrive at their annual income. If there is no previous year income from the same employer, or the job was started mid-year, the current income year to date using the calculation explained in (a) above will be used. If an applicant works consistently 40 hours per week and has occasional or regular overtime, the calculation listed in (a) above will be used to calculate income.
- c. **Inconsistent or Temporary Change in Income Due to a Temporary Circumstance.** If an applicant has a temporary situation (7 months or less) that makes income calculation difficult, a Verification of Employment may be used to calculate the applicant's income based on a normal annual time period. Or, the income may be calculated based on the person's hourly rate times their normal working hours (as shown in item (a) above).
- d. **Self-Employed or Non-Corporation.** A self-employed applicant is also considered to have variable income. Gross annual income calculations will be based on the previous two years' net income shown on Schedule C of the federal income tax returns, plus net income before taxes from the applicant's signed, year-to-date Profit and Loss Statement, divided by the appropriate number of months (NOT TO EXCEED 12 MONTHS) times 12 to arrive at the annual income.

**4.2.2.4 Assets**

An asset test will be applied to all applicants to determine whether they satisfy the income requirements. If an applicant has assets that exceed \$30,000, the following amounts will be added to the applicant’s Gross Household Income to determine the household’s Total Household Income:

- 10% of all assets valued at between \$30,001 and \$130,000
- 30% of all assets valued over \$130,000

The maximum assets allowed are \$250,000. Households with assets in excess of \$250,000 will be disqualified. Assets include, but are not limited to, cash, all savings and checking accounts, stocks, bonds, real estate, gifts, and other sources of money. Pensions and federally approved retirement savings accounts, such as IRAs, Roth IRAs, and 401(k)s, are excluded; however, retired applicants who receive income from their retirement account must include such income as Gross Household Income on their application. **Example 8** illustrates the calculation for determining income with assets.

<b>Example 8. Determining Income with Assets</b>
<p><b>Example 8.A</b> A household of 3 earns \$50,000 a year and has \$150,000 in total household assets  <math>\\$150,000 - \\$30,000 = \mathbf{\\$120,000}</math> (which is less than \$130,000)                      10% of \$120,000 = <b>\$12,000</b>                      New total household income: <math>\\$50,000 + \\$12,000 = \mathbf{\\$62,000}</math></p> <p><b>Example 8.B</b> A household of 3 earns \$50,000 a year and has \$200,000 in total household assets  <math>\\$200,000 - \\$30,000 = \\$170,000</math> (which is more than \$130,000)                      10% of \$130,000 = <b>\$13,000</b>                      30% of balance of \$40,000 = <b>\$12,000</b>                      New total household income: <math>\\$50,000 + \\$13,000 + \\$12,000 = \mathbf{\\$75,000}</math></p>

**4.2.3 Credit Score**

For ownership BMR Units, a credit check will be conducted on all adults (other than dependents) in the household. Applicants must have sufficient creditworthiness to qualify. Creditworthiness means that:

1. All household individuals shall have a minimum of three years since Chapter 7 or Chapter 13 bankruptcy discharge date and/or foreclosure/short sale and evidence of reestablished credit is provided; and
2. All persons appearing on the mortgage shall have a minimum FICO credit rating of 620 points from all three credit agencies.

**4.2.3.1 Alternative Credit History Parameters**

Alternative Credit History is permitted with satisfactory references from a minimum of four trade lines and 12 months of consistent payment records. One of the trade lines must be a 12-month verification of rent history.

## 4 BMR BUYER AND RENTER QUALIFICATIONS

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### 4.2.4 Preference Points

Applicants for BMR Units will be screened by the developer or their designated party for initial eligibility based on the requirements set forth in **Section 4.1.1** (for ownership units) or **Section 4.1.2** (for rental units). Qualified Households will then be ranked based on the number of Preference Points they receive.

The Preference Point system set out in the Inclusionary Zoning Ordinance provides priority to certain households who are deemed to have a priority need for housing in Dublin. Priority groups are shown in **Table 9**. Each household may only claim Preference Points once for any given category. The Ordinance provides that even if two persons in the household qualify for Preference Points for the same category, the points are only awarded for one person. For example, if a husband and wife are both employed in Dublin, the couple receives only 3 Preference Points for being employed in Dublin. Similarly, if two seniors make up a household, they would be entitled to only 1 Preference Point.

Some developments may seek to serve the specific housing needs of one or more segments of the population, such as seniors, disabled persons, or veterans. Some such developments may utilize a preference system that varies from the system described in the Inclusionary Zoning Ordinance and described herein in order to prioritize these target households. Alternative preference systems must be reviewed approved by the City Manager and described in detail in the approved Management Plan for the development (see **Section 3.6.1** for detail regarding the Management Plan).

## 4 BMR BUYER AND RENTER QUALIFICATIONS

**Table 9. Preference Points**

Priority	Points	Proof Required
Employed in Dublin for at least 6 months	3	Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past six months; or If self-employed in Dublin, then the business must have a current City business license for at least 6 months at the time of application.
Public service employee in Dublin*	1 additional	Copy of first and most recent pay stub establishing length of employment; or Letter from employer, on company letterhead, indicating continuous employment for the past six months; or For a newly hired teacher at a State-accredited school, who will be working in Dublin, a copy of employment contract; and A letter from employer confirming employment and employer contact information.
Has resided in Dublin for at least one year	3	Copy of two utility bills (PG&E or water), one from at least one year ago and one most recent utility bill both showing the applicant with a Dublin address; or Copy of a current rental agreement.
Seniors (62 and over)	1	A valid State driver license; or A valid State identification card (with photo); or A valid passport.
Permanently disabled	1	Doctor's note confirming that applicant is permanently disabled; or Other verification from a state agency establishing permanent disability status; or Verification of receipt of SSI or SSDI.
Veteran	1	A military department record of service such as an original military service record or certified copy. The document must contain the length, time, and character of the service.
Has an immediate family member who is a Dublin resident and who has continuously lived in Dublin for at least one year**	1	Copy of two utility bills (PG&E or water), one from at least one year ago and one most recent utility bill both showing the immediate family member with a Dublin address; or Copy of the immediate family member's current rental agreement; and A copy of birth certificates for self and immediate family member, establishing relationship; or Other legal document establishing relationship.
Must move because housing is to be demolished or converted to condo	1	Letter from apartment owner or management firm verifying the imminent condominium conversion or demolition of the unit; and Confirmation from the City's Community Development Department.

\* A public service employee is a person who is employed by a public agency such as the City of Dublin, a fire fighter or police officer assigned to work in Dublin, BART, DSRSD, or USPS working in Dublin.

\*\* Immediate family is defined as a mother, father, brother, sister, child, grandparent, or grandchild currently living together for 6 months or more.

## 4 BMR BUYER AND RENTER QUALIFICATIONS

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**Example 9** demonstrates how Preference Points are calculated.

### **Example 9. Preference Points Calculation**

**Example 9.A** An applicant for a BMR Unit both lives in Dublin (for at least one year) and works in Dublin (for at least 6 months). This individual will receive the following points:

Lives in Dublin            3 points

Works in Dublin            3 points

Total number of points 6 points

**Example 9.B** One member of an applicant household works in Dublin and is a schoolteacher. This household will receive the following points:

Works in Dublin            3 points

Public service employee    1 point

Total number of points    4 points

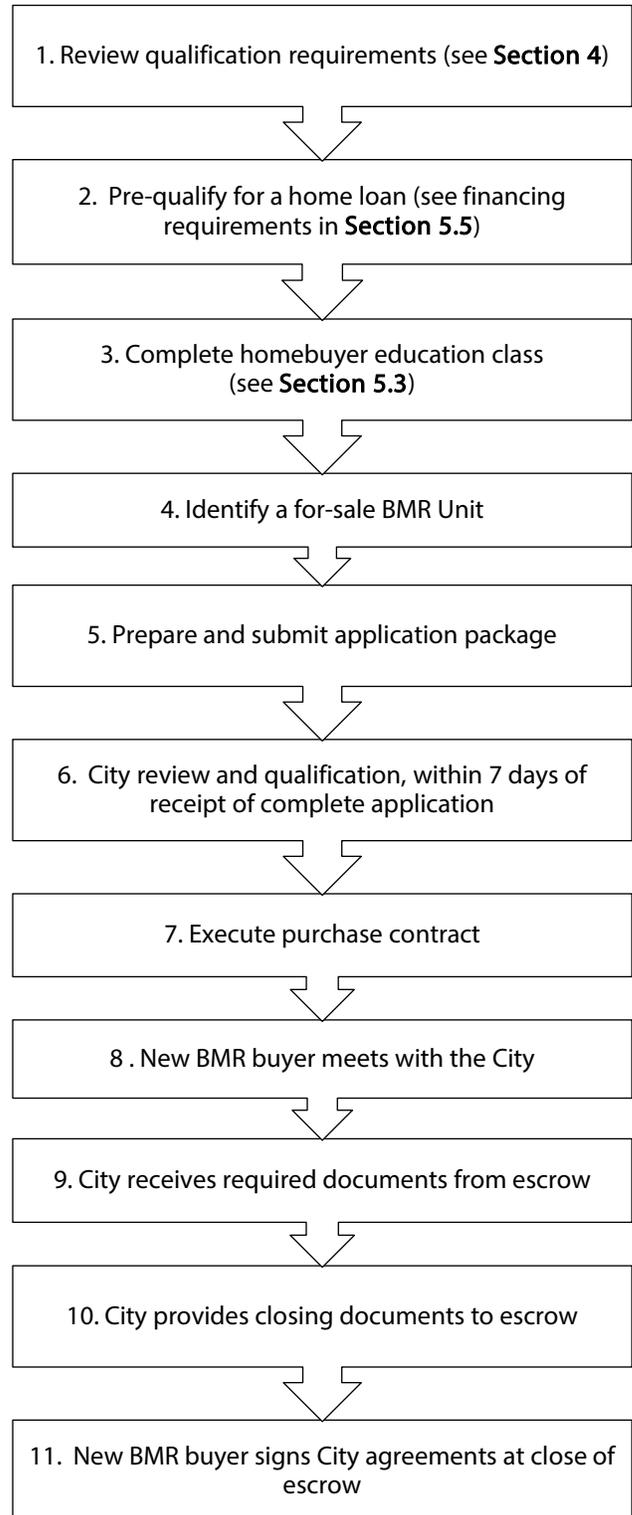
# 5 REQUIREMENTS FOR BUYERS OF BMR UNITS

## 5.1 BMR Unit Application and Purchase Procedures

The following are the general steps for qualifying for and purchasing a BMR Unit (see **Figure 4** for an overview):

1. **Review qualification requirements.** Potential BMR Unit buyers should review these Guidelines and confirm that they meet established qualification requirements (see **Section 4**).
2. **Pre-qualify with a lender.** Potential BMR buyers should work with a lender of their choosing to get pre-qualified to purchase a home. Potential financing must meet the requirements described in **Section 5.5**. This will be necessary for preparing a complete application and will give the buyers a clear understanding of the amount of money they are eligible to borrow for a home purchase.
3. **Homebuyer education.** Potential BMR Unit buyers must complete an 8-hour homebuyer education course (see **Section 5.3**).
4. **Identify a BMR Unit.** If eligible, potential buyers should identify and view BMR Units available for sale, including newly constructed units or resale units (most available BMR Units are listed on the City’s website).
5. **Prepare application package.** When the BMR buyers find a BMR Unit that they would like to purchase, the potential buyers should work with the real estate agent or developer’s sales staff to confirm eligibility, complete the application, and compile qualification materials. The complete application must be submitted to the City’s Housing Division.

Figure 4. BMR Application and Purchase Process



## 5 REQUIREMENTS FOR BUYERS OF BMR UNITS

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6. **City review and qualification determination.** The City will make every effort to review the application and qualification materials and determine program eligibility within 7 working days of receipt of a complete application. If approved, the City will send the developer or agent a conditional qualification letter (or similar document). The letter will be valid for 6 months from the issue date. Applicants who are determined to be ineligible will receive an ineligibility letter. Ineligible applicants may not reapply to purchase any BMR Unit for a period of one year from the date of the ineligibility letter.
7. **Execute contract.** Once the BMR buyer household has confirmed eligibility and received a conditional qualification letter from the City, the BMR buyer should execute a purchase contract with the seller. The agent should open escrow and provide escrow information to the City. The City will prepare escrow instructions and submit them to the escrow officer.
8. **In-person consultation.** Potential BMR buyers must schedule and complete an in-person consultation with City Staff (see **Section 5.2**).
9. **Sign paperwork.** Following receipt of required paperwork from the escrow company, the City will prepare the Resale Restriction Agreement and Performance Deed of Trust for the BMR buyer to sign at closing (see **Section 5.6**). Once the BMR Unit buyer has signed, the paperwork will be delivered to the City for signature. The City will forward this paperwork as well as a request for notice of default on the BMR Unit buyer's loan to the escrow officer for recordation.
10. **Monitoring and correspondence.** The BMR Unit Owner must complete annual surveys to the City and should contact City Staff with any questions. The BMR Unit buyer must contact the City when considering a refinance, to request approval for any planned capital improvements (see **Section 6.1**), and to notify the City of intent to sell.

### 5.2 In-Person Consultation

All members of the BMR Unit buyer household must attend an in-person meeting with City Staff to discuss BMR Unit resale restrictions and ongoing requirements. Following issuance of a qualification letter, City Staff will work with the buyers to determine a mutually convenient meeting time. At the meeting, buyers will review and sign a disclosure statement.

### 5.3 Homebuyer Education Program

Homebuyer(s) must successfully complete a City-approved Below Market Rate 8-hour homebuyer education class prior to the close of escrow and must provide the City with evidence of completion.

### 5.4 Title and Loan Requirements

All adult household members must appear as an owner or co-owner on the BMR Unit title and must co-sign for any purchase loan for the BMR Unit with the following exceptions:

1. Legal dependents of titleholders as claimed on the most recent tax return or legal minor children of titleholders. Spouses or domestic partners are not considered dependents.
2. Recent immigrants with insufficient credit history, defined as persons who have been in the United States for two years or less, as supported by entrance documentation or a sworn statement and lender documentation of the reason for loan denial, including a copy of the applicant's credit report.

## **5.5 Financing Requirements**

All BMR Unit buyers must be able to secure a loan through a lending institution for a BMR Unit. For new BMR Units, the developer may require that all applicants get pre-approval from the developer's preferred lender at the time of application. However, once an applicant receives approval to purchase a unit, applicants may use a lender of their choice, provided that the lender adheres to the City's Guidelines for acceptable loan products.

### **5.5.1 Acceptable Loan Products to Purchase or Refinance a BMR Unit**

The City reserves the right to reject loan products if the City believes in its sole discretion that there is a stronger likelihood that the loan product would potentially result in loss of the BMR Unit due to the purchasers' inability to comply with the terms of the loan.

Following is a nonexclusive list of the loan products that may be acceptable to the City. The list is not intended to be exhaustive, and other loan products may be evaluated upon request.

#### **Acceptable First Mortgage Loan Products**

- Fixed mortgages up to 40 years
- Maximum 100% combined loan to value

### **5.5.2 Prohibited Loan Products and Unacceptable Mortgage Features**

- Interest-only loans
- Negative amortizing loans
- Adjustable rate loans
- Balloon payment loans
- Lines of credit that exceed the resale price of the unit
- Stated income loans
- Excessive points and fees (more than what is typical of the market at the time)

### **5.5.3 Down Payment**

The applicant is required to make a minimum down payment of at least 3.5% of the sales price. Funds must be placed into escrow prior to the close of escrow and must come from acceptable sources and be verified and properly documented per Federal Housing Administration guidelines. The 3.5% down payment may not be used toward closing costs.

### **5.5.4 Down Payment Assistance**

The City reserves the right to reject down payment assistance products if the City believes in its sole discretion that there is a stronger likelihood that the down payment assistance product would potentially result in loss of the BMR Unit due to the purchasers' inability to comply with the terms of the assistance.

## 5 REQUIREMENTS FOR BUYERS OF BMR UNITS

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### 5.5.5 Debt to Income Ratio

A homebuyer's total debt to income ratio will be set from time to time by the City based on current financial or real estate market conditions.

### 5.5.6 First Mortgage Loan to Value Ratio

Borrower must provide funds in an amount equal to a minimum of 3.5% of the purchase price for use as a down payment. **The 3.5% must be applied to the purchase price so the combined loan to value ratio does not exceed 100%.**

### 5.5.7 Closing Costs and Deposits

The buyer is responsible for all closing costs related to the purchase of the BMR Unit, including, but not limited to, title fees, escrow fees, and loan origination fees (approximately 2% to 3% of the purchase price). The buyer may be "gifted" funds to pay for closing costs.

The buyer may take advantage of other down payment assistance programs to assist with closing costs with approval from the City.

## 5.6 Recorded Documents (Resale Restriction Agreement and Performance Deed of Trust)

The Inclusionary Zoning Ordinance requires that all BMR Units be restricted for a period of 55 years. As a result, BMR Unit buyers must execute a Resale Restriction Agreement and a Performance Deed of Trust. These documents must be signed by all title holders and recorded.

### 5.6.1 Highlights of the Resale Restriction Agreement

The following list highlights some of the restrictions in the Resale Restriction Agreement. This list is not intended to be exhaustive. A sample Resale Restriction Agreement is provided in **Exhibit 1**.

#### Principal Residence Requirement

The unit must be owner-occupied and shall not be used as an investment or rental property. BMR Unit Owners are required to occupy the BMR Unit as their Principal Residence. BMR Owners are prohibited from renting their unit without prior written approval from the City. Refer to **Section 6.2** for a discussion of circumstances in which a BMR Unit Owner may be approved to rent out a BMR Unit and related provisions.

#### Resale of BMR Unit

The City of Dublin is not responsible for locating or providing qualified buyers for BMR Units; however, all potential buyers must be qualified by the City before the sale can proceed. BMR Unit Owners may only sell their units to a Qualified Household or to the City for a restricted price calculated pursuant to **Section 6.4.1**. A BMR Unit Owner must follow the requirements set forth in **Section 6.4** when selling his or her unit. The City has the right of first refusal.

### Appreciation Share

Upon the first sale of the BMR Unit after the end of the 55-year term of the Resale Restriction Agreement, the owner must pay to the City an amount equal to 25% of the difference between the actual sale price and the adjusted resale price calculated pursuant to the formula set forth in **Section 6.4.1**. For example, if a unit was originally purchased for \$200,000 (actual sale price) and at the end of 55 years sells for \$500,000 (adjusted resale price), the equity in the unit is \$300,000. The amount owed to the City would be 25% of the \$300,000, or \$75,000.

### Title Changes

A BMR Unit Owner cannot make changes to the title on a BMR Unit without prior written approval from the City. BMR Unit Owners must request changes to title in writing before making **any** changes to the title to a BMR Unit and are responsible for all costs associated with adding or removing a person to or from the title.

In the case of a change in the household makeup, due to either marriage, divorce, legal separation, death, or other occasion that will cause a person to move in or to vacate the BMR Unit, BMR Unit Owners should contact the City to ascertain how to add or remove names from the Resale Restriction Agreement and Performance Deed of Trust.

### City's Option to Purchase

The City has the option to purchase a BMR Unit Owner's unit upon the occurrence of certain events, including, but not limited to, the sale of the BMR Unit, bankruptcy of the BMR Unit Owner, and foreclosure. The City may also choose to transfer its purchase option to an individual or organization of its choosing. A BMR Unit Owner must notify the City when it desires to sell its BMR Unit by submitting a Notice of Intent to Transfer (Exhibit B to the Resale Restriction Agreement) to the City. If the City decides not to purchase the unit, the City will send the BMR Unit Owner a letter, along with a packet of information that will assist the BMR Owner in finding another Qualified Household to purchase the unit.

### Refinancing BMR Units and Taking Cash Out

In general, BMR Unit Owners may refinance their units only to take advantage of a new loan that benefits the BMR Unit Owner financially (e.g., a lower interest rate with lower monthly payments). BMR Unit Owners must contact the City in writing for prior written approval of **all** refinancing. Taking cash out of the unit is not allowed unless the cash will be used for Approved Capital Improvements as outlined in **Section 6.1**.

### Annual Survey/Monitoring

Each year, the City of Dublin will monitor and require occupancy certification for all BMR Units. An annual survey will be mailed to the owner(s) of each BMR Unit, usually around the anniversary date of the purchase of the unit. Each owner **must** complete and return the survey along with qualifying documentation. Failure to return the survey and documentation could place the owner(s) in default of the Resale Restriction Agreement. In addition, pursuant to the Consent Agreement, the City may access and review the BMR Unit Owner's credit reports or other financial or personal information to verify the BMR Unit Owner's compliance with the Resale Restriction Agreement and these Guidelines.

## 5 REQUIREMENTS FOR BUYERS OF BMR UNITS

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### **Estate Planning**

Upon the death of a BMR Unit Owner, the inheriting owner must notify the City of the BMR Unit Owner's death within 30 days of the date of the death and must sell the BMR Unit to a Qualified Household at a restricted resale price within 180 days (or longer if approved by the City due to market conditions) unless (i) the inheriting owner is the legal child or stepchild of the BMR Unit Owner; (ii) the City verifies that legal child or stepchild qualifies as a Qualified Household; and (iii) the legal child or stepchild signs a Resale Restriction Agreement and a Performance Deed of Trust.

## 6 Requirements for Ownership and Resale of BMR Units

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### 6.1 Capital Improvements

BMR Unit Owners may make modifications to improve their home for maintenance and aesthetic purposes. For certain Approved Capital Improvements (i.e., permanent changes that improve the health, safety, or efficiency of the home), the adjusted resale price of the BMR Unit will be increased. It is the responsibility of the BMR Unit Owner to keep cost and accounting records of all Approved Capital Improvements.

#### 6.1.1 Procedure for Requesting Approval of Capital Improvements

In accordance with regulations adopted by the City, from time to time the City will approve capital improvements that improve the health and safety conditions of a BMR Unit. To receive such approval, the BMR Unit Owner must:

- Complete a Request for Capital Improvement form and submit the form along with a cost estimate for the capital improvement(s);
- Receive written approval from the City **prior** to commencing any improvements; and
- Submit documentation to the City within 30 days of completion of the improvements verifying that such improvements have been completed.

Upon receipt of the request and estimate for capital improvements, City Staff will review the request for compliance with these Guidelines. The City will categorize requests into **three categories**: (1) Eligible Capital Improvements; (2) Eligible Replacement and Repair; and (3) Ineligible Costs. A description of each category is provided in **Section 6.1.2**, below.

The City will send a letter to the BMR Unit Owner approving or denying the requested capital improvements within 30 days of original receipt. A copy of the letter will be maintained in the BMR Unit's file at the City of Dublin for inclusion in the adjusted resale price calculation when the unit is resold.

Once the City has approved the capital improvements, the BMR Unit Owner may proceed with the work, obtaining permits from the City Building Division, if applicable. Within 30 days of completion of the improvements and sign-off by the City Building Division, if applicable, the BMR Unit Owner must submit all of the following information:

- A copy of the receipt/invoice for each eligible improvement;
- Proof of payment, such as a cancelled check, bank account statement, or credit card bill;
- A copy of the building permit, if required; and
- A picture or pictures of the completed work.

The City may, at its discretion, visit the job site to view the completed work.

## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

### 6.1.2 Eligible and Ineligible Capital Improvements

Table 10 provides a nonexclusive list of example improvements that are eligible, partially eligible, and ineligible for capital improvement credit.

Table 10. Eligible and Ineligible Capital Improvements

	Eligible Capital Improvements	Eligible Replacement and Repair	Ineligible Costs
<b>Description</b>	Includes major structural system upgrades, some new additions to the unit, and improvements related to increasing the health, safety, and energy efficiency of the BMR Unit.	Includes in-kind replacement of existing amenities, repairs, and general maintenance that keeps the property in good working condition.	Include cosmetic enhancements, installations with limited useful life spans, and nonpermanent fixtures.
<b>Percentage Credited</b>	100%	50%	0%
<b>Example Improvements (lists are not exclusive)</b>	<ul style="list-style-type: none"> <li>Major electrical wiring system upgrade</li> <li>Major plumbing system upgrade</li> <li>Upgrade to double-paned windows</li> <li>Room additions (if room addition meets the criteria for the household size)</li> <li>Installation of additional closets and walls</li> <li>Alarm system</li> <li>Removal of toxic substances such as asbestos, lead, or mold/mildew</li> <li>Insulation</li> <li>Upgrade to Energy Star built-in appliances, as follows:                             <ul style="list-style-type: none"> <li>Furnace</li> <li>Water heater</li> <li>Stove/range</li> <li>Dishwasher</li> <li>Microwave hood</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Electrical maintenance and repair</li> <li>Plumbing maintenance and repair, such as:                             <ul style="list-style-type: none"> <li>Supply line</li> <li>Sinks</li> </ul> </li> <li>Flooring (tile, linoleum, or hardwood)</li> <li>Countertops</li> <li>Cabinets</li> <li>Bathroom tile</li> <li>Bathroom vanity</li> <li>Replacement of built-in appliances, as follows:                             <ul style="list-style-type: none"> <li>Furnace</li> <li>Water heater</li> <li>Stove/range</li> <li>Dishwasher</li> <li>Microwave hood</li> <li>Garbage disposal</li> <li>Fireplace maintenance or in-kind replacement (gas)</li> <li>Heating system</li> <li>Lighting system (recessed)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Fireplace tile and mantel</li> <li>Decorative wall coverings or hangings</li> <li>Window treatments (blinds, shutters, curtains, etc.)</li> <li>Installed mirrors</li> <li>Shelving</li> <li>Refinishing of existing surfaces</li> <li>Nonpermanent fixtures, such as:                             <ul style="list-style-type: none"> <li>Track lighting</li> <li>Portable appliances (refrigerator, microwave, stove/oven, etc.)</li> </ul> </li> <li>Installations with limited useful life spans, such as:                             <ul style="list-style-type: none"> <li>Carpet</li> <li>Painting of existing surfaces</li> <li>Window glass</li> </ul> </li> </ul>

### 6.1.3 Special Assessments

HOA-initiated Special Assessments are considered capital improvements and will be added to the resale price of the BMR Unit. In order to receive credit for Special Assessments, homeowners must submit the following documentation within 3 months of payment:

- Invoice for Special Assessment; and
- Proof of Payment, such as a cancelled check, bank account statement, or credit card bill.

### 6.1.4 Capital Improvements Minimum and Cap

To be considered in the adjusted resale price, the initial cost of capital improvements must total \$1,000 or more. In order to maintain the affordability of the BMR Unit for subsequent buyers, at the time of sale, BMR Unit Owners may receive credit for Approved Capital Improvements up to a maximum of 5% of the adjusted resale price.

### 6.1.5 Building Permits

It is the responsibility of the BMR Unit Owner to ascertain whether the work to be performed requires a City building permit and, if so, to obtain such permit. Any work that is done without a required permit will automatically be deemed ineligible as a capital improvement expense whether or not it fits within the definition of an Eligible Capital Improvement or Eligible Replacement and Repair. BMR Unit Owners may call the City of Dublin Building & Safety Division at (925) 833-6620 to inquire about building permits.

## 6.2 Owner Occupancy Exception

Ownership BMR Units are subject to an owner occupancy requirement. However, under the following circumstances, a BMR Unit Owner may be permitted to temporarily rent his or her unit to a Qualified Household (see **Section 4.1.2** for renter qualifications) to alleviate one or more of the following specified hardships:

- The BMR Unit Owner is unable to resell the unit as described in **Section 6.5**;
- The BMR Unit Owner must temporarily relocate for employment purposes; or
- The BMR Unit Owner must attend to personal health problems or the health problems of an immediate family member.

The BMR Unit Owner must request and obtain advance written permission from the City to rent the BMR Unit before advertising the unit and selecting a qualified tenant. Once the request is approved and a qualified tenant is selected, the BMR Unit Owner must execute a rental agreement that clearly states:

1. That the term of the rental is for a limited period of time (not to exceed 12 months);
2. The monthly rental payment (set in accordance with the maximum monthly rent calculated in accordance with the Ordinance and published annually or the BMR Unit Owner's total monthly housing costs [mortgage payment – principal plus interest, homeowner's insurance, homeowner's association fees, and property taxes], whichever is less).

## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

The BMR Unit Owner must submit a copy of the executed rental agreement to the City and, within 10 days of execution of the rental agreement, sign a Rental Regulatory Agreement with the City. The signed Rental Regulatory Agreement will be recorded against the property.

### 6.3 Refinance Requirements

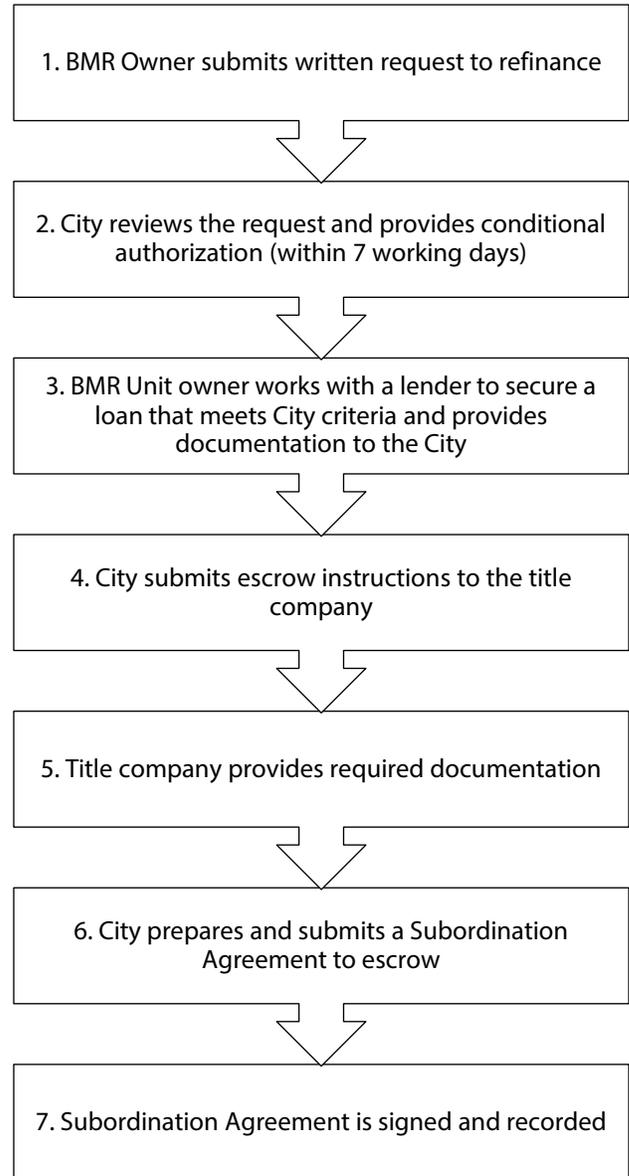
BMR Owners may refinance their units; however, financing terms are subject to the restrictions noted in **Section 5.5**, above, and the terms stated in the Resale Restriction Agreement. BMR Unit refinances are subject to an administrative fee. BMR Owners should contact City Staff for the current fee schedule.

#### 6.3.1 Refinance Procedure

BMR Unit Owners must comply with the following procedures when refinancing an ownership BMR Unit (see **Figure 5** for an overview of the refinance process):

1. **Inform the City.** The BMR Owner must inform the City of his or her desire to refinance. Notification must be submitted in writing and must be accompanied by a copy of the BMR Unit Owner's most recent mortgage statement.
2. **City Review.** The City will review the refinance request within 7 working days to verify that the proposed loan terms are in keeping with City requirements and terms outlined in the Resale Restriction Agreement. If the loan is found acceptable, the City will issue a conditional authorization letter to the BMR owner. The letter will outline documentation needed by the City, which typically includes a loan approval letter, good faith estimate, and truth in lending statement from a lender, as well as a preliminary title report, and appraisal.
3. **Document Preparation and Closing.** Once all requested documents are received and deemed acceptable, City Staff will issue escrow instructions to the title company. The instructions will outline the final documents the City needs to prepare closing paperwork. Once received, the City will prepare and submit a Subordination Agreement to the title company to be reviewed and signed by the BMR Owner and bank. The documents will then be signed by the City and recorded.

**Figure 5. BMR Unit Refinance Process**

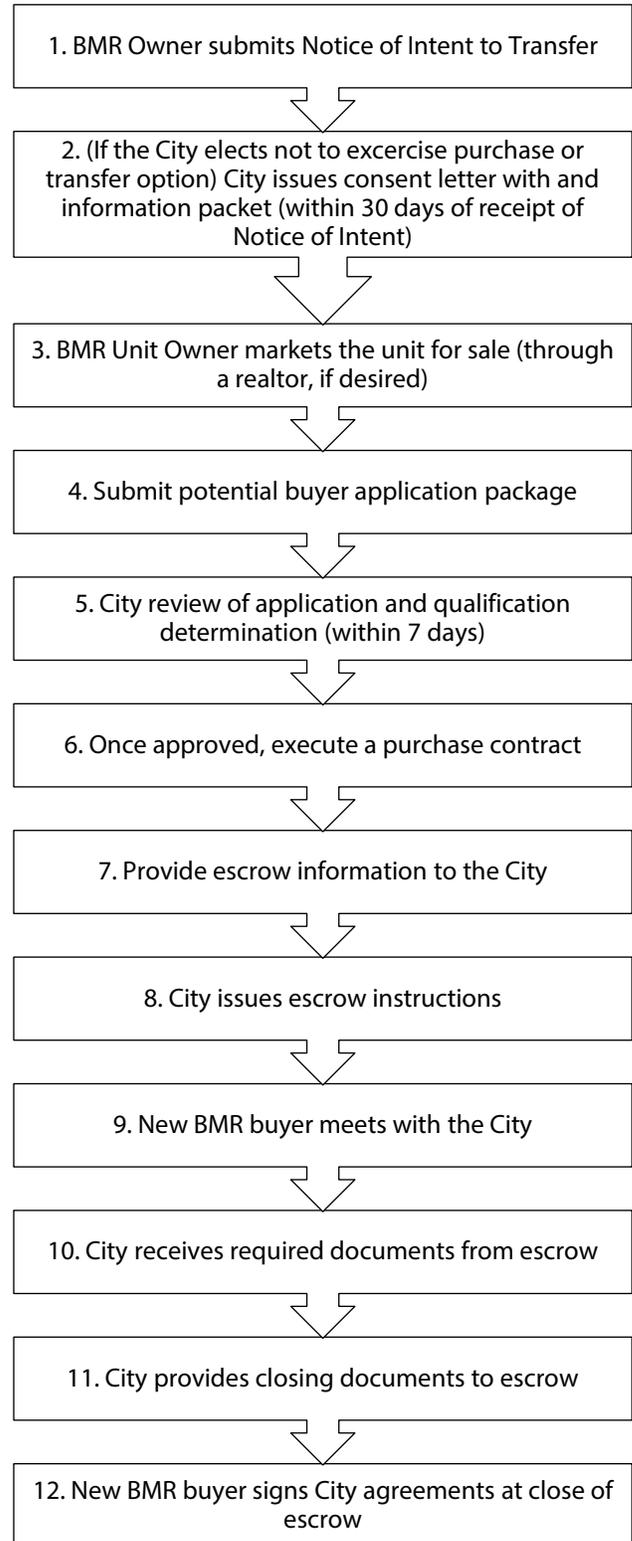


6.4 Resale Procedure

BMR Unit Owners must comply with the following procedures when reselling an ownership BMR Unit (see Figure 6 for an overview of the resale process):

1. **Inform the City.** The owner must inform the City of his or her intent to sell the unit by filling out a Notice of Intent to Transfer (Exhibit B to the Resale Restriction Agreement) and submitting it, along with any letters from the City for Approved Capital Improvements, to the City. (The owner may still decide not to sell their unit after submitting these documents.)
2. **City Option to Purchase/Consent to Transfer.** The City may exercise its option to purchase the unit or transfer its right to purchase the unit to a designated entity. The City will make this determination and inform the BMR Unit Owner of its intent within 30 days of receipt of the Notice of Intent to Transfer. If the City opts not to purchase the unit or transfer its purchase option, the City will send the BMR Unit Owner a Conditional Consent to Transfer letter and a packet of information that will assist the BMR Unit Owner in finding another Qualified Household to purchase the unit. The Conditional Consent to Transfer letter will be valid for 90 days from the date of the letter and will include the maximum restricted resale price of the unit (pursuant to the formula in Section 6.4.1) and any other conditions of sale.
3. **Marketing.** The BMR Unit Owner must market the unit and pay all fees associated with the sale of the unit. The BMR Unit Owner may resell the BMR Unit through a BMR Resale Program conducted by a for-profit or nonprofit organization. If the seller uses a real estate agent, the agent must contact the City to learn the requirements for listing the property.
4. **Potential Buyer Application.** At least 30 days

Figure 6. BMR Unit Resale Process



## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

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prior to the anticipated date of the close of escrow, the prospective buyer must submit the following documentation to City Staff for approval:

- a. The income documentation set forth in **Section 4.2.2**;
  - b. Evidence of completion of a below market rate homebuyer education workshop;
  - c. A loan pre-approval letter with Good Faith Estimate and Truth in Lending Statement;
  - d. A signed Disclosure Statement (Exhibit F of the Resale Agreement);
  - e. A signed Credit Authorization and Release Form, or similar document;
  - h. Copy of tri-merge Credit Report; and
  - i. Evidence of 3.5% available funds to be used as a down payment.
5. **Potential Buyer Qualification.** The City shall notify the owner within 7 working days of receipt of complete packet of documentation as listed above of its approval or disapproval of the prospective buyer.
6. **Execute Purchase Contract.** The BMR Unit owner executes a purchase contract with the qualified buyer and open escrow. Provide a copy of the contract to the City along with the name, address, and phone number of the title company handling the transaction and the name of the escrow officer.

### 6.4.1 Restricted Resale Price Calculation

The resale price of a BMR Unit is dependent on AMI at the time of sale and the value of Approved Capital Improvements.

The resale price is equal to:

1. The lowest of the (i) original price paid by the owner for the BMR Unit, increased by an amount equal to the original price multiplied by the percentage increase in AMI between the effective date of the Resale Restriction Agreement and the date the City receives the owner's Notice of Intent to Transfer (for instance, if the original price of the unit was \$200,000 and the median income increases 2% between the effective date of the Resale Restriction Agreement and the date the City receives the owner's Notice of Intent to Transfer, the unit price will increase by 2%, or \$4,000 to \$204,000); or (ii) the fair market value of the BMR Unit as determined by an appraiser approved in writing by the City; **plus**
2. The cost of Approved (in writing by the City) Capital Improvements; **minus**
3. The cost to repair damage to the BMR Unit and to place the unit into saleable condition (the determination of what is considered damage to a unit will be determined by the City). Such items may include, but are not limited to, ripped or torn carpet, damage to kitchen or bathroom appliances or fixtures, broken light fixtures, broken or missing tiles and/or grout around tiles, or damage to floors; **minus**
4. The amount of all costs advanced by the City for the payment of mortgages, taxes, assessments, insurance premiums, HOA dues, and/or associated late fees, costs, penalties, interest, attorneys' fees, pest

## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

inspections, resale inspections, and other expenses related to the BMR Unit which the owner has failed to pay or has permitted to become delinquent.

See **Example 10** for a sample maximum restricted resale price calculation.

### Example 10. Maximum Restricted Resale Price Calculation

A BMR Unit owner purchased her home in 2008 for \$300,000 and would like to sell the unit in 2015. The BMR Unit owner received City approval to replace worn carpeting (eligible at 50% of total cost) for a credit of \$2,000. The maximum restricted resale price is calculated as follows:

Purchase price (2008)	\$300,000
Median income (2008)	\$86,100
Median income (2015)	\$93,500
Percentage change in median income	8.59%
Increase in value	\$25,770
Approved Capital Improvement credits	\$2,000
Maximum Restricted Resale Price (2015)	\$327,770

### 6.4.2 BMR Unit Marketing

BMR Unit Owners shall follow current best practices for home marketing. Compliance with the following provisions constitutes a good faith marketing effort:

- **BMR Unit condition** – The BMR Unit shall be offered for sale in a condition similar to or better than at the time of the BMR Unit Owner’s purchase. Alterations that may result in a reduction in value (such as removal of walls, bedrooms, or bathrooms, or downgrades to appliances, flooring, or finishes) shall be corrected prior to the initiation of BMR Unit marketing.
- **Professional representation** – The BMR Unit Owner shall execute a listing agreement with an active realtor, currently licensed by the California Bureau of Real Estate.
- **Listing** – The BMR Unit shall be listed as an active property on the Multiple Listing Service (MLS) maintained by the East Bay Association of Realtors. The listing shall include the following:
  - **BMR Unit photographs** – at least one exterior photograph and at least three well-lit interior photographs of the BMR Unit in keeping with current industry practices. **Property data** – pertinent data including, but not limited to asking price (at or below the maximum restricted resale price) location, square footage, number of bedrooms, number of bathrooms, unit features and amenities, development features and amenities, current amount of homeowner’s association dues (if applicable), and information about parking spaces and restrictions.
  - **BMR Unit statement** – a clear statement that the home is a BMR Unit and that potential buyers must meet income and other requirements.
- **Professional showings** – The BMR Unit Owner and agent shall make the home available for showings including a broker’s open, weekend open houses, and individual showings with interested buyers and agents representing interested buyers.

## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

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- **City of Dublin website** – The BMR Unit Owner shall complete and submit the required form to the Housing Division to advertise the resale on the City of Dublin’s website.

### 6.4.3 Fees Associated with the Selling of a BMR Unit

The BMR Unit Owner is responsible for all fees associated with the sale of the unit including, but not limited to, any real estate fees, and the City’s Administration Fee of \$1,500, which may be adjusted from time to time.

## 6.5 Units Unable to Resell

### 6.5.1 Special Exceptions

The City may offer special consideration where the BMR Unit Owner has been unable to attract a buyer and at least one of the following conditions applies:

- The BMR Unit Owner has made a good faith effort to market the BMR Unit for 6 or more months, as defined in Section 6.4.2;
- The resale price for the BMR Unit is at or below current comparable market-rate units; or
- Financing for the BMR Unit is unavailable due to pending litigation in the project or a ratio of rental to ownership housing units in the project that is unacceptable to lenders.

On a case-by-case basis, upon request by the BMR Unit Owner, the City will consider granting one or more of the following exceptions on a one-time basis:

1. The BMR Unit Owner may rent the unit to a Qualified Household for a maximum of 12 months in keeping with the provisions of **Section 6.2**;
2. A one-time waiver of the first-time homebuyer qualification requirement for a potential BMR buyer;
3. A one-time waiver of the asset test for a potential buyer (potentially allowing a household that could pay in cash to purchase the BMR Unit);
4. A one-time allowance to exceed the maximum qualifying income level for the potential BMR buyer household by up to 20% of the maximum stated in the Resale Restriction Agreement for the unit, but not to exceed 120% of AMI at any time.

BMR Unit Owners who are unable to sell and may seek an exception should contact City Staff for a consultation.

### 6.5.2 Release of Resale Restrictions

Upon written request by the BMR Unit Owner, the City may authorize the release of resale restrictions and allow a BMR Unit Owner to sell the BMR Unit at a market rate price where the BMR Unit Owner has been unable to attract a qualified buyer and at least one of the following conditions applies:

- **Proven hardship.** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2) to sell the BMR Unit for 6 or more months and has a specific need to sell the home due to financial or personal hardship. Eligible hardships include:

## 6 REQUIREMENTS FOR OWNERSHIP AND RESALE OF BMR UNITS

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- A change in annual household income that has resulted in housing costs (mortgage payment, homeowner's association dues, property taxes, and property insurance) exceeding 50 percent of monthly income;
- Relocation of employment to a work site that is 60 miles or more from the City of Dublin; or
- The maximum restricted resale price, as provided by City Staff in the current Consent to Transfer letter is below or within 10 percent of that of recent (within three months) sales prices of comparable nearby market rate homes as evidenced by documentation of these comparable sales (list prices are not acceptable).
- **Excessive time on market.** The BMR Unit Owner has made a good faith effort (BMR Unit Owner has complied with ALL recommended marketing provisions as set forth in Section 6.4.2) to sell the BMR Unit for 9 or more months.

In either instance, sales in which resale restrictions are approved for release are subject to all of the following requirements:

1. **Excess proceeds.** The City is entitled to 100% of any increase between the market rate resale price as stated in the purchase contract and the maximum restricted resale price, as quoted by City staff in the Consent to Transfer letter.
2. **Resale price.** The allowable contract market rate resale price is subject to City approval, based on a formal evaluation by a City-approved appraiser. If the City requires the services of an appraiser other than the appraiser retained to evaluate the property in connection with the buyer's loan, the City will pay the cost of the appraisal (to be deducted from City proceeds in the closing process and reflected on the final settlement statement).
3. **Owner occupant.** The subject BMR Unit need not be sold to a qualified buyer (as described in Section 4.1.1) but must be sold to a buyer who will personally occupy the unit. Sales to investors are prohibited. The buyer's intent to occupy must be reflected in the ratified purchase agreement and on loan documents, if applicable.
4. **Loan repayment.** If the BMR Unit Owner took out a City First Time Homebuyer Loan Program loan, the loan must be repaid in full (principal plus interest) during or before the close of escrow.

# 7 REQUIREMENTS FOR OWNERS OF BMR SECONDARY UNITS

A BMR Secondary Unit is a legal secondary dwelling unit on an owner’s property that has been approved by the City of Dublin as a rental BMR Unit for purposes of compliance with the Ordinance and that is reserved for occupancy by Very Low-, Low-, or Moderate-Income households. The City Council may approve such units as part of the developer’s proposal for an alternate method of compliance with the Inclusionary Zoning Ordinance.

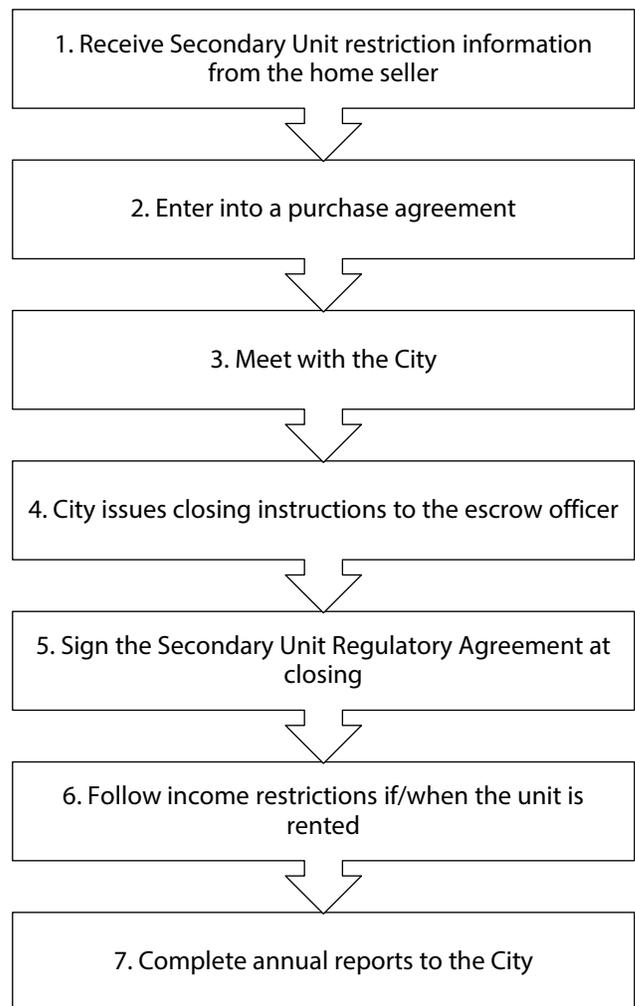
The owner of a BMR Secondary Unit must sign a Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants, which will be recorded against the property. The Agreement will remain in effect regardless of any sale, assignment, or transfer of the property, unless the Agreement is terminated by the City in writing.

## 7.1 Purchase Process

Buyers and sellers of homes that include a BMR Secondary Unit must coordinate with the City during the purchase and sale process (see **Figure 7** for an overview). Key steps are as follows:

1. **Initial Sale or Resale Notification.** For the initial sale of homes with a restricted secondary unit, the developer must explain the rent restrictions associated with the secondary unit and provide potential buyers with a sample of the Secondary Unit Regulatory Agreement (see **Exhibit 5**). At least 30 days prior the anticipated close of escrow, the developer must submit a completed contact sheet, a disclosure statement signed by the potential buyer, and a preliminary title report to the City.
2. **Meeting with City Housing Division.** Potential buyers of restricted secondary units must meet with City Staff to discuss the rental limitations and requirements associated with restricted secondary units and review the Secondary Unit Regulatory Agreement. At the meeting, buyers will review and sign a disclosure statement. For initial sales by the developer, the City will contact the potential buyer upon receipt of the contact sheet from the developer to arrange the meeting. For resales, real estate agents or potential buyers should contact City Staff directly to arrange the meeting.

**Figure 7. BMR Secondary Unit Sale Procedure**



3. **Escrow Instructions.** Following the meeting with the potential buyers, the City will issue escrow instructions to the title officer who will facilitate the closing of the transaction. The instructions will clearly inform the title officer of documents the City will need to review prior to providing the Secondary Unit Regulatory Agreement.
4. **Close of Escrow.** Following receipt and satisfactory review of all documents requested in the escrow instructions, the City will provide the Secondary Unit Regulatory Agreement for execution at closing.

### 7.2 Rental Requirements

If the owner rents the BMR Secondary Unit, the owner shall rent the unit to a Qualified Household (see **Section 4.1.2**). The owner shall ensure that all leases and contracts with tenants prohibit subleasing of the BMR Secondary Unit.

### 7.3 Tenant Income Verification

Prior to a household's initial occupancy of a BMR Secondary Unit and on every anniversary thereafter, the owner or its authorized agent shall obtain from each household written documentation verifying each tenant's eligibility containing all of the following, including additional documentation as City may reasonably require:

- Number of people in the household; and
- Total Household Income.

The owner or its authorized agent shall retain this documentation for not less than three years, and upon City's request, shall make the documentation available for inspection by the City and shall provide copies of the documentation to the City. The owner or its authorized agent may require each household to certify the verifying documentation.

### 7.4 Annual Report

Owner shall submit an annual report to the City in conformity with the requirements of Section 8.68.050.B of the Inclusionary Zoning Ordinance, together with a certification that the property is in compliance with the requirements of the Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants. The annual report shall, at a minimum, include the following information:

1. The address of the BMR Secondary Unit;
2. The monthly rent charged and proposed to be charged;
3. The number of people residing in the unit; and
4. The Total Household Income of residents.

Upon the City's request, the owner shall provide the City a copy of the verifying documentation and such additional information as City may reasonably request from time to time in order to show compliance with the Secondary Unit Regulatory Agreement and Declaration of Restrictive Covenants.

## 7 REQUIREMENTS FOR OWNERS OF BMR SECONDARY UNITS

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### 7.5 Management Responsibilities

The owner shall be responsible for all management functions with respect to the property, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Except as the City may otherwise agree in writing, the City shall have no responsibility for management or maintenance of the property. The contracting of management services to a management entity shall not relieve owner of its primary responsibility for proper performance of management duties.

### 7.6 Refinance Requirements

Owners of BMR Secondary Units must inform the City if they intend to refinance their home and are subject to an administrative fee for the City's review and preparation of the Subordination Agreement. The City and owner will follow a procedure similar to that outlined in **Figure 5** and described in **Section 6.3.1**, except that BMR Secondary Units are not subject to the same financing restrictions as BMR Units.

# 8 Exceptions and Appeals

## 8.1 Exception Requests

Any applicant believing that his/her situation warrants an exception to any part of these Guidelines due to circumstances outside of his/her household’s control, such as refugee status, special needs, or other hardships or special circumstances, may request an exception by submitting a written letter to the City prior to submitting an application of any kind. The exceptions request procedure is outlined in **Figure 8**.

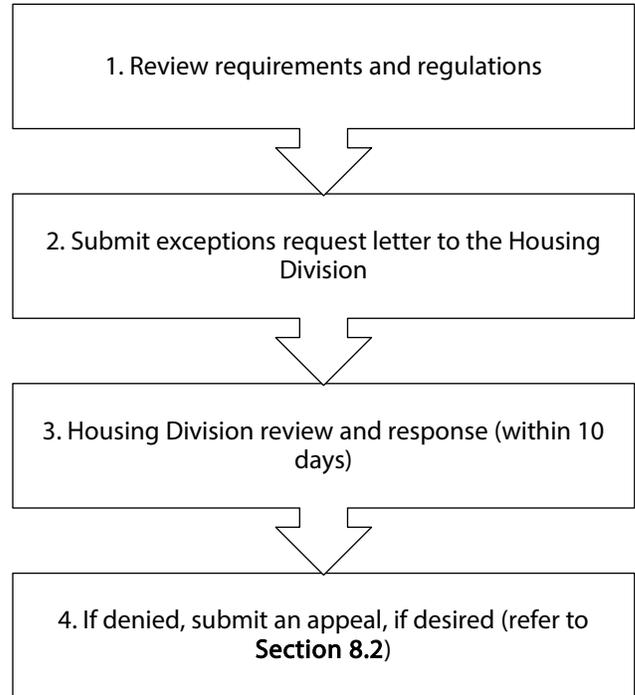
The exception request must specify which particular guideline or requirement the household cannot meet for reasons beyond their control or other valid reasons, and/or describe the household’s unique circumstances which warrant one or more specific exceptions to be identified in the letter, referencing the page(s) and section(s) of these Guidelines and/or application form related to the request.

If the need for an exception arises while an application is being reviewed, a request may be submitted at such time. If the need for an exception arises only after receipt of a determination letter issued by City Staff, an exception request shall be submitted as an appeal of such determination, according to the appeal process described in **Section 8.2**.

Exceptions related to disabilities (reasonable accommodations) may be requested according to this procedure, with a brief description of the exception(s) needed due to the applicant’s disability. Such requests will be handled in accordance with the City’s reasonable accommodations policy and these Guidelines.

The City will consider the requested exception and will provide a letter response within 10 calendar days, stating whether the requested exception can be granted in full or part and the reason for such decision. If denied, applicants may submit an appeal, as explained in **Section 8.2**.

**Figure 8. Exception Request Procedure**



8.2 Appeals Procedure

Applicants may appeal any determination letter, including denial of a requested exception, by providing a written explanation of the reasons for their appeal, and any supporting evidence they wish to provide. The appeals procedure is outlined in **Figure 9**.

City Staff is not authorized to assist applicants in drafting appeal letters, nor in determining appropriate grounds for appeal or appropriate forms of supporting evidence, beyond advising them of the contents of these Guidelines, application forms, and other published program materials. Applicants may refer to these Guidelines and application forms and/or seek their own advisors/counsel for guidance in determining what types of documentation would be reasonable.

The appeal shall be heard by the Community Development Director. The appeal letter must be delivered by mail, e-mail, or personal delivery within 10 calendar days of issuance of the determination letter being appealed. The Community Development Director will review the appeal and make a determination within 10 calendar days.

If denied, the applicant may submit an appeal letter to the City Manager. The City Manager will review the appeal and issue a determination within 10 calendar days or less of receipt. Determinations by the City Manager shall be final.

Unless the appellant opened escrow to purchase a BMR Unit prior to submittal of an appeal letter, no BMR Unit will be held or reserved for the applicant while an appeal is being considered, and offers from other prospective buyers may be accepted by seller(s) of BMR Unit(s) during this time. If the appellant is in escrow to purchase a BMR Unit, the City shall not issue any escrow instructions until a final determination regarding the appeal has been made, other than to inform the escrow officer that he/she may not close until further written notice from the City.

The City is not responsible for any actions of seller, lender, or other parties regarding the escrow during the appeal period which may jeopardize buyer’s ability to purchase the BMR Unit.

Figure 9. Appeals Procedure

