



MEMORANDUM

DATE: February 3, 2010

TO: Housing Commission

FROM: Douglas Frederick
Housing Manager

RE: **Consideration of Changes to the BMR Guidelines for Recommendation to the City Council**

Attached are three copies of the BMR Guidelines; the guidelines as they currently exist, a marked up copy of proposed changes to those guidelines, and a clean copy of the guidelines with the changes incorporated. Many of the changes were recommended by the Housing Commission in November and December, 2007. For the most part, the remaining items are additions that articulate existing practice and policy applications. Some of these existing practices are currently included in the Deed Restrictions, so their addition to the Guidelines is an attempt to create uniformity between the program's two policy documents. In addition under current practice, the Guidelines are used as an administrative as well as a policy manual. The Guidelines are a resource for program staff, interested applicants, and potential developers and some of the changes are semantic and organizational in nature, rather than substantive. These changes are an attempt to provide additional clarity and enhanced comprehension for the reader.

The changes are summarized in the order in which they appear in the Guidelines, as follows:

Table of Contents:

- Clarification to Section 6, eligibility requirements for purchase units only. Eligibility for rental units is already detailed under Section 11.

- Clarification/reorganization by adding a new Section 9, Occupancy Requirements for Owner-Occupied BMR Units. There is sufficient information to merit its own item/section.
- Clarification/reorganization by adding a new Section 10, Process for Resale of BMR Units. This was previously included under Section 8 but there is sufficient information to merit a separate section.

Section 3.4, Required Contribution for Residential Development Projects:

- Five (5) to Nine (9) Units – the requirement was clarified by adding specific language regarding income targeting for the required unit.
- Twenty (20) or More Units – Language was added that opens up the possibility for developers to propose meeting a portion of their inclusionary requirement by providing BMR units targeted to income levels below 110% of Area Median Income (AMI). Although the current language states that units are available to very low-, low-, or moderate-income households, Section 4.1.1 specifies that pricing for BMR units shall be based on what is affordable to households earning 110% AMI. Approaches such as smaller unit size, duet-style, and/or attached units could allow developers to price these units based on what is affordable to households earning less than 110% AMI. Because BMR pricing based on less than 110% AMI offers less return to developers, alternative housing approaches may allow developers to produce BMR units at a lower cost, thereby passing this savings on to our BMR buyers. Should the Commission wish to explore this concept further, there are many other ways to further incentivize developers and/or reduce their cost burden for producing units with greater affordability. These additional incentives have precedent with other BMR Programs in the state, hence they are not new and some research exists as to the effectiveness of these incentives.

Section 4.1.2, Initial Price for Rental Unit:

- The statement that in no case shall monthly rental amounts for BMR units exceed 75% of comparable market rate rents was recommended by the Commission. It ensures that in a weak rental market in which market rate rents are low, BMR rents remain affordable, thereby providing a viable option for households that cannot afford prevailing market rate rents.

Section 5.4, Sales Price Determination for BMR For-Sale Units:

- This has to do with the change recommended by the Commission that one and two person households have greater opportunities to purchase/rent BMR units. The change allows one person households to apply for two-bedroom BMR units and retains the current pricing formula for two bedroom units. The current formula states that two bedroom units are priced based on what is affordable to two-person households. This change was recommended by the

Commission because the program has and produces so few one bedroom units. Likewise under current existing practice, two-person households may apply for one bedroom units. Currently about half of households on the BMR waiting list are one- and two- person households.

Section 6, Eligibility Requirements for Households Applying to Purchase BMR Units:

- This section was reorganized to focus discussion on requirements for purchase units only, in an effort to enhance clarity and because a separate section (Section 8) “Requirements for BMR Rental Developments” already exists that identifies eligibility requirements for households wishing to rent. The Section 8 discussion of rental eligibility requirements lacks detail because no BMR rental units currently exist, however, this section can be expanded when rental units are anticipated.

Section 6.1, BMR Waiting List, and Section 6.1.1, Definition of Household:

- Section 6.1 was added because the Guidelines did not identify the eligibility requirements for getting on the BMR waiting list. These requirements are somewhat different than the requirements at actual time of rent or purchase of a BMR unit. The requirements are not new and have been in place or at least several years, if not since the inception of the program. Section 6.1.1 also articulates existing practice/policy and applies to the waiting list as well as time of purchase or rent.

Section 6.2.1, Eligibility by Living in Menlo Park, and 6.2.2, Eligibility by Working in Menlo Park:

- These do not contain substantive changes and are only an attempt to improve organization and clarity.

Section 6.2.2.2, Employer-Based Work, Section 6.2.2.3, Owning and Operating a Business at a Menlo Park Location, Section 6.2.2.4, and Section 6.3, Household Requirement, are clarifications on existing practice.

Section 6.4, First Time Homebuyer:

- This section was added per the Commission’s recommendation that only first time homebuyers be purchase BMR units. The Commission may wish to consider an exception to this requirement for applicants who currently own homes outside the area (for instance Contra Costa County) and commute to Menlo Park for work. Such applicants have purchased BMR units in the past and this exception would help to reduce commute traffic and meet the City’s goals of creating a more equitable live/work balance.

Section 6.5, Complete One-Time Pre-Purchase Homebuyer Education:

- This section was added per the Commission's recommendation that a system be created to identify qualified potential applicants/buyers early on and provide more one-on-one support, including homebuyer education/counseling to create qualified applicants. While it is staff's current practice to encourage households on the waiting list to engage in some form of home buyer education, many (if not most) do not. And although staff provides some one-on-one pre-purchase counseling and advice in conjunction with applying to purchase BMR units, no system exists to provide this service consistently or uniformly. Staff feels that simply encouraging applicants to participate in home buyer education will not produce the desired results, since this is essentially current practice. This solution would require minimal additional administrative staff time and could potentially increase program efficiency by increasing the number of qualified applicants.

Section 6.5.1, Non-Profit Homebuyer Education Provider:

- Staff researched this item a couple of years ago and found that various local organizations provide this service. Many provide one-time (and even long-term) home buyer education at no or very little cost. Others expressed interest in partnering with the City to provide home purchase education. These organizations included EPA Can Do, Project Sentinel, Consumer Credit Counseling Services, and Northern California Urban Development.

Section 6.5.2, Long-Term Education or Counseling Required for Certain Applicants:

- This is a response to an actual situation where a particular applicant household applied to purchase different units on several different occasions. Each time the applicant household was denied and advised to seek credit counseling. After applying many times and being denied due to entrenched credit issues, the applicant household finally decided to seek assistance with a credit counselor however not before significant staff time had been expended.

Section 6.7, Income and Asset Limits for Purchasers of BMR Units:

- This is an attempt to improve clarity and detail regarding what are, and are not, assets as they pertain to the BMR program. The Commission specifically recommended that dedicated education funds be exempted from the asset limit test.

Section 7, BMR Waiting List for Rental and For-Purchase Units:

- This section was added but articulates existing practice as it relates to the BMR waiting list. Because the City maintains one BMR waiting list that pertains to both rental and for-purchase properties, it makes sense to give it its own section.

Section 7.2.1, Annual Affirmation of Continued Interest in Remaining on the BMR Waiting List:

- This was added per the Commission's recommendation and existing practice.

Section 8, the BMR Unit Purchase Process: Buyer Selection and Sale Procedures:

- Discussion of resale procedures was removed and given its own section to provide clarity. In addition, Section 8.1.11 was added to articulate a change in current practice.

Section 9.1, Primary Residence, and Section 9.2, Refinancing and BMR Valuations:

- These sections articulate existing policy and practice and are also reflected in the BMR Deed Restrictions.

Section 9.3 Transfers of Title:

- This section was added to provide clarity to the program's rules and regulations regarding title transfers. It also reflects exactly what is said in the BMR Deed Restrictions so it provides uniformity between the two documents. The language itself is hopefully easier to understand than the legal language used in the Deed Restrictions. It was also recommended by the Commission.

Section 10.1:

- Language was added to create clarity regarding certain standards in the BMR resale process. This is a response to a recent situation with the selling owner of a BMR unit, who consistently questioned what is meant by "salable condition." The addition of this language should clear up any possible future confusion on the part of selling owners.

Section 10.2:

- The Commission recommended that the City's time for resale of units be increased from 90 to 180 days.

Section 13.3, Eligible Uses in Support of Very Low, Low, and Moderate Income Housing Development:

- These sections were added per the Commission's recommendation.

We have this on the tentative agenda for March 2nd for the City Council. Your recommendation concerning the changes will be added to the staff report. Please review and provide any suggestions or comments you may have.

ATTACHMENTS:

1. [Below Market Rate Housing Program Guidelines](#)
2. [Below Market Rate Housing Program Guidelines \(2/3/10 DRAFT\)](#)
3. [Below Market Rate Housing Program Guidelines \(2/3/10 DRAFT – IN REDLINE\)](#)