

## **BMR Ownership Provisions**

(Does not include sale/resale process)

### **Helpful Definitions to include in BMR manual:**

**Resale Restriction Documents:** Set of documents the City executes with the buyers of BMR Unit including the Resale Restriction with Option to Purchase, Deed of Trust, Promissory Note, Notice of Default, etc.

**Domestic Partner:** A "domestic partner" is defined in Section 297 of the California Family Code. An individual is considered a domestic partner of the owner by presenting the Declaration of Domestic Partnership filed with the California Secretary of State

### **A. General Requirements**

*NOTE: Is First time buyer status a requirement or a preference? If so, define- see below description which is based on the HUD HOME definition.*

#### **FIRST-TIME HOMEBUYER**

Applicants must be a "First time Homebuyer" which means a person who has not owned a residential property during the three-year period before the purchase of a BMR unit regardless of whether the individual's interest in such property results in a financial gain, such property is in another state or country, or the whether the property was used as the primary residence.

Exceptions include:

- An individual who owned a home with a former spouse or domestic partner during their prior marriage or partnership.
- An individual who has owned a principal residence that was not permanently affixed to a permanent foundation, according to applicable regulations.
- An individual who has owned a property that was not in compliance with state or local building codes, and which cannot be brought back into compliance for less than the cost of constructing a permanent structure.
- Timeshares.
- Loan co-signers from previous real estate transactions if the applicant was not on title and there was no financial gain to the applicant
- Acting solely as a trustee with no beneficiary interest for a trust that includes a residential property, subject to verification of income and assets from the trust.
- Being a named beneficiary of a trust that includes a residential property, but only if the trustor is living at the time.
- Ownership of shares in a not-for-profit limited equity co-op (rental income, if any, will be included when determining eligibility).

#### **OWNER OCCUPANCY**

*NOTE: "Principal place of residence" is most commonly defined as 10 months out of any calendar year. Flexibility on this requirement should be drafted in the Resale Restriction Documents and included in the guidelines with specific procedures described. Below assumes City can grant a waiver for good cause.*

place of residency, the owner shall live in the unit for at least 10 months out of each calendar year. In emergency or hardship situations, a temporary waiver may be granted on a case by case basis for a short period of time (generally a maximum of one year) by the City. The owner must submit a letter to the City requesting permission to rent their unit, the reason for the request with appropriate documentation and length of time requested. All rentals or leases must be pre-approved by the City. The unit shall be rented to a qualified tenant household at the same affordability level as specified in the owner agreement. The City reserves the right to contact Homeowner Associations to discuss the owner-occupancy status of program participants. The City reserves the right to monitor and inspect the BMR unit for evidence of owner occupancy and require documentation as deemed necessary by the City.

**INSURANCE**

The owner must obtain and maintain a standard homeowner’s insurance policy, with the City named as an additional insured for the inclusionary unit. The owner must ensure that the City receives a copy of evidence of insurance on at least an annual basis.

**HOMEOWNER’S EXEMPTION**

The owner must continuously claim a homeowner's exemption for property taxes for the BMR unit.

**MAINTENANCE OF HOME**

The BMR Owner shall not destroy or damage the BMR Unit and shall maintain the BMR Unit in compliance with all applicable laws, ordinances and regulations and in a good and clean condition and all appliances shall be in good and working order.

**B. Pricing Units**

*NOTE: The “affordable housing cost” below is based on a percentage (30-35%) of the monthly income category as described in H&SC 50052.5. Cal Admin Code title 25 Sec 6920 identifies the following to be included in the total monthly housing costs: PITI, The mortgage interest rate and down payment amount impact the mortgage amount and its payment. The assumptions of these factors impact the price greatly, so it is important to adopt assumptions and update them periodically.*

**INITIAL MAXIMUM AFFORDABLE SALES PRICE**

The maximum initial sales price of the BMR Unit shall be calculated by City staff and finalized when the affordable housing agreement between the developer and City is executed, using the assumptions outlined below. The following chart shows how the total monthly affordable housing cost is calculated by income category:

Income Category	Percent of AMI Used for Calculating Affordable Housing Cost Allowance	Percent of Income Used to Calculate Affordable Housing Cost Allowance
Very Low-Income	50%	30% of Income
Low-Income	70%	30% of Income
Moderate-Income	110%	35% of Income*

*\*(H&SC allows 28-35% of monthly income for Mod ownership)*

Assumptions

*NOTE: Figures in parentheses are the range of assumptions currently used by local programs.*

Once the total monthly affordable housing cost allowance from above is calculated, the following assumptions are used to determine the components of the monthly housing costs and establish the initial sales price.

- **Household Size:** The income for household size shall be the number of bedrooms plus one person, meaning one person for a studio, two persons for a one-bedroom unit, three persons for a two-bedroom unit, four persons for a three-bedroom unit, and five persons for a four-bedroom unit.
- **Downpayment:** Five percent.
- **Mortgage Term:** 30 years, amortized
- **Mortgage Interest Rate:** Two-year average, Freddie Mac Primary Mortgage Market Survey (<https://www.freddiemac.com/pmms>). ~~(1-10 years average)~~
- **Property Taxes:** 1.1% of sales price divided by 12. ~~(1.1 or 1.2%)~~
- **Hazard Insurance:** ~~\$75~~ ~~0.3% of sales price divided by 12.~~ ~~(.25-.49%)~~
- **Private Mortgage Insurance Premium (PMIP):** ~~None, if there is financing available that waives PMI.~~ ~~Otherwise,~~ 0.55% of loan amount divided by 12. ~~(.5-1.1% see FHA calculator~~ [https://www.fha.com/fha\\_requirements\\_mortgage\\_insurance](https://www.fha.com/fha_requirements_mortgage_insurance))
- **Maintenance:** ~~\$100 per month. (\$0-100)~~ \$50
- **HOA/Condo Dues:** The estimated or actual dues proposed for the unit from developer.
- **Utility Allowance:** Schedule issued annually by the County of San Mateo at <https://www.smcgov.org/housing/utility-allowance-schedules>. Where the developer can provide estimates of actual utility costs, these estimates may be used. Adjust utilities as needed if construction includes significant energy efficiency features that decrease utility usage.

**Commented [SC1]:** Upon further research, this is too high for condos, who only need to cover interiors and contents. Assume 70-75/month.

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**Commented [SC2]:** Although individuals may have sufficient DP to avoid MI, this pricing model assumes 5% so will require MI.

These may be updated by staff from time to time.

**Example: 2024 Moderate Income 2 Bedroom Condominium**

<u>Line</u>	<u>Income Available for Housing</u>	<u>Calculation/Explanation</u>	<u>Amount</u>
<u>A</u>	<u>Assumed Household Size</u>	<u># of bedrooms plus one</u>	<u>3</u>
<u>B</u>	<u>2024 Median Income</u>	<u>Based on Assumed Household Size</u>	<u>\$167,950</u>
<u>C</u>	<u>Annual Income used for calculating Monthly Housing Cost</u>	<u>110% of Area Median Income for a Household of 3</u>	<u>\$184,745</u>
<u>D</u>	<u>Annual Income Available for Housing</u>	<u>35% of Annual Income line C</u>	<u>\$64,661</u>
<u>E</u>	<u>Monthly Income Available for Housing</u>	<u>Divide Annual Income line D by 12</u>	<u>\$5,388</u>

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<u>Line</u>	<u>Monthly Housing Costs</u>	<u>Calculation/Explanation</u>	<u>Amount</u>
<u>F</u>	<u>Utility Allowance</u>	<u>San Mateo County Housing Authority Utility Schedule</u>	<u>\$325</u>
<u>G</u>	<u>Homeowner Association (HOA) Dues</u>	<u>Based on estimated or actual HOA fees</u>	<u>\$400</u>

<u>H</u>	<u>Property Maintenance Reserve</u>	<u>Estimate in addition to HOA dues</u>	<u>\$50</u>
<u>I</u>	<u>Property Insurance</u>	<u>Assume Condo Policy HO6</u>	<u>\$70</u>
<u>J</u>	<u>Property Taxes</u>	<u>1.2% of sales price</u>	<u>\$593</u>
<u>K</u>	<u>Mortgage Insurance Premium (MIP)</u>	<u>FHA rate based on LTV and loan amount (.55% of loan amt)</u>	<u>\$261</u>
<u>L</u>	<u>Monthly Housing Cost (Before Mortgage Payment) Subtotal</u>		<u>\$1,699</u>
<u>M</u>	<u>Income Available for Mortgage Payment</u>	<u>Monthly Housing Income less Monthly Hsg Costs: Subtract Line L from Line E</u>	<u>\$3,689</u> -

<u>Line</u>	<u>Mortgage and Sales Price</u>	<u>Calculation/Explanation</u>	<u>Amount</u>
<u>N</u>	<u>Interest Rate</u>	<u>Freddie Mac 24 month fixed-rate average</u>	<u>6.7%</u>
<u>O</u>	<u>Term (Years)</u>	<u>Industry standard</u>	<u>30</u>
<u>P</u>	<u>Loan Amount</u>	<u>Based on Monthly Income Available for Mortgage, Interest Rate and Term</u>	<u>\$569,994</u>
<u>Q</u>	<u>Down Payment</u>	<u>5% of Sales Price (rounded)</u>	<u>\$30,000</u>
<u>R</u>	<u>Maximum Affordable Sales Price</u>	<u>Downpayment plus Loan Amount (rounded)</u>	<u>\$600,000</u>

**MAXIMUM AFFORDABLE SALES PRICE UPON RESALE**

*NOTE: Determine how to calculate resale price based on policy and regulatory docs. Some programs use the same formula as the initial price. Others use an index such as increase in median income or CPI to apply to original sales price. The advantage of index is it is simpler to explain and is easier to understand by buyers.*

The City will calculate Maximum Resale Price for the BMR unit.

-The Maximum Resale Price shall be the lower of 1) Fair Market value, or 2) the price at which the owner purchased the BMR unit adjusted by the percentage increase or decrease in the area median income at 100 percent for a family of four in San Mateo County as established by HCD.

Alternate: The calculation of the Maximum Resale Price for the BMR Unit will follow the same methodology as the calculation for the initial sales price. The City reserves the right to adjust the price so that the seller is not required to sell their unit for less than they purchased it.

This Maximum Resale Price shall include adjustments by the market value of any documented, permanent capital improvements (as defined below) to the BMR unit approved by the City. As a condition of obtaining City approval of such an adjustment, the owner shall present to the City written documentation of all expenditures made by the owner for which an adjustment is sought.

The Maximum Resale Price shall also include adjustments by the cost of Items necessary to put a Property into sellable condition shall be determined by the City or its designee, and may include cleaning, painting, and making needed structural, mechanical, electrical, plumbing, and fixed appliance repairs and other deferred maintenance repairs. The amount of the downward adjustment due to deferred maintenance shall be based on a pest control report, inspection report, or other reasonable estimate of repair costs.

*NOTE: Determine how to calculate capital improvements and ensure Resale Restriction Documents includes specifics. Do you accept actual costs? Do you depreciate the improvements? Is there a minimum or cap on value of Improvements? How do you differentiate between normal wear and tear repairs and capital improvements? Do you require repairs to be performed before escrow, deposit into escrow or adjust sales price?*

### Capital Improvements

The Maximum Resale Price may be adjusted to account for the depreciated value of eligible capital improvements made by the Owner to the unit.

- Eligible capital improvements are defined as substantial structural or permanent fixed improvements which cannot be removed without substantial damage to the residence or substantial or total loss of value of the improvements. The initial cost of the improvement must be at least \$2,000.
- Ineligible costs include cosmetic enhancements (such as paint, wallpaper, mirrors), installations with limited useful life spans (such as paint and flooring) and non-permanent fixtures (such as window treatments, shelving, portable appliances, lighting fixtures). Homeowners may undertake these projects at their discretion; however, they will not be given capital improvements credit.
  - The exception to this definition applies to kitchen and bathroom renovations. In those cases, flooring, paint and total cost of renovation will be considered and the depreciation schedule will be based on the entire project.
- The amount of such adjustment shall be based on the depreciated value of the improvements based on the cost and date of installation of the improvements and the type of improvement.
  - Depreciation shall be computed as shown by the Marshall Valuation Service (Marshall and Swift LP) or based on any other reasonable source as determined by the City.
  - The adjustments are calculated assuming items are in "good" condition. If at the time of sale these items show damages more than normal wear, they could be downgraded to low or average. "Excellent" will be considered upon inspection if the items are less than 5 years old.

BMR Owners must submit capital improvement documentation to City within 6 months of the completion of the project. Upon receipt of a complete capital improvements claim, staff may arrange a site visit to inspect the completed project. Once the improvements have been verified, the City will send a written response to approve or deny the submitted capital improvements within 60 days of the original receipt. This information will be placed in the property file for use when the property is being sold.

### Special Assessments

Special assessments initiated by a Homeowner's Association are considered capital improvements and will be added to the resale price of the home at the full amount of the special assessment paid by the BMR

Owner. In order to receive credit for special assessments, homeowners must submit the following documentation within 6 months of payment:

- An invoice for the special assessment; and
- Proof of payment, such as a cancelled check, bank account statement or credit card bill.

### C. Loan Requirements

*Note: Are there any income asset provisions that are different for ownership than rentals? An asset cap might be higher or consider deducting down payment amount from assets. Example: Assets that do not exceed 50% of the purchase price, or 100% of the purchase price for seniors, excluding the amount that will be used for the down payment and closing costs. A fixed dollar amount could be used but may need to be updated from time to time.*

#### ASSET LIMITATIONS

The maximum asset limit for purchasers is 50% of the Maximum Sales Price.

#### LOAN TERMS

The first mortgage used by the applicant(s) must be for no more than a 30-year term. Loans must also be fixed rate and fully amortizing. Balloon payments, negative amortization, adjustable and/or non-prime interest rate loans, prepayment penalties, and stated-income loans are prohibited. The City, in its sole discretion, may identify other prohibited loan characteristics

#### DOWN PAYMENT

The applicant must be able to make at least a 3 percent down payment from the borrower's own funds. The applicant's down payment funds must be held in an account in the applicant's name for at least six months prior to submitting this application. Funds used for the 3 percent down payment may not be used toward closing costs. The buyer is responsible for paying any applicable closing costs; however, gift funds may be used for closing costs.

The maximum down payment shall be 50% of the Maximum Affordable Sales Price.

#### GIFT FUNDS

*NOTE: Restrictions on the max amount of gift funds vary widely including: cap of 20% of sales price less buyer's down payment, 17% (assumes buyer DP of 3%) 20-50% of sales price regardless of buyer funds.*

The applicant may use gift funds that do not exceed 20 percent of the purchase price. Gift funds may not be used for the 3 percent down payment requirement. All gifts must be clearly identified in a gift letter which must be submitted with the application that includes the following:

- The amount of money being provided.
- The relationship of the gifter to the applicant.
- Statement, under penalty of perjury, that the applicant is not required nor expected to repay the funds, nor is the gifter to hold title for the property, in whole or in part, upon the close of escrow or in the future.

- Attached to the letter, the applicant must provide documentation of the funds to be gifted (e.g., most current account statement).

#### TITLE/OWNERSHIP

BMR Units may be vested in any form as long as all adult members of the household are titleholders and appear on title as a fee owner for the BMR Unit.

The City may grant exemptions at its discretion if warranted. Examples of reasons for an exception might be:

- A disabled person or elderly adult who is not capable of making major decisions for themselves. Another member of the household must have power of attorney for this individual.
- Legal dependents of titleholders as claimed on the most recent federal income tax return. Spouses or domestic partners are not considered dependents.
- Household members younger than the age of 24 who are the natural or adopted child of a titleholder, will reside in the BMR unit as their primary residence, regardless of being named as a dependent on the federal tax form of the titleholder.
- Recent immigrants with insufficient credit history as defined as a person who has been in the United States for 2 years or less as supported by entrance documentation or a sworn statement and lender documentation

Co-signing for a loan for a BMR units by a non BMR household member is not allowed.

#### HOME BUYER EDUCATION

Completion of a first-time homebuyer education course is required before within 6 months of completing closing the purchase of an Affordable Homeownership BMR Unit. This course may be completed by one of the mortgage applicants. Approved courses can be found in Exhibit A “ Approved Homebuyer Education Courses”.

#### D. Refinance, Subordination, Junior Liens

NOTE: *Do you allow cash out as long as underwriting criteria is followed? Do you want to prepare subordination agreement or have title/lender prepare? Also remember to file a new Notice of Default for new loan.*

#### REFINANCE/SUBORDINATION

The City will agree to subordinate its lien to allow a refinance of the first lender deed of trust if the following conditions are met:

- The total principal amount of all secured loans against the property does not exceed the greater of:
  - ninety percent (90%) of the Restricted Resale Price calculated as of the date the request was made, or
  - the remaining balance of the original first deed of trust as of the date the request was made.
- If the remaining balance of the original deed of trust exceeds ninety percent (90%) of the Restricted Resale Price, then the refinanced first deed of trust must reduce the owner’s principal and interest payments.

- The refinanced first deed of trust is fully amortized with a fixed interest rate for a minimum of a five (5) year period, allows no negative amortization and requires no balloon payment.
- The total new housing cost to the owner after the refinance does not exceed the owner’s ability to pay and remains affordable to the owner.

The owner shall submit the subordination request using the form, Exhibit B “Owner Request for City Subordination to Refinanced First Lender Loan” along with a processing fee of \$\_\_\_\_\_. The applicant shall provide the City with sufficient time to collect and review the required documentation. City staff will process refinancing requests as quickly as possible but will not be liable for any loss to the owner as a result of any delay.

**JUNIOR LOANS AND EQUITY LINES OF CREDIT**

Mortgage loans or equity lines of credit junior in lien priority to the City’s Resale Documents are not permitted, unless approved by the City in writing ahead of time. The City will only approve junior mortgage loans or equity lines of credit where the total of all debt secured by the home does not exceed ninety percent (90%) of the Restricted Resale Price calculated at the time of the owner’s request to refinance. The City will not approve any mortgage loan or equity line of credit which includes negative amortization.

**E. Permitted Transfers**

*NOTE: This section needs to reflect the language in Resale Documents. Inheritance provisions vary widely.*

Owners who wish to make changes to the title must first notify the City in writing prior to any changes to the title on the property. The homeowner must provide the City with notice of these permitted transfers at least fifteen days before they occur, except that if a transfer occurs due to inheritance or to the death of an owner, the City must be notified within 30 days. No permission from the City is required for the following transfers, but all owners of the inclusionary unit remain bound by the Resale Restriction Documents:

**TRANSFER TO SPOUSE, DOMESTIC PARTNER, OR CO-OWNER**

- A transfer by an owner who marries or enters into a domestic partnership where the spouse or domestic partner becomes the co-owner of the property. An owner intending to add a spouse or domestic partner must submit their marriage certificate or domestic partner registration to the City for review. Adding a person as owner to the title, other than a new spouse or domestic partner, is prohibited unless permission is granted in writing by the City.
- A transfer between spouses as part of a dissolution proceeding, or between domestic partners as part of the dissolution of a domestic partnership. Owners must submit their dissolution documents to the City for review
- Upon the death of a co-owner, the City may require such co-owner to execute an addendum to City documents related to the BMR for-sale unit by which the co-owner shall assume the same rights and responsibilities with respect to those documents as the Owner

**TRANSFER TO A TRUST**



Placing the home into a trust. A copy of the trust must be submitted to City. No provisions of the trust may conflict with the provisions of the Resale Restriction Documents. City staff reserves the right to revise and request revisions to the provisions of any trust agreement.

#### TRANSFER BY INHERITANCE

If the owner dies and there is no surviving co-owner, an heir must provide written notice to City within 30 days of death and if the heir wishes to own and live in the unit, they must submit income documentation. If the heir is verified as income and asset eligible, they shall execute a new set of Resale Restriction Documents for a new 55 year term. If the heir is not income eligible, has assets that exceed the maximum allowed, or decides to sell the property, it must be sold to another eligible buyer in accordance with the provisions of the Resale Restriction Documents.

In the case of an heir who is a current household member at the time of the death of a titleholder, that heir shall be allowed one (1) year to live in the BMR unit before either qualifying to inherit it as a qualified income eligible purchaser household or resell it under the procedures. The heir shall only be entitled to receive the BMR owner's proceeds from said transfer.

### F. Monitoring

*NOTE: Monitoring ownership units is challenging. One approach is to collect annual documentation that shows the owner's name at the BMR unit location. This can be difficult to collect many people ignore the request. Another approach is to conduct annual review from assessors' office that shows if homeowners exemption is being claimed and if mailing address differs from property address. Neither method works if someone keeps paperwork current but resides at another location.*

The City will annually mail owners a letter requesting documentation to show compliance with the requirements of the BMR Program. The letter from the City will include a list of the types of documentation required at that time, which will include a self-certification of occupancy and document(s) verifying owner occupancy which may include insurance statements, DMV vehicle license and registration documents, personal income tax forms, and utility or property bills, showing the Participant's name and the home address.

If the Owner or successor(s) fails to perform an annual certification within 90 days of receiving their annual letter, they may be fined \$1,000. The City shall continue to fine the owner or successor(s) an additional \$1,000 for every 30-day period that passes without resolution or response to the City's requests. If unpaid by the owner, the City shall take steps to assess these fines as a special assessment against BMR unit.

### H. Non Compliance

*NOTE: This section needs to reflect the language in Resale Restriction Documents, which may vary by jurisdiction.*

#### DEFAULT

If an owner violates the terms of the Resale Restriction Documents, the owner can be found to be in default of the agreement. The most common reasons for default include:

- Failure to occupy the property as the principal residence of the owner or renting the property without the City's permission.
- Non-permitted transfer of the property without notification to the City.
- Foreclosure on another deed of trust or mortgage.
- Bankruptcy.
- Misrepresentation when acquiring the BMR unit
- Placing an additional encumbrance on the property without City approval.

The City may institute any appropriate legal actions or proceedings necessary to ensure compliance with the BMR program, including but not limited to curing of the default, forcing the sale of the unit and/or imposing any criminal or civil penalties that apply. In the event the City must institute legal action to enforce the provisions of the resale documents, the City shall be entitled to recover its administrative costs, including reasonable attorneys' fees, in addition to any other remedy provided by the court.

If an owner sells a BMR unit during the 55-year affordability term at a price higher than the Maximum Resale Price, the City will be entitled to receive from the difference between the Maximum Resale Price and the actual sales price of the BMR unit.

#### FORECLOSURE

If the BMR unit goes into foreclosure, the City (pursuant to a subordination agreement with the first mortgage lender) shall have the same rights as the owner to cure the defaults and prevent foreclosure of the home/

**Exhibit A**  
**Approved Homebuyer Classes**

Applicants are responsible for paying any required fees for attending the homebuyer class of their choice.

**IN-PERSON OR ONLINE:**

Project Sentinel

Located in Milpitas. Call (800) 339-6043 for updates on in-person classes. Classes currently available online: <https://www.housing.org/first-time-homebuyer-education>.

**ONLINE CLASSES**

Online Classes are available from the following non-profit housing counseling agencies, often in various languages:

<https://www.balancepro.org/workshops/>

<https://www.hometrek.org/>

<https://www.knowdebt.org/services/homebuyer-education-course/>

Other providers may also be available. If you have found a class you prefer from another provider, check with Housing staff to determine if it is HUD-approved and meets the Program requirements.

**EXHIBIT B**  
**Owner Request for City Subordination to Refinanced First Lender Loan**

To: City  
From: \_\_\_\_\_  
Property Address: \_\_\_\_\_  
Date: \_\_\_\_\_

The Owner hereby requests the Agency to approve the Owner's refinance of the existing first mortgage on the Property. The Owner provides the following information which it certifies to be true and correct:

1. Preliminary Title Report.
2. Signed Loan Application for New Loan.
3. Preliminary Loan Approval Document from New Lender that Describes New Loan Terms and Conditions.
4. Estimated HUD-1 Settlement Statement.
5. Prepared Subordination Agreement (to be executed by City upon approval).
6. Prepared Request for Notice of Default (to be executed by City upon approval).
7. Letter from owner to describe the reasons for refinance.
8. Copy of the current Homeowners Insurance Policy showing valid insurance dates and amounts and Listing the City of San Mateo as an Additional Loss Payee
9. The charge for the process and execution of the Subordination Agreement is \$ \_\_\_\_\_ payable to the \_\_\_\_\_.

The Owner hereby certifies the above information is true and correct and this Owner Request is executed under penalty of perjury on \_\_\_\_\_.

By: \_\_\_\_\_  
Owner