

Below Market Rate Rental Housing Programs

ADMINISTRATIVE PROCEDURES AND GUIDELINES

Issued January 17, 2024





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1 IMPLEMENTATION AUTHORITY

Authority for implementation of these Below Market Rate and Workforce Rental Housing Administrative Procedures and Guidelines (“BMR Guidelines”) is provided by the City of Foster City Municipal Code, Chapter 17.90.020 (E).

This document replaces the BMR Administrative Procedures and Guidelines, last updated on March 19, 2020.

2 INTRODUCTION

This document provides administrative procedures and guidelines to implement the City of Foster City’s (“City”) Below Market Rate (“BMR”) Rental Housing Program, and the Workforce Housing Program (“Workforce”). These Administrative Procedures and Guidelines may be amended and updated from time to time by the Community Development Department Director.

The purpose of these BMR Guidelines is to provide clear and consistent guidance, procedures, and best practices to implement Chapter 17.90 of the Foster City Municipal Code <https://www.codepublishing.com/CA/FosterCity/> and affordability restrictions, and regulatory agreements, as well as to promote the goals of the City's Housing Element 2023-2031, as adopted on May 22, 2023, specifically fair housing and anti-discrimination priorities as stipulated in the Fair Housing Action Plan in Chapter 3, Affirmatively Furthering Fair Housing. <https://engagefostercity.org/housing-element>.

3 FAIR HOUSING

The priorities of the City’s Fair Housing Action Plan in the 2023-2031 Housing Element include:

1. Address disproportionate impacts by increasing the supply of affordable housing and providing more housing choices throughout the City.
2. Protect Tenants from displacement through an anti-displacement strategy.
3. Address housing discrimination through fair housing information and training.
4. Address housing discrimination by providing additional support and opportunities for housing to meet special needs.

The BMR and Workforce Programs must comply with AB 686 (https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686_summaryhousingelementfinal_04222020.pdf), which requires all public agencies to administer programs and activities related to housing and community development in a manner that affirmatively furthers fair housing.



3.1 PROPERTY MANAGER REQUIREMENTS

BMR and Workforce Property Managers and all property management and maintenance staff must comply with Fair Housing laws and regulations and complete Fair Housing training (see Section 12, Training Requirements). In addition, Property Managers are required to notify all BMR and Workforce Tenants of annual City-provided informational sessions on Fair Housing and work in partnership with City Staff to help provide reasonable accommodation to those with disabilities who need assistance in attending the annual informational session.

4 COVERED PROPERTIES

These BMR Guidelines apply to all rental properties in the City that are subject to an affordability restriction. Owner-occupied BMR properties are covered by separate guidelines.

Chapter 17.90 of the Foster City Municipal Code defines “below market rate dwelling unit” as “a dwelling unit in a residential development project that is restricted for sale or rental to and occupancy by an eligible household at a below market rate ownership cost or below market rate rent.” Workforce Housing is designed to make it possible for public servants (including first responders, public employees, and teachers) to live near where they work, and falls within the definition of “below market rate dwelling unit.” Different requirements apply to Workforce Housing compared to other BMR Housing. For example, Workforce Housing is deed-restricted for rental rates but not incomes. For clarity, these BMR Guidelines distinguish between the Below Market Rate Housing Program and the Workforce Housing Program as needed.

5 DOCUMENTS REQUIRING CITY APPROVAL PRIOR TO LEASING

5.1 MARKETING PLANS

Owners or their authorized agents must submit a marketing plan to the City in advance of initial leasing up a property and prior to reopening a closed Waitlist. For properties with extremely low-income and/or accessible or adaptable units and/or units that are designated as supportive housing are also subject to Section 5.2 below. Marketing plans shall include, at a minimum:

1. Procedures and requirements for determining eligible households for rental of rental units.
2. Minimum and maximum occupancy requirements as provided in the affordability restriction on the property, if applicable.
3. Initial and ongoing marketing, advertising, outreach policies, and a list of target agencies and organizations, including the City of Foster City website and the Foster City Islander newspaper.
4. A statement explaining the application process, including accommodations for those who need assistance in applying.
5. Preference requirements.



6. Waitlist management procedures.
7. Income verification requirements.
8. Annual recertification requirements.
9. The process for rejection of ineligible applicants and eligibility termination.
10. A statement on fair housing that complies with the current laws and regulations.
11. Such other provisions as the Community Development Director may prescribe from time to time according to these BMR Guidelines.

The marketing plan may be updated from time to time or as required by the City. Any changes to a City-approved marketing plan shall require City approval.

5.2 AFFIRMATIVE MARKETING PLANS

This section has been added to comply with the City of Foster City Housing Element (<https://engagefosterCity.org/housing-element>) and AB 686 (https://www.hcd.ca.gov/community-development/housing-element/housing-element-memos/docs/ab686_summaryhousingelementfinal_04222020.pdf), which require all public agencies to administer programs and activities related to housing and community development in a manner that affirmatively furthers fair housing.

For all BMR properties with extremely low-income or accessible or adaptable units or designated as supportive housing, the Property Manager shall prepare and submit an Affirmative Marketing Plan for special needs groups to the City for approval, including a process for encouraging qualified households to apply. The Affirmative Marketing Plan shall be used prior to notice of the availability of the units at the initial lease-up and for any future vacancies. The Affirmative Marketing Plan may be included as a section of the Marketing Plan or may be a separate document.

5.3 RESIDENT SELECTION POLICY

Property Managers shall submit a Resident Selection Policy for approval by the City in advance of marketing a property. The Resident Selection Policy shall include a statement of fair housing and non-discrimination, preferences and a statement that the preference must be in effect at the time of Application, the minimum and maximum occupancy standards for each unit size, credit and background check requirements, the application fee amount and acceptable methods of payment, application requirements, documents required along with the Application, including identification and proof of income, the requirements for income eligibility, including minimum income, income limits, and income certification and annual recertification requirements, and an initial lease term of 12 months. The Resident Selection Policy must be signed and dated by all adult household members and must be kept in the file.

5.4 APPLICATIONS FOR HOUSING

The Property Manager shall submit the Application draft to the City for approval prior to the initial leasing of the property. The Application must include a statement of fair housing and include space for names, birthdates, social security numbers or tax identification numbers, if applicable, employment information, and past residency information for all household members. The Application must be signed by all adult household members and kept in the file.



5.5 SUBMITTAL AND APPROVAL OF MARKETING PLANS, SELECTION POLICY, AND APPLICATION

These items shall be submitted to the City for approval in advance of the initial lease-up, and one or more may be required by the City to be re-submitted to the City in advance of the availability of multiple BMR and Workforce units or reopening of a closed Waitlist. The City will respond within ten days of submittal. In the event that the City does not respond, a lack of response indicates approval of the submitted document. Available units shall be marketed in accordance with the approved Marketing Plan.

6 REQUIREMENTS FOR WAITLISTS

6.1 REQUIREMENTS FOR WAITLIST APPLICATIONS

- a) **Information to be Included in the Waitlist Application.** At a minimum, the application shall include at least the information needed to determine initial estimate of gross household income, preference category, household size, and contact information. The application must also include a statement of Fair Housing that complies with current laws. The required data items are contained in the sample format for the Waitlist and sample applications.
- b) **Additional Information in Application.** The application may include additional information to conduct an initial eligibility screening. The application shall include a statement that it is the applicant's responsibility to inform the Property Manager of any changes in address, phone number or email.
- c) **Required Statement of Truth and Accuracy.** The application shall include a statement that if the applicant provides false or misleading information, they may be considered ineligible.
- d) **Accommodation for those with Disabilities.** The application must be available in multiple formats to accommodate those with disabilities.
- e) **Preliminary Application.** The Property Manager may have a preliminary application that contains only the basic information required to apply to the Waitlist or they may have a more detailed application if they want to conduct a more thorough screening at the time of application to the Waitlist.
- f) **Changes and Updates to Applications.** The burden shall be on the applicant to inform the Property Manager of any changes in status, such as household size, residence, or employment location, contact information or other information. The Property Manager shall adjust the preference category if the applicant provides the appropriate documentation. A statement to this effect must be included in the Waitlist application.
- g) **Use of Third-Party Waitlist Management Providers.** Property Managers may elect to use a third-party provider to manage their applications and Waitlists. The costs associated with third-party contracts shall be incurred by the Property Manager and/or Owner.



- h) **Use of County's Doorways Portal.** Property Managers are required to use the County's Doorways portal for available properties for any vacancies or open Waitlists unless the City grants an exception. <https://smc.housingbayarea.org/get-assistance>.
- i) **Use of Other Online Portals for Waitlists.** The City strongly recommends against the use of online portals, other than the County of San Mateo's Doorways Program, to make additions to the Waitlist unless the portal can flag or eliminate duplicate entries.

6.2 REQUIREMENTS FOR FORMATTING A WAITLIST

- a) **Waitlist Format.** The Waitlist shall be kept in this format in an electronic spreadsheet and include the information that will be necessary in order to sort the Waitlist by Preference Category. The sorting feature can be utilized to create a custom order list by Preference Categories. If the Waitlist is managed by a third party contracted by the property management, the Waitlist shall be kept in a manner that enables sorting by preference category, lottery number, and application date.
- b) **Use of Filters.** A filter may be applied for viewing the list or finding a specific applicant. A filter can be applied to hide the inactive applicants, while retaining their information in the event they later question why they were changed to inactive status. An electronic version of the Waitlist in spreadsheet format is available from the Community Development Department. Property Managers may add columns for additional data items for any special program requirements or other uses if they wish.
- c) **Notes and Updates Added to Waitlist.** Notes shall be kept in the Waitlist spreadsheet to document all contacts and communications with the applicants, including the complete date and initials of the staff member. It is important to maintain these notes in order to verify and document appropriate use of the Waitlist to fill vacancies and changes to an applicant's status.
- d) **Sorting the Waitlist.** The Waitlist shall be sorted by: (1) Preference category; (2) Lottery number (if applicable); (3) Application date.
- e) **Move-ins.** Those applicants who have moved into the unit shall remain on the Waitlist in inactive status with a note that they have moved in and the move-in date.
- f) **New Applicants.** New applicants to the Waitlist shall be placed at the end of the list in the appropriate preference category by their date of application.

6.3 REQUIREMENTS FOR TEMPORARY AND PERMANENT CLOSURE OF A WAITLIST

- a) **Temporary Closure.** Closure of a Waitlist is at the Property Manager's discretion. The City recommends that Waitlists remain open if there are fewer than 50 applicants for new lease-ups or properties with three or more vacancies. The Property Manager shall notify City staff of closure of a Waitlist to new applicants. Waitlists may be open for some categories and closed for others, in sequential order of preferences, upon approval by the City's Housing Coordinator.



- b) **Notification of City Staff.** The Property Manager shall discuss with City staff any plan to reopen a closed Waitlist and obtain City staff approval for an updated marketing plan.
- c) **Permanent Closure.** The Property Manager shall submit a Waitlist closure plan to the City for approval. The plan shall include procedures and a schedule for notifying households on the Waitlist of the closure and whether they will automatically be transferred to a new list or must apply.

6.4 REQUIREMENTS FOR REOPENING A WAITLIST

- a) **Reopening a Waitlist.** Temporarily closed Waitlists may be reopened at the discretion of the Property Manager. Before re-opening a Waitlist, the Property Manager shall submit an updated Marketing Plan and/or Affirmative Marketing Plan to the City for approval pursuant to Section 5.
- b) **Workforce Housing Waitlist.** For Workforce housing units, the City may require that the Waitlist be open for a period of time or indefinitely for one or more of the highest preference categories.

6.5 GUIDELINES FOR WAITLIST MANAGEMENT

Annually, the Property Manager is encouraged to send a Waitlist Information Update Letter, or purge letter, to ascertain whether the people on the Waitlist want to remain on the list. The letter shall state that no response will result in removal from the list. Applicants shall be given a minimum of two weeks to respond. If email is used as a substitute for a mailed letter, a copy of the email shall be kept. If someone notifies the Property Manager via telephone that they wish to be removed from the Waitlist, a follow-up letter shall be mailed to the applicant confirming their decision to be removed from the Waitlist.

6.6 REQUIREMENTS FOR NOTIFYING APPLICANTS ON WAITLIST OF A VACANCY

- a) **Notification Timeline Rules.** When a unit becomes available, except as noted in item 6.6(b), the Property Manager shall notify the first person on the Waitlist and allow them not less than five (5) business days to submit an application for housing after they have responded with interest in submitting an application per Section 6.5.
- b) **Expediting Waitlist Processing.** To expedite processing of applicants, the batching of up to ten (10) names on the Waitlist within the first preference category may be invited simultaneously to respond. Respondents shall be given a minimum of five (5) business days to submit an application. Applications will be processed in waitlist order. Application fees for any unprocessed applications shall be returned to respondents. If there are no qualified applicants from the first batch, the Property Manager moves on to the next batch of up to ten names within the preference category. Once the preference category is exhausted, the Property Manager may move on to the next batch of up to ten (10) names in the next preference category.
- c) **Handling Applicants Who Decline.** The Property Manager may establish a policy to make an



applicant inactive if they decline the offer of a unit three times. Any such policy shall be applied equally to all applicants and be in writing. The applicant must be informed of the policy in advance.

- d) **Notification Rules for a New Vacancy.** The notification of applicants shall restart at the top of the list when a new vacancy occurs, except for applicants that have been notified within the past 30 days.

7 DETERMINING ELIGIBILITY

Preference and other eligibility standards must be included in the Resident Selection Policy for each property. Income eligibility for BMR and Workforce housing for initial move-ins and annual recertifications is based on HUD and California Tax Allocation Committee (CTCAC) standards, with exceptions as noted below. Eligibility requires initial income certification and annual recertification of income performed in a manner pursuant to these BMR Guidelines, unless superseded by the affordability restrictions or other regulatory document in effect.

7.1 STANDARD PREFERENCE CATEGORIES AND EXCEPTIONS

Except as noted below or by the affordability restrictions or regulatory document in effect, properties covered by these BMR Guidelines shall maintain preference categories for eligibility established by the City Council in Resolution 2020-24 or a subsequent amendment to prioritize applicants as follows:

City of Foster City Standard Preference Categories for BMR Housing

Preference	Description
1a	Persons who are currently living in a Below Market Rate deed restricted unit in Foster City and have been so for at least twelve (12) months, whose unit is subject to termination of affordability restrictions within three (3) years.
1	Persons who live <u>and</u> work in Foster City.
2	Persons who live in Foster City.
3	Employees of the City of Foster City.
4	Classroom teachers who are employees of the San Mateo-Foster City School District, the San Mateo Union High School District, or the San Mateo County Community College District.
5	Persons who work in Foster City.
6	All others who are income qualified.



City of Foster City Standard Preference Categories for Workforce Housing*

Preference	Description
1a	Persons with mobility-related disabilities
1	Persons who are employed by the City of Foster City in First Responder Departments
2	Other employees of the City of Foster City
3	Classroom teachers in the Foster City School District, Foster City-San Mateo Union High School District, or the San Mateo County Community Colleges District
4	Persons who live and work in Foster City
5	Persons who live in Foster City
6	Persons who work in Foster City
7	All others who are income-qualified**

*These preferences also apply to the BMR units within the workforce housing development, except for Preference 1a and 1. The first preference category for the BMR units in the workforce housing development is for all city employees.

**Workforce housing applicants must only meet minimum income requirements.

7.2 PREFERENCE REQUIREMENT AT TIME OF APPLICATION FOR HOUSING

The preference category of the applicant shall be confirmed as the preference category in effect at the time of the Application for housing, not the date of the Application to the Waitlist.

7.3 PREFERENCE VERIFICATION

The preference category shall be verified for all initial move-ins based on the date of application for housing. Preference category verification is not required for annual recertification.

7.3.1 Verifying Foster City Residence

Property Managers are supplied with a map of Foster City that shows the City limits. Note that parts of the 94404 zip code are within the City of San Mateo. Property Managers should contact the Community Development Department with any questions about whether a property is within Foster City.

In order to be assigned a Preference Category as a resident of Foster City, at least one member of the household must be currently living in Foster City. There is no requirement for the duration of residence except that persons claiming Preference Category 1a which requires a minimum 12 months. Residency shall be verified through submittal of two current utility bills from at least one of the following utility providers: Pacific Gas & Electric Company, water, telephone, television service, or garbage. If the applicant has recently moved and does not yet have utility bills, a lease agreement will be accepted. If the applicant cannot provide items listed above, then an Affidavit of Residence is required.

7.3.2 Verifying Work Location in Foster City

Property Managers are supplied with a map of Foster City that shows the City limits. Note that parts of the 94404 zip code are within the City of San Mateo. Property Managers should contact



the Community Development Department with any questions about whether a property is within Foster City.

At least one half of one household member's income shall be from employment within Foster City in order to qualify for the "works in Foster City" Preference Category and that paid employment shall be at least 16 hours per week. If the employment is a home occupation, the home address shall be a Foster City residence and the household member must also have a Foster City business license.

Employment in Foster City must be based at a fixed address, not an itinerant type of occupation or temporary work assignment.

7.3.3 Verifying City of Foster City Employment

If an applicant states that they are an employee of the City of Foster City, the Property Manager shall contact the Community Development Department for verification.

7.3.4 Preference Verification Form

The Property Manager shall complete a preference verification form or statement for each Tenant file that indicates the preference category verified for the household and the method used for verification. A sample of this form is available from the City.

7.4 OWNERSHIP OF REAL ESTATE

The City does not permit any household member of rental BMR or Workforce housing to own domestic or foreign residential real estate for income or leisure purposes, including short-or-long term rentals, second homes, vacation homes, or timeshare units. Existing residents with residential property used for income or leisure purposes that occupied the BMR or Workforce residence prior to the effective date of these BMR Guidelines, may remain in their unit. Property Managers should follow the procedures outlined in Section 7.8.16 to calculate income from the real estate asset.

Tenants who acquire residential real estate for income or leisure purposes after the date they moved into the BMR or Workforce unit, or after the effective date of these BMR Guidelines, whichever is later, are no longer eligible for the BMR or Workforce program and must vacate the BMR or Workforce unit or pay market rate rent. The only exception is when a household member acquires residential property through divorce, inheritance, or other legal transfer not initiated by the household member, after moving into the BMR or Workforce unit.

7.5 SOLE AND PRIMARY RESIDENCE REQUIREMENT

The BMR or Workforce unit must be the full-time, sole, and primary residence of all household members, with the exception of students who may live near their educational institution during some of the year but still claim the BMR or Workforce unit as their primary residence, military leave, institutional stays, or child-custody arrangements. With the exceptions as noted in this section and as noted in Section 7.4, tenants who claim the BMR or Workforce unit as their sole and primary residence to meet program requirements, but are found to have an alternate primary residence, will be deemed ineligible for the BMR or Workforce program and required to vacate



the BMR or Workforce unit or pay market rate rent. Household members shall not be named on a lease of any other unit, pay rent for any other unit for themselves or another household member, or reside in any other unit or units for more than sixty (60) days (consecutive or non-consecutive) in any 12-month period, with exceptions as noted in this section.

7.6 REQUIREMENTS FOR INCOME ELIGIBILITY

7.6.1 Applicability

For LIHTC properties, this section is superseded by the California Tax Credit Allocation Committee (CTCAC) Compliance Online Reference Manual and all applicable CTCAC rules and regulations. See <https://www.treasurer.ca.gov/ctcac/compliance.asp>. For bond programs and specific HUD programs, please refer to the Property Bond Agreement, affordability restrictions, and other property-specific governing documents. For all other BMR and Workforce housing properties, this Section applies.

7.6.2 Source for Income Limits

Per the City of Foster City Municipal Code, Chapter 17.90, the City uses the income limits as established by the California Department of Housing and Community Development (HCD), as amended or any successor statute thereto, except as noted below or by affordability restrictions. These income limits are issued in the spring of each year, with the actual issuance date varying from approximately February to June.

Foster City Municipal Code, Chapter 17.90.020, Definitions defines Extremely Low, Very Low, Low (or Lower), and Moderate income as follows:

“Extremely low income households” means households with incomes no greater than the maximum income for extremely low income households, as published annually by the California Department of Housing and Community Development (HCD) as the Official State Income Limits pursuant to Health and Safety Code Section [50093](#) for San Mateo County, adjusted for household size, except that the city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted housing.”

Section 50093 refers to Section 50106, which states that Extremely Low Income is less than 30% of Area Median Income.

“Very low income households” means households with incomes no greater than the maximum income for very low income households, as published annually by the California Department of Housing and Community Development (HCD) as the Official State Income Limits pursuant to Health and Safety Code Section [50093](#) for San Mateo County, adjusted for household size, except that the city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted housing. (Ord. 644 § 3, 2022)

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Section 50093 refers to Section 50105, which states that Very Low Income is less than 50% of Area Median Income.

“Low income households” means households with incomes no greater than the maximum income for low income households, as published annually by the California Department of Housing and Community Development (HCD) as the Official State Income Limits pursuant to Health and Safety Code Section [50093](#) for San Mateo County, adjusted for household size, except that the city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted housing.

Section 50093 refers to Section 50079.5, which states that Lower Income is less than 80% of Area Median Income.

“Moderate income households” means households with incomes no greater than the maximum income for moderate income households, as published annually by the California Department of Housing and Community Development (HCD) as the Official State Income Limits pursuant to Health and Safety Code Section [50093](#) for San Mateo County, adjusted for household size, except that the city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted housing.

Section 50093 states that moderate income is less than 120% of Area Median Income.

Property Managers are responsible for determining and applying the income limits for their property each year in accordance with the affordability restrictions for their property and submitting a copy of their income and rent limits to the City annually for review and confirmation of correctness. The City issues confirmation of income limits annually for each property. The annual calculations of income and rent limits are due to the City within 30 days following the annual issue of HCD limits. The income limits apply to the following affordability categories: Extremely Low-Income, Very Low-Income, Low-Income, and Moderate-Income. The income limits, and an explanation of the methodology used to develop them, are available at: <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits.shtml> (see the “Official State Income Limits”).

7.6.3 Other Governing Income Limits

The HCD income limits may be different than the income limits required by other programs that may affect a property, such as tax credits or bonds. The coordination of these requirements shall be as established by mutual agreement for each affected development and the City. For the Marlin Cove and Miramar developments, the City and the Owners have agreed that: initial occupancy shall be governed by the HCD income limits and recertifications shall utilize the HUD HERA income and limits. The HUD HERA income limits are available on the California Tax Allocation Committee website: <https://www.treasurer.ca.gov/ctcac/compliance.asp>.

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7.6.4 Calculating Non-Standard Income Limits

To calculate income limits or rents using income limits other than the published percentages of very low (50% of AMI), low or lower income (80% of AMI), and moderate (120% of AMI), the City uses the HUD standards for calculations in which all affordability levels less than the Area Median Income (100%) are based on the Very Low Income Level of 50% of AMI, and all affordability levels over the Area Median Income are based on the median income (100% of AMI). For more details on the methodology, see: <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/income-limits-2023.pdf>. Use the following table to calculate non-standard income limits for determining rents or income limits, where K is the 50% of AMI income limit and M is the median income limit, 100% of AMI.

Multipliers for Calculating Income Limits, where K= 50% of AMI and M = 100% of AMI

5% = K * .1	30% = K * .6	55% = K * 1.1	80% = K * 1.6	110% = M * 1.1
10% = K * .2	35% = K * .7	60% = K * 1.2	85% = K * 1.7	120% = M * 1.2
15% = K * .3	40% = K * .8	65% = K * 1.3	90% = K * 1.8	130% = M * 1.3
20% = K * .4	45% = K * .9	70% = K * 1.4	95% = K * 1.9	
25% = K * .5	50% = K	75% = K * 1.5	100% = M	

Example: if the Area Median Income is \$175,000 (the 2023 HCD Area Median Income for a family of four) and 50% of AMI is \$93,200, then 60% of AMI is $93,200 \times 1.2 = \$111,840$ (rounded down to nearest 100, or \$111,800), 80% of AMI = $93,200 \times 1.6 = \$149,120$ (rounded down to nearest hundred, \$149,100), 110% AMI is $175,000 \times 1.1 = \$192,500$, and 120% of AMI is $175,000 \times 1.2 = \$210,000$.

7.6.5 Third-Party Verification of Income and Assets

The City of Foster City requires third-party verification of employment income and assets for initial certifications only. For recertifications, the City recommends third-party verification if information provided by the household member is incomplete, confusing, conflicting, or inaccurate, or if income is periodic or sporadic. Third-party verification may also be required by bond agreements or tax credit programs or by the Property Manager. Property Managers' verification policies must comply with current fair housing regulations and the current HUD Handbook, Chapter 5, Section 3, Verifications.

7.6.6 Reductions in Income Limits

In cases where the income limit established by HCD is lower than the prior year, and the Tenant's income would continue to qualify under the prior year's income limit, the Tenant will be deemed to comply with the income requirements.

7.6.7 Annual Income Recertification Requirement

The Property Manager shall annually re-certify each household for continued eligibility in the BMR program no later than the Tenant's recertification deadline (generally the first day of the anniversary of the month the Tenant moved in), with the exception of the Workforce housing units (see Section 7.6.9). Methods used to calculate annual income shall follow the methodology as set forth in these BMR Guidelines unless superseded by another program due to funding, grant, affordability restrictions, or other regulation or Agreement.

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In the event that the income certification cannot be completed due to non-cooperation from the tenant, incomplete, or inaccurate information, or the inability to verify information, the tenant shall be deemed non-compliant. Absent procedures in the property's covenant, the tenant shall be in-eligible for the BMR program and rent will be increased to market rent with a sixty-day (60) written notice.

7.6.8 Minimum Income Requirement

Property Managers shall determine the minimum income required for each BMR and Workforce unit. The City recommends but does not require a minimum income to rent ratio of 2.5 (minimum income is rent multiplied by 2.5 multiplied by 12) for BMR and Workforce units. The minimum income requirement shall be included in the Resident Selection Policy (see Section 5.3). For applicants with Housing Choice Vouchers or other rent subsidy, the minimum gross income shall be based on the applicant's share of rent rather than the full rental rate.

7.6.9 Minimum Income Verification for workforce Units

Minimum income shall be verified for initial eligibility for the household to occupy the unit. Minimum household income shall be verified using three months of paystubs, a copy of the most recent federal taxes, and other documentation as needed to ensure the household meets the minimum income for the unit. Annual income recertification is not required for the workforce housing units in the workforce housing program.

7.6.10 General Guidance on Income Certification Procedures

Income certification methods not covered in these BMR Guidelines or by the affordability restrictions or a Bond/Financing Agreement for the property shall follow the U.S. Code of Federal Regulations and provided on the website of the U.S. Department of Housing and Urban Development at: <https://www.hud.gov/sites/documents/43503HSGH.PDF>. In the event of multiple requirements or conflicting methodology due to requirements of bond or tax credit financing or the affordability restrictions for the property, the strictest rule shall apply in calculation of income. It is imperative that all bond/tax credit properties follow directives as stipulated in the agreements. If a Property Manager is unclear on which methodology to follow or seeks clarification of these BMR Guidelines, the City shall provide guidance regarding and interpretation, if requested by the Property Manager.

7.7 ANNUAL RECERTIFICATION OF INCOME

7.7.1 Applicability

For LIHTC properties, this section is superseded by the California Tax Credit Allocation Committee (CTCAC) Compliance Online Reference Manual and all applicable CTCAC rules and regulations. See <https://www.treasurer.ca.gov/ctcac/compliance.asp>. For bond programs and specific HUD programs, please refer to the Property Bond Agreement, affordability restrictions, and other property-specific governing documents. For all other BMR and Workforce housing properties, this Section applies.

7.7.2 Annual Recertification Date

The annual recertification date for each Tenant shall be the first day of the month the Tenant

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moved in. For example, if the Tenant moved in on May 15, 2023, then the recertification date shall be May 1, 2024. If Property Managers prefer to have all Tenants on the same schedule, they must recertify the household twice in one year to put the new household on the annual schedule. The mass certification deadline must be at least 30 days prior to the deadline for the annual Property Status Report (PSR) for the property.

7.7.3 Deadline for Forms and Documents Submitted by Tenants

The City follows Chapter 7 of the HUD Handbook on this issue. The final deadline for submission of all completed forms and documents shall be the 10th day of the month prior to their annual recertification deadline. For example, if the recertification deadline is January 1st, then the deadline to complete forms and submit documents is December 10.

7.7.4 Notices to Tenants

Property managers should follow HUD Handbook 4350.3 Rev-1 (“HUD Handbook”), Chapter 7 for recertification notices, with the exceptions on noticing timelines as noted below. Tenants who respond to notice(s) but do not submit all required completed forms or documents by the deadline(s) stated in reminder notice(s), shall be notified in writing of non-compliance status following the final notice deadline and informed that their rent will change in rent to market rate, in accordance with current notice laws and regulations. Please note that the City’s notice requirements for recertification deviate from the HUD Handbook on notice of recertifications as follows:

1. First notice: the first notice of annual recertification shall be sent at least ninety (90) days prior to the recertification deadline.
2. Second notice: if the Tenant does not respond to the first notice or has not completed submittal of all required documents and forms, the second reminder notice shall be sent at least sixty (60) days prior to the recertification deadline.
3. Third and final notice: if the Tenant does not respond to the second reminder notice or has not completed submittal of all required documents and forms, a third and final reminder notice of recertification shall be sent at least thirty (30) days prior to the recertification deadline.
4. Notice of non-compliance: if the Tenant has not responded to the three notices or has not submitted required documentation or forms, a notice of non-compliance shall be sent on the day of or after the recertification deadline.

Each reminder notice must list the recertification deadline, the deadline for submitting all completed forms and documents, the forms and documents required, how to submit forms and documents, and Property Manager contact information, including email, telephone number, and office hours of the Property Manager. It is highly recommended that the Property Manager schedule an in-person appointment with the household members to collect forms and documentation and provide the Tenant with the opportunity to reschedule the appointment to another day and time during business hours.

7.7.5 Notification of Non-Compliance

The Property Manager shall copy the City on any notice of non-compliance related to



recertifications.

7.8 PROCEDURES FOR CALCULATING INCOME

7.8.1 Applicability

For LIHTC properties, this section is superseded by the California Tax Credit Allocation Committee (CTCAC) Compliance Online Reference Manual and all applicable CTCAC rules and regulations. See <https://www.treasurer.ca.gov/ctcac/compliance.asp>. For bond programs and specific HUD programs, please refer to the Property Bond Agreement, affordability restrictions as, and other property-specific governing documents. For all other BMR and Workforce housing properties, this Section applies.

The purpose of this methodology is to ensure consistency in calculating income for all Foster City BMR units and to ensure compliance with Fair Housing laws. The methodology is based on the HUD standards as stipulated in the HUD Handbook 4350.3 (<https://www.hud.gov/sites/documents/43503HSGH.PDF>) and uses HUD forms and some California Tax Credit Allocation Committee forms.

7.8.2 Multiple or Conflicting Requirements

In the event of multiple requirements or conflicting methodology required by the affordability restrictions for the property, the strictest rule shall apply in calculation of income.

7.8.3 Projected Income

Income is projected for the next 12 months using documentation provided by the household.

7.8.4 Household Member Income to Count

Any adult household member aged 18 or over and residing in the unit 14 days or more per year (consecutive or non-consecutive days) shall be counted for income calculation purposes and included in the household size. This includes college students living away from home for some of the year. However, do not include incomes of live-in aides. See the HUD Handbook for guidance on live-in aides.

7.8.5 Full Set of Forms Required for all Adult Household Members

A full set of forms and associated documents is required for each adult household member, including a Tenant Income Questionnaire. A Forms Schedule is available from the City.

7.8.6 Rules on Redacting of Information Provided for Income Certification

Tenants are not permitted to redact information, other than Social Security Numbers, that are provided on documents submitted for the income certification process.

7.8.7 Income Inclusions and Exclusions

The City of Foster City follows the HUD Manual regarding income inclusions and exclusions, with the following clarifications. See https://www.hud.gov/sites/documents/DOC_35699.PDF. However, if the affordability restrictions for the property reference California Code of Regulations, Title 25, Section 6914 for determining income, then CCR Title 25, Section 6914 shall supersede

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this section.

For temporary, non-recurring, or sporadic income (including gifts), non-recurring is defined as income that appears only one time in any calendar year. For example, sporadic income from the same source that results in multiple deposits to a checking or savings account, even if differing amounts, in a given calendar year, is considered recurring income and must be counted. Assets in foreign or offshore accounts shall be included in the asset section of the certification.

Rent subsidies provided by government programs, such as Section 8, COVID relief, and other sources, are excluded from income. Rent subsidies from any source should be excluded from income if the subsidy is tied to the income of the Tenant, even if it is recurring and not a lump sum single payment and/or temporary in nature. If the subsidy is recurring, not temporary, and is a set amount that is not dependent on the amount of income of the Tenant, the subsidy should be counted as income. The exclusion rule, while not explicitly stipulated in the HUD list of exclusions, is based on the definition of determinable income as stated in the Housing Act of 1937 (https://www.hud.gov/sites/documents/DOC_10010.PDF). For example, Section 8 subsidies paid by the Housing Authority of San Mateo County and temporary emergency rent relief subsidies paid by any source should always be excluded from income.

7.8.8 Three Methods Required to Calculate Income

Property Managers should use three methods to calculate income from employment and take the highest of the three incomes for use in the income certification or recertifications, except as noted below, or if superseded by the property's affordability restrictions or other regulatory agreement in effect.

The three methods include: 1) gross income paystub averaging for three months of paystubs using the gross pay; 2) annualized year-to-date income calculation, and 3) pay rate calculation, including overtime. Exceptions: (1) If the Property Manager obtains third-party employment verification, the information provided in the verification shall supersede information from paystubs or other methods of calculation. However, paystubs should still be included in the file even if employment verification is received; (2) for self-employment, see Section 7.7.11.

The City requires three months of paystubs to be submitted by employed adult household members. Employment verification may be substituted for paystubs only if paystubs are not available. For those who have been employed less than three months or are about to start a new position, a letter of employment serves as acceptable verification of employment.

Method 1: Paystub Averaging

For each type of payment schedule, take the sum of the gross pay for each pay stub and divide and multiply as directed below.

- If paid weekly, 12 paystubs are required. Divide the total sum of payments by 12, then multiply by 52.
- If paid monthly, three paystubs are required. Divide the total sum of payments by three, then multiply by 12.

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- If paid bi-weekly (every other week): seven paystubs are required. Divide the total sum of payments by seven, then multiply by 26.
- If paid semi-monthly (twice a month on the same days each month): six paystubs are required. Divide the total sum of payments by six then multiply by 24.
- For teachers who are paid ten months out of the year, take the total sum of three months and divide by ten then multiply by ten.

Method 2: Year-to-Date Annualization

Take the gross year to date amount and the pay period end date from the paystub. Determine how many days or weeks the end date is in the year. Use either the weeks calculator method or the days calculator method and use one or the other consistently in your calculations for each property.

Calculating annualized YTD income using weeks calculation: If using the weeks method, be sure to use a decimal for partial weeks: one day=.143, two days=.286, three days=.429, four days=.571, five days=.714, six days=.857). Use an online calculator program such as <https://planetcalc.com/7741/>. Divide the YTD amount on the paystub by the number of weeks and then multiply by 52 weeks.

Calculating annualized YTD income using days calculation: If using the days method, divide the paystub amount by the number of days between January 1 and the end date of the pay period to get an average daily rate and then multiply by 365. The Excel DAYS formula can be used to find the number of days.

Note that the pay period end date includes the last date, but the calculators do not, they count the first date, and all dates up to the last date but not the last date, so for accuracy you must add one day when using a weeks or days calculator. For example, If a pay period end date is January 15, that is 15 days or two weeks and one day of pay, but if you use the days or weeks calculator, it is 14 days or two weeks and zero days. Therefore, you must add a day to capture the pay period end date.

In the event that the household member started a job after January 1 of the given year, use the start date as the first date to annualize rather than January 1.

Examples:

Assumptions: YTD pay period end date: June 15, 2023. Pay YTD: \$45,500

Example for Weeks Method:

Using PlanetCalc or another online calculator to determine the weeks between 01/01/2023 and 06/16/2023 (remember to add a day), the answer provided is 23 weeks, 5 days. Note: Excel does not provide decimal points and rounds up, so the Excel weeks formula is not recommended to determine the weeks.

Convert the days to a decimal. 5 days divided by 7 is .714, so the number of weeks is 23.714.

Divide \$45,500 by 23.714 to get a weekly average pay. $\$45,500/23.714 = \1918.70

Multiply that result by 52 to annualize: $1918.70 \times 52 = \$99,772.40$

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Example for Days Method using Excel:

Enter the formula as follows into a spreadsheet using the DAYS formula:
=DAYS("16-JUN-2023, "1-JAN-2023") = 166 days (remember to add a day)
Divide \$45,500 by 166 to get the average daily rate: $45,500/166 = 274.10$
Multiply by 365 to annualize: $\$274.10 \times 365 = \$100,046.50$

Due to rounding, the final values are slightly different. Therefore, the City recommends that the Property Manager use either the weeks method or the days method consistently for all BMR income calculations.

Method 3: Pay Rate Calculation

This method uses the hourly rate or salaried amount that the household member earns and annualizes it. If the household member works overtime, overtime rates should be averaged and annualized as well. For full-time work, use 2,080 hours or 40 hours a week.

Example 1. Full-time work, \$47.50 per hour. The household member works an average of five hours of overtime per pay period and is paid bi-weekly.
Regular pay $47.50 \times 2080 = \$98,800$ or $47.50 \times 40 \times 52 = \$98,800$
Overtime: rate is 1.5 x pay rate or \$71.25. The average of two hours OT per pay period and 26 payments per year (paid bi-weekly) equates to 52 OT hours per year. $\$71.25 \times 26 = \$1,852.50$ additional earnings per year.
Total income from this method is: \$100,652.50.

Reviewing the methods, and, for the purposes of this example, the Property Manager uses the Days method for calculating YTD, and the paystub averaging method resulted in an annual income of \$101,222.22, the amount that should be used for the income certification is the highest of the three, or \$101,222.22.

7.8.9 Lump Sum Payments

See the HUD Manual Income Inclusions and Exclusions for more information on lump sum payments and when to count them as income or assets. In general, single payment lump sums are not counted as income for certifications. See: https://www.hud.gov/sites/documents/DOC_35699.PDF. However, if the property's affordability restrictions reference California Code of Regulations, Title 25, Section 6914 for determining income, then CCR Title 25, Section 6914 shall supersede this section.

7.8.10 Tax Returns

The prior year's tax return assists the property manager with income verification as a reference point for reasonableness. Taxes and tax transcripts must be signed and dated by the taxpayer. The 120-day HUD and CTCAC rule for dating documents does not apply.

Since income is projected forward, taxes are not used for calculating income, except for self-employment income in some cases. See Section 7.8.12 for details on Self-Employment Income. If a household member does not have their most recent tax returns, they must submit Form 4506-T to the IRS to obtain a statement of non-tax filing. If the household member does not file taxes,

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the household member must complete a non-tax filer affidavit and submit Form 4506-T to the IRS to obtain a statement of non-tax filing.

Transcripts and statements of non-tax filing may be requested by mail, telephone or online. If the household member cannot produce a transcript or statement using the mail, phone or online methods, the City recommends that the Property Manager witness the request by having the tenant call, mail, or go online from the Property Management office. The person signing the form is responsible for completing the IRS form accurately, submitting it to the IRS, and providing the report from the IRS to the Property Manager.

- Use www.irs.gov or the *IRS2Go* app to access [Get Transcript by Mail](#); transcript will be delivered within 10 days to the tax filer's address of record, or
- Submit Form 4506-T or 4506T-EZ to have a transcript mailed to the tax filer at the tax filer's address of record with the IRS. Complete and print the form at <https://www.irs.gov/forms-pubs/about-form-4506-t>
- Call [800-908-9946](tel:800-908-9946) for an automated Get Transcript by Mail feature.

In the event that the household member is still unable to produce a transcript or taxes, and the Property Manager can attest to witnessing the transcript request, an affidavit of non-tax filer status will suffice in the file, along with a clarification of verification.

7.8.11 Income of Teachers and Seasonal Workers

While third-party employment verification is not required by the City for recertifications, the City recommends that the Property Manager obtain third-party employment verification for teachers and seasonal workers to obtain clarification on annual pay due to varying payment schedules. A letter or email from the employer or the Employment Verification form will suffice as third-party verification.

7.8.12 Self-Employment Income

Self-employment in Foster City, including home-based businesses, independent contractors, door-to-door sales, and peddling, requires a valid Foster City Business License. See <https://www.fostercity.org/finance/page/tax> for more information.

For self-employment, which includes sole proprietorships with or without employees, single entity LLCs, contract work, "gig" work, and work paid in cash with no paystub, the household member shall complete a Self-Employment Affidavit. The Self-Employment Affidavit shall be used to document projected net self-employment business income for the following 12 months and must be confirmed through tax returns and other documentation, such as business bank statements that may be requested by the Property Manager to clarify income. Net business income is all anticipated revenue for the next 12 months less business expenses. Self-employment income cannot be zero for income certification unless the prior year's income taxes show a loss, and the Tenant anticipates a continued loss for the next 12 months.

Those who are self-employed must provide their most recent taxes for verification. In the event that the Tenant does not file taxes, the Tenant must complete a Non-Tax Filer Affidavit, a Form

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4506-T, and provide evidence of the business, such as deposits, receipts, or business bank account statements for verification.

For businesses in which the business owner pays themselves a regular salary, the amount they pay themselves should be included in the business expenses and should not be listed separately as income. For a business owner that pays other household members, the income amount should be included as part of that household member's income. Self-employment should not be third-party verified other than through taxes.

The Self-Employment Affidavit shall include a statement that providing false or misleading information may result in disqualification and be subject to prosecution. The City does not require that the form be notarized, but this may be required by other funding programs. The Property Manager may create a Self-Employment Affidavit for their property based on one of the samples provided, which may be submitted to the City for review, or use the form provided by the City.

The business Owner must submit business documentation as needed and the most recent federal tax return. Use the amount on the affidavit and collect last year's federal tax return to verify the business and the business income.

Example 1: Uber Driver

- Tenant anticipates \$35,000 in gross revenue in the next 12 months.
- Business expenses (car washes, gas, insurance, etc.): \$10,000.
- Net Business Income: \$25,000.
- Use \$25,000 as the projected income for the next 12 months for the income certification.
- Have the Tenant complete the Under Income Affidavit form if there are no other sources of income sufficient to pay the rent.
- Screenshots of payments from Uber are not required.

Example 2: Sole Proprietorship with a Loss

- Tenant anticipates \$0 for the next 12 months due to higher expenses than revenues.
- Revenues are anticipated at \$25,000.
- Expenses are anticipated at \$30,000 due to recently starting the business.
- Last year's taxes showed a loss.
- Use \$0 as the projected income for the income certification.
- Note: if the prior year's tax return did not show a loss, and the Tenant is claiming \$0 for the next 12 months, use the amount from the prior year's taxes for the income certification.

Example 3: Occasional Cash-Paid Service Worker

(e.g., babysitting in which the employer does not claim the worker as an employee)

- Tenant anticipates \$3,500 in revenue for the next 12 months.
- Expenses are anticipated at \$0.
- Use \$3,500 as the projected income for the income certification.
- Verify evidence of past payments through deposits to checking account(s), if possible.
- Have the Tenant complete the Under Income Affidavit form if there are no other sources



of income sufficient to pay the rent.

7.8.13 Unemployment and Disability Income

Unemployment and disability benefits shall be annualized unless the household member provides documentation that benefits will cease in the next 12 months.

7.8.14 Social Security and Supplemental Social Security Income

For Social Security Income or Supplemental Security Income (SSI), a benefit verification letter with a date no earlier than 120 days prior to the effective date of certification or recertification is required. Refer to the Social Security website on how to obtain this letter. See <https://www.ssa.gov/manage-benefits/get-benefit-letter>. Count the total income before any deductions. If the Benefit Verification Letter is for the prior year and lists payment amounts prior to December of the prior year, you must multiply the benefit amount by the cost-of-living adjustment (COLA) to project benefits for the following year. The current year COLA adjustment can be found here: <https://www.ssa.gov/oact/cola/latestCOLA.html>. Note that if a Tenant's sole source of income is from Social Security, the Tenant should also complete a Non-Employment Affidavit. For lump sum social security payments, refer to the HUD Manual, Chapter 5.

7.8.15 Dates of verifications

All verifications received, including the dated social security benefit letter received should be dated within 120 days prior to the annual recertification deadline. Written clarifications shall be included in the Tenant file for any exception to rules or any calculation that needs explanation.

7.8.16 Ownership of Real Estate or Timeshares

As stated in Section 7.4, effective the date the Tenant moves into the BMR or Workforce unit, the City does not permit any household member of BMR or Workforce housing to own residential real estate for income purposes, second homes, vacation homes, or timeshares, including short-term and long-term rentals.

Existing residents with residential property used for income purposes, vacation, or second homes or who own timeshares that occupied the BMR or Workforce residence prior to the effective date of these BMR Guidelines may remain in their unit as long as the BMR or Workforce unit is the sole residence of all household members, with the exception of students who live near their educational institution some of the year but still claim the BMR or Workforce unit as their primary residence.

Tenants who acquire real estate for income purposes or second homes after the date they moved into the BMR or Workforce unit, or after the effective date of these BMR Guidelines, whichever is later, are no longer eligible for the BMR or Workforce Housing program and must vacate the BMR or Workforce unit or pay market rate rent in which they reside, pursuant to the affordability restrictions on their property for tenants who are no longer eligible. The Notice to Vacate shall be issued to the tenant with at least 60 days' notice, or more, if required by law.

BMR or Workforce tenants who own residential real estate for income purposes or second homes prior to the effective date of these BMR Guidelines, or who receive income from ownership of commercial real estate, must include the rental income in the income section of the certification



and the cash value of the asset in the asset section of the certification.

- To determine the income for the income section, subtract the annual property expenses from annual property revenue based on a Real Estate Income Affidavit form (available from the City) indicating anticipated expenses for the following year. Expenses cannot be lower than the prior year's expenses as shown on Schedule C of the Tenant's federal taxes. This income is similar to self-employment income.
- Use documentation on the purchase of the property, a current lease, or most recent federal taxes to confirm net property income.
- See Section 7.9.7 to determine the cash value of the property, obtain a value of the property from three sources, such as a recent appraisal that is 120 days old or less and on-line resources such as www.realtor.com, www.zillow.com, and www.redfin.com. Take the average of the three values and subtract 6% for average sales costs and subtract any remaining mortgage on the property. To verify the remaining mortgage, obtain a recent mortgage payment statement or use an online source to verify the outstanding balance. The cash value of the asset goes in the asset section of the Tenant Income Certification (TIC). Imputed income will also be added to the income from assets since the cash value of the real estate, combined with other financial assets, will likely trigger the imputed income rule.

7.9 ASSET ELIGIBILITY AND VERIFICATION

7.9.1 Use of California Code of Regulations, Title 25 for Calculating Income from Assets

For all properties, unless noted in the property's affordability restrictions or Affordable Housing Agreement, Property Managers should calculate income from assets in accordance with the requirements set forth in California Code of Regulations, Title 25, Section 6914 and as directed in these BMR Guidelines. [View Document - California Code of Regulations \(westlaw.com\)](#)

7.9.2 Ten Per Cent Imputed Income Rule

The California Code of Regulations, Title 25, Section 6914 states: "Where a family has net family assets in excess of \$5,000, income shall include the actual amount of income, if any, derived from all of the net family assets or 10 percent of the value of all such assets, whichever is greater. For purposes of this section, net family assets is defined as the value of equity in real property other than the household's full-time residence, savings, stocks, bonds, and other forms of capital investment. The value of necessary items such as furniture and automobiles shall be excluded." The City of Foster City uses this rule in calculating household income. Notably, this is different than the imputed income rate of 0.06% used by the California Tax Credit Allocation Committee on Tenant Income Certification forms.

Property Managers must use the 10% imputed income rate instead of the 0.06% rate when calculating household income, unless LIHTC funding or the terms of other bonds require the City to use a different method of calculating income. In the event that a property's affordability restrictions or Regulatory Agreement for a particular property does not refer to Section 6914, this Section applies unless a different methodology is referenced or stated in the property's



affordability restrictions or governing Regulatory Agreement.

7.9.3 Third-Party Verification of Assets

The City of Foster City does not require third-party verification of assets for annual recertification of income for BMR housing. However, third-party verification may be required by bond agreements or tax credit programs or by Property Management. Furthermore, the City recommends third-party asset verification if the forms and documents provided by the household member is confusing, conflicting, incomplete, or varies from assets disclosed in the last three years of income recertifications. Third-party verifications must comply with current fair housing regulations and the current HUD Handbook, Chapter 5, Section 3, Verifications.

7.9.4 Negative or Blank Asset Verifications

Negative or blank asset verifications, in which the Property Manager seeks to determine if an account is held at a financial institution and for which there is no disclosure of the asset on the TICQ, are not permitted unless the asset had been disclosed in the prior three years, or if there is documented evidence of existence of the asset or documented suspected fraud. The Property Manager must inform the Tenant of the reason for the blanket or negative verification. The Property Manager must also have a written policy in place that clearly documents the scenarios for which a blanket or negative verification is justified and must provide a copy of the policy to the Tenant, if requested. The names of financial institutions must be stated on the verification form prior to obtaining Tenant signatures. The Property Manager has an obligation to inform the City of any suspected fraud.

7.9.5 Rules on Redacting Information on Documents Provided

The City does not allow redacted information, other than social security numbers, on any documents submitted for the income certification process. Tenants that redact information other than social security numbers will be deemed non-compliant. The City recommends including this information in the annual recertification notice to tenants.

7.9.6 Calculating the Cash Value and Income from Financial Assets

Six months of bank statements are required for checking and savings accounts and the latest quarterly statement for investment and retirement accounts. For checking accounts, the cash value of the asset is the average of the ending balance for six months. For savings accounts, the cash value is the ending balance on the most recent statement. For investment accounts, the cash value is the ending balance on the current statement, less any penalty for early withdrawal (usually 10%), if applicable. Substantial, frequent, or regular deposits of \$100 or more require explanation from the household member, if not included on the TICQ. See Sample Forms. For income from financial assets, most checking accounts are 0% interest; most savings accounts are .01%. The bank statements generally state the percentage rate for interest. If no interest rate can be determined, it is acceptable to use 0% for checking and .01% for savings accounts. For retirement and investment accounts, use the interest earned to date on the most current bank statement and annualize the amount. For negative returns, use zero. Alternatively, you can use actual dividends earned to date and annualize them.



7.9.7 Computing Income from Real Estate Assets

For real estate assets, in accordance with Section 7.4, Property Managers should verify the cash value of the asset through three online sources (examples include Zillow, Redfin, and Realtor.com) or a recent appraisal that is not more than 120 days old. Take the average of the three values and subtract 6% for average sales costs (or current industry standard if not 6%) and subtract any remaining mortgage on the property. To verify the remaining mortgage, obtain a recent mortgage payment statement or use an online source to verify the outstanding balance. The cash value of the asset goes in the asset section of the Tenant Income Certification (TIC). Imputed income will also be added to the income from assets since the cash value of the real estate, combined with other financial assets, will likely trigger the imputed income rule.

7.9.8 Lump Sum Payments

Single lump sums for the following items should be counted as assets rather than income: inheritance, capital gains, lottery winnings made in one payment, cash from sale of assets, insurance settlements, workers compensation, and personal property losses; any other amounts that are received in one-time lump sum payments. Two or more payments of these items shall be counted as income, rather than assets. See HUD Inclusions and Exclusions to Income for more details. See https://www.hud.gov/sites/documents/DOC_35699.PDF.

7.10 HOUSEHOLD INCOME ABOVE OR BELOW THE INCOME LIMIT AT THE TIME OF RECERTIFICATION

7.10.1 Over Income Households in City Owned Units

For the City-owned units, other than Workforce Housing, or as provided by regulatory agreement, Tenants who have an income that exceeds the highest affordability designation in the BMR housing program will be given a 60-day notice to vacate, or if market rate units are provided at the property, the rental rate shall graduate to market rate. At the discretion of the City, an additional thirty (30) day extension may be granted. For very low- and low-income units, if a Tenant's income exceeds the income limit, they will be "graduated" to the next higher affordability level provided on the property for which they are qualified. The next available similarly sized unit will be utilized to bring the development back into compliance with the required number and affordability level of units. For Workforce Housing, there is no income limit.

7.10.2 Over Income Households for All Other BMR Units

For all other BMR units, refer to the current regulatory agreement regarding Tenants who are over income at the time of annual income recertification. In general, the Tenant shall graduate to the next level of the program or, if they are over-income for the highest level of affordability in the program, to market rate, if market rate units are provided at the property. The next available unit rule applies. For moderate-income BMR households, to the extent allowed by applicable law, including Section 42 of the Internal Revenue Code, if a Tenant's income exceeds the Moderate-Income limit, they will be "graduated" from the BMR program and charged market rent. The next available similarly sized unit will be utilized to bring the development back into compliance with the required number and affordability level of units. For LIHTC units, follow CTCAC rules.

7.10.3 Under Income Households

Property Managers shall not evict a Tenant for being under the income minimum for the income



range of their household size provided that they continue to pay rent per their Lease Agreement. However, if the income is below the minimum income range for the household size and affordability and/or below the minimum required income for the unit as specified in by the Property Management in the Resident Selection Policy, the Property Management is required to have the Tenant submit an Under Minimum Income Affidavit. This Affidavit provides the Tenant's statement of how they will pay their rent and the sources of income. This form must be submitted by the Tenant prior to final certification of income to allow additional time for submission of additional documentation and forms and the recalculation of income, if needed. The income certification deadline should be extended by thirty (30) days if additional documentation, verification, and recalculation of income is necessary. The Under Minimum Income Affidavit form is available from the City.

7.10.4 Next Available Unit Rule

If a Tenant's income falls below the income limit for a lower affordability category, they may go on the Waitlist in the appropriate preference category and application date for a unit of a lower affordability level, if permitted by property's affordability restrictions or Regulatory Agreement. When a unit is available, the Tenant's unit may be reclassified for the lower affordability level and the next available unit may be classified with the higher affordability level so that the tenant does not need to move units.

7.11 STUDENT STATUS

The City's BMR and Workforce Housing programs are not intended as student housing. Accordingly, a household in which all occupants, including those in grades K-12, are full-time students, is not eligible for BMR or Workforce Housing. An exception is made for single parents with dependent children and certain other conditions. See <https://www.hud.gov/sites/documents/43503HSGH.PDF> for exceptions. Children ages 0-5 are not considered full-time students. See income inclusions and exclusion rules that apply to full-time students when calculating income: https://www.hud.gov/sites/documents/DOC_35699.PDF. For LIHTC properties, refer to CTCAC compliance rules on this issue.

7.12 LIVE-IN AIDES

The City does not count income from live-in aides as defined by HUD. See HUD Handbook Chapter 3 and Chapter 5: <https://www.hud.gov/sites/documents/43503c3HSGH.PDF> and <https://www.hud.gov/sites/documents/43503c5HSGH.PDF> for more information. For LIHTC properties, refer to CTCAC compliance rules on this issue.

7.13 DOCUMENTING INCOME CERTIFICATIONS AND ANNUAL RECERTIFICATIONS

7.13.1 Forms

Property Managers shall use the most current forms available from the California Tax Credit Allocation Committee (CTCAC) or the City, as provided below, or substantially similar forms created by the Owner or Property Manager or third-party software provider, as noted below: CTCAC forms are available on the CTCAC website at <https://www.treasurer.ca.gov/ctcac/compliance.asp>. Sample City forms are available from the

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City. In addition, Property Managers shall include a calculation worksheet for each household showing how income was calculated for each household member.

7.13.2 Tenant File Organization

Income Certifications for Tenant files shall be organized in the following order unless required otherwise for LIHTC, bond, or other programs.

1. Tenant Income Certification Form
2. Income calculation worksheet(s), income and rent limits, and Utility Allowance Schedule for the household.

The following Items shall be in order by household member with the head of household first.

1. Tenant Income Questionnaire
2. Income forms and documents
3. Asset forms and documents
4. Child support forms and documents
5. Student status forms and documents

7.13.3 Required Forms

Forms required by the City of Foster City for Initial Income Certifications and Recertifications are listed below. Unless otherwise noted, one form is required for each adult household member. Forms listed as "Sample" are provided by the City. Forms marked by an asterisk are available on the CTCAC website at <https://www.treasurer.ca.gov/ctcac/compliance.asp>. The City recommends checking the CTCAC website regularly to check for CTCAC form updates.

1. Sample Affidavit of Residence Form (required for Foster City residents for new move-ins)
2. Sample Annual Household Composition Form (one per household; required annually)
3. Tenant Income Certification (TIC) Form*(one per household)
4. Sample Income Calculation Worksheet
5. Tenant Income Questionnaire (TICQ)*
6. Sample Self-Employment Affidavit (SEA), if applicable
7. Family Contribution Affidavit, if applicable*
8. Non-Employment Form, if applicable*
9. Zero Income Certification Form, if applicable*
10. Sample Non-Tax Filer Affidavit, if applicable
11. IRS Form 4506-T, if applicable <https://www.irs.gov/forms-pubs/about-form-4506-t>
12. Under \$5,000 in Asset Certification Form, required if value of assets is < \$5000*
13. Sample Substantial Deposits form, (required if bank statements show multiple deposits over \$100 that are not disclosed on TICQ)
14. Child or Spousal Support Affidavit*
15. Sample Student Status Affidavit, (required for all students, full or part-time)
16. Live-In Aide Verification Form, if applicable*
17. Sample Under Minimum Income Affidavit, (required if income is under the minimum income for the affordability range and/or under the minimum required income for the unit)



18. Sample Clarification Form, if applicable
19. Sample Asset Verification Clarification Form, if applicable
20. Other forms, as required for LIHTC, Section 8 or other HUD programs, or Bond programs.

7.13.4 Creation of Forms by Property Managers

Property managers may elect to use their own forms for all non-TCAC forms (TCAC forms are marked with an asterisk above), provided they are substantially similar to the sample forms provided by the City. Property Managers that use compliance software that produces non-TCAC TIC forms for non-tax credit properties may use the non-TCAC TIC forms (e.g. Yardi or On-Site).

7.13.5 Use of California Tax Credit Allocation Committee Tenant Income Certification Form

The City requires use of the California Tax Credit Allocation Committee tenant income certification form, with the exception noted in Section 7.13.4, but acknowledges that the form is designed for tax credit properties. As described in Section 7.9.2, Property Managers must use the imputed income rate required for the property per the property's affordability restrictions (e.g., 10% instead of .06%) and enter the income limit required for their property on the LIHTC income and rent limits lines if different from the LIHTC limits.

7.13.6 Signatures on Forms

The Tenant Income Certification form must be signed by all adult household members and the Property Manager. All forms must be signed as indicated on the form. Taxes included in the file must be signed by the Tenant.

7.13.7 Dates on Forms

Forms prepared and/or signed after the effective date of recertification shall be signed with the current date and include the following statement "True and Correct as of (insert effective date). The statement must be initialed by the Tenant(s). Backdating of forms is not permitted.

7.13.8 Mistakes and Corrections on Forms

Forms and documents submitted for recertification may not be amended or corrected unless authorized by the Property Manager and initialed by the household member. Errors should be crossed out and initialed. Blacking or whiting out of errors is not permitted.

7.13.9 Conflicting, Incomplete, Insufficient, or Unclear Information Provided on Forms

If the Property Manager determines they have received conflicting, unclear, or insufficient forms or documentation, they have the right to request additional information from the household member pursuant to HUD Guidelines.

7.14 OCCUPANCY STANDARDS

7.14.1 Minimum and Maximum Household Size Requirements

The minimum and maximum household size for occupancy of various size units varies based on the requirements of the applicable affordable housing restrictions for each property. If occupancy standards are not addressed in the property's affordability agreement or covenant, the following general occupancy standards of a minimum of one person per bedroom for a studio and one

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bedroom, two people for a two-bedroom, four people for a three-bedroom, six people for a four bedroom, and eight people for a five-bedroom unit per Title 25, Section 8305, shall apply, and a maximum of two people per bedroom, plus one person per unit, shall apply, except that the maximum occupancy for a one-bedroom plus den unit shall be four people. Note that if the tenant has a live-in aide, the live-in aide counts in determining the household size for occupancy standards, but the aid is not counted in the household for income purposes, nor is the aide’s income counted in the household income.

General Occupancy Standards

Unit Size	Minimum Occupancy	Maximum Occupancy
Studio	1 person	2 people
One-Bedroom	1 person	3 people
One-Bedroom Plus Den	1 person	4 people
Two-Bedroom	2 people	5 people
Three-Bedroom	4 people	7 people
Four-Bedroom	6 people	9 people
Five-Bedroom	8 people	11 people

7.14.2 Annual Occupancy Monitoring

Households must complete a Household Composition Form annually for recertification and all two- and three-bedroom households must complete an Under-Occupancy Agreement form at move-in. A change in the number of occupants in the household may change the size of the unit for which the household is qualified. If the household no longer qualifies for the size unit they are renting, they shall be given at least a 60-day notice at the time of recertification that when an appropriate sized unit becomes available, they will be given a 30-day notice to move into such appropriate sized unit. Until an appropriately sized unit becomes available, they may stay in their current unit. If the development does not offer the appropriately sized unit for the household size, the Tenant shall be given a ninety (90)-day notice to vacate unless City determines that allowing additional time to comply is warranted. For example, if a family of six lives in a two-bedroom unit in a development in which there are no three-bedroom units, the family will receive a notice to vacate.

In the event that the property manager is unable to verify occupancy of one or more household members due to lack of tenant cooperation, or incomplete or inaccurate documentation, the tenant’s household size will be certified only for the verified occupants. The tenant may be required to move to an appropriately sized unit if the tenant is under the minimum occupancy requirement for the unit. The tenant shall be offered the next available appropriately sized unit and shall be provided with a thirty (30)-day notice. If occupancy of all tenants cannot be verified, the tenant will no longer be eligible for the BMR unit, and the rent shall be increased to market rate with a 60-day notice (ninety (90) days if the tenant is on a month-to-month lease). The next available unit shall be designated as a BMR unit at the same affordability level to maintain the required number of BMR units.



7.15 REQUESTING ADDITIONAL INFORMATION REQUIRED FOR ELIGIBILITY

Additional information and documentation may be required to review a Tenant’s eligibility to rent a unit in accordance with the HUD Handbook. Property Managers shall have policies and guidelines in effect at the time they request additional information and documentation to ensure compliance with Fair Housing laws and regulations. All policies and guidelines should be submitted to the City.

7.16 CITIZENSHIP/RESIDENT ALIEN STATUS VERIFICATION

The City does not require verification of citizenship or resident alien status unless required by law.

7.17 SOLE RESIDENCY REQUIREMENT

The BMR or Workforce housing unit must be the household’s sole and primary residence. Exceptions include students who reside elsewhere to attend school and reside in the BMR or Workforce unit 14 or more (consecutive or non-consecutive days per year), children under a shared custody agreement, estranged or separated spouses, and household members in temporary or permanent supportive housing.

8 DETERMINING RENT

8.1 REQUIREMENTS FOR DETERMINING RENTS

Property Managers are required to submit an Annual Rent and Income Limit Summary and a Utility Allowance Schedule to the City within 30 days of issuance of HCD Income Limits. The City issues a confirmation of rent limits for each property annually within 30 days of submission. Requirements for determining the Maximum Chargeable Rent pursuant to affordability designations are in each property’s affordability restrictions. See Section 7.6.4 for calculating non-standard income limits to be used in calculating rents.

8.1.1 City’s Standard Methodology for Rent Calculations

Unless stated otherwise in the property’s affordability restrictions or other regulatory agreement in effect, the City of Foster City calculates rent by determining the gross rent and deducting a reasonable utility allowance to determine the maximum chargeable rent for each size of unit.

The City of Foster City Municipal Code, Chapter 17.90 (C) defines below market rate rent as follows:

“Below market rate rent” means the total monthly housing expenses for a below market rate dwelling unit, available as a rental unit, not exceeding the rents specified by Section [50053](#) of the California Health and Safety Code and California Code of Regulations Title 25, Sections 6910 through 6924, except that the city may permit alternative criteria, when necessary, to be consistent with pertinent state and federal statutes and regulations governing publicly assisted rental housing. Adjustment for household size shall be as stated in Section 50052.5 of the California Health and Safety Code, except that in the event that



the property is subject to a tax credit, bond, or other financing program, then the household size adjustment shall be as stated in the tax credit, bond, or financing agreement.

As used in this chapter, “below market rate rent” shall include the total of monthly payments by the tenant for all of the following:

1. Use and occupancy of the below market rate dwelling unit and land and all facilities associated with the below market rate dwelling unit, including but not limited to parking (whether unbundled or not), bicycle storage, storage lockers, and use of all common areas;
2. Any additional separately charged fees or service charges assessed by the owner, other than security deposits;
3. An allowance for utilities paid by the tenant as established by the San Mateo County Housing Authority which may be updated from time to time, including garbage collection, sewer, water, electricity, gas, and other heating, cooking, and refrigeration fuel, but not telephone service, cable TV or Wi-Fi/internet; and
4. Any other interest, taxes, fees or charges for use of the land or below market rate dwelling unit or associated facilities and assessed by a public or private entity other than the owner and paid by the tenant.

8.1.2 Gross Rent

Gross Rent, defined as the affordable cost of housing and includes rent and utilities. Gross rent is generally calculated as 30% of the income limit for the applicable income category as established by California’s Housing and Community Development Department (HCD) for the household size or as stipulated in the property’s affordability restrictions, Regulatory Agreement, or Bond Agreement.

The affordability restriction may require use of different income limits to be used for income recertification than for calculating rent. For example, moderate income may be specified as 120% of AMI for determining income but refer to California Health and Safety Code Section 50053 for determining rent. The moderate income rent in Section 50053 is currently set at 110% of AMI. Therefore, the Property Manager must use 120% of AMI to calculate the household income for recertification purposes and 110% of AMI for the maximum rent calculation. Refer to the property’s affordability restrictions to confirm affordability levels for determining rent. Section 7.6.4 provides multiplier factors for determining non-standard percentages of Area Median Income.

8.1.3 Maximum Chargeable Rent

Maximum Chargeable Rent, or net rent, is defined as the maximum amount a Property Manager can charge the Tenant for their rent. Maximum Chargeable Rent is calculated by deducting a standard utility allowance, comprised of average costs for utilities and mandatory fees paid by the Tenant in order to live in their unit, from the Gross Rent. In general, and if not specified in the affordability restriction recorded on the property, the following household sizes shall be assumed: for a one-bedroom unit, a household size of two shall be assumed; for a two-bedroom unit, a household size of three shall be assumed, and for a three-bedroom unit, a household size of four shall be assumed. See Section 8.2 below for how to calculate the Utility Allowance.



- a) Maximum Chargeable Rent is always rounded down to the nearest dollar, if rounding is used, regardless of the fractional dollar amount. For example, if the Maximum Chargeable Rent is \$2,500.75, the rent must be rounded down to \$2,500. Charging \$2,501 would be greater than the Maximum Chargeable Rent.
- b) For properties with multiple regulatory agreements setting forth different methods to calculate maximum allowable rent, the lowest rent of the applicable calculation methods shall be used as the Maximum Chargeable Rent.
- c) Property Managers may charge less than the Maximum Chargeable Rent.

8.2 REQUIREMENTS FOR DETERMINING UTILITY ALLOWANCES

The Utility Allowance is the sum total of typical or average costs of certain utilities as listed on the Utility Allowance Schedule issued by the County of San Mateo, with exceptions as noted below, and that are paid for by the Tenant. The amount is determined annually for each size of unit in each BMR and Workforce housing development. Utilities paid for by the Tenant include those paid directly to the landlord, a third-party service, or to the utility company. The allowance also includes any mandatory fees charged to the Tenant. The Utility Allowance for each size of unit is deducted from the maximum gross rent for the unit to determine the maximum chargeable rent.

8.2.1 Definition of a Reasonable Utility Allowance

A reasonable utility allowance is defined as the sum total of all values for utilities that are paid for by tenants in addition to their rent as listed on the Utility Allowance Schedule issued annually by the County of San Mateo at <https://www.smcgov.org/housing/utility-allowance-schedules>, including sewer charges and other non-optional mandatory fees, as specified in the Foster City Municipal Code, Chapter 17.90.020 (C).

8.2.2 Calculating the Utility Allowance

Utility Allowances should be calculated consistently from year to year unless there is a change in how utilities are paid or charged to Tenants. An explanation of any change from one year to the next must be documented by the Property Manager and submitted to the City.

8.2.3 Source for Utility Allowance Schedule

Utility Allowances shall be as established by HUD for San Mateo County, as amended annually. The appropriate Utility Allowance shall be deducted from maximum rent to determine maximum chargeable rent for Tenants for each unit type at each property, unless stated otherwise in the property's affordability restrictions. HUD provides for the costs allocated to each type of utility for San Mateo County and the rates are listed on the following County of San Mateo website and issued annually: <https://www.smcgov.org/housing/utility-allowance-schedules>. The following additional items must be included on the Utility Allowance Schedule if they are charged to the Tenant, regardless of the method of billing.

- a) **Renter's Insurance.** If renter's insurance is required to be purchased by the Tenant, then an appropriate allowance for this shall be provided. The Property Manager shall determine the



appropriate allowance amount and the source for calculating the allowance shall be included in the annual Utility Allowance Schedule. In addition, the requirement for insurance must be included in the lease and the Property Manager must collect the evidence of coverage from the Tenant as part of the lease renewal process.

- b) **Sewer Charges.** If sewer costs for the property are charged to Tenants, the methodology for calculations shall be the average of the actual monthly sewer charges for the property for the last 12 months, prorated by unit size, number of units of that size in the property, and the household size per unit using the household size used in determining rent (example: 2 people in a one-bedroom unit, 3 people for a 2-bedroom unit, 4 people for a 3-bedroom unit). The bill shall be prorated and allocated as a flat rate for each size of unit. Calculations should be submitted with the Utility Allowance Schedule to the City annually.
- c) **Additional Mandatory Fees.** Any other mandatory fees charged to the Tenants must be included in the Utility Allowance. Examples parking fees, utility billing service fees, required use of a computer application to pay rent, monthly or quarterly pest control charges, etc. The allowances for these additional fees must be calculated using actual costs and the methodology must be provided to the City along with the annual Utility Allowance Schedule.

8.2.4 Rounding

Utility Allowances must always be rounded up to the nearest dollar if rounding is used, regardless of the fractional dollar amount. For example, if the Utility Allowance total is \$75.45, the Utility Allowance amount must be rounded up to the nearest dollar, or \$76.00 if rounding is used, to ensure that the allowance is not charged below the amount. Rounding is optional. It is acceptable to charge \$75.45.

8.2.5 Tenant-Paid Utilities Must be Stated in the Lease

The types of utilities paid for by Tenants to determine the Utility Allowance must be stated in the body of the lease or as a Utility Addendum, and included regardless of the entity to which the Tenant pays the utility bill. The Lease must also include the formula for calculating or prorating the utility payments, if applicable. In the event of conflicting information, the lease shall prevail in determining which utilities to include in the Utility Allowance. The Lease should also clearly state which utilities are paid for and not charged to the Tenant.

8.2.6 Annual Notification of Utility Allowance

Property Managers must submit a copy to the City of the annual Utility Allowance Schedule for each type of unit within 30 days of issuance by the County of San Mateo. See <https://www.smcgov.org/housing/utility-allowance-schedules> for current rates to be used in calculations.

8.2.7 City's Request of Information

The City has the right to request documentation regarding the Utility Allowance schedules prepared by Property Managers.



8.2.8 Tenant's Request for Information

Property Managers shall provide Tenants with the Utility Allowance Schedule and calculations for the Tenant's premises upon request. The City recommends providing the tenants with a copy of the Utility Allowance Schedule each year.

8.2.9 Implementation of Annual Utility Allowance

There are no restrictions in the California Housing regulations on the timing of adjustments to utilities allowances. Property Managers therefore have the following options to implement new allowances when they are issued: (1) begin using the new allowances and recalculate rents immediately, (2) make adjustments as Tenants are recertified and leases are renewed, or (3) make adjustments later in the year when the new HCD income limits are published, and rents are reset.

8.3 REQUIREMENTS FOR IMPLEMENTING CHANGES IN RENTAL RATES

8.3.1 Timing of Rent Changes

Any changes in rent shall take effect upon recertification at the time the Tenant's lease is renewed or January 1, at the discretion of the Property Manager, or another date mutually agreed upon by the Property Manager and the City.

8.3.2 Noticing of Tenants of Rent Changes

All rent changes must be noticed to Tenants pursuant to current State of California notice laws and regulations. In the event of conflicting notice rules as stipulated by HUD, financing entities, property's affordability restrictions, or local regulation, the longest notice rule shall apply.

8.4 ANNUAL RENT INCREASES AND ANTI-DISPLACEMENT STRATEGY

For BMR properties built after the effective date of these BMR Guidelines, rent increases for BMR units are limited as defined in Section 8.4.1. For BMR properties built prior to the effective date of these BMR Guidelines, Property Managers are permitted to raise BMR and Workforce rents to no more than the Maximum Chargeable Rent (See Section 8.1) per the property's affordability restrictions, or as provided by local, state, or federal law, with a recommended best practice as defined in Section 8.4.1.

However, due to the following reasons, BMR and Workforce Tenants often face financial hardship due to substantial rent increases, as many Property Managers increase rents to the maximum allowed annually, regardless of the percentage increase or Tenant hardship:

- HCD income limits often experience substantial increases from year to year, and due to the direct relationship between rent limits and income limits, the rent limits are often substantially greater than the prior year and often increase more than 10%.
- Property Managers often set initial rents at rates substantially lower than the Maximum Chargeable Rent due to prevailing market conditions, thereby creating a significant gap between the current rental rate and the maximum chargeable rental rate.

The practice of raising annual rents close to or at the maximum chargeable rent limit can also result



in an overcharging of rent if it is determined that the Utility Allowance was incorrectly calculated.

Therefore, and to support the City of Foster City's Fair Housing Action Plan priorities as outlined in the Housing Element 2023-2031 (<https://engagefosterCity.org/housing-element>), a key element of the City's Anti-Displacement Strategy for BMR and Workforce Housing is as noted below in Section 8.4.1.

8.4.1 Anti-Displacement Strategy

For BMR properties built before the effective date of these BMR Guidelines, the City strongly recommends as a best practice that annual rent increases for BMR units be limited to the lower of the Maximum Chargeable Rent or 5%, unless otherwise limited by statute at the local, state, or federal level or as required by the financing entity or bond program for a property or as stated in the property's regulatory agreement.

For BMR properties built after the effective date of these BMR Guidelines, annual rent increases for BMR units are limited to the lower of the Maximum Chargeable Rent or 5%, unless otherwise limited by statute at the local, state, or federal level or as required by the financing entity or bond program for a property.

8.5 RENTAL RATE ADJUSTMENTS FOR CITY-OWNED RENTAL UNITS

Staff has authority to adjust rental rates for vacant city-owned rental units by +/- ten percent (10%) due to current market conditions. Any increase or decrease greater than ten percent (10%) requires the approval of City Council.

9 REQUIREMENTS FOR LEASES

9.1 GENERAL LEASE REQUIREMENTS

9.1.1 HUD Model Lease

BMR and Workforce Leases should follow the applicable terms of the HUD model lease, including all required California Addenda. All leases are subject to current local, state, and federal regulations.

9.1.2 Affordable Housing Program Addendum

BMR and Workforce Leases must include an Affordable Housing Program Addendum signed by all adult household members and the agent for the Property that explains the requirements of the BMR or Workforce Housing program, including:

- a) The affordability designation for the unit for income and rent and the sources used for income and rent limits and the Utility Allowance determinations.
- b) Annual recertification of income requirements, if applicable.
- c) The Tenant's annual recertification deadline and deadline for submitting completed forms and documents each year, if applicable.
- d) Requirements for each adult household member, including documents required for annual



recertification, if applicable.

- e) A statement that Tenant cooperation is required for continued participation in the program, if applicable.
- f) A statement explaining what happens if the Tenant's income is over the limit for their unit, the Tenant does not submit all requested and complete recertification forms documents by the deadline, does not provide accurate information, provides false or misleading documentation or information, or withholds information.
- g) Annual rent increase rules and policies.

Properties with HUD-financing must comply with the HUD Handbook, Chapter 6, Requirements and Leasing Activities.

9.1.3 Utilities

BMR and Workforce Leases must include information about which utilities the Tenant pays for, any utilities charged to the Tenant through a ratio utility billing system (RUBS), if payments are made to a third-party service, how charges are calculated, any utilities paid for by the landlord, and any mandatory fees, including required renter's insurance. This information must be included in the lease document or a Utility Addendum. See Section 8.2 for details on calculating the Utility Allowance.

9.1.4 Occupants Named on Lease

Any person residing at the BMR or Workforce residence fourteen (14) or more consecutive or non-consecutive days per year, regardless of age, must be on the lease. Those who no longer reside in the household must complete a Release from Lease form. Refer to the HUD Handbook for live-in aides.

9.1.5 Renter's Insurance

If renter's insurance is required by the Property Manager, a copy of the Tenant's policy must be included in the lease and updated annually.

9.1.6 Lease Term

Initial leases must be offered to the Tenant for at least 12 months. Renewals may be month to month or annual or as required by the property's affordability restrictions, or local, state, or federal regulation.

9.1.7 Addenda

Leases shall include all addenda required by local, state, or federal, or financing entity law, regulation, or policy.

9.1.8 Resident Selection Policy

The resident selection policy must be included in the tenant's file, completed as part of the application for housing, and must be signed by all adult household members.

9.1.9 AB 1482

BMR and Workforce Leases are exempt from AB 1482, the California Tenant Protection Act of 2019.



9.2 REQUIREMENTS FOR TERMINATION OF BMR OR WORKFORCE TENANCY

Please refer to HUD Handbook HUD Handbook 4350.3 REV-1, Chapter 8 for guidelines regarding terminations. Any terminations of tenancy comply with local, state, and federal laws. Note that a Tenant's income falling below the minimum income required is not a valid reason for lease termination. The Property Manager shall notify the City and provide a copy of the eviction proceedings.

10 REQUIREMENTS FOR PROGRAM MONITORING AND ADMINISTRATION

10.1 ANNUAL MONITORING FEES

The City charges annual monitoring fees for annual monitoring compliance of BMR units built after the effective date of these BMR Guidelines. Annual monitoring fees are due April 1 each year. Fees are included in the City's Master Fees and Service Charges Schedule.

10.2 USE OF HOUSING COMPLIANCE SOFTWARE

Property Managers shall use the Housing Compliance software to file their annual Property Status Report (PSR) with the City. The annual deadline for report submission is April 1 of each year unless specified otherwise in the property's affordability restrictions or Affordable Agreement. Instructions for Housing Compliance software: <https://www.housingcompliance.org/faq-help/>.

10.3 ANNUAL SUBMISSION OF WAITLIST TO CITY

At the same time as the Property Manager submits a report to the City, an up-to-date version of the Waitlist shall also be submitted by email in an electronic spreadsheet format.

10.4 SUBMISSION OF UTILITY ALLOWANCE WORKSHEETS TO CITY

The Property Manager shall submit, a current Utility Allowance Schedule To the City concurrent with the Annual Report and within thirty (30) days of issuance of the schedule by the County of San Mateo.

10.5 DIGITAL SIGNATURES ON LEASES AND INCOME CERTIFICATIONS

The City allows electronic signatures on documents and follows the California Tax Credit Allocation Committee rules on digital signatures. See: <https://www.treasurer.ca.gov/ctcac/compliance/memos/compliance-monitoring-2022.pdf>.

10.6 SUBMISSION OF LEASE DOCUMENTS TO CITY

For City-owned units, Property Managers must submit a copy of each BMR or Workforce Lease, including all addenda, to the City within seven (7) days of execution.



10.7 RETENTION OF RECORDS

10.7.1 Storage Time Requirement

Property Managers must maintain records for at least seven (7) years that document the compliance of their BMR or Workforce rental properties with the City's requirements. These records must also support the accuracy of the reports that Property Managers submit to the City. Required records include documentation related to Tenant income certifications, unit rents, applications, selection policies, and leases, and policies, procedures, marketing plans.

This requirement may be superseded by property's affordability restrictions or state or federal rules or regulations governing the properties, including those in LIHTC or bond programs.

10.7.2 Tenant Files

Tenant files must be in locked cabinets or locked storage rooms. Documents and file contents must be affixed to the file and in date order. Lease and certification files may be separated into separate files if preferred. File contents should be date ordered.

10.7.3 Electronic Files

Files may be kept electronically or in hard copy. Electronic files must be protected. The City requires all electronic files to comply with California Tax Credit Allocation Committee rules on electronic files. See: <https://www.treasurer.ca.gov/ctcac/compliance/memos/electronic-storage.pdf>.

10.7.4 Disposal of Records

Records must be disposed of in a manner that protects the privacy of Tenants. Unneeded documents and Tenant files containing personal and confidential information must be shredded onsite or using a third-party shredding service. Tenant files with sensitive information should never be put in the trash or recycling.

10.8 CITY AUDITS AND MONITORING

The City may, at any time, request to review the records to verify compliance with program requirements and/or inspect the property or records associated with Tenant files or the BMR or Workforce program. City audits may be conducted at the property if requested by the City.

10.9 CHANGES IN MANAGEMENT OR OWNERSHIP

The City shall be notified of any changes in management or Ownership. These BMR Guidelines shall be provided to any new management staff.

10.10 EXPIRATION OF PROGRAM RESTRICTIONS – TENANT NOTIFICATION

At least two years prior to the expiration of program restrictions, the Property Manager shall begin a discussion with the City regarding procedures for Tenant notification.



10.11 DUTY TO DISCLOSE COMPLAINTS OR LEGAL ACTION TAKEN BY A TENANT

Property Managers shall notify the City of any legal action pursued by a Tenant regarding Fair Housing, discrimination, landlord-Tenant disputes, or compliance with the affordability restriction for the property or these BMR Guidelines.

10.12 TENANT ACCESS TO FILES

Tenants shall be given the opportunity to review their physical file upon request and be given access within a reasonable amount of time. Tenants shall have access to all contents of their file, including, but not limited to information regarding income limits, calculations of rent and utility allowances, initial and recertifications, any policies related to certification or recertification, resident selection policies, and leases.

10.13 BEST PRACTICES FOR PROPERTY MANAGEMENT

The City recommends that the Property Manager follow the CALIFORNIA TENANT'S GUIDE, A GUIDE TO RESIDENTIAL TENANTS' AND LANDLORDS' RIGHTS AND RESPONSIBILITIES and make this guide available to the applicant/Tenant at the time of their initial lease. <https://www.courts.ca.gov/documents/California-Tenants-Guide.pdf>.

10.14 ADDITIONAL REQUIREMENTS

The property's affordability restrictions, local, state, or federal regulation may require additional records management and reporting requirements, or supersede requirements as stipulated in this Section 10.

11 USE OF HUD GUIDELINES FOR ITEMS NOT COVERED IN THESE GUIDELINES

11.1 USE OF HUD GUIDELINES FOR BMR AND WORKFORCE PROPERTIES

For items not covered in these BMR Guidelines, the HUD Handbook 4350.3 REV-1 shall be considered a reasonable best practice. The handbook is provided on the website of the U.S. Department of Housing and Urban Development at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsg/4350.3

Note that the City does not use or require use of the Enterprise Income Verification (EIV) system referenced in the HUD Manual, unless required by the property's affordability restrictions or Bond Financing. In addition, the Below Market Interest Rate (BMIR) referenced in the HUD Manual is not the same as the City of Foster City's BMR Program. Specific requirements for HUD-based programs, such as Section 8, only apply if the property is a Project-Based Section 8 property or a Tenant has a Section 8 (now called Moving to Work) voucher. In the event that guidance is not provided by the HUD Manual referenced above or is not clear, the City shall provide guidance regarding the methods used for income certification and interpretation of the HUD Manual and



property's affordability restrictions or other regulatory agreements that relate to income certification, at the request of the Property Manager.

11.1.1 Use of HUD Guidelines for Properties Covered by One or More HUD-Funded Programs

For properties covered by one or more HUD-funded Programs, if there is conflicting information in the HUD Handbook, the property's affordability restrictions, or these BMR Guidelines, then the strictest policy shall apply. An overview of HUD Programs can be found at <https://www.hud.gov/sites/dfiles/Main/documents/HUDPrograms2023.pdf>.

11.2 USE OF HUD FOR PROPERTIES NOT COVERED BY HUD-FUNDED PROGRAMS

For properties that are not financed by HUD-funded Programs, The HUD Handbook does not supersede the affordability restrictions in place for a property or these BMR Guidelines but supplements these documents by providing best practices. For example, a BMR or Workforce property that is not subject to Section 8 and has no Tenants with Section 8 vouchers, is not subject to the Section 8 rent calculation, minimum rent, or other rules specific to Section 8. An overview of HUD Programs can be found at: <https://www.hud.gov/sites/dfiles/Main/documents/HUDPrograms2023.pdf>.

11.3 USE OF HUD'S FAIR HOUSING POLICIES

Please note that HUD's policies on Fair Housing are applicable to all BMR and Workforce properties. See:

https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_act_overview#_The_Fair_Housing. In addition, the following temporary HUD Programs may apply to the BMR or Workforce property if the Owner received federal financial assistance through one of the following programs:

- The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136, approved March 27, 2020)
<https://www.congress.gov/bill/116th-congress/house-bill/748/text>
- American Rescue Plan Act of 2021 (Public Law 117-2, approved March 11, 2021)
<https://www.congress.gov/bill/116th-congress/house-bill/748/text>

Please note that the State of California Fair Housing laws also apply to all properties. More information about California Fair Housing can be found here: <https://calcivilrights.ca.gov/LegalRecords/>.

12 TRAINING REQUIREMENTS FOR PROPERTY MANAGERS

12.1 FAIR HOUSING TRAINING

The City requires that all Property Managers interacting with Tenants in leasing and/or income certifications complete Fair Housing Training at least once every other year. Property Managers must submit their training certificates to the City upon request. Additional information about Fair Housing is available here:

<https://calcivilrights.ca.gov/california-fair-housing-regulations-webinar-pdfs/>.



12.2 COMPLIANCE TRAINING

The City requires federal, state, or local income certification training at least once every three years for all property management staff involved in conducting income certifications and initial training within six months for any new hires. Workshop schedules for the California Tax Credit Allocation Committee are available here: <https://www.treasurer.ca.gov/ctcac/compliance.asp>. HUD training is available at <https://www.hudexchange.info/trainings/>. Please note that TCAC has a stricter set of rules for compliance than HUD and these BMR Guidelines. Therefore, not all TCAC training is applicable.

12.3 TECHNICAL ASSISTANCE

12.3.1 Technical Assistance to Non-Profits

The City will provide technical assistance, such as information on applicable regulations and policies and how to coordinate various programs, to nonprofit groups organized to encourage provision of affordable housing and sponsors of affordable housing projects and programs.

12.3.2 Technical Assistance to Property Managers

The City will facilitate provision of housing by providing technical assistance in a liaison role with non-profit housing groups and managers of affordable housing units in the City. The City may also provide training on these BMR Guidelines from time to time or upon request.

12.4 ADDITIONAL RECOMMENDED TRAINING

The City recommends that Property Managers complete training on topics such as AB 1482, the Tenant Protection Act, Service and Assistive Animals, and other topics relevant to property management to stay apprised of current laws and industry best practices. The City may from time-to-time share training opportunities with Property Managers. Property Managers should also consult their property's affordability restrictions, and, for City-owned properties, the Property Management Agreement, regarding any additional training requirements.

13 NON-COMPLIANCE AND ENFORCEMENT

In the event that the City determines that BMR management practices are not in compliance with the provisions of the property's affordability restrictions, or other regulatory document in effect the City has enforcement authority pursuant to City of Foster City Municipal Code, Chapter 17.90.110 (E). <https://www.codepublishing.com/CA/FosterCity/>.

13.1 PROCEDURE FOR ENFORCEMENT OF NON-COMPLIANCE

In the event that the City determines that BMR management practices are not in compliance with the provisions of the property's affordability restrictions, or other regulatory document in effect, City staff shall notify the Property Manager with a Notice of Non-Compliance, and remedies, per Section 13.2, and deadlines for correcting non-compliance issues.



13.1.1 Appeal Process

Property Managers/Owners who wish to appeal a notice of non-compliance must submit a request for appeal in writing to the City within ten (10) business days of receipt of the Notice of Non-Compliance. Appeals must provide evidence that demonstrates that the property complies with the property's affordability restrictions or other governing regulatory document in effect, as applicable. The City will respond to the appeal within thirty (30) days. Appeals are denied or approved by the Community Development Director in coordination with the City Attorney. In the event of a denial the Property Manager/Owner shall have 30 (thirty) days from the date of the denial, to remedy the non-compliance.

13.1.2 Continued or Repeated Non-Compliance

Property Managers/Owners that remain in a state of non-compliance for more than ninety (90) days after the date of a Notice of Non-Compliance or Denial of an Appeal of Non-Compliance or are notified by the City of non-compliance may be subject to fines, as established by Resolution, or legal action by the City pursuant to City of Foster City Municipal Code, Chapter 17.90.110 (E) and the City's Master Fees and Service Charges Schedule.

13.1.3 Fair Housing Issues

The City refers any member of the public alleging a violation of Fair Housing laws to the California Civil Rights Department. See <https://calcivilrights.ca.gov/complaintprocess/>. Property Managers shall notify the City of any complaint filed by a BMR or Workforce Tenant. If the City suspects a fair housing violation due to findings of an audit of BMR or Workforce files, the City has an obligation to inform the Property Manager in writing of the potential violation and request immediate action to demonstrate the City's commitment to Affirmatively Furthering Fair Housing as provided in the Housing Element, Chapter 3 (<https://engagefosterCity.org/housing-element>).

13.1.4 Americans with Disabilities Act

The City refers any member of the public alleging a violation of the Americans with Disabilities Act to the California Civil Rights Department. Property Managers shall notify the City of any complaint filed by a BMR or Workforce Tenant.

13.2 TENANT INQUIRES AND DISPUTE RESOLUTION

The City has an obligation to respond to BMR and Workforce Tenants that contact the City to inquire about compliance issues regarding their BMR or Workforce property. The City investigates compliance inquiries and complaints and responds to Tenants generally within thirty (30) days. The City facilitates dispute resolution in accordance with the affordability restriction on the property, financing entity rules and regulations, these BMR Guidelines, the Housing Element 2023-2031, and Fair Housing and Anti-Discrimination Regulations. Disputes are handled on a case-by-case basis and, if necessary, are referred to the State of California Civil Rights Department's Community Conflict Resolution Unit (<https://calcivilrights.ca.gov/disputeresolution/#conflictBody>) or the Peninsula Conflict Resolution Center (<https://www.pcrweb.org>).



13.3 REMEDIES

City staff may elect to seek one or more remedies as necessary to enforce the provisions of the property's affordability restrictions or other Regulatory Agreement in effect. The City will provide a reasonable period of time to cure violations. Remedies shall be consistent with the applicable affordability restrictions or other Regulatory Agreement, as well as Foster City Municipal Code Chapter 17.90, as amended from time to time.

14 REVISIONS TO EXISTING REGULATORY AGREEMENTS

If an existing BMR property manager wishes to adopt new occupancy standards included in Section 17.14.1, they must also comply with BMR unit rent control (section 8.4.1) and BMR monitoring fee (section 10.1). The proposed revisions to the regulatory agreement shall be reviewed and approved by the City Attorney.

15 CONFLICT WITH HOUSING ELEMENT OR OTHER REGULATORY INSTRUMENT(S)

These BMR Guidelines serve as an implementation tool for the Housing Element and property affordability restrictions, affordable housing agreements, amendments, or other regulatory instruments that are in effect for all properties covered by these BMR Guidelines. In the event that these BMR Guidelines conflict with the Housing Element, the deed restriction recorded for the property, affordability restrictions, affordable housing agreement, or amendment to a covenant or agreement or other local, state, or federal regulation covering the property, the regulatory instrument(s) in effect for the property shall supersede these BMR Guidelines.

16 LIST OF SAMPLES AND TEMPLATES AVAILABLE

The following samples, forms, and templates are available from City Staff upon request.

- Sample Marketing Plan
- Sample Flyer for Waitlist Opening
- List of Organizations for Outreach
- Waitlist Template
- Waitlist Application Template
- Purge Letter Template
- Income Certification Forms Checklist
- Income Certification Forms Packet
- Rent Calculation Spreadsheet Template
- Calculation Worksheet Template

Other templates and samples may be added to this list from time to time.