



# Housing Mitigation Procedural Manual

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# City of Cupertino

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# INTRODUCTION

Assembly Bill No. 1600 (AB 1600, statutes of 1987, 1988 and 1989, California Government Code, Section 66000-et seq.) establishes standards for cities imposing development fees. To reiterate the standards, the City must show a relationship (nexus) exists between the fee's use and the type of project, identify the purpose of the fee and identify the use of the fee. The City of Cupertino has addressed these standards with the nexus study that was commissioned in 1991.

The study, ("A Study to Examine the Relationship of Land Use and the Creation of Additional Housing Needs", Planning Resource and Associates, January 1992) evaluated the relationship between land use and affordable housing. The "nexus" study demonstrated that all new developments create additional housing needs and place additional strain on the City's Affordable Housing programs. However, the City Council believed that requiring retail developers to provide affordable housing would negatively impact the City's economy. Therefore, residential and office/industrial developers are required to mitigate the need for additional housing units.

This document establishes procedures to implement housing mitigation as required by the General Plan Housing Element. The City or its agent will administer the programs.

This procedural manual consists of two major components, Section One addressing the office and industrial mitigation and Section Two addressing residential housing mitigation.

# **Section One: Office and Industrial Mitigation**

## **1.01 Objective**

The purpose of Cupertino's Office and Industrial Housing Mitigation Program is to acknowledge housing needs created by the development of office and industrial projects and provide nominal fees to support the development of affordable housing for families and individuals who work in Cupertino but live elsewhere. This policy will help alleviate regional traffic congestion by reducing distances between residence and workplace.

For the purposes of Section One of this manual, the terms "developer", "company", and "owner" shall be synonymous.

## **1.02 Program Requirements**

### ***1.02.01 Application of Program***

Housing mitigation shall apply to new development of office and industrial space. Office and industrial development, which has a valid use permit at the adoption of the General Plan (June 1, 1993), shall be exempt.

### ***1.02.02 Mitigation Fee***

Developers shall pay a fee as determined by the City Council. The fee shall be adjusted annually using the Consumer Price Index (all items index for the San Francisco Bay Area) and shall only be used for the provision of affordable housing in Cupertino. The options for use of the fee include, but are not limited to the following:

- a. Development of new affordable units.
- b. Conversion of existing market rate units to affordable units
- c. Down payment assistance programs
- d. Second mortgage programs

In the event the funds are not used for affordable housing within five years fee will be returned to the developer as per AB 1600.

### ***1.02.03 Mitigation Fee Payment***

Mitigation fee shall be due and payable at the issuance of any construction permits for the office or industrial project.

## **Section Two: Residential Mitigation**

### **2.01 Objective**

The purpose of the Residential Mitigation segment of the program is to provide the City of Cupertino with a supply of affordable housing for households working and residing in Cupertino. The main goal is to provide a safe, clean living environment for those families and individuals making a contribution to Cupertino and its residents.

Public service employees make especially high contributions to Cupertino and its residents by ensuring public safety and providing other vital services. As such, they shall receive a high priority in the placement system.

### **2.02 Program Requirements**

#### **2.02.01 *Application of Program***

Housing mitigation shall apply to all new residential developments of one unit or greater. In projects where units are being demolished, the net increase in units shall be used in determining the number of BMR units to be constructed.

#### **2.02.02 *Mitigation Requirement***

Residential developers shall designate at least 15% of the units in a development as “affordable”. If the developer is constructing “for-sale” housing, the affordable units must serve median and moderate-income families. Fifty percent of the ownership BMR units shall serve median income and 50% shall be made available to moderate income households.

If the units being constructed are rental units, then they must serve very low income and low-income families. Forty percent (40%) of the Below Market Rate (BMR) rental units shall be affordable to low income households and sixty percent (60%) of the BMR rental units must be affordable to very-low income households. For example, if the development consists of 120 rental units, then 18 units shall be affordable (7 to low income and 11 to very low income). In the case of ownership developments, when 50% of the BMR units results in an odd number, the “extra unit” shall benefit the median income group.

When the computed housing mitigation for either rental or ownership results in a fraction of a unit, the developer’s obligation shall be as follows:

0 - .49 of a unit: Round down

.50 - .99 of a unit: Round up.

For condominiums used as rental housing, the BMR units shall be made available to low and very low-income families using the above stated formula. Should the property owner decide to sell the individual condominiums units, then said owner must allow the BMR

residents one year to secure new housing. After the BMR units have been vacated (during the conversion to condo use), the units will be sold to median and moderate-income households and will be deed restricted by the City for the remainder of the term of affordability.

In phased developments, the BMR requirement shall be assessed against the overall development plan and not the individual phases of the proposed master plan.

In all cases, the BMR units should be developed in a time frame consistent with the overall development.

### **2.02.03 Mitigation Options**

In projects of one to six units, the developer may pay a fee in lieu of development of the affordable units or meet the requirement with alternatives consistent with the Housing Element of the General Plan. Developments consisting of seven units or more must develop the BMR units on-site using the standards set forth in this procedural manual.

### **2.02.04 In-Lieu Fee**

Developers shall pay a fee as determined by the City Council for developments of one to six units. The fee will be assessed on a per square foot basis (inclusive of garages) on all new development and be adjusted annually using the Consumer Price Index (all items for the San Francisco Bay Area). For the purposes of assessing the fee, new development shall be defined as development on an existing vacant lot or redevelopment of a lot where an existing housing unit has been demolished.

The in-lieu fee (collected for projects of less than seven units) shall only be used for the provision of affordable housing in Cupertino and will be collected at the building permit stage of development. The in-lieu fee shall be paid prior to the issuance of any construction permits and prior to the commencement of any work on the site.

The options for use of the fee include, but are not limited to, the following:

- a. Development of new affordable units
- b. Conversion of existing market rate units to affordable units
- c. Down payment assistance programs
- d. Second mortgage programs

In the event the funds are not used for the purposes they were exacted or utilized within five years from the date the fee was collected, the in-lieu fee will be returned to the developer as per AB 1600.

### **2.02.05 Agreement between Developer and City**

Developer shall enter into an agreement with the city of Cupertino to provide the affordable units prior to the issuance of any construction permits and prior to the commencement of

any construction on the site. Said agreements shall indicate where the units will be located on the site.

### **2.02.06     *Annual Revision of Sale Prices and Rental Rates***

Both the affordable selling prices and rents for the affordable units shall be updated on an annual basis in conformance with the HUD Income Guidelines as established for the County of Santa Clara by the United States Department of Housing and Urban Development (HUD).

### **2.02.07     *Project Conformance***

Affordable units shall generally reflect the total project mix in terms of bedroom count and size of unit. The units shall be scattered throughout the site and shall conform to the exterior appearance of the other units in the project. Buyers should be permitted to upgrade fit and finishes prior to the close of escrow. Low/very low-income units can be substituted for market rate units at the developer's discretion.

## **2.03        City Contributions**

### **2.03.01     *Density Bonus***

To maximize housing opportunity and partially assist the developer by reducing or eliminating the development cost for the affordable units, a density bonus consistent with Ordinance No. 1569 ("An Ordinance of the City Council of the City of Cupertino Adopting and Implementing the State Density Bonus Law") may be permitted. The bonus units shall be permitted providing they can reasonably be accommodated on the site and meet City standards. Residential/housing mitigation requirements shall apply to the density bonus units.

### **2.03.02     *Alternate Interior Finishes in Affordable Units***

The exterior design of the unit shall be consistent with other units in the project. Internally, the affordable units may differ from other units in the development by using alternate interior finishes that are approved by the Cupertino Housing Commission.

### **2.03.03     *Financial Assistance***

If the project qualifies, the City may choose to utilize Affordable Housing Fund monies to create a greater percentage of affordable units at the 50% (very-low income) and 80% (low income) price levels.

### **2.03.04     *Fee Waivers***

The City shall waive park dedication and construction tax fees for affordable units.

### **2.03.05     *Priority Processing***

The city shall, wherever possible, expedite the processing of developments with affordable units.

### **2.03.06     *Management Agreement***

The City shall enter into an agreement with a management agency to administer the buyer selection process and manage the BMR rental program. To assist developers in separating themselves from the management and sale of the BMR units, developers shall have their affordable units managed and sold under the City agreement with the management agency.

### **2.03.07     *Subordination Restrictions***

The City agrees to subordinate this housing mitigation program to any construction lender and to individual first deeds of trust to the extent of 90% of the below market rate value. The City shall have the nonexclusive right to cure a default to preserve the housing mitigation program.

## **2.04        Applicant Qualifications**

### **2.04.01     *Solicitation of Applicants***

Applications for BMR units shall be solicited as necessary to maintain adequate application pools for each appropriate income level. The City's agent shall provide and distribute program brochures that are culturally and linguistically appropriate to the community. These brochures will be available at City Hall, the Cupertino Public Library, the Quinlan Community Center, the Cupertino Senior Center and other appropriate locations. Furthermore, the City's agent shall conduct outreach efforts through local media that are culturally and linguistically appropriate to the community.

Applicants may use a "self-qualifying" eligibility application, which will be subject to verification.

Applicants will receive a point for meeting each of the following descriptions:

- One point = Cupertino resident;
- Two points = Primary full-time employment in Cupertino;
- One point = Public Service Employee.

Applicants receiving four points shall be considered the highest priority;  
Applicants receiving three points shall be considered the second highest priority;  
Applicants receiving two points shall be considered the third highest priority;  
Applicants receiving one point shall be considered the fourth highest priority; and  
Applicants receiving zero points shall be considered the lowest priority.

### **2.04.02 Definition of Residency**

Households applying under priority consideration for residency shall provide proof of residency in Cupertino for at least one year from the date of application. Utility bills and rental agreements shall be considered proof of residency.

### **2.04.03 Definition of Full-time Employment**

Full-time employment is defined as 35 hours per week. Cupertino employees must show proof of being employed at a primary full-time, permanent job within the city limits for at least 25 of the 35 hours. A letter from the personnel department of the employer and one year's paycheck stubs shall serve as sufficient proof.

### **2.04.04 Definition of Public Service Employee**

Public Service employees are defined as full-time employees from the Cupertino Union School District, Fremont Union High School District, DeAnza College, the City of Cupertino and Cupertino Library. Santa Clara County Fire Department and Santa Clara County Sheriff Department employees must work within the city limits to be eligible for housing assistance; reassignment to another city/county area is cause for removal from the eligibility list. However, if the Fire or Sheriff employee has received housing assistance and is reassigned, the employee will not need to relinquish the housing unit.

The public service position, as defined in the above paragraph, must be the applicant's primary wage earning job in order to qualify under the public service definition. Proof shall be submitted in the form of paycheck stubs.

### **2.04.05 Applicant Waiting Lists**

Within each priority group, waiting list numbers shall be assigned based upon the date the application was verified and approved, or if a drawing is performed, the order drawn within each priority group.

Waiting lists will be verified annually in accordance with the U.S. Department of Housing and Urban Development (HUD) income guidelines. The verification procedure will consist of notifying the applicants on the waiting lists to complete a new "self-qualifying" Eligibility Application form or supply specific information to determine if they are still qualified. The information will need to be supplied within 30 days of the request or the date specified on the letter. Applicants will retain their priority number on the Priority Waiting Lists from the previous year, if their qualification information is received within the specified time period.

### **2.04.06 Applicant Submittals**

All applicants remaining on the waiting list shall submit, when requested, proof of:

- a. Residency
- b. Place of Employment
- c. Annual Gross Income

d. Other Assets

**2.04.07 Applicant's Right to Refusal of Unit**

An applicant has one opportunity to refuse a development before being removed from the current applicant pool.

Applicants who do not qualify for a particular development shall retain their eligibility.

**2.04.08 Income Qualification**

Household income is defined as the sum of all the income for every adult, 18 years or older, living in the unit. Sources of income include all wages or salaries, overtime pay, commissions, fees, tips, bonuses and other compensation, net income from a business or profession or from the rental of real or personal property, interest and dividends, payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, payments in lieu of earnings, public assistance, alimony and child support, and any other sources of income.

Net assets in excess of \$60,000 will have imputed income at 5% or actual income, whichever is larger, added to Household Income.

Each able-bodied adult included in the household, 18 years or older must be employed. Exceptions will be reviewed by the City or its management agent (i.e. disabled, full-time student, etc.)

**2.04.09 Appeal Process**

Any portion of this manual may be appealed. A written request is required from the appellant. The request should be addressed the Community Development Director. Any appeal will be referred to the Cupertino Housing Commission for recommendation within thirty (30) days of the date of the written request. The recommendation from the Cupertino Housing Commission will then be forwarded to the City Council for final ruling. All City Council rulings on the appeal are final.

**2.05 Ownership Units**

**2.05.01 Applicant Qualifications for Ownership Units**

The BMR program is designed to assist first-time homebuyers with incomes between 80% and 120% of the median for the County of Santa Clara as established by HUD. Applicants will be eligible according to the family size and income criteria indicated on Exhibit A.

**2.05.02 Applicant Assets**

Households with net assets over \$100,000 held in the United States or foreign countries will not be eligible. Excluded from net assets are all non-accessible funds; or any assets that generate a penalty when withdrawn i.e. 401K, CALPERS, STRS and other pension plans.

### **2.05.03 Definition of First-time Homebuyer**

An applicant must be a first-time homebuyer to be considered for ownership. An applicant shall be considered a first-time homebuyer if their name has not appeared on a residential property title for a principal residence in at least three years from the date of application. This definition applies to properties owned in foreign countries as well as the United States.

### **2.05.04 Price Determination**

The income range of the buyers shall determine the unit type and sale price as indicated in Exhibit B.

### **2.05.05 Lending Institutions**

The prospective buyer, when seeking financing, may choose to contact lending institutions that have been briefed by the City or its agent.

### **2.05.06 Insurance Requirements**

Prior to the sale of any unit, the City shall require that each purchaser execute a subrogation agreement whereby the City shall be named the additional insured party to any policy of fire or casualty insurance and will be entitled to any such policy proceeds in excess of the affordable unit purchase price.

### **2.05.07 Qualification Period**

Applicants must verify qualifications and qualify to purchase a unit within 30 days of notice that they are eligible apply to purchase.

### **2.05.08 Occupancy Conditions**

Units must be owner-occupied verification of owner shall be on an annual basis.

### **2.05.09 Lease, Rent, or Sublet of Units**

Owner is not permitted to lease, rent, sublet the unit, or otherwise assign their interests in the property without the express written permission from the City or its property management agency. The lessee must meet the same requirements imposed on the owner. The lease shall be subject to review by the City or its agent.

#### ***Example:***

*The owner of an affordable unit is being transferred to a different state for a nine-month period. In order to lessen the burden of the owner paying a mortgage on the BMR unit as well as rent in the new state, the owner may lease the BMR unit with prior written approval from the City or its agent.*

### **2.05.10 Resale Price**

The resale price will be established based on the following:

- a. Original Purchase Price.
- b. Cumulative increases or decreases during the period of ownership, as indicated by the Consumer Price Index for the Bay Area.
- c. The value of any substantial improvements or damage to the unit. Values of improvements, if any, are to be established by a property appraisal at the owner's expense.
- d. Administrative costs incurred by the property management agency or other selling agent to sell the unit.

### **2.05.11 Right of First Refusal**

During the period that an affordable unit is maintained at an affordable price the City has the right of first refusal on the sale of any of those units. Within sixty (60) days of notice from homeowner, the City must decide whether it will exercise this option.

### **2.05.12 Condition of Units**

Units shall be kept in good repair and resale price shall reflect the condition of the unit. Cost of termite reports and any required repairs are considered out of pocket expenses for the sellers.

### **2.05.13 Terms of Affordability**

The deed restrictions imposed on each affordable unit pursuant to the program shall remain in effect for a period of 99 years from the date of original sale of that unit. Furthermore, the resale restrictions shall renew at each change of title.

### **2.05.14 Resale of Unit - Owner's Responsibility**

If the owner elects to sell his unit, the City and/or its agent must be notified in writing.

### **2.05.15 Purchaser**

As units become available for resale, the next qualified buyer in the application pool will be notified.

### **2.05.16 Fees**

In addition to any fees noted, the City or their Agency may charge an administrative fee for services in qualifying a purchaser and maintenance of waiting lists. The fee will be the responsibility of the Purchaser.

## **2.06 Rental Units**

### **2.06.01 Applicant Qualifications for Rental Units**

The program is designed to assist low and very low-income families, which are defined as families with an income equal to or less than 80% of the median income for the County of Santa Clara as established by HUD. Applicants will be eligible according to the family size and income criteria indicated in Exhibit B. Individual complexes may impose a minimum income not to exceed two times the monthly rent.

### **2.06.02 Applicant Assets**

Households with net assets exceeding one year of the maximum income allowed will not be eligible. Excluded from net assets are all non-accessible funds; or any assets that generate a penalty when withdrawn i.e. 401K, CALPERS, STRS and other pension plans.

### **2.06.03 Rental Rate Determination**

The income range and household size of the tenant shall determine the unit type (and therefore the maximum rental rate of the unit) by using Exhibit B.

### **2.06.04 Availability of Units**

An affordable unit shall not be available for lease until the City formally accepts the units.

### **2.06.05 City Contractor's Role in Leasing of Units**

The developer shall utilize the services of the City's management agency to assist in the selection of tenants. The services of this agency shall be funded out of the in-lieu or Community Development Block Grant (CDBG) funds and shall be monitored by the City.

### **2.06.06 Previewing of Unit**

It is the applicant's responsibility to contact the management agency to preview the unit.

### **2.06.07 Occupancy Conditions**

It is the intent of this policy that the original lessee shall occupy the unit during the term of the lease. However, if special conditions require that the unit be sublet, the applicant/tenant is only permitted to sublet the unit to qualified households with the express written permission from the City of Cupertino and its agent.

If an additional occupant (roommate, family member, etc.) moves into the unit, he/she will be considered part of the existing household. In such cases, the BMR tenant must notify the City and/or its agent prior to the move in date for reevaluation. At which time, the entire household (including the new occupant) will be reevaluated to determine eligibility, including household income requirements. All household members must reside in the unit for at least six months each year.

### **2.06.08    *Annual Re-qualification***

On an annual basis, the city or its agent shall requalify tenants to verify they are eligible to remain in the below market rate rental units. Requalification shall be based upon the tenant's income, as determined by the three most recent pay stubs, prior year tax forms and family size. If no longer eligible for the below market rate rental unit, the tenant will have three months to locate alternate housing and vacate the BMR rental unit. A three month extension may be granted in cases of extreme hardship.

### **2.06.09 Annual Rental Rate Increases**

The annual rental rate increase shall be established from a formula provided by the City based on the following:

- a. Previous rental rate
- b. HUD income guidelines
- c. Household size
- d. Units size
- e. Annual Utility Allowance

No annual increase shall exceed 5%.

### **2.06.10 Evictions**

Any falsification or knowingly withholding documents and information will result in an immediate 30-day notice to vacate. Tenants are subject to apartment management regulations.

### **2.06.11 Condition of Units/Complex**

The units/complex shall be kept in good repair. Tenants are subject to apartment management regulations, which may result in termination of tenancy.

### **2.06.12 Terms of Affordability**

Deed restrictions placed on each unit/complex pursuant to the program shall remain in effect for a period of 99 years from the date of first occupancy of the unit/complex and shall become null and void upon the expiration of that period, unless it is extended by the developer in order to take advantage of incentives resulting from changes in public policy and programs. These deed restrictions shall run with the property and not be affected by the sale of the complex, or the individual units within the complex, prior to the completion of the term of affordability.

In the event the program is terminated prior to the 99-year period through formal action by the City Council, deed restrictions shall be null and void. Full ownership rights of the units/complex shall revert to the owner at the time of termination.

## Exhibit A

Income Category and Range		1	2	3	4	5	6	7	8
Very-low	0%- 50%	37,150	42,450	47,750	53,050	57,300	61,550	65,800	70,050
Low	51% - 80%	59,400	67,900	76,400	84,900	91,650	98,450	105,250	112,050
Median	81% - 100%	73,850	84,400	94,950	105,500	113,950	122,400	130,800	139,250
Moderate	101% - 120%	88,600	101,300	113,950	126,600	136,750	146,850	157,000	167,100

Department of Housing and Urban Development on an annual basis. Revised 2/04.

**Exhibit B**

<b>BMR Sale Prices</b>	<b>Household Size</b>	<b>Number of Bedrooms</b>	<b>Median Income Sale Price</b>	<b>Moderate Income Sale Price</b>
	2	1	178,000	232,000
	3	2	208,000	269,000
	4	3	238,000	306,000
	5	4	263,000	335,000
	6	5	287,000	365,000

**Rental Rates of Affordable Units by Household Size and Number of Bedrooms**

<b>Household Size</b>	<b>Number of Bedrooms</b>	<b>Very-Low Income</b>	<b>Low Income</b>
2	1	\$1,100	\$1,210
3	2	\$1,120	\$1,350
4	3	\$1,230	\$1,500