

# UPDATED PRELIMINARY AFFORDABLE HOUSING PLAN<sup>1</sup> FOR THE RISE

## I. Introduction

The Rise (formerly known as the Vallco Town Center project) (Project) proposes a total of 2,402 units, of which 1,201 units (50 percent) will be set aside as affordable housing for lower income households. This document serves as the Project's Affordable Housing Plan as required by the City of Cupertino and to document how the following affordable housing standards will be complied with:

- Government Code § 65913.4 (SB 35)
- State Density Bonus law
- City of Cupertino Below Market Rate (BMR) Housing Program

The following income definitions are used throughout this document:

- Very Low Income (VLI): 50 percent or below of the Area Median Income (AMI), adjusted for household size
- Low Income (LI): 80 percent or below of AMI, adjusted for household size

Combined, lower income refers to households earning 80 percent or below of the AMI.

## II. Overview of Requirements and Compliance

### 1. General

This Affordable Housing Plan demonstrates how the Project proposes to meet the requirements of all three regulations (SB 35, Density Bonus, and City BMR Program). Table 1 summarizes the proposed Affordable Housing Program at the Project.

In general:

- A unit may satisfy multiple requirements, for example:
  - The Very Low Income (VLI) units count toward requirements under the State Density Bonus law and BMR Program; and
  - All units that satisfy the BMR Program or Density Bonus law also satisfy SB 35 requirements.

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<sup>1</sup> A Preliminary Affordable Housing Plan was submitted to the City as part of the SB 35 streamlined process for approval of the Project in 2018. The City requested the Plan pursuant to Section 2.3.3 of the City's BMR Housing Mitigation Program Procedural Manual. While VPO submitted the Plan, it also noted that SB 35 preempts any local affordable requirements, unless the local ordinance requires that greater than 50% of the units are affordable, and did not waive any rights. Since then, the court in *Ruegg & Ellsworth v. Berkeley*, 63 Cal. App. 5th 277, 326 fn. 34 (2021) confirmed that in 50% jurisdictions, the terms of the local ordinance apply only if the local ordinance requires more than 50% affordable units. If the local ordinance requires less than 50% affordable units, then none of the elements of the local ordinance apply, such as deeper affordability than is required by SB 35. We are updating this Preliminary Affordable Housing Plan in a manner that continues to contemplate compliance with the City's local requirements, but we continue to believe these requirements do not apply and we reserve all rights.

- Where affordable housing units are developed with other state or federal housing program assistance, the rental price requirements of the state or federal housing program will supersede the price limitations established in this Affordable Housing Plan where the state or federal housing programs are more stringent.

## 2. **SB 35 Requirements**

- Type and of Number of Affordable Units:
  - 50% of the total project units must be “affordable to households making at or below 80 percent of the area median income.” Pursuant to HCD’s SB 35 Guidelines, the 50% is “calculated based on the total number of units in the development exclusive of additional units provided by a density bonus.” SB 35 Guideline § 402(c). The Project nonetheless continues to voluntarily include 1,201 affordable units, even though the law only requires that it include 890 units.
  - These affordable units are referred to as “80% AMI Units” in this Affordable Housing Plan.
- Allowable Rent:
  - “Affordable” generally means that rent shall not exceed 30% of the area median - the maximum rental rate is therefore established at 30% of 80% AMI (adjusted for household size appropriate for the unit). SB 35 provides that affordable rent for at least 30 percent of Affordable Units shall be set at an affordable rent as defined in Section 50053 of the California Health and Safety Code, and affordable rent for the remaining 70 percent of the Affordable Units may be set in a manner consistent with the maximum rent levels for a housing development that receives an allocation of state or federal low-income housing tax credits from the California Tax Credit Allocation Committee. This 30/70 split would apply only to the 890 units required under SB 35, meaning that at least 267 of the Affordable Units must set rent based on Section 50053 of the California Health and Safety Code.
  - Rent includes a reasonable utility allowance
- Term of Recorded Covenant:
  - 55 years if rented
  - 45 years if sold (no for-sale affordable units, so not applicable to the Project)

## 3. **Cupertino BMR Program**

- Type and Number of Affordable Units:
  - City’s BMR Program requires that 15% of the units must be affordable, broken down between 9% as VLI units and 6% as LI units. The City’s practice, consistent with state law, is to base these requirements on a project’s unit count prior to any density bonus units. Therefore, the City’s BMR Program requires 267 affordable units (i.e., 15% of 1,779), broken down between 160 VLI units and 107 LI units.
    - Although the initial Preliminary Affordable Housing Plan calculated units for the City’s BMR Program based on the total units after the density bonus, this was not

required and the current proposal is in full compliance with the City’s BMR Program and the State Density Bonus Law.

- Allowable Rent:
  - VLI units: 30% of 50% AMI (adjusted for household size appropriate for the unit)
  - LI units: 30% of 60% AMI (adjusted for household size appropriate for the unit)
  - Maximum housing allowance of 30% of gross income for a household size of one person more than the number of bedrooms in the rental BMR unit
  - “Rent” includes utilities and fees for other housing services<sup>2</sup>
- Term of Recorded Covenant:
  - 99 years

#### **4. Density Bonus Program**

- Type and Number of Affordable Units:
  - Provided that a 35% density bonus and 3 concessions are achieved, 15% of the “total units” must be VLI, where “total units” excludes density bonus units; therefore, 267 units must be VLI
  - These 267 VLI units are inclusive of the 160 VLI units that qualified under the City BMR program
- Allowable Rent:
  - VLI units: 30% of 50% AMI (adjusted for household size appropriate for the unit)
  - Rent includes a “reasonable utility allowance”
- Term of Recorded Covenant:
  - 55 years

### **III. BMR Specific Requirements**

This section details specific requirements that apply only to the 267 units that satisfy the City BMR Program requirements (160 VLI and 107 LI units).

#### **1. BMR Unit Design Requirements**

Pursuant to the City’s Below Market Rate (BMR) Housing Mitigation Program Procedural Manual, the design of the BMR units must meet specific requirements. Table 2 demonstrates the Project’s plan for compliance.

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<sup>2</sup> As part of the Project’s overall TDM program, parking is “unbundled” from all units and is paid for separately so is not included in rent. Further, under SB 35, the City cannot require any parking, so the fact that the Project elected to include parking does not mean that such spaces must be offered free of charge.

**Table 1: BMR Unit Design Requirements**

BMR Requirements	Project Compliance
<p>BMR units shall be comparable to market rate units in terms of unit type, number of bedrooms per unit, quality of exterior appearance and overall quality of construction.</p>	<p>Pursuant to the Density Bonus law, the City has determined that the Project qualifies for the following concession:</p> <ul style="list-style-type: none"> <li>To allow the affordable units to be primarily studios and one-bedroom units instead of a mix of unit types that is comparable to the units within the development pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(A).<sup>3</sup></li> </ul>
<p>BMR unit size should be generally representative of the unit sizes within the market-rate portion of residential project.</p>	<p>Pursuant to the Density Bonus law, the City has determined that the Project qualifies for the following concession:</p> <ul style="list-style-type: none"> <li>To allow the affordable units to be smaller in size than the comparable market rate units pursuant to BMR Housing Mitigation Procedure Manual Section 2.3.4(B).</li> </ul>
<p>Interior features and finishes in affordable units shall be durable, of good quality and consistent with contemporary standards for new housing.</p>	<p>The Project will comply with this requirement. The Furniture, Fixture, and Equipment (FF&amp;E) plans will be submitted to the City for review.</p>
<p>The BMR units shall be dispersed throughout the residential project.<sup>4</sup></p>	<p>The BMR units in the updated Project are dispersed throughout the Project to the same extent and manner as the BMR units were dispersed in the originally approved Project. The location of BMR units is identified in the SB 35 Plan Set, as modified.</p>

<sup>3</sup> The Project as modified also includes two and three bedroom units, but the mix does not match the market unit match, so this concession remains applicable.

<sup>4</sup> Under the Density Bonus Law, the bonus market rate units can be located in geographically separate areas, so this dispersal requirement does not apply to the 623 market rate bonus units.

## **2. Initial Maximum Sales Prices and Rents of BMR Units**

### **A. For-Sale BMR Units**

All 1,201 affordable units at the Project are for-rent units. No for-sale units are included as part of this Affordable Housing Plan in general or for the BMR requirements specifically.

### **B. Rental BMR Units**

All 267 BMR units will be rental units and subject to the following maximum initial rents:

- 1) The maximum initial rents for BMR units are set at a level affordable to LI and VLI households. The maximum initial rents for BMR units shall be determined based on:
  - a. Maximum housing allowance of 30% of gross income for a household size of one person more than the number of bedrooms in the rental BMR unit, and
  - b. For LI units, assume household income at 60% of AMI, and for VLI units, assume household income at 50% of AMI.
- 2) The maximum rents for BMR units and maximum household income limits are revised annually following the annual publication of HCD income limits for Santa Clara County.
- 3) "Rent" includes monthly rent paid to the property owner, utilities, and all fees for housing services. Parking is not included in "rent." A reasonable utility allowance, as determined by the tables published annually by the Santa Clara County Housing Authority, shall be deducted from the maximum monthly rents for those utilities paid by the tenant.

## **3. Administration**

Administration of the 267 units that satisfy the City BMR Program requirements will adhere to the City of Cupertino Policy and Procedures Manual for Administering Deed Restricted Affordable Housing Units. The Cupertino Manual includes procedures and guidelines for prioritizing applicants, evaluating the eligibility of applicants, setting maximum affordable rents, and monitoring compliance of tenants with the recorded affordability covenants. Specifically, the Cupertino Manual will govern the ongoing administration of the 267 BMR units in the following areas:

- Application Selection Process
- Minimum Tenant Eligibility Requirements
- Requirements for Renting a BMR Unit
- Requirements of Apartment Owners and Property Managers
- Appeal Process

For the remaining 934 affordable units not subject to City BMR program, the California Tax Credit Allocation Committee’s compliance manual will be used.

#### **IV. Terms of Affordability**

Affordable housing is subject to recorded covenants that require the units be occupied at prices/rents that are affordable to VLI and LI households for:

- A period of not less than 99 years for 267 City BMR units; and
- A period of not less than 55 years for the remaining 934 affordable units pursuant to State Density Bonus law and SB 35.

The terms of affordability shall be established from the date of first occupancy of the units. These deed restrictions shall run with the land and remain in effect for subsequent buyers and owners.

#### **V. Agreement between Developer and City**

##### **1. Affordable Housing Agreement**

Prior to recordation of a building permit for the superstructure, a master affordable housing agreement shall be recorded against the Project. The master affordable housing agreement shall include, but not be limited to, the following:

- Total number of affordable units (City BMR units, affordable units pursuant to Density Bonus, and 80% AMI pursuant to SB 35), type, location, square footage, and number of bedrooms, and anticipated construction schedule of market-rate and affordable units;
- Provision to ensure concurrent construction and completion of affordable and market-rate units;
- Affordability levels for each affordable unit;
- Provisions for income certification and screening of potential occupants of affordable units; and
- Financing of ongoing administrative and monitoring costs (City and private).

#### **VI. Waiver Of Office Affordable Housing Fee**

Section 2.3.3 of the City’s BMR Housing Mitigation Program Procedural Manual allows for waivers or modifications of the City’s BMR requirements if applying such requirements would result in an unconstitutional taking. Under separate cover in a letter dated March 24, 2022 from Miles Imwalle at Coblenz Patch Duffy & Bass LLP to Chris Jensen, City Attorney, the Applicant has explained that charging an affordable housing fee for any portion of the Project, such as office, would be unconstitutional and as such has requested a waiver.