



# Information Item

**Date: March 29, 2012**

To: Mayor and City Council  
From: Andy Agle, Director of Housing and Economic Development  
Subject: Policy on Over-Income Tenants in Affordable Housing

## **Introduction**

This report provides information on the existing policy regarding 'over income' tenant households occupying residences developed pursuant to the Affordable Housing Production Program (AHPP; Municipal Code Section 9.56). The Administrative Guidelines to the AHPP (Guidelines), originally adopted by the City Council on [October 5, 1999](#) and most recently amended on [June 14, 2011](#), establish the policy for situations in which a tenant's household income eventually exceeds the income limit for the unit.

## **Background**

At its November 22, 2011 meeting, the City Council requested that staff provide the policy which addresses situations of tenants residing in affordable housing whose income exceeds the qualifying limits.

## **Discussion**

Section 7C-8 of the Guidelines establishes policy for changes in tenant income. Changes in tenant income surface during the annual income recertification process. The language of this policy is provided as Attachment A. The policy states that households initially qualified as moderate-income (\$67,500 for 2 persons) may remain in place so long as their income does not exceed 140 percent of the moderate-income limit (\$94,500 for 2 persons). However, if the household income increases beyond 140 percent of the moderate-income limit, then the household must vacate the affordable residence within one year. For reference to income limits, see Attachment B, which

includes a chart listing 2012 income limits for very low-, low- and moderate-income households.

Additionally, there are some options for households in mixed-income developments that initially qualified as very low-income (\$33,750 for 2 persons) or low-income (\$40,500 for 2 persons) but whose income subsequently exceeds 140 percent of those income limits (\$47,250 and \$56,700, respectively). For example, in a mixed-income development where a household initially qualified for a very low-income residence and their income later exceeds 140 percent of the very low-income limit, that household can remain in the residence so long as the very low-income residence is re-designated as a low-income residence and the next vacant low-income residence in the development is re-designated as a very low-income unit. The same option applies to a household in mixed-income development that initially qualified for a low-income residence and their income later exceeds 140 percent of the low-income limit. In that instance, the household can remain in the residence so long as the low-income residence is re-designated as a moderate-income residence and the next vacant moderate-income residence in the development is re-designated as a low-income unit. The scenarios described in this paragraph are feasible only in mixed-income developments that contain a mix of very low-, low- and moderate-income residences. Further, the existing Guidelines work only in developments that have 'floating' affordable units, where the requirements for very low -, low- and moderate-income units can be satisfied among any of the units in the building. In developments in which the affordable units are specifically designated, for example, as "Unit 102" or "Unit 204", income levels cannot be traded among units without violating deed restrictions.

The Guidelines provide another option to remain in place for households in developments containing both affordable and market-rate residences when a household in an affordable residence exceeds 140 percent of the income limit. In that scenario, if the development does not include residences designated at higher affordability levels than the subject residence, then the rent for the subject residence can be raised to

market rent and the next vacant market-rate residence must be re-designated as an affordable residence at the same affordability level as the original subject residence.

Finally, the Guidelines do not specifically address the circumstance in which a landlord allowed a tenant to occupy an affordable residence but failed to establish the tenant's eligibility. Staff has taken the position that in such instances the landlord must provide the tenant a 90-day notice to vacate and the landlord must be responsible for costs associated with relocating the tenant to another residence. In the coming year, staff intends to clarify the Guidelines in this regard by preparing recommendations for City Council consideration.

**Prepared By:** Jim Kemper, Housing Administrator

## **Attachment A**

### Section 7C-8 of the AHPP Administrative Guidelines

#### **Changes in Income of Residents of Affordable Units**

If after moving into an affordable unit the tenant's income eventually exceeds the income limit for the unit, the tenant may remain in the unit as long as his/her income does not exceed 140 percent of the income limit for the unit.

However, if the tenant's income exceeds 140 percent of the income limit for the unit, the following shall apply, depending upon the income mix of the development:

- A) **For Developments that are All Low-Income:** If a tenant's income exceeds 140 percent of the income limit for the low-income unit but remains within the Program limit for a moderate-income unit, the tenant may remain in the unit and his/her name shall be moved automatically to the top of the Waiting List for the next available moderate-income unit of the same size or larger in the City. As long as the tenant's income does not exceed the program limits for a moderate-income unit, the tenant may remain in the low-income until the next moderate-income affordable unit of an appropriate size becomes available. Once the tenant is offered tenancy in a moderate-income unit, if the tenant does not accept the offer, then the tenant must move out of the low-income unit with 90 days of the offer of the moderate-income unit.

Notwithstanding, if the tenant's income exceeds the program limits for a moderate-income unit at any time during his/her tenancy in the low-income unit, the tenant shall be given one year's notice to vacate the unit.

**Attachment A** (continued)

**B) For Mixed Income Developments:** If a tenant's income exceeds 140 percent of the income limit for his/her unit ("original unit") but does not exceed the income limits of other units in the development, the tenant may remain in the original unit as long as:

a) The income limit for the original unit is re-designated for an appropriate higher income category applicable to another unit in the development, and;

b) The next vacant higher income unit in the development is re-designated for the same lower income category applicable to the original unit.

Notwithstanding, if the tenant's income exceeds 140 percent the program limits for all affordable units in the mixed income development and also exceeds the program limits for a moderate-income affordable unit, the tenant shall be given one year's notice to vacate the unit.

**C) For Mixed Income Projects Including Market Rate Units:** If the tenant's income exceeds the program limits for the original unit by 140 percent, and if there are no units designated for a higher income category within the development which may be substituted for the original unit, the tenant may remain in the original unit and the tenant's rent may be raised to market rate. However, the next vacant market rate unit in the development must be re-designated for the same income limit formerly applicable to the original unit.

**D) Tenants Residing in Moderate-income Units:** If the income of a tenant residing in a moderate-income unit exceeds the income limit for the unit, the tenant may remain in the unit as long as his/her income does not exceed 140 percent of the income limit for the unit. However, once the tenant's income exceeds 140 percent of the moderate-income limit, the tenant shall be given one year's notice to vacate the unit.

**Attachment B**

**2012 INCOME LIMITS**

**INITIAL QUALIFYING INCOME (ANNUAL)**

<b>Household Size</b>	<b>Very Low Income</b>	<b>Low Income</b>	<b>Moderate Income</b>
1	\$29,550	\$35,500	\$59,100
2	\$33,750	\$40,500	\$67,500
3	\$37,950	\$45,600	\$75,900
4	\$42,150	\$50,600	\$84,300
5	\$45,550	\$54,700	\$91,100
6	\$48,900	\$58,700	\$97,800
7	\$52,300	\$62,800	\$104,600
8	\$55,650	\$66,800	\$111,300

**140% of INCOME LIMIT**

<b>Household Size</b>	<b>140% of Very Low Income</b>	<b>140% of Low Income</b>	<b>140% of Moderate Income</b>
1	\$41,370	\$49,700	\$82,740
2	\$47,250	\$56,700	\$94,500
3	\$53,130	\$63,840	\$106,260
4	\$59,010	\$70,840	\$118,020
5	\$63,770	\$76,580	\$127,540
6	\$68,460	\$82,180	\$136,920
7	\$73,220	\$87,920	\$146,440
8	\$77,910	\$93,520	\$155,820