

**Replacement Housing and Tenant Relocation Benefits Requirements
for the Mallard Pointe Housing Development**

On January 26, 2022, the City of Belvedere received an application for a housing development at Mallard Point. The project proposes to demolish 22 existing rental duplex and fourplex housing units on the project site and replace those with 42 new units. The proposed new units would include six single-family homes, ten duplex units, 23 apartments, and three accessory dwelling units.

The Legislature has adopted two state laws – the Density Bonus Law and the Housing Crisis Act of 2019 -- to ensure that new housing developments do not *reduce* the total number of existing housing units. A housing project must create at least as many housing units as will be demolished. Projects must also replace units occupied by lower income tenants with units affordable to lower income tenants and provide relocation benefits to lower income tenants who become displaced by the construction. Both of these laws apply to the Mallard Pointe development.

State law does not allow the City to approve any housing development unless it complies with the replacement housing requirements described below. The City will review all information provided as part of the Mallard Pointe application and verify that the project meets the state-mandated replacement housing requirements.

The Project Must “Replace” Any Units Occupied by Lower Income Households

If any units currently at the Mallard Pointe development site are occupied by households with low or very low incomes, the developer must “replace” those units with units that are affordable to households at the same income level. The state establishes the criteria for very low and low-income levels in Belvedere:

MAXIMUM ANNUAL HOUSEHOLD INCOME

	Household Size		
	1	2	3
Low Income	\$102,450	\$117,100	\$131,750
Very Low Income	\$63,950	\$73,100	\$82,250

Incomes Are Known. Any units currently occupied by low income or very low-income households must be replaced by units in the same or lower income category. The same applies if a unit is vacant but the income of the last tenant is known to be lower income.

Incomes Are Not Known. If the income of the current tenants is not known or the incomes of the last tenants who occupied vacant units are not known, the law presumes that lower income tenants occupy (or occupied) the units in the same proportion as lower income households occupy units in the City as shown in HUD's Comprehensive Housing Affordability Strategy (CHAS) data base (*available at:* <https://www.huduser.gov/portal/datasets/cp.html>). That presumption can be rebutted by the developer.

The CHAS data for Belvedere shows that 23.3% of renters are very low income and 18.6% are low income. Any calculations resulting in fractions must be rounded up to the nearest whole number. For instance, if the incomes for all 22 households are not known, then it would be presumed that at least 6 units in the new development should be affordable to very low-income households, and at least 4 units should be affordable to low-income households.

Requirements for Replacement Housing Units Affordable to Lower Income Households

- a. Replacement Units Must be of "Equivalent Size" as Units Replaced.** The replacement units must contain at least the same total number of *bedrooms* as the units replaced.
- b. Deed Restrictions Must be Recorded for Replacement Units.**

The replacement units may be entirely for-sale units, or entirely rental units, or a mixture of both.

Rental Replacement Units. Rental replacement units must be subject to a deed restriction requiring affordable rents for 55 years. Affordable rent must be calculated as required by Health & Safety Code § 50053.

For-Sale Replacement Units. For-sale replacement units must be sold to lower income buyers at an affordable cost and be subject to an equity-sharing agreement requiring that any profits at sale be shared with the City. Affordable housing cost must be calculated as required by Health & Safety Code § 50052.5.

Rights of Displaced Residents

Displaced residents are entitled to the following.

- a. Occupancy Until Six Months Before the Start of Construction.** All existing occupants must be allowed to remain in their units until six months "before the start of construction activities."
- b. State Relocation Benefits.** The developer must provide state relocation benefits to any existing lower income residents. These relocation benefits include moving expenses, relocation assistance, and a payment of the difference between affordable rent and rent for a "comparable" unit for up to 42 months. The developer must submit a state-required relocation plan to the City if there are any lower income residents.

Any lower income residents must provide their income to the applicant or to the City to ensure that they receive the benefits they are entitled to.

- c. Right of First Refusal for New Unit.** In addition to relocation payments, any lower income households are entitled to a right of first refusal for a "comparable" unit in the development at affordable rent or affordable housing cost.