

ORDINANCE NUMBER O- 20107 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 21 2011

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2, DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 142.1302 AND 142.1303, AMENDING AND RENUMBERING SECTION 142.1304 TO SECTION 142.1307, AMENDING AND RENUMBERING SECTION 142.1305 TO 142.1308, REPEALING SECTION 142.1306, AMENDING AND RENUMBERING SECTION 142.1307 TO SECTION 142.1309, ADDING SECTION 142.1306, REPEALING SECTION 142.1308, AMENDING AND RENUMBERING SECTION 142.1309 TO SECTION 142.1305, AMENDING AND RENUMBERING SECTION 142.1310 TO SECTION 142.1304, AMENDING RENUMBERING SECTION 142.1311 TO SECTION 142.1310 AND AMENDING AND RENUMBERING SECTION 142.1312 TO 142.1311, ALL RELATING TO INCLUSIONARY AFFORDABLE HOUSING FEES.

WHEREAS, it is the policy of the City of San Diego (City) to encourage diverse and balanced neighborhoods with housing available for households of all income levels; and

WHEREAS, the intent of the City’s Inclusionary Affordable Housing Ordinance is to ensure that when developing the limited supply of developable land, housing opportunities are provided for persons of all income levels; and

WHEREAS, due to a recent court decision, *Palmer/Sixth Street Properties, LP v. City of Los Angeles*, 175 Cal.App.4th 1396 (2009), the City desires to modify and clarify the existing Inclusionary Affordable Housing Ordinance; and

WHEREAS, it is the intent of the City to amend the existing Inclusionary Affordable Housing Ordinance to remove any on-site rental requirement that would violate the state Costa-Hawkins Rental Act;

WHEREAS, the Council of the City of San Diego hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, portion or

provision thereof, irrespective of the fact that any one or more sections, subsections, clauses phrases, portions or provisions be declared invalid or unconstitutional. NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego as follows:

Section 1. That Chapter 14, Article 2, Division 13 of the San Diego Municipal Code is amended by amending sections 142.1302 and 142.1303, amending and renumbering section 142.1304 to section 142.1307, amending and renumbering section 142.1305 to 142.1308, adding a new section 142.1305, repealing section 142.1306, amending and renumbering section 142.1307 to section 142.1310, adding a new section 142.1307, repealing section 142.1308, amending and renumbering section 142.1309 to section 142.1306, amending and renumbering section 142.1310 to 142.1304, and amending 142.1311 and 142.1312, all relating to Affordable Housing Inclusionary Fees, to read as follows:

§ 142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential *development* of two or more units, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those units are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive shall apply.

§ 142.1303 Exemptions From the Affordable Housing Inclusionary Regulations

[No change in text.]

(a) through (d) [No change in text.]

- (e) Certain *condominium conversion developments* as set forth in Section 142.1306(c).
- (f) Residential *development* containing at least ten percent of the total *dwelling units* in the proposed *development* as affordable to and occupied by *targeted rental households* for a period of not less than 55 years. To ensure compliance with the Costa-Hawkins Rental Housing Act, this Section applies only to a proposed *development* where the *applicant* agrees in a contract with a public entity to restrict rents at the proposed *development* in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (g) Residential *development* containing at least ten percent of the dwelling units as affordable to and occupied by *targeted rental households* for a period of not less than 55 years, as a result of the *applicant's* voluntary pursuit and receipt of tax credits, multifamily housing bonds, below market interest rate loans, and/or grants to facilitate the construction of the *development*.

§ 142.1304 Inclusionary Affordable Housing Fee

All *development* subject to this Division, except for *condominium conversion developments* which shall comply with Section 142.1306, shall pay an Inclusionary Affordable Housing Fee to the City as follows:

- (a) The Inclusionary Affordable Housing Fee shall be the product of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.
- (b) The applicable per square foot charge shall be calculated annually by the San Diego Housing Commission according to the formula set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual as approved by the City Council.
- (c) The Inclusionary Affordable Housing Fee shall be determined using the rate in effect at the time the building permit application is filed. The Inclusionary Affordable Housing Fee shall be paid on or before the issuance of the first residential building permit for the *development*.
- (d) Any *applicant* may pre-pay the Inclusionary Affordable Housing Fee, which shall be determined using the rate in effect on the date of pre-payment.
- (e) All funds collected pursuant to this Division shall be deposited into the Affordable Housing Fund.

§ 142.1305 Election to Provide For-Sale Affordable Housing Units in a For-Sale Development

- (a) Instead of paying the applicable Inclusionary Affordable Housing Fee, an *applicant* may elect to comply with this Division by providing at least ten percent of the total *dwelling units* in the proposed *development* as affordable to *targeted ownership households* in a for-sale development.

- (b) The *development* of for-sale affordable housing units is subject to the following requirements and the provisions of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.
- (1) The for-sale affordable housing units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market-rate units receive final inspection approval from the Building Official. The *applicant* may seek an alternative *development* schedule in accordance with the provisions of Sections 142.1307 and 142.1308.
 - (2) The sales price for each for-sale affordable housing unit shall not exceed an amount that is affordable to a *targeted ownership household*, as determined by the San Diego Housing Commission and detailed in the Inclusionary Housing Procedures Manual.
 - (3) The equity in a for-sale affordable housing unit shall be shared between the owner and the San Diego Housing Commission in an amount based upon length of ownership at the time of the first resale, in accordance with Table 142-13.
 - (A) Equity means the difference between the unrestricted fair market value of the affordable unit on the date of the first resale, as determined by an appraisal approved by the San Diego Housing Commission, and the sum of: (i) the original unrestricted fair market value of the affordable unit

at the time of its acquisition by the *targeted ownership household*, and (ii) the actual costs of any San Diego Housing Commission approved improvements to the affordable unit. If the foregoing calculation of equity results in a negative number, the equity shall be deemed to be zero.

(B) The term resale is defined in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual, and includes the sale, conveyance, transfer or refinancing of all or any part of the affordable unit by a *targeted ownership household*.

(C) Equity shall not be shared if all of the following apply:

(i) The purchaser of the affordable unit is a *targeted ownership household* approved by the San Diego Housing Commission;

(ii) The sales price does not exceed an amount that is affordable to a *targeted ownership household* as determined by the San Diego Housing Commission; and

(iii) The purchaser assumes all of the obligations of the initial *targeted ownership household*.

(4) All funds collected shall be deposited into the Affordable Housing Fund.

- (5) The San Diego Housing Commission shall be entitled to the first right of refusal on any for-sale affordable unit upon its sale.
- (6) Each for-sale affordable housing unit shall have recorded against it a Declaration of Covenants, Conditions and Restrictions that complies with Section 142.1310. The Declaration of Covenants, Conditions and Restrictions shall be secured by a recorded deed of trust in favor of the San Diego Housing Commission.

Table 142-13

Length of Ownership at the Time of Resale	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

§ 142.1306 Inclusionary Affordable Housing Obligations for *Condominium Conversions*

- (a) All *condominium conversion developments* subject to this Division shall pay a Condominium Conversion Inclusionary Affordable Housing Fee to the City.
- (1) The Condominium Conversion Inclusionary Affordable Housing Fee shall be one-half of the Inclusionary Affordable Housing Fee, calculated pursuant to Section 142.1304 and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.
- (2) The Condominium Conversion Inclusionary Affordable Housing Fee shall be paid at the close of escrow of the first condominium sold within the *development*. The Condominium Conversion Inclusionary Affordable Housing Fee shall be calculated using the rate in effect at the close of escrow of the first condominium sold within the *development*. The *applicant* and the San Diego Housing Commission shall enter into a written agreement securing payment of the Condominium Conversion Inclusionary Affordable Housing Fee, which shall be recorded against the *development* and secured by a recorded deed of trust in favor of the San Diego Housing Commission. The San Diego Housing Commission shall collect all Condominium Conversion Inclusionary Affordable Housing Fees at the close of escrow of the first condominium sold within the *development*.

- (3) Any *applicant* may pre-pay the Condominium Conversion Inclusionary Affordable Housing Fee, which shall be calculated using the rate in effect on the date of pre-payment. All pre-paid fees shall be collected by the City.
 - (4) All funds collected shall be deposited into the Affordable Housing Fund.
- (b) Instead of paying the applicable Condominium Conversion Inclusionary Affordable Housing Fee, an *applicant* for a *condominium conversion development* subject to this Division may elect to comply with this Division by providing at least five percent of the total *dwelling units* in the *development* as affordable to and occupied by *targeted ownership households* subject to Section 142.1305 and the Inclusionary Affordable Housing Implementation Procedures Manual.
- (c) This Division is not applicable to *condominium conversion developments* that meet all of the following:
- (1) All of the *dwelling units* in the *condominium conversion development* are initially affordable to and sold to households earning at or below eighty percent of the area median income; and
 - (2) The *applicant* executes a declaration under penalty of perjury that the *dwelling units* satisfy the condition set forth in Section 142.1306(c)(1) above.

In the event that the San Diego Housing Commission determines the *dwelling units* do not satisfying the conditions set forth in

Sections 142.1306(c)(1) and (c)(2) above, then, upon such discovery, the San Diego Housing Commission shall require the *applicant* to pay the applicable Condominium Conversion Inclusionary Affordable Housing Fee in effect at the close of escrow of the first condominium sold within the *development*.

§ 142.1307 Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations

- (a) A variance, adjustment, or reduction from the provisions of this Division may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or reduction shall require either that the findings in Section 142.1308(a) or in Section 142.1308(b) be made.
- (b) An application for a variance, waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, waiver, adjustment, or reduction.
- (c) A *development* located within an adopted redevelopment project area and subject to a Redevelopment Agency agreement may seek a variance, waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five

Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four. Waiver requests shall be reviewed in accordance with Process Five.

§ 142.1308 Findings for Variance, Waiver, Adjustment or Reduction Approval

- (a) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction of the applicability of the provisions of this Division only if the decision maker makes all of the following *findings*:
- (1) Special circumstances, unique to that *development*, justify granting the variance, waiver, adjustment, or reduction;
 - (2) The *development* would not be feasible without the modification;
 - (3) A specific and substantial financial hardship would occur if the variance, waiver, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (b) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction to the provisions of this Division if the decision maker makes a finding that there is an absence of any reasonable relationship or nexus between the impact of the *development* and the amount of the Inclusionary Affordable Housing Fee,

the Condominium Conversion Inclusionary Affordable Housing Fee, or the inclusionary requirement.

- (c) For a *development* that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area, the decision maker may approve or conditionally approve a variance to the Inclusionary Affordable Housing Regulations only if the decision maker makes the following supplemental *findings*:
- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
 - (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit-oriented *development*.

§ 142.1309 General Rules for Inclusionary Affordable Housing Regulations

- (a) The Chief Executive Officer of the San Diego Housing Commission shall be responsible for determining affordability standards and occupant qualifications for any affordable units provided pursuant to this Division. The San Diego Housing Commission shall also monitor compliance with any documentation created as a result of an *applicant's* compliance with this Division.
- (b) The San Diego Housing Commission shall determine the reasonable fee to be paid by the *applicant* for the costs incurred by the San Diego Housing Commission in connection with implementation of this Division.

§ 142.1310 Declaration of Covenants, Conditions and Restrictions

All *development* of affordable units pursuant to 142.1305 or Section 142.1306(b) shall be subject to the following requirements, in addition to those in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.

- (a) The applicable portion of the *development* shall have recorded against it a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the San Diego Housing Commission.
- (b) Any Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission recorded against the *development* or unit, as applicable, prior to construction or permanent financing.

§ 142.1311 Reporting Requirements

- (a) The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division including, but not limited to, the following:
 - (1) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
 - (2) The number of *applicants* and location of *developments* that applied for a waiver, variance, reduction, or adjustment in

accordance with this Division, and the number of *applicants* and location of *developments* that were granted a waiver, variance, reduction, or adjustment and the terms of each; and

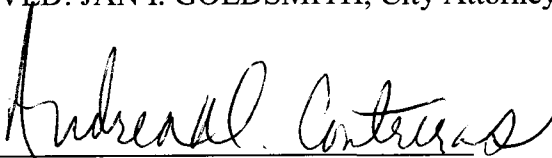
- (3) The number of market rate units and the number of affordable units, including the location of all affordable units, and the total Inclusionary Affordable Housing Fees and Condominium Conversion Inclusionary Affordable Housing Fees paid.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That, pursuant to San Diego Municipal Code section 11.0205, if any section, subsection, sentence, clause, phrase, portion or provision of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

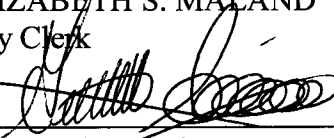
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Andrea M. Contreras
Deputy City Attorney

AMC:cw
06/29/11
Or.Dept:San Diego Housing Commission
PL#2011-0589

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 01 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor