



## LAND USE & HOUSING REPORT

**DATE ISSUED:** September 29, 2011

**REPORT NO:** LUH 11-011

**ATTENTION:** Chair and Members of the Land Use & Housing Committee  
For the Agenda of October 5, 2011

**SUBJECT:** Proposed Amendments to Inclusionary Ordinance [Inclusionary Affordable Housing Regulations]

**COUNCIL DISTRICT:** Citywide

**REQUESTED ACTION:**

Recommend approval of the amendments to the Inclusionary Affordable Housing Regulations (Chapter 14, Article 2, Division 13 of the San Diego Municipal Code) and Inclusionary Affordable Housing Implementation and Monitoring Procedures ("Procedures Manual").

**STAFF RECOMMENDATION:**

That the Land Use & Housing Committee:

- 1) Recommend adoption by the City Council of the proposed amendments to the Inclusionary Affordable Housing Regulations; and
- 2) Recommend adoption by the City Council of the proposed amendments to the Procedures Manual.

**SUMMARY:**

The City of San Diego's Inclusionary Affordable Housing Regulations (SDMC §142.1301 et seq.) (the "Inclusionary Regulations") require the San Diego Housing Commission to annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing the Inclusionary Regulations. (SDMC §142.1312.) Per the code, the San Diego Housing Commission's report should include information concerning the number of developments before the City for approval, the number of units and developments subject to the Inclusionary Regulations, the number of waivers, variances and exemptions applied for and received, and the number of market rate units and affordable units developed under the Inclusionary Regulations.

This section of the Report is intended to fulfill the Housing Commission's reporting requirements under the Inclusionary Regulations.

1. **Number of Projects and Units Subject to Inclusionary Regulations:** Since adoption of the Inclusionary Regulations in 2003, a total of 563 new residential developments have come before the City requesting a ministerial building permit, representing a total of 16,116 units. Of these new developments, 46 have building permits pending and 517 have received a building permit. All discretionary projects that have come to fruition have also sought ministerial building permits from the City, and are therefore tracked for purposes of the Inclusionary Regulations, as ministerial projects.

These developments are located all over the City but most of the permits were concentrated in the Mission Beach Community Plan Area (69 permits), Pacific Beach (59 permits) and Uptown (44 permits). If the total permits were examined by number of units, Centre City (6,052 units) experienced the largest number of permits by unit followed by University (1,321 units) and Mission Valley (808 units). The largest number of permits issued for affordable units were found in Centre City (535 affordable units), City Heights (321 affordable units) and Barrio Logan (216 affordable units).

**2. Waivers and Variances.** Since the Inclusionary Regulations were enacted, there have been 3 variances and 1 waiver. The Morena Vista project was granted a variance to allow fewer units at a higher restricted rent, where the project was also subject to an agreement with the Redevelopment Agency. The other two variances were granted to the Costa Verde North and South condominium conversions allowing the developer to fix the rate of the in lieu fee at the current rate but defer payment until the time that the first condominium sells. One waiver has been granted during the history of the Inclusionary Regulations to the Chabad School's development of student and faculty housing.

**3. Exemptions.** Exemptions from the Inclusionary Regulations were granted to 159 developments including developments with an existing vesting tentative map, an existing development agreement with the City, and/or projects involving development of affordable, Navy or student housing. This number does not include exemptions for developments located in the North City Future Urbanizing Area, which are subject to different inclusionary zoning requirements in the North City Future Urbanizing Area Framework Plan.

**4. In Lieu Fees.** Since the adoption of the Inclusionary Regulations, the City has collected a total of \$46.1 million in inclusionary housing in lieu fees. Of this amount, \$44.9 million has been committed toward the development of 1,565 affordable units. Inclusionary housing fees collected are typically leveraged with other funding sources including funds from Housing Trust Fund, Low/Mod Housing Funds from the Redevelopment Agency and other State and Federal resources. A total of \$1.26 million remains uncommitted for use towards future affordable housing developments.

**5. Study.** Section 142.1312 of the Inclusionary Regulations requires the San Diego Housing Commission to direct a study "to determine the relationship in nature and amount between the production of market-rate residential housing and the availability and demand for affordable housing in San Diego." To that end, the Housing Commission issued a request for proposals and contracted with Keyser Marston Associates for the completion of such a study. Keyser Marston Associates has prepared a 2011 Residential Nexus Analysis, attached, which addresses the linkages between the construction of market rate residential units and the demand for affordable housing in the City. The Residential Nexus Analysis illustrates a supported nexus between market rate residential housing and the need for affordable housing in the City of San Diego, which is addressed by the Inclusionary Regulations. The Residential Nexus Analysis determined that the in lieu fee currently at \$4.98 per square foot for projects of 10 or more is reasonable and is significantly lower than the maximum supportable fees from the nexus perspective.

## **DISCUSSION:**

The Costa-Hawkins Rental Housing Act was enacted in response to rent control issues and generally requires that an owner of residential property be allowed to establish the initial rents for a dwelling unit,

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except when certain exceptions apply. (Cal. Civil Code §1954.52.) In 2009, the California Court of Appeals applied the Costa-Hawkins Rental Housing Act to an inclusionary housing ordinance in the City of Los Angeles. (*Palmer/Sixth Street Properties L.P. v. City of Los Angeles* (“Palmer”) (2009) 175 Cal. App. 4<sup>th</sup> 1396.)

To date, the City’s Inclusionary Regulations have not been invalidated by *Palmer* or any other court decision or regulation and no suit challenging the validity of the Regulations has been filed. The Costa-Hawkins Rental Housing Act only applies to rental units, therefore, it does not affect the requirements of the Inclusionary Regulations applicable to for-sale residential development or condominium conversions.

Importantly, the Inclusionary Regulations, as applied to rental residential developments, are significantly different from the inclusionary housing ordinance at issue in the *Palmer* decision. The in lieu fee in the Inclusionary Regulations is also substantially different in application and calculation from the fee at issue in *Palmer*. The fee at issue in *Palmer* was based “solely” upon the number of units to be made affordable and consisted of a set fee based upon whether a unit was a low or very low income unit with each type of unit paying a set fee. In San Diego, the fee is based upon the total square footage of the project, including all units. Under the Inclusionary Regulations, two projects with the same number of units could pay a slightly different fee because the square footage of the two projects differs. The City of San Diego’s fee is not based solely upon the number of affordable units within any project and differs from the ordinance invalidated by the *Palmer* decision in the City of Los Angeles.

Rental residential development in the City of San Diego remains subject to the Inclusionary Regulations. Currently, applicants may elect to comply by paying the fee, providing for-sale affordable housing units or, if the applicant can demonstrate compliance with the Costa-Hawkins Rental Housing Act, affordable rental units can only be provided in exchange for certain development incentives, deviations or density bonuses. Each application is being reviewed, on a case by case basis, to assure compliance with the applicable law. (*Home Builders Assoc. of Northern California v. City of Napa* (2001) 90 Cal. App. 4<sup>th</sup> 188, 199.)

However, since the *Palmer* decision, the City and Housing Commission have received numerous inquiries about the application of the Inclusionary Regulations to specific developments. In order to provide clarity with respect to the Inclusionary Regulations in light of *Palmer*, the San Diego Housing Commission, the City, General Counsel of the San Diego Housing Commission and the City Attorney’s Office have collaborated on an amendment to the Regulations to provide desired simplification and clarity. Several other California cities have amended or are in the process of amending their inclusionary programs in light of *Palmer* and the Costa-Hawkins Rental Housing Act.

The proposed amendments to the Inclusionary Regulations have been drafted to comply with state law and specifically with *Palmer* and the Costa-Hawkins Act. Local governments may legally impose fees on the development of property, so long as the amount of the fee is reasonably related, “in both intended use and amount, to the deleterious public impact of the development.” (*San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal. 4<sup>th</sup> 643, 671.) The plain language of *Palmer* provides that rental units may be provided if there is compliance with the Costa-Hawkins Act. (*Palmer*, 175 Cal. App. 4<sup>th</sup> at 1410.) The proposed amendments to the Inclusionary Regulations have been drafted to specifically comply with the Costa-Hawkins Act. The Inclusionary Regulations instead impose an

affordable housing fee on all projects that are not exempt from the fee. Rental projects that are exempt from the provisions of the Inclusionary Ordinance will not have to pay any affordable housing fee. None of the exemption or affordable housing fee language being proposed was present in the ordinance discussed and invalidated in *Palmer*.

### **SUMMARY OF REVISIONS:**

Under the current Inclusionary Regulations, applicants for the development of residential projects that are subject to the Inclusionary Regulations may elect one of three separate and distinct ways of satisfying the Inclusionary Regulations: (1) providing ten percent (10%) of the total dwelling units as affordable for-sale units; (2) providing ten percent (10%) of the total dwelling units as affordable rental units; or (3) paying an in lieu fee.

The proposed amendments presented to the Housing Commission, Planning Commission and other City planning groups proposed a fee based requirement with alternative compliance methods for developers desiring to construct and operate affordable housing, subject to certain restrictions on rental units to ensure compliance with the Costa-Hawkins Rental Housing Act. After further conversation between General Counsel for the San Diego Housing Commission and the City Attorney's Office, the proposed amendments to the Inclusionary Regulations and Procedures Manual have been further revised. The proposed amendments before City Council require all applicants, not exempt from the Inclusionary Regulations, to pay an Inclusionary Affordable Housing Fee. Applicants retain the option to provide 10% of the total dwelling units as for-sale affordable units instead of paying a fee and a similar option for applicants who are converting condominiums. The proposed amendment removes the option for an applicant to provide rental affordable units. However, the proposed amendments add two exemptions from the Inclusionary Regulations for applicants who are developing certain types of rental housing projects. If a project is exempt from the Inclusionary Regulations, no payment of an affordable housing fee is required of the applicant.

#### **A. Inclusionary Affordable Housing Fee.**

The proposed amendment requires all applicants of residential rental and for-sale developments that are not exempt from the Inclusionary Regulations, to pay an "Inclusionary Affordable Housing Fee". No applicant will be required to provide affordable units as a result of the application of the Inclusionary Regulations. The rate of the Inclusionary Affordable Housing Fee would be calculated in the same manner as the in lieu fee under the existing Inclusionary Regulations, in accordance with the following criteria:

- Fifty percent (50%) of the difference between the median sales price of all new home sales in the City for the last year to the time of adjustment and the amount of money a median-income family of the appropriate size is able to afford to purchase a unit.
- The product of the above calculation is then multiplied by ten percent (10%), the inclusionary requirement.

- The result of the above calculation shall then be divided by the average square footage of new units constructed in the City in order to determine the level of the Inclusionary Affordable Housing Fee.

The median sales price and the average square footage of new units constructed in the City currently is and would continue to be provided by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis. It is being proposed and recommended that the reduced fee applicable to projects of fewer than ten units be removed as there is no legal justification for this reduction based on the 2011 Residential Nexus Analysis. . This is a policy decision for the Council to make, however. It may be that the Council will decide to retain the lower fee for new construction projects containing less than 10 units. A separate Condominium Conversion Inclusionary Affordable Housing Fee would also be created, which is discussed in more detail below.

Consistent with current practice, applicants would be required to pay the Inclusionary Affordable Housing Fee prior to receiving their initial building permit(s). Under the proposed amendment, the amount of the Inclusionary Affordable Housing Fee would be determined based on the date that the application for building permit was filed. An applicant could pre-pay the fee, however, which would freeze the fee at the rate in effect at the time of pre-payment.

The Residential Nexus Analysis prepared by Keyser Marston Associates, discussed above, determined that the current fee of \$4.98 per square-foot is substantially below the fee that could be legally charged. Depending upon the building type, the fee being charged is between 7.9 percent and 21.1 percent of the fee that could be charged in accordance with the Nexus Analysis. The fees could legally range from \$23.56 per foot for single family homes to \$62.84 for high density condominium projects. There is no intention to increase the amount of the fee to the levels supported by the Residential Nexus Analysis. The proposed fee meets the legal nexus requirements of the recent case of *Building Industry Association of Central California v. City of Patterson* (2009) 171 Cal. App. 4th 886.

#### **B. For-Sale Affordable Units.**

Under the amended Regulations, an applicant can elect to comply by providing at least 10 percent of the total units as affordable to and occupied by targeted ownership households. An applicant providing for-sale affordable units would not be required to pay the Inclusionary Affordable Housing Fee. A similar option is available for applicants developing condominium conversions, discussed below.

Under the proposed amendment, the requirements applicable to for-sale affordable units in the amended Inclusionary Regulations would not change substantially from the current practice. The sales price would be restricted to an amount that is affordable to targeted ownership households earning at or below 100 percent of area median income. The equity in the affordable unit would be shared between the owner and the Housing Commission at the time of the first sale. Equity would not be shared if the resale was to another qualified targeted ownership household. The amended Inclusionary Regulations adopt clarified definitions of “equity” and “resale” based on the documentation used by the Housing Commission for for-sale affordable units provided under the current Regulations. The Housing Commission is entitled to the first right of refusal of any for-sale affordable unit. Applicants providing for-sale affordable units would also be subject to all of the regulations in effect, including the

requirement to record a declaration of covenants, conditions and restrictions against the property secured by a deed of trust in favor of the Commission.

The findings of the Residential Nexus Analysis support the 10 percent requirement for alternative compliance by applicants providing for-sale affordable units. The Residential Nexus Analysis supports percentages for new construction from 15 percent to 27.4 percent, depending upon the building type. There is no recommendation to change the nexus percentages with this proposed amendment, which is proposed to stay at the 10 percent for new development.

### **C. Exemptions from the Inclusionary Regulations.**

The Inclusionary Regulations currently do not apply to the following: (1) residential development in the North City Future Urbanizing Area, which is subject to another inclusionary requirement specific to that area; (2) residential development of naturally affordable for-sale units sold to households earning 150 percent of area median income; (3) rehabilitation of an existing building that does not result in a net increase of units; and, (4) density bonus units. The proposed amendments would add three more exemptions from the Inclusionary Regulations:

- condominium conversions containing only units that will be sold at or below 80 percent of area median income;
- residential development containing at least 10 percent of the total units as affordable to and occupied by targeted rental households for not less than 55 years. To ensure compliance with the Costa-Hawkins Rental Housing Act, this exemption applies only to a development where the applicant agrees in a contract with a public entity to restrict rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 of Division 1 of Title 7 of the Government Code;
- residential development containing at least 10 percent of the units as affordable to and occupied by targeted rental households as a result of seeking and obtaining tax credits, multifamily housing bonds, below market interest rate loans, and/or grants to facilitate construction of the development.

The proposed exemption for certain condominium conversions is discussed below.

The remaining proposed exemptions from the Inclusionary Regulations apply to certain residential developments that contain rental affordable units. These exemptions are intended to apply to those residential projects that voluntarily provide rental affordable units in exchange for financial assistance from federal, state and/or local public entities and those projects providing rental affordable units in exchange for certain development incentives, including density bonuses and participation in the expedite program. Projects that meet the requirements of one of these exemptions are not subject to the Inclusionary Regulations, and therefore, are not required to pay the Inclusionary Affordable Housing Fee.

In order to qualify for either exemption, the development must contain at least 10 percent of the total units as rental affordable units affordable to households earning at or below 65 percent of area median

income. The rental affordable units must be restricted for at least 55 years. In order to ensure compliance with *Palmer* and the Costa-Hawkins Rental Housing Act, exempt developments must provide rental affordable units in connection with a contract with a public entity in consideration for direct financing, or certain incentives or concessions as defined by the Act.

Pursuant to proposed amendments to the Procedures Manual, in order to qualify for one of these two exemptions, applicants would enter into an exemption agreement with the Housing Commission recorded against the development and secured by a deed of trust. The exemption agreement would require the applicant to provide the Housing Commission with a copy of a recorded "public entity agreement", by which the applicant has agreed to restrict the rent and occupancy of at least 10 percent of the units in exchange for direct financial contribution or a form of assistance specified in Chapter 4.3 of Division 1 of Title 7 of the Government Code. If the public entity agreement is not received by the time of the initial building permit, the development will be subject to the Inclusionary Regulations and required to pay the Inclusionary Affordable Housing Fee in effect at that time. The time for submission of the public entity agreement may be extended, for good cause, by the Chief Executive Officer of the Commission. Upon receipt of the recorded public entity agreement, the Housing Commission will release the exemption agreement and reconvey its deed of trust. The Commission will periodically monitor compliance with the public entity agreement during its term.

The Procedures Manual, as proposed, also provides a mechanism for applicants to enter into a public entity agreement with the Housing Commission, if desired. Before doing so, the Housing Commission would require proof of receipt of direct financial assistance or a form of assistance specified in Chapter 4.3 of Division 1 of Title 7 of the Government Code from the City. However, a contract with any public entity that provides the applicant with financially sufficient incentives or direct financial assistance in exchange for the rental affordable units will qualify as a public entity agreement for purposes of the exemption.

#### **D. Condominium Conversions.**

The proposed amendment would create a new section addressing the application of Inclusionary Regulations specifically for condominium conversions. All condominium conversions would be required to pay a Condominium Conversion Inclusionary Affordable Housing Fee, which is equal to half of the Inclusionary Affordable Housing Fee. The Condominium Conversion Inclusionary Affordable Housing Fee shall be paid at the close of escrow of the first condominium sold and will be calculated using the rate in effect at that time, just as is currently the practice under the provisions of the Procedures Manual. An applicant would be able to pre-pay the Fee at the rate in effect at the time of payment.

Instead of paying the Condominium Conversion Inclusionary Affordable Housing Fee, an applicant for condominium conversion could elect to provide at least 5 percent of the total units at the development as affordable to and occupied by targeted ownership households, earning at or below 100 percent area median income. These for-sale affordable units would be provided in the same manner as the for-sale affordable units discussed above. They would be restricted by a declaration of covenants, conditions and restrictions and a deed of trust in favor of the San Diego Housing Commission. The for-sale affordable units would also be subject to the equity sharing provisions in the Inclusionary Regulations.

The 5 percent inclusionary requirement for condominium conversions represents a decrease in the current 10 percent requirement. This is being proposed because the 2011 Residential Nexus Analysis shows that the nexus for condominiums, in this depressed market, is generally between 5 percent and 8 percent. Even at this reduced percentage, the current per square foot rate of \$4.98 is lower than the rate supported by the Residential Nexus Analysis. In this market, the rate for condominium conversions could legally be set in the range of \$6.57 to \$15.26 per square foot according to the Residential Nexus Analysis. With the proposed change in the Inclusionary Regulations, the rate for all condominium conversions is currently \$2.49 per square foot, which is half of the current rate for projects of 10 units or more. This is suggested because of the current depressed market and because the inclusionary requirement for condominium conversions is being reduced from 10 percent to 5 percent. Accordingly, under the proposed change the rate, today, for new applications is \$2.49 per foot for all condominium conversion projects, regardless of whether the project has fewer than 10 units.

A third option available to some applicants developing a condominium conversion is an exemption for condominiums that will initially be affordable to and sold to households earning at or below 80 percent of area median income. The market surveys conducted for the 2011 Residential Nexus Analysis indicate that because of the current depressed market, some condominium conversions will be affordable both before and after conversion at or below 80 percent of area median income. The proposed amendments to the Inclusionary Regulations include an exemption for these projects. Under this exemption, there would be no limit on the size of the units, nor restriction that the sale be to a first time homebuyer, nor that the units be occupied by the low income purchasers. In addition, the buyers could own other property. Applicants taking advantage of this exemption would execute a declaration under penalty of perjury stating that all the condominium units in their projects will be initially sold at or below 80 percent of area median income. This declaration would be secured by a deed of trust in favor of the Commission. If the Commission were to determine that the for-sale units under this new exemption were actually being sold at or above 80 percent of area median income, then the Commission would impose the Condominium Conversion Inclusionary Affordable Housing Fee. This would be determined through a requirement that the applicant report to the Commission as each of the units are sold. At such time the Commission, could spot verify that the exemption is appropriate.

The 80 percent area median income, or low income exemption, is in addition to the 150 percent area median income exemption that already exists within the Inclusionary Regulations. The 150 percent exemption requires that the prospective purchaser be a first time homebuyer, occupy the unit, not own other real estate and that unit contain at least two bedrooms.

#### **E. Pending Projects.**

A new section is proposed to be added to the Procedures Manual to address projects that have already been processed under the existing Inclusionary Affordable Housing Regulations and that have entered into written agreements with the San Diego Housing Commission to pay the "In Lieu Fee", that is applicable at the time of the close of escrow for the first condominium unit within the project. Under these agreements, payment of the In Lieu Fee is required at a future date at the rate in effect on that date. This new section states that for purposes of these agreements the In Lieu Fee shall mean the Inclusionary Affordable Housing Fee in effect at the due date, not the reduced Condominium Conversion Inclusionary Affordable Housing Fee. If the project was a condominium conversion of

fewer than 10 units, then the In Lieu Fee shall be half of the Inclusionary Affordable Housing Fee, as is the current law.

**F. Other Changes.**

Additional revisions to the Inclusionary Regulations and Procedures Manual are proposed to clarify and simplify the Inclusionary Regulations. Further revisions were needed to effectuate the change from an in lieu fee to an Inclusionary Affordable Housing Fee. Going forward all projects not exempt from the Inclusionary Regulations would be required to pay the Inclusionary Affordable Housing Fee unless the applicant elected to provide for-sale affordable units. The waiver language in the Procedures Manual was removed since that language was previously incorporated into the Inclusionary Regulations.

**FISCAL CONSIDERATIONS:**

Approval of the action could provide additional income to the Affordable Housing Fund.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

This item received unanimous approval at the Housing Commission Board Meeting of April 15, 2011. The Inclusionary Affordable Housing Regulations were last amended by the San Diego City Council in January 2010. The proposed amendments were heard at the Code Monitoring Committee on April 13, 2011, and were recommended for adoption by a vote of 5-3-3. The Community Planning Committee heard a presentation concerning the proposed amendments on April 26, 2011, and declined to take any action on the issue. On April 27, 2011, the Land Use and Housing Committee recommended that the Housing Commission move forward with the proposed amendments by presentation to the Planning Commission and City Council, by a vote of 3-1. On June 2, 2011, pursuant to Resolution No. 4705-PC, the Planning Commission recommended adoption of the proposed amendments by a vote of 5-0, with Commissioner Griswold absent, and further recommended City Council consider the relationship between the current fee and the conclusions of the Residential Nexus Analysis. As discussed above, the proposed Inclusionary Regulations and Procedures Manual before City Council has changed in some aspects from the version reviewed by Planning Commission, the Housing Commission, Land Use and Housing Committee and other City committees to deal with the new exemptions that have been drafted into the proposed Inclusionary Regulations. The overall intent and effect of the amendments remains the same, however, to address the potential impact of the *Palmer* decision and clarify the Inclusionary Regulations and Procedures Manual.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Key stakeholders include residential property developers as well as individuals needing affordable rental and for-sale housing. The intended impact is to clarify the existing Inclusionary Affordable Housing Regulations with respect to the *Palmer* decision while maintaining the same practical effect of the Inclusionary Regulations in the development of affordable housing opportunities in all areas of the City. On April 27, 2011, the Land Use and Housing Committee instructed the Housing Commission to hold a stakeholders meeting, which was held on May 12, 2011. The stakeholders meeting was attended by representatives of the Building Industry Association of San Diego, the San Diego Association of Realtors and the San Diego Chamber of Commerce.

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**ENVIRONMENTAL REVIEW:**

This proposed transaction is not a “project” pursuant to Section 15378(b)(5) the California Environmental Quality Act (CEQA) Guidelines.

Respectfully submitted,

*Charles B. Christensen*

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General Counsel

San Diego Housing Commission

Approved by,

*Richard C. Gentry*

Richard C. Gentry

President & Chief Executive Officer

- Attachments:
1. Inclusionary Affordable Housing Regulations, Redline Version
  2. Inclusionary Affordable Housing Regulations, Final Version
  3. Inclusionary Affordable Housing Implementation and Monitoring Procedures, Redline Version
  4. Inclusionary Affordable Housing Implementation and Monitoring Procedures, Final Version

Hard copies are available for review during business hours in the main lobby of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials on the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

**STRIKEOUT ORDINANCE**OLD LANGUAGE: ~~Strike-Out~~NEW LANGUAGE: Underlined

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

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.

**Article 2: General Development Regulations****Division 13: Inclusionary Affordable Housing Regulations****§ 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 ~~of the two~~ 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 Variance Rules for Inclusionary Affordable Housing Regulations~~

- ~~(a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.~~
- ~~(b) An application for a variance, 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, adjustment, or reduction, and shall be a matter of public record.~~
- ~~(c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective 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.~~
- ~~(d) No variance, adjustment, or reduction shall be issued unless:
  - ~~(1) Special circumstances unique to that *development* justify the granting of the variance, 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, 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.~~
- (e) No variance, adjustment, or reduction shall be issued to an applicant unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.
- (f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):
  - (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.

§ 142.130410 In Lieu Fee Regulations Inclusionary Affordable Housing Fee

In accordance with Section 142.1306(b)(4), an *applicant* may pay an in lieu fee subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:

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 rate of the in lieu fee shall be determined as follows: 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.
  - (1) For building permits that are obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, the rate of the in lieu fee shall be the rate in effect at the time the application for that first *tentative map* or *development permit* was *deemed complete*.
  - (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, but are issued within three (3) years of the date of approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time that first *tentative map* or *development permit* was approved.

(3) ~~For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, and that are not issued within three (3) years of the date of the approval of the first tentative map or development permit, the rate of the in-lieu fee shall be the rate in effect at the time the application for the building permit is deemed complete.~~

(4) ~~For any tentative map or development permit approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in-lieu fees, the rate of the in-lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the tentative map or development permit was approved, or until July 3, 2006, whichever occurs later. The rate of the in-lieu fee thereafter shall be the rate in effect at the time the application or the building permit is deemed complete.~~

(b) ~~The amount of the in-lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate gross floor area of all of the units within the development. 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) No building permit may be issued without payment of the in lieu fee. 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) Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable. 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.

Table 142-13C

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ. FOOT

Table 142-13D

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ. FOOT
YEAR TWO	\$0.875/SQ. FOOT
YEAR THREE	\$1.25/SQ. FOOT

- (e) The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption of this Division, based upon 50% of the difference between the

~~median cost of housing and housing price affordable to the median household. All funds collected pursuant to this Division shall be deposited into the Affordable Housing Fund.~~

~~§ 142.1306 General Inclusionary Affordable Housing Requirements~~

- ~~(a) At least ten percent (10%) of the total *dwelling units* in the proposed development shall be affordable to *targeted rental households* or *targeted ownership households* in accordance with Section 142.1309. For any partial unit calculated, the applicant shall pay a prorated amount of the in lieu fee in accordance with Section 142.1310 or provide an additional affordable unit. *Condominium conversion* units affordable to and sold to households earning less than 150 percent (150%) of the *area median income* pursuant to an agreement entered into with the San Diego Housing Commission shall not be included in the *dwelling units* total for purposes of applying the ten percent inclusionary housing requirement.~~
- ~~(b) With the exception of condominium conversions of twenty or more dwelling units the requirement to provide *dwelling units* affordable to and occupied by *targeted rental households* or *targeted ownership households*, can be met in any of the following ways:~~
- ~~(1) On the same site as the proposed project site;~~
  - ~~(2) On a site different from the proposed project site, but within the same community planning area. Nothing in this Division shall preclude an *applicant* from utilizing affordable units constructed by another in accordance with this Division upon approval by the~~

~~Housing Commission in accordance with the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;~~

- ~~(3) On a site different from the proposed project site and outside the community planning area if the *applicant* has obtained a variance in accordance with Section 142.1304. Nothing in this Division shall preclude an *applicant* from utilizing affordable units, constructed by another *applicant* in accordance with this Division, upon approval by the Housing Commission pursuant to the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;~~
  - ~~(4) Payment of an in lieu fee in accordance with the provisions of Section 142.1310; or~~
  - ~~(5) Any combination of the requirements of this Section.~~
- ~~(e) *Condominium conversions of twenty or more dwelling units* shall satisfy the requirement to provide *dwelling units* affordable to and occupied by *targeted rental households or targeted ownership households* on the same site as the condominium conversion project.~~

§ 142.13095 Requirements for Inclusionary Affordable Housing Election to Provide For-Sale Affordable Housing Units in a For-Sale Development

~~*Development of affordable units is subject to the following requirements and the provisions of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:*~~

- (a) ~~The affordable 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.~~  
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.
- (1) ~~The applicant may seek an alternative development schedule in accordance with the provisions of Sections 142.1304 and 142.1305 and decided in accordance with Process Two.~~
- (b) ~~The affordable units shall be comparable in bedroom mix, design and overall quality of construction to the market rate units in the development, except that the affordable units shall not be required to exceed three bedrooms per unit. The square footage and interior features of the affordable units shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.~~
- (c) ~~Sale or lease of the affordable units shall follow the marketing requirements and procedures contained within the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.~~
- (d) ~~Affordability Levels and Restrictions - Rental Units:~~
- (1) ~~The units shall be occupied by targeted rental households.~~

- (2) ~~The monthly rent for each unit shall not exceed 1/12 of 30% of 65% average median income, as adjusted for household size, less reasonable allowances for utilities.~~
- (3) ~~The units shall remain affordable for a period of not less than fifty-five (55) years from the date of issuance of Certificate of Occupancy for the *development* or applicable phase of the *development* through the imposition of a declaration of covenants, conditions and restrictions in first lien position as required in Section 142.1311.~~

(eb) ~~Affordability Levels and Restrictions For Sale Units~~ 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 units shall be occupied by *targeted ownership households*, subject to Section 142.1308(e)(3).~~ 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 households, as determined by the San Diego Housing Commission and detailed in the Inclusionary Housing Procedures Manual. The amount affordable to ~~targeted ownership households~~ shall be no greater than 35% of the AMI, adjusted for household size, determined as of the date of the close of escrow and shall not exceed an annual payment for all housing costs, including mortgage principal and interests, taxes, insurance, assessments, and five percent (5%) down payment, subject to Section 142.1308(e)(3).
- (3) The equity in a for-sale the affordable housing unit shall be shared as follows: 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 for purposes of this Division is measured by the difference in the original means the difference between the unrestricted fair market value of the affordable unit at the time of the acquisition of the affordable unit and the unrestricted fair market value of the affordable unit on the date of the first resale, and each and every transfer, lease or refinancing as determined by an appraisal approved by the City: 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) ~~Upon the first resale of the affordable unit during the first 15 years from the date of issuance of the certificate of occupancy, the City and owner of the affordable unit shall share the equity in accordance with the provisions of Table 142-13B. 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) ~~Upon each transfer, lease and or refinancing during the first 15 years from the date of issuance of the certificate of occupancy, the City and the Owner shall share the equity in the affordable unit based upon an appraisal of the affordable unit in accordance with the provisions of Table~~

~~142-13B.~~ 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*.

~~(D)~~ Upon any sale or any transfer, whenever it occurs the City shall also receive that sum which is calculated as the difference between the original fair market value of the affordable unit and the restricted value of the affordable unit at the time of the original sale, as determined by an appraisal as approved by the City.

- (4) All funds collected shall be deposited into the Inclusionary Affordable Housing Fund.
- ~~(5)~~ ~~The unit shall be sold at no less than fair market value.~~
- (65) The City of San Diego Housing Commission shall be entitled to the first right of refusal on any "~~for sale~~" 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 142-13B**

Length of Ownership at the Time of Resale, Refinance, or Transfer	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%

- (f) ~~In accordance with Section 142.1311, each affordable unit shall have recorded against it a Declaration of Covenants, Conditions and Restrictions in favor of the City of San Diego.~~

§ 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*.

~~§ 142.1308~~ **Development Review Procedures for Inclusionary Affordable Housing**

- ~~(a) The City Manager will review applications for *development* and determine whether the proposed *development* is subject to Process One decisions or requires decisions in accordance with Process Two, Three, Four or Five.~~
- ~~(b) If the proposed *development* is subject to Process One decisions only, the *applicant* shall be so advised and informed of the in lieu fee rate in accordance with Section 142.1310 or referred to the San Diego Housing Commission to obtain a Declaration of Covenants, Conditions and Restrictions in accordance with Section 142.1311.~~
- ~~(c) If proposed *development* is subject to Process Two, Three, Four or Five decisions, and the *applicant* intends to provide affordable housing in accordance with Section 142.1306(b)(1) through (3), the *applicant* shall be referred to the San Diego Housing Commission to obtain a Declaration of Covenants, Conditions and Restrictions in accordance with Section 142.1311. If the *applicant* intends to provide affordable housing in accordance with Section 142.1306(b)(4), the provisions of Section 142.1310 shall apply.~~

**§ 142.130407 Variance, Waiver, Adjustment or Reduction of Rules for Inclusionary Affordable Housing Regulations**

- ~~(a) Except as provided in Section 142.1304(e), a variance, adjustment, or reduction from the provisions of Section 142.1306 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 and shall require either that the findings in Section 142.1304(d) 142.1308(a) or in Section 142.1304(e) 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, ~~and shall be a matter of public record.~~
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency of the City of San Diego 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.
- (d) ~~No variance, adjustment, or reduction shall be issued unless:~~
- (1) ~~Special circumstances unique to that *development* justify the granting of the variance, 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, 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.~~
- (e) ~~No variance, adjustment, or reduction shall be issued to an applicant unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in-lieu fee charged or the inclusionary requirement.~~
- (f) ~~A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):~~
  - (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.~~

§ 142.13058 Findings for Variance, Waiver, Adjustment or Reduction Approval Rules for Inclusionary Affordable Housing Regulations

- (a) ~~Except as provided in Section 142.1305(c), a waiver, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require either that the findings in Section 142.1305(d) or in Section 142.1305(e) be made.~~
- (b) ~~An application for a 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* rationale for the waiver, adjustment, or reduction and shall be a matter of public record.~~
- (c) ~~A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a 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 waiver, adjustment, or reduction shall be in accordance with Process Five.~~
- (da) The decision maker may approve or conditionally approve an application for a variance. ~~No waiver, adjustment, or reduction shall be issued to an *applicant* unless 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 the granting of the variance, waiver, adjustment, or reduction;
  - (2) The *development* would not be feasible without the ~~waiver,~~ adjustment, or reduction 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.
- (eb) The decision maker may approve or conditionally approve an application for a ~~No~~ variance, waiver, adjustment, or reduction to the provisions of this Division if the decision maker makes a finding that shall be issued to an ~~applicant~~ unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in-lieu fee Inclusionary Affordable Housing Fee, the Condominium Conversion Inclusionary Affordable Housing Fee, charged 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*.

§ 142.130709 **General Rules for Inclusionary Affordable Housing Regulations**

- (a) The Chief Executive Officer of the San Diego Housing Commission shall be responsible for determining ~~targeted rental household and targeted ownership household~~ affordability standards and resident occupant qualifications for any affordable units provided pursuant to this Division. The San Diego Housing Commission shall also ~~and for monitoring~~ conformance compliance with Declarations of Covenants, Conditions and Restrictions any documentation created as a result of an applicant's compliance with this Division.
- (b) ~~The City shall establish and adopt submittal requirements, review procedures, and standards and guidelines for affordable housing to be referred to as the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual which shall be included in the Land Development Manual.~~
- (e) 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.

§ 142.134410 Declaration of Covenants, Conditions and Restrictions

All ~~development in accordance with~~ of affordable units pursuant to  
Section ~~142.1309, except Section 142.1309(b)(4),~~ 142.1305 or Section  
142.1306(b) shall be subject to the following regulations and 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, ~~in favor of the City of San Diego.~~
- (b) The 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 ~~that may be~~ recorded against the ~~project~~ development or unit, as applicable, prior to construction or permanent financing.
- (c) ~~The Declaration of Covenants, Conditions and Restrictions shall include the following provisions:~~
  - (1) ~~Compliance with the City of San Diego marketing and monitoring procedures.~~
  - (2) ~~The affordable units for targeted rental households shall remain affordable for fifty five (55) years from the date of issuance of the first certificate of occupancy.~~

- (3) ~~All affordable units for targeted ownership households shall remain affordable as follows:~~
- (A) ~~If the affordable unit is not resold to a targeted ownership household at a price described in Section 142.1309(e)(2), provision shall be made in the for-sale affordability restrictions for the recapture of a share of the profits on resale of the affordable unit, if the unit is not resold to a targeted ownership household at the sales price described in Section 142.1309(e)(2).~~
- (B) ~~The Declaration of Covenants, Conditions and Restrictions or conditions of approval will include provisions restricting resale prices and purchaser income levels according to the formula specified in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.~~
- (C) ~~In the event a subordination of the deed of trust securing the affordability conditions contained in a Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the applicant's receipt of adequate construction or permanent financing for the project, or to enable first-time home buyers to qualify for mortgages, the applicant shall enter into a separate agreement with the City of San Diego for subordination of the deed of trust securing the affordability restrictions.~~

- (4) ~~The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the San Diego Housing Commission assuring performance recorded against the restricted unit or units, and such other instruments as may be required by the Chief Executive Officer of the San Diego Housing Commission to effectuate the viability of the affordability restrictions for the entire term of required affordability.~~
- (5) ~~Any other terms necessary to implement the provisions of this Division.~~

**§ 142.131211 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 or exemption in accordance with Sections 142.1304 and 142.1305 or Section 142.1303, respectively this Division, and the number of *applicants* and location of *developments* that were granted such an

~~exemption or a waiver, variance, reduction, or adjustment and the terms of each variance or waiver; 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.

- (b) ~~In conjunction with the comprehensive update of the City of San Diego Progress Guide and General Plan, Housing Element, the San Diego Housing Commission and the Planning Department shall direct a study to determine the relationship in nature and amount between the production of market rate residential housing and the availability and demand for affordable housing in San Diego.~~

AMC:cw  
06/29/11  
Or.Dept:San Diego Housing Commission  
PL#2011-05899

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

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

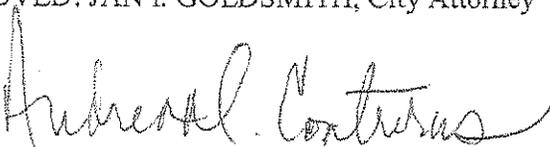
- (3) The number of market rate units and the number of affordable units, including the location of all affordable units, and the total Inclusionary Affordable Housing Fees and Condominium Conversion Inclusionary Affordable Housing Fees paid.

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 \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

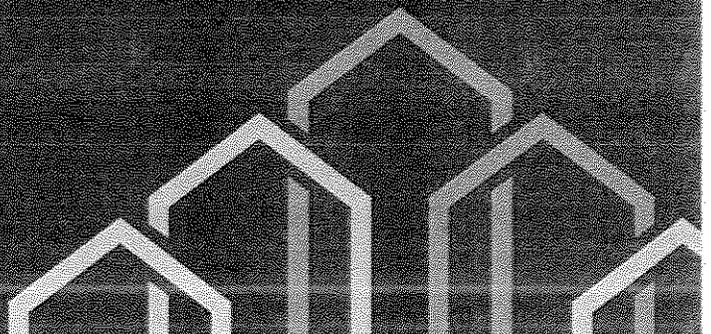
\_\_\_\_\_  
JERRY SANDERS, Mayor



SAN DIEGO  
HOUSING  
COMMISSION

# San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures 2011

San Diego Housing Commission  
Real Estate Department  
1122 Broadway, Suite 300  
San Diego, CA 92101  
[www.sdhc.org](http://www.sdhc.org)



# Inclusionary Affordable Housing Implementation & Monitoring Procedures



Regulations pertaining to the City of San Diego's Inclusionary Housing Program ("Program") are incorporated in San Diego Municipal Code ("SDMC") Chapter 14, Article 2, Division 13 (the "Inclusionary Regulations"). The purpose of this Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual ("Procedures Manual") is to provide additional detail in the implementation and administration of the Program. Italicized words are defined in the Land Development Code.

## I. Development Review Procedures

Specific development procedures are summarized in the Development Services Department Information Bulletin 532. *Applicants* constructing affordable units pursuant to ~~the requirements of the Program~~ will be eligible for expedited permit processing through the Affordable/Infill Housing and Sustainable Buildings Expedite Program as implemented by Council Policy 600-27 (See Information Bulletin 538).

The City decision maker will review applications for *development* and determine whether the proposed *development* is subject to Process One decisions or requires decisions in accordance with Process Two, Three, Four or Five. Any *applicant of development* electing to provide affordable for-sale housing units or exempt under subdivisions (b), (f) or (g) of Section 142.1303 or Section 142.1306(c) shall be referred to the San Diego Housing Commission ("Commission") to obtain the documentation required under the applicable Section.

## II. Inclusionary Affordable Housing Fee ~~In-Lieu Fees~~ *(moved from back of Manual)*

Pursuant to Section 143.1310, an Applicant may pay a fee in lieu of constructing affordable units.

~~Where no building permit application is filed in connection with a condominium conversion project, the in-lieu fees shall be paid in full no later than the close of escrow of the first unit sold within the project, subject to an agreement with the San Diego Housing Commission. The Applicant shall pay the then current, applicable in-lieu fee amount~~

The amount of the Inclusionary Affordable Housing Fee for each *development* in lieu fees to be charged and collected for each Residential Development Project shall be the product of the applicable per square foot charge (i.e., the rate) multiplied by the aggregate gross floor area ~~gross floor area~~, as defined in the San Diego Municipal Code, of all of the units within the development Residential Development Project (excluding garages and carports and other parking structures).

The following In Lieu Fees shall be collected during the first three (3) years after the Program is effective:

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ FOOT

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

A. The applicable square foot charge (i.e., the rate) level of the in-lieu fee shall be revised annually commencing on the fourth year based on the following formula and shall not exceed the amount determined as follows:

- Fifty percent of the difference between the median sales price of all homes sales in the City of San Diego for the last ~~quarter of the year~~ prior to the time of adjustment (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis) and the amount of money a median-income family of four is able to afford to purchase a home.
- The product of the above calculation shall then be multiplied ~~divided by~~ 10%, in order to represent the level of obligation under the Program.
- The product of the above calculation shall then be divided by 2,000 Square Feet ~~which represents the average size in~~ (Square Feet) of a unit constructed within the City of San Diego (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis), in order to determine the level of the in-lieu fee for projects of ten or more units. Average size of a unit may be adjusted from time to time.
- ~~The level of the in-lieu fee for projects of less than 10 units shall be 50% of the amount set for projects of 10 or more units.~~

## Example Only:

Assume that the median income household can afford to purchase a home priced at \$174,000. The median home price within the City of San Diego is \$274,000. Fifty percent of the difference between the median home price and that which the median income household can afford is \$50,000. Ten percent of this number is \$5,000. This number is divided by 2,000 SF (for purposes of this example only) to produce an in-lieu fee level of \$2.50 per square foot ~~for projects of 10 or more. The level of the in-lieu fee for projects of less than 10 units would be 50% of this or \$1.25 per square foot.~~

Pursuant to the above formula, the in-lieu fee rate used to calculate the Inclusionary Affordable Housing Fee from July 3, 2009 to present was and is \$4.98/square foot for projects with 10 or more units and \$2.49 for projects with 9 or fewer units.

## III. Exemptions from the Inclusionary Regulations for 150% Units. (Moved from back of Manual)

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



Pursuant to Section 142.1303(b) of the Municipal Code, contains an exemption from the Inclusionary Regulations for any residential *development* or portion of the *development* that are naturally affordable for-sale units (“150% Units”).

A. Pursuant to Section 142.1303(b) any portion of a residential *development* development project that meets all of the following *criteria* shall be exempted from the requirements of the Program, including payment of the in-lieu fee:

- 1. The 150% Unit units contained within the residential development project are for sale to private household(s), is being sold to persons who owns no other real property, for use as the buyer's and will reside in the unit as their primary residence;
- 2. The 150% Unit is affordable to and units are specifically targeted for, sold to, and occupied by households earning less than 150% AMI; and
- 3. The 150% Unit has Each qualifying unit must have two (2) or more bedrooms; and (not required for condo conversions).
- 4. The 150% Unit unit(s) subject to this exemption has recorded against it an agreement between the *Applicant* and the Chief Executive Officer of the San Diego Housing Commission assuring that the provisions of Section 142.1303(b) above have been met. The San Diego Housing Commission will certify the eligibility of the prospective buyers.

B. *Applicants* with qualifying 150% Units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.

C. The 150% Unit(s) subject to this exemption shall have recorded against it an agreement between the applicant and the Commission assuring that the provisions above have been met.

D. In the event that the *applicant* Applicant is unable to fulfill the requirements of this provision, the Inclusionary Regulations Program requirements will be applied to the units that would have been exempted. The *applicant* shall Applicant may choose to pay the then-current, applicable Inclusionary Affordable Housing Fee or make an election to provide 10% of the total units at the development as For-Sale Affordable Housing Units in-lieu fee or provide the affordable units as provided for in the Inclusionary Housing Ordinance.

E. Qualifying 150% Units shall be sold at prices at or below the “Maximum 150% Sales Price” as. The Maximum Sales Price shall be the sales price determined and published by the San Diego Housing Commission on an annual basis, to be the Maximum Sales Price for a unit affordable to a household with income at 150%

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



AMI, adjusted for unit size, based upon the number of bedrooms located within the 150% Unit(s). The Maximum 150% Sales Price is the Maximum Sales Price for a unit affordable to a household with an income at or below 150% Area Median Income<sup>1</sup> (AMI), adjusted for unit size. The Maximum 150% Sales Price shall be determined by the San Diego Housing Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the 150% Unit, which does not exceed the thirty-five percent (35%) of one hundred fifty percent (150%) of AMI Area Median Income adjusted for household size, determined as of the date of the execution of a binding purchase and sale agreement for the 150% Unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

Maximum eligible incomes and Maximum Sales Price restrictions shall be adjusted based upon the revisions to Area Median Income limits as promulgated from time to time by HUD.

All 150% Units qualifying for this exemption for the year 2010/2011 shall be affordable at or below the maximum sales prices shown in the chart below.

## **2010/2011 SALES PRICE RESTRICTIONS 150% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Condominium Maximum Sales Price	Single Family Residence Maximum Sales Price
Studio	\$323,312	\$335,219
One	\$366,733	\$382,935
Two	\$410,154 \$390,090	\$430,976
Three	\$457,448 \$435,158	\$479,017

The maximum eligible incomes for 2010/2011 are as follows:

## **2010/2011 MAXIMUM INCOME 150% AREA MEDIAN INCOME**

Household Size	Income
One	\$79,275 \$78,675
Two	\$90,600 \$89,850
Three	\$101,925 \$101,100
Four	\$113,250 \$112,350

F. Compliance with the exemption from the provisions of the Inclusionary Regulations Housing Ordinance shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed. Applicants

<sup>1</sup> For purposes of this Procedures Manual and the Inclusionary Regulations, the Area Median Income means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the United States Department of Housing and Urban Development ("HUD").

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



~~shall enter into an agreement with the San Diego Housing Commission to ensure compliance.~~

G. ~~The San Diego Housing Commission~~ may, but shall not be obligated to, perform the following monitoring functions and services, on a periodic basis:

1. ~~(A) r~~ Reviewing the applications of prospective or actual occupants and/or purchasers of the affected ~~150% U~~ units, to spot check the eligibility of such persons and/or households as eligible occupants and/or households;
2. ~~(B) r~~ Reviewing the documentation submitted by ~~applicants~~ Applicants in connection with the certification process for eligible households and/or occupants.

Notwithstanding the foregoing description of the ~~San Diego Housing Commission's~~ functions, no person or entity, including the ~~applicant~~ Applicant shall have any claim or right of action against the ~~San Diego Housing Commission~~ Commission based on any alleged failure to perform such function, ~~except that Applicant may reasonably rely upon the San Diego Housing Commission's tenant eligibility determination and the Applicant shall not be liable to the San Diego Housing Commission for any damages, attributable to the San Diego Housing Commission's sole negligence or willful misconduct in conducting any eligibility determinations and/or monitoring.~~

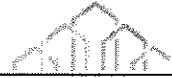
## IV. Exemptions from the Inclusionary Regulations for Affordable Rental Units in Compliance with the Costa-Hawkins Rental Housing Act

A. Pursuant to subdivisions (f) and (g) of Section 142.1303, an applicant is exempt from the Inclusionary Regulations if:

1. The residential development complies with either subdivision (f) or (g) of Section 142.1303;
2. Applicant enters into an Exemption Agreement, as defined below, with the Commission that is recorded against the applicable portion of the development and secured by a deed of trust in favor of Commission;
3. Applicant timely provides Commission with a recorded Public Entity Agreement, as defined below; and
4. Upon request, applicant shall, from time to time, provide the Commission with documentation to verify compliance with the terms and conditions of the Public Entity Agreement.

Failure to comply with all the requirements of the exemption in subdivision (f) or (g) of Section 142.1303 and set forth in the Procedures Manual, will result in the

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



development being subject to payment of the Inclusionary Affordable Housing Fee.

- B. Exemption Agreement.** Applicants seeking exemption under subdivision (f) or (g) of Section 142.1303 shall execute a written agreement with the Commission (the "Exemption Agreement"). The Exemption Agreement shall be recorded in the official records of the San Diego County Recorder's Office against the applicable portion of the development and secured by a deed of trust in favor of the Commission. The Exemption Agreement shall be in a form acceptable to Commission, which may be revised from time to time, and shall provide the following:
1. Applicant warrants that the development will be rent and occupancy restricted by a Public Entity Agreement. Applicant further warrants that it shall provide Commission with a copy of a recorded Public Entity Agreement before the issuance of the initial building permit for the development.
  2. Applicant agrees to pay the then-current, applicable Inclusionary Affordable Housing Fee if the Public Entity Agreement is not timely recorded and a copy supplied to the Commission.
  3. The time for performance may be extended by the President and Chief Executive Officer of the Commission in his reasonable discretion.
  4. The Exemption Agreement shall be released and the Commission's deed of trust shall be reconveyed upon Commission's timely receipt of a copy of the recorded Public Entity Agreement.
- C. Public Entity Agreement.** The Public Entity Agreement is a written agreement between applicant and a public entity recorded in the official records of the San Diego County Recorder's Office, which restricts the rents and occupancy of at least 10% of the dwelling units within the development to targeted rental households for a period of not less than 55 years (the "Public Entity Agreement"). The Public Entity Agreement shall be entered into by applicant 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 or as a result of 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.
- D. Monitoring.** Applicant shall provide the Commission with such documentation relating to the affordable units provided pursuant to the Public Entity Agreement, as, and when requested by the Commission. Commission shall periodically monitor and spot verify the representations and warranties made by the applicant in the Public Entity Agreement for compliance with the Inclusionary Regulations.

## Inclusionary Affordable Housing Implementation & Monitoring Procedures

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The Commission shall determine a reasonable fee to be paid by the *applicant* for the costs incurred by the Commission in connection with implementing and verifying compliance with the terms of this exemption.

- E. Any *applicant* may voluntarily elect to enter into a Public Entity Agreement with the Commission, which Public Entity Agreement shall comply with all the requirements of subdivision (f) of Section 142.1303 of the Inclusionary Regulations, this section IV of the Procedures Manual, and the following:
1. The *dwelling units* affordable to *targeted rental households* 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.
  2. The *dwelling units* affordable to *targeted rental households* shall be comparable in bedroom mix, design and overall quality of construction to the market rate units in the *development*, except that the affordable units shall not be required to exceed three bedrooms per unit. The square footage and interior features of the *dwelling units* affordable to *targeted rental households* shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.
  3. The *dwelling units* affordable to *targeted rental households* shall be occupied by *targeted rental households* for the entire term of the Public Entity Agreement entered into by the Commission and *applicant*.
  4. The *dwelling units* affordable to *targeted rental households* shall remain affordable for a period of not less than fifty-five (55) years from the date of issuance of a Certificate of Occupancy for the *development* or applicable phase of the *development*.
  5. The eligibility of each prospective ~~tenant and/or household~~ *targeted rental household* under the restrictions set forth above shall be certified by the San Diego Housing Commission. *Applicants* shall submit documentation for certification to the San Diego Housing Commission for a determination of tenant eligibility, prior to tenant occupancy. No *dwelling unit* affordable to *targeted rental households* ~~Affordable Unit~~ may be rented to a prospective tenant or occupied by any person unless and until the San Diego Housing Commission has determined that the prospective tenant or occupant has satisfied the eligibility requirements.
  6. 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 Commission, which shall serve as the Public Entity

**Inclusionary Affordable Housing  
Implementation & Monitoring Procedures**



Agreement for purposes of this section. The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position.

7. The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the Commission and such other instruments as may be required by the Chief Executive Officer of the Commission to effectuate the viability of the affordability restrictions for the entire term of required affordability. The deed of trust may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
  
8. In the event a subordination of the deed of trust securing the Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the applicant's receipt of adequate construction or permanent financing for the project the applicant shall enter into a separate agreement with the Commission for subordination of the deed of trust.

**Targeted Rental Households and Targeted Ownership Households**

~~Program requirements can be fulfilled through the provision of rental or for-sale housing. Rental units meeting program requirements shall be affordable at rents affordable to households earning 65% or less of the Area Median Income ("AMI"). For sale units meeting program requirements shall be affordable to households earning 100% AMI or less. Income restrictions shall be adjusted annually based upon the revisions to Area Median Income limits as promulgated from time to time by HCD.~~

***Targeted Rental Household***

- F. Targeted Rental Households are households whose aggregate gross annual income does not exceed 65% Area Median Income (AMI). Rent calculations shall be based on 1/12 of 30% of 65% of the updated AMI and shall include rent and all tenant paid utilities, fees and charges for a targeted rental household, as adjusted for household size limits as adjusted for household size by the U.S. Department of Housing and Urban Development (HUD) for San Diego County at 65% AMI. The current rent levels as of June 20112010 as adjusted by household size and utility allowance are as follows:

<b><u>20112010 65% Area Median Income and Rent Restrictions</u></b>			
<b><u>Household Size</u></b>	<b><u>Unit Size</u></b>	<b><u>Income</u></b>	<b><u>Gross Rent*</u></b>
One	Studio	\$35,75037,300	\$894933
Two	1 bedroom	\$40,85042,600	\$1,0211,065
Three	2 bedroom	\$45,95047,950	\$1,1491,199
Four	3 bedroom	\$51,05053,250	\$1,2761,331

\*Gross rent is equal to cash rent plus all tenant-paid utilities. See the

**Inclusionary Affordable Housing  
Implementation & Monitoring Procedures**



“San Diego Housing Commission Utility Allocation Schedule” to calculate the tenant-paid utilities based on the project’s actual utilities mix. Any fees required by owner that would otherwise be optional to the tenant (such as renter’s insurance) shall be deducted from the gross rent.

**V. Election to Provide For-Sale Affordable Housing Units. Targeted Ownership Household**

Pursuant to Section 142.1305, an applicant may elect to comply with the Inclusionary Regulations by providing at least ten percent (10%) of the total dwelling units in the proposed development as affordable to targeted ownership households (the “For-Sale Affordable Housing Units”).

- A. For any partial unit calculated, the applicant shall pay a prorated amount of the Inclusionary Affordable Housing Fee or provide an additional For-Sale Affordable Housing Unit. Any units provided as 150% Units pursuant to an agreement entered into with the Commission shall not be included in the dwelling units total for purposes of applying the ten percent (10%) calculation.
  
- B. The “Maximum Sales Price” for each For-Sale Affordable Housing Unit shall not exceed an amount that is affordable to targeted ownership households. The Maximum Sales Price shall be established based on housing costs that do not exceed 35% of 100% of AMI, adjusted for household size. This amount shall be determined as of the date of the close of escrow and includes mortgage principal and interest, taxes, insurance, HOA and assessments. The Maximum Sales Price assumes a 5% down payment, payment of taxes and insurance, and prevailing 30-year fixed-rate interest rates.

Targeted Ownership Household price restrictions shall be based on the updated AMI limits adjusted for household size by HUD for San Diego MSA at 100% AMI. Program Maximum Sales Prices restrictions as of 2010/2011 are as follows:

**2011/2010 MAXIMUM SALES PRICE RESTRICTIONS  
100% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Condominium Maximum Sales Price	Single Family Residence Maximum Sales Price
Studio	\$203,923 193,992	\$221,497
One	\$230,290 218,864	\$253,060
Two	\$256,655 243,953	\$284,840
Three	\$286,893 272,760	\$316,619



~~2011~~2010 MAXIMUM INCOME  
100% AREA MEDIAN INCOME

Household Size	Income
One	\$52,85052,450
Two	\$60,40059,900
Three	\$67,95067,400
Four	\$75,50074,900
Five	\$81,55080,900

The sales price restrictions shall be established based on housing costs that do not exceed 35% of the annual median household income, including mortgage principal and interests, taxes, insurance, HOA and assessments. Purchase price assumes 5% down payment, payment of taxes and insurance, and prevailing 30-year fixed rate interest rates. Upon request, the San Diego Housing Commission shall prepare and make available to Applicant *applicant* any general information that the San Diego Housing Commission possesses regarding income limitations, sales prices, occupancy policies and restrictions which are applicable to the For-Sale Affordable Housing Units-affected units. The Maximum Sales Price applicable to specific units-Actual sales prices for units restricted at 100% AMI will be calculated on a project-by-project basis.

- C. Commission shall certify theThe eligibility of each prospective buyer and the sales price prior to the close of escrow for any For-Sale Affordable Housing Unit under the restrictions set forth above shall be certified by the San Diego Housing Commission. Applicants *Applicants* shall submit documentation for certification to the San Diego Housing Commission for a determination of buyer eligibility prior to close of Escrow on each For-Sale Affordable Housing Unitrestricted unit.
- D. For-Sale Affordable Housing Units must be owner occupied unless the San Diego Housing Commission has determined a hardship on a case-by-case basis. Except where authorized by the San Diego Housing Commission for a specific unit, renting a restricted unit would trigger a recapture in equity pursuant to San Diego Municipal Code Section 142.1309 (e).
- E. The equity in the For-Sale Affordable Housing Units shall be calculated and shared between the owner and Commission at the time of the first resale, as set forth in the Inclusionary Regulations.
  - 1. “Resale” means any of the following:
    - a. The sale, conveyance or transfer of all or any part of the For-Sale Affordable Housing Unit or any interest in the For-Sale Affordable Housing Unit by a *targeted ownership household*;

## Inclusionary Affordable Housing Implementation & Monitoring Procedures



- b. If the *targeted ownership household* is not a natural person, the sale, conveyance or transfer of all or any part or any beneficial interest in the *targeted ownership household*;
  - c. Any refinancing of all or any part of the For-Sale Affordable Housing Unit by a *targeted ownership household*, except as provided in (2) below;
  - d. The failure of the *targeted ownership household* to occupy the For-Sale Affordable Housing Unit as his, her, or their primary residence;
  - e. The leasing of all or any part of the For-Sale Affordable Housing Unit, except where authorized by the Commission for a hardship determined on a case-by-case basis;
  - f. Any material breach of the documentation recorded against the For-Sale Affordable Housing Unit in favor of the Commission; or
  - g. The filing of bankruptcy by the *targeted ownership household*.
2. Notwithstanding the foregoing, a refinancing of the For-Sale Affordable Housing Unit shall not be considered a Resale, provided either:
- a. The principal balance of the *targeted ownership household's* loan after the refinancing, does not exceed the principal balance of the *targeted ownership household's* loan before the refinancing, plus reasonable closing costs; or
  - b. All of the following conditions are met, and provided that the Commission provides advance written consent to the refinancing to the *targeted ownership household*: (A) the *targeted ownership household* receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of the *targeted ownership household's* first loan before the refinancing; (B) such cash is borrowed for the purpose of and is used for improvements to the For-Sale Affordable Housing Unit, which improvements are preapproved by the Commission prior to the *targeted ownership household's* obtaining the refinancing; and (C) the total amount of all the loans secured by the For-Sale Affordable Housing Unit do not exceed 100% of the value of the For-Sale Affordable Housing Unit, including payment of the Commission's share of the Equity.

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



- F. The For-Sale Affordable Housing Unit shall be sold at no less than fair market value.
- G. The *applicant* shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. *Applicants* shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original *applicant's* successors in interest.
- H. 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 Commission. The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position.
1. The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the Commission and such other instruments as may be required by the Chief Executive Officer of the Commission to effectuate the viability of the affordability restrictions for the entire term of required affordability. The deed of trust may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
  2. In the event a subordination of the deed of trust securing the Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the *applicant's* receipt of adequate construction or permanent financing for the project, or to enable first time home buyers to qualify for mortgages, the *applicant* shall enter into a separate agreement with the Commission for subordination of the deed of trust.

## Condominium Conversions

~~Pursuant to Section 143.1306 of the Municipal Code, condominium conversion units affordable to and sold to households earning less than 150% AMI shall be exempted from the requirements of the Program, including payment of the in-lieu fee. Qualifying units shall be sold to private household(s), who owns no other real property, for use as a primary residence.~~

~~Applicants with qualifying condominium conversion units ("150% units") as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.~~



VI. Condominium Conversions.

Upon the approval of the amended Procedures Manual by the City Council, the initial Condominium Conversion Inclusionary Affordable Housing Fee shall be one half the current Inclusionary Affordable Housing Fee or \$2.49/square foot.

- A. Election to Provide 5% of Converted Condominiums as For-Sale Affordable Housing Units.
1. All units provided pursuant to Section 142.1306(b) of the Regulations shall be considered For-Sale Affordable Housing Units subject to all of the provisions of the Regulations and this Procedures Manual applicable to For-Sale Affordable Housing Units.
  2. For any partial unit calculated, the *applicant* shall pay a prorated amount of the Condominium Conversion Inclusionary Affordable Housing Fee or provide an additional For-Sale Affordable Housing Unit. Any units provided as 150% Units pursuant to an agreement entered into with the Commission shall not be included in the *dwelling units* total for purposes of applying the five percent (5%) calculation.
- B. Exemption for Condominium Conversions Affordable Households Earning 80% AMI or less.
1. Pursuant to Section 142.1306(c) of the Inclusionary Regulations, any *condominium conversion development* where all of the *dwelling units* will initially be affordable to and sold to households earning less than eighty percent (80%) of the Area Median Income are exempt from the Inclusionary Regulations.
  2. The *applicant* for such exempt condominium conversion *development* shall execute a declaration under penalty of perjury. Such declaration shall be on a form created by Commission for this purpose and may be revised from time to time and shall be secured with a deed of trust in favor of the Commission recorded against the property.
  3. Qualifying exempt *condominium conversion* units shall be sold at prices at or below the "Maximum 80% Sales Price", as determined and published by the Commission on an annual basis. The Maximum 80% Sales Price is the Maximum Sales Price for a unit affordable to a household with an income at or below 80% Area Median Income (AMI), adjusted for unit size. The Maximum 80% Sales Price shall be determined by the Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the unit, which does not exceed the thirty-five percent (35%) of 80% of AMI adjusted for household size, determined as of the date of the execution of a binding purchase and sale



agreement for the exempt condominium unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

All condominium conversion units qualifying for this exemption for the year 2011 shall be affordable at or below the maximum sales prices shown below.

**2011 SALES PRICE RESTRICTIONS**  
**80% AREA MEDIAN INCOME**

<u>Unit Size (bedrooms)</u>	<u>Maximum Sales Price</u>
<u>Studio</u>	<u>\$165,372</u>
<u>One</u>	<u>\$186,342</u>
<u>Two</u>	<u>\$207,311</u>
<u>Three</u>	<u>\$231,998</u>

The maximum eligible incomes for 2011 are as follows:

**2011 MAXIMUM INCOME**  
**80% AREA MEDIAN INCOME**

<u>Household Size</u>	<u>Income</u>
<u>One</u>	<u>\$45,850</u>
<u>Two</u>	<u>\$52,400</u>
<u>Three</u>	<u>\$58,950</u>
<u>Four</u>	<u>\$65,500</u>

4. Applicants with qualifying condominium conversion units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers. Applicants shall provide documentation concerning purchasers of the units and sales prices to Commission, at Commission's request.
5. Compliance with Section 142.1306(c) shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed.
6. In the event that the applicant is unable to fulfill the requirements of Section 142.1306(c) and this Procedures Manual, the Inclusionary Regulations will be applied to the units that would have been exempt. The applicant shall pay the then-current, applicable Condominium Conversion Inclusionary Affordable Housing Fee in effect at the close of escrow of the first condominium sold within the development.



VII. Off-Site Housing

- A. An applicant electing to provide affordable units pursuant to the Program~~If the Applicant elects, pursuant to Section 142.1306 (b)(2) of the San Diego Municipal Code, that desires to construct the affordable units on a site different than the proposed development and Off-Site Units to satisfy the requirements of this Program, the Applicant shall construct the Units within the same Community Planning Area, as delineated in the General Plan of the City of San Diego, as the Principal Project. An alternate site for the construction of the Affordable Units shall obtain be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission (and the Executive Director of the Redevelopment Agency if the development is located within a Redevelopment Project Area) or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Development Project is located in a Redevelopment Project Area.~~
- B. An applicant~~Applicant~~ electing to provide affordable units may satisfy the requirements of the Inclusionary Regulations this Program~~by the use of affordable units constructed by other developers, in addition to any to be built to meet their respective affordable housing requirements as set forth in the Ordinance, by transfer of credits between developers, if and when approved by the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission. The Receiver applicant~~ Applicant ~~would be precluded from~~ may not utilize any local public funds to meet the Program's affordability requirements. The approval of the Receiver ~~Site~~ would be is subject to all applicable approvals set forth in this Procedures Manual and the Inclusionary Regulations~~Ordinance~~.
- C. An~~If the applicant~~ Applicant electing, pursuant to Section 142.1306 (b)(3) of the San Diego Municipal Code, to construct the affordable units on a site different from the proposed development ~~primary development~~ site and outside the community planning area, the applicant must~~shall comply~~ obtain a variance in ~~accordance with Section 142.1308(c). 04 in accordance with Process Four.~~ An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission ~~or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Residential Development Project is located in a Redevelopment Project Area. The use of an alternate site for the construction of the Affordable Units outside of the Community Planning Area of the Principal Project must be found to support the community and economic balance and/or transit orientation goals.~~
- D. It is expected that the receiver site will be a new construction development; however, existing market-rate developments may be provided if the Chief



Executive Officer of the Commission determines that the condition and age of the development will not preclude the provision of decent, safe and sanitary housing for the full 55-year period without the need for substantial rehabilitation. Developments with historic designation will not qualify as a receiver site. The approval of the receiver site would be subject to all applicable approvals set forth in this Procedures Manual and the Ordinance.

### VIII. Alternative Development Schedule and Phasing of Units

A. Pursuant to San Diego Municipal Code Section 142.1309(a)(1), an Applicant may seek approval for an alternative development schedule subject to a Process Two approval. An applicant/~~Applicant~~ approved for an alternative development schedule may provide Affordable Units in accordance with the following:

1. Affordable Units built subject to a variance authorized by the Inclusionary Regulation/~~this Program~~ shall be constructed, completed, and ready for occupancy no later than the date that the Market Rate Housing is constructed, completed and ready for occupancy unless there is an otherwise acceptable agreement for an alternative development schedule which is satisfactory to the Chief Executive Officer of the Housing Commission or the CEO of the San Diego Housing Commission (and the Executive Director of the Redevelopment Agency if the development in the event that the Principal Project is located within a Redevelopment Project Area).
2. The timely construction of the affordable housing units shall be assured by the posting of a bond and the execution of agreements satisfactory to the Chief Executive Officer/~~CEO of the San Diego Housing Commission~~ on or before the issuance of the first building permit for any unit in the proposed development/~~Residential Development Project.~~

B. In the event that the development/development is proposed to be constructed in phases or the affordable units are/affordable housing is proposed to be constructed off-site, an alternative development schedule may be approved, subject to a written agreement between the applicant/~~Applicant~~ and the Chief Executive Officer/~~CEO of the San Diego Housing Commission~~, such as the following:

1. The issuance of building permit for the Affordable units/Housing Project shall occur on or before the earlier of: (i) the issuance of building permits for construction of the number which represents 50% of the Market Rate Units within the development/Project; or (ii) the date which is eighteen (18) months after the filing of final map for the Market Rate units/Project, or (iii) a date which is eighteen (18) months after the receipt of the building permit for the first Market Rate Unit if no final map is filed;.

## Inclusionary Affordable Housing Implementation & Monitoring Procedures



2. Completion of construction of the Affordable units Housing Project shall occur upon the earlier of twelve (12) months after the issuance of building permits for the Affordable units Housing Project as described above; or the date which is two and one-half years after the earliest date determined above.
3. The issuance of building permits for the construction of the number which represents 75% of market rate units for the development Project shall not occur until the completion of all of the Affordable Units is authorized by the City.
4. Occupancy of the Affordable units Housing Project by persons meeting the Program Eligibility requirements set forth in this Manual shall occur not later than 180 days after the completion of construction as determined above.

### Determining Amount of In Lieu Fee(s)

The San Diego Municipal Code Section 142.1310(a), provides “the rate of the in lieu fee shall be determined at the time the building permit application is filed”. Therefore, at the time the building permit application is filed, Development Services shall determine the amount of the in lieu fee and will advise the applicant of the amount of the applicable in lieu fee, in accordance with the following:

- (1) For building permits that are obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, the rate of the in lieu fee shall be the rate in effect at the time the application for that first tentative map or development permit was deemed completed.
- (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, but are issued within three (3) years of the date of approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time that first tentative map or development permit was approved.
- (3) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, and that are not issued within three (3) years of the date of the approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is deemed complete.
- (4) For any tentative map or development permit approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the tentative

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



~~map or development permit was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate in effect at the time the application for the building permit is deemed complete.~~

## Conversion of Tenure Type for of Affordable Units

~~Any Affordable Units constructed pursuant to the Program, proposed to change the type of tenure from rental to for sale or for sale to rental must satisfy the requirements of this Procedures Manual.~~

~~Any Affordable Rental Units to be converted to ownership units must satisfy the requirements of this Procedures Manual. Any Rental Units to be converted to For Sale Units shall be sold at or below the Maximum Purchase Price to Targeted Ownership Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval, with a right of first refusal for the occupant(s) of such Units at the time of conversion. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including sales price and length and method of restriction.~~

~~Any Affordable Ownership Units to be converted to rental units must satisfy the Manual. Any Affordable Ownership Units to be converted to Rental Units shall be rented at or below the Rental Rate to Targeted requirements of this Procedures Rental Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including rental rate and length and method of restriction.~~

## IX. Affirmative Marketing Requirements

The conditions of approval shall specify that ~~applicant~~Applicant shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. ~~Applicant~~Applicants shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original ~~Applicant's~~Applicant's successors in interest to the extent that the first sales to the general public are covered.

## X. Ongoing Monitoring

### A. Monitoring Fees – Affordable Units pursuant to Public Entity Agreement with Commission

1. An initial monitoring fee of \$500 will be assessed as a one-time charge to cover costs for developing the compliance monitoring plan, computer database program and reporting system for the project, and training sessions for owner/manager. This fee is only applicable to developments

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



electing to provide affordable units pursuant to a Public Entity Agreement with the Commission under subdivisions (f) or (g) of Section 142.1303 rental properties.

2. Annual Monitoring fees will be required for all affordable units pursuant to a Public Entity Agreement with Commission rental affordable units developed under the Program. The base monitoring fee per unit is \$65 for the first 40 units. The base fee charged decreases \$10 for each unit more than 40 units, and decreases \$20 for each unit more than 80 units.

1 to 40 Units \$65 per unit

41 to 80 Units \$55 per unit

81+ Units \$45 per unit

3. Applicants providing affordable units pursuant to a Public Entity Agreement with any public agency other than the Commission shall pay the Commission, at the time the Certificate of Occupancy is issued by the City, a one-time initial fee and annual monitoring fees, as determined, from time to time, by Commission in schedules printed by Commission, but in no event shall such fees be higher than those established for Public Entity Agreements with the Commission.

B. The Annual Monitoring fee shall be adjusted upward annually for increased costs due to inflation. The adjustment shall reflect the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the County of San Diego.

C. For developments projects that contain For-Sale Affordable Housing Units affordable for sale units, a \$1,000 per unit fee will be required for monitoring and determining eligibility for For-Sale Affordable Housing Units price restricted units. The fee is due upon execution of the Declaration of Covenants, Conditions and Restrictions a cooperation agreement between the Applicant and the Housing Commission.

## XI. Determination of Inclusionary In Lieu Fees under Existing Agreements with the Commission.

Any requirement to pay the "Inclusionary In Lieu Fee" or "In Lieu Fee" that is contained in any written agreement with the Commission, entered into in order to comply with prior versions of the Inclusionary Regulations, shall be satisfied by payment of an amount equal to the amount of the Inclusionary Affordable Housing Fee in effect at the time payment is due under the agreement. In the event that the "Inclusionary In Lieu Fee" or "In Lieu Fee" was previously applicable to a project comprised of ten or fewer units, then the amount payable in order to satisfy that obligation contained in the agreement(s) shall be one half (1/2) of the Inclusionary Affordable Housing Fee in effect at the time payment is due under the terms of the agreement(s).

## Inclusionary Affordable Housing Implementation & Monitoring Procedures

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However, this provision setting fees, shall not apply to any agreement(s) that fixed the amount of payment due at a set rate in the agreement(s). In those cases, the amount of payment shall be the amount fixed in the applicable agreement(s) and not the rate in effect at the time that the payment is due.

### Waivers, Adjustments and/or Reductions

~~The City Council of the City of San Diego desires to clarify the procedures that allow potential lack of nexus challenges to the constitutionality of the Inclusionary Ordinance under the provisions of San Diego Municipal Code Section 142.1305. The Council declares that this amendment to the Procedures Manual is declaratory of its existing intent and policy and remedies that exist under the current ordinance and under state law. This Procedures Manual was adopted by Resolution Number R-298003, adopted on May 20, 2003, and may be updated, revised and/or clarified by resolution.~~

~~An applicant for or developer of any development, project or property subject to the requirements of the Inclusionary Ordinance may appeal for a reduction, adjustment or waiver of the requirements of the Inclusionary Ordinance by following the procedures outlined in Section 142.1304 and/or 142.1305, based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the in lieu fee or the inclusionary housing requirement. If such lack of nexus is established under either Section 142.1304(d)(1) (variance) and/or 142.1305(d)(1) (waiver), then the findings required under 142.1304(d)(2), (3) and (4) for a variance and/or Section 142.1305(d)(2), (3) and (4) for a waiver, shall automatically be deemed established by the decision makers.~~

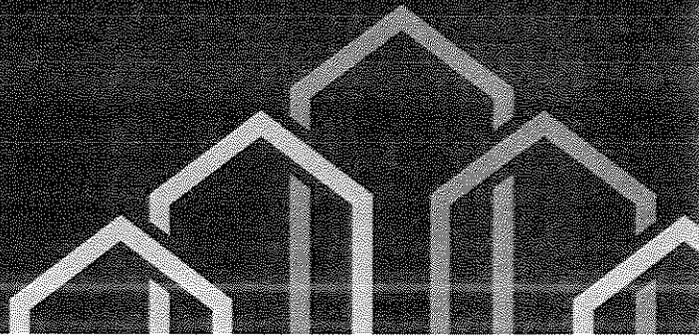
~~It is the intent of this policy to be applicable until the City Council amends the Inclusionary Ordinance to reflect this policy concerning reduction, adjustment and waivers.~~



SAN DIEGO  
HOUSING  
COMMISSION

# San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures 2011

San Diego Housing Commission  
Real Estate Department  
1122 Broadway, Suite 300  
San Diego, CA 92101  
[www.sdhc.org](http://www.sdhc.org)



# Inclusionary Affordable Housing Implementation & Monitoring Procedures

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Regulations pertaining to the City of San Diego's Inclusionary Housing Program ("Program") are incorporated in San Diego Municipal Code ("SDMC") Chapter 14, Article 2, Division 13 (the "Inclusionary Regulations"). The purpose of this Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual ("Procedures Manual") is to provide additional detail in the implementation and administration of the Program. Italicized words are defined in the Land Development Code.

## I. Development Review Procedures

Specific development procedures are summarized in the Development Services Department Information Bulletin 532. *Applicants* constructing affordable units pursuant to the Program will be eligible for expedited permit processing through the Affordable/Infill Housing and Sustainable Buildings Expedite Program as implemented by Council Policy 600-27 (See Information Bulletin 538).

The City decision maker will review applications for *development* and determine whether the proposed *development* is subject to Process One decisions or requires decisions in accordance with Process Two, Three, Four or Five. Any *applicant* of *development* electing to provide affordable for-sale housing units or exempt under subdivisions (b), (f) or (g) of Section 142.1303 or Section 142.1306(c) shall be referred to the San Diego Housing Commission ("Commission") to obtain the documentation required under the applicable Section.

## II. Inclusionary Affordable Housing Fee

The amount of the Inclusionary Affordable Housing Fee for each *development* shall be the product of the applicable per square foot charge (i.e., the rate) multiplied by the aggregate *gross floor area* as defined in the San Diego Municipal Code, of all of the units within the *development* (excluding garages and carports and other parking structures).

- A. The applicable square foot charge (i.e., the rate) shall be revised annually based on the following formula and shall not exceed the amount determined as follows:
  - Fifty percent of the difference between the median sales price of all homes sales in the City of San Diego for the last year prior to the time of adjustment (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis) and the amount of money a median-income family of four is able to afford to purchase a home.
  - The product of the above calculation shall then be multiplied by 10%, in order to represent the level of obligation under the Program.
  - The product of the above calculation shall then be divided by the average size in Square Feet of a unit constructed within the City of San Diego (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis), in order to determine the level of the fee. Average size of a unit may be adjusted from time to time.

# Inclusionary Affordable Housing Implementation & Monitoring Procedures

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## Example Only:

Assume that the median income household can afford to purchase a home priced at \$174,000. The median home price within the City of San Diego is \$274,000. Fifty percent of the difference between the median home price and that which the median income household can afford is \$50,000. Ten percent of this number is \$5,000. This number is divided by 2,000 SF (for purposes of this example only) to produce an in-lieu fee level of \$2.50 per square foot.

The rate used to calculate the Inclusionary Affordable Housing Fee from July 3, 2009 to present was and is \$4.98/square foot.

### III. Exemptions from the Inclusionary Regulations for 150% Units.

Section 142.1303(b) contains an exemption from the Inclusionary Regulations for any residential *development* or portion of the *development* that are naturally affordable for-sale units (“150% Units”).

- A. Pursuant to Section 142.1303(b) any portion of a residential *development* that meets all of the following is exempt:
  - 1. The 150% Unit is being sold to persons who own no other real property and will reside in the unit as their primary residence;
  - 2. The 150% Unit is affordable to and sold to households earning less than 150% AMI;
  - 3. The 150% Unit has two (2) or more bedrooms; and
  - 4. The 150% Unit has recorded against it an agreement between the *applicant* and the Commission assuring that the provisions of Section 142.1303(b) have been met.
- B. *Applicants* with qualifying 150% Units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.
- C. The 150% Unit(s) subject to this exemption shall have recorded against it an agreement between the applicant and the Commission assuring that the provisions above have been met.
- D. In the event that the *applicant* is unable to fulfill the requirements of this provision, the Inclusionary Regulations will be applied to the units that would have been exempted. The *applicant* shall pay the then-current, applicable Inclusionary Affordable Housing Fee or make an election to provide 10% of the total units at the *development* as For-Sale Affordable Housing Units.

**Inclusionary Affordable Housing  
Implementation & Monitoring Procedures**



- E. Qualifying 150% Units shall be sold at prices at or below the “Maximum 150% Sales Price” as determined and published by the Commission on an annual basis. The Maximum 150% Sales Price is the Maximum Sales Price for a unit affordable to a household with an income at or below 150% Area Median Income<sup>1</sup> (AMI), adjusted for unit size. The Maximum 150% Sales Price shall be determined by the Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the 150% Unit, which does not exceed thirty-five percent (35%) of 150% of AMI adjusted for household size, determined as of the date of the execution of a binding purchase and sale agreement for the 150% Unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

All 150% Units qualifying for this exemption for the year 2011 shall be affordable at or below the maximum sales prices shown below.

**2011 SALES PRICE RESTRICTIONS  
150% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Condominium Maximum Sales Price	Single Family Residence Maximum Sales Price
Studio	\$323,312	\$335,219
One	\$366,733	\$382,935
Two	\$390,090	\$430,976
Three	\$435,158	\$479,017

The maximum eligible incomes for 2011 are as follows:

**2011 MAXIMUM INCOME  
150% AREA MEDIAN INCOME**

Household Size	Income
One	\$78,675
Two	\$89,850
Three	\$101,100
Four	\$112,350

- F. Compliance with the exemption from the provisions of the Inclusionary Regulations shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed.
- G. Commission may, but shall not be obligated to, perform the following monitoring functions and services, on a periodic basis:

<sup>1</sup> For purposes of this Procedures Manual and the Inclusionary Regulations, the Area Median Income means the area median income, as adjusted for family size, for the San Diego Metropolitan Area as promulgated by the United States Department of Housing and Urban Development (“HUD”).



1. Reviewing the applications of prospective or actual occupants and/or purchasers of the 150% Units, to spot check the eligibility of such persons and/or households as eligible occupants and/or households;
2. Reviewing the documentation submitted by *applicants* in connection with the certification process for eligible households and/or occupants.

Notwithstanding the foregoing description of the Commission's functions, no person or entity, including the *applicant* shall have any claim or right of action against the Commission based on any alleged failure to perform such function.

**IV. Exemptions from the Inclusionary Regulations for Affordable Rental Units in Compliance with the Costa-Hawkins Rental Housing Act**

- A. Pursuant to subdivisions (f) and (g) of Section 142.1303, an *applicant* is exempt from the Inclusionary Regulations if:
1. The residential *development* complies with either subdivision (f) or (g) of Section 142.1303;
  2. *Applicant* enters into an Exemption Agreement, as defined below, with the Commission that is recorded against the applicable portion of the *development* and secured by a deed of trust in favor of Commission;
  3. *Applicant* timely provides Commission with a recorded Public Entity Agreement, as defined below; and
  4. Upon request, *applicant* shall, from time to time, provide the Commission with documentation to verify compliance with the terms and conditions of the Public Entity Agreement.

Failure to comply with all the requirements of the exemption in subdivision (f) or (g) of Section 142.1303 and set forth in the Procedures Manual, will result in the *development* being subject to payment of the Inclusionary Affordable Housing Fee.

- B. **Exemption Agreement.** *Applicants* seeking exemption under subdivision (f) or (g) of Section 142.1303 shall execute a written agreement with the Commission (the "Exemption Agreement"). The Exemption Agreement shall be recorded in the official records of the San Diego County Recorder's Office against the applicable portion of the *development* and secured by a deed of trust in favor of the Commission. The Exemption Agreement shall be in a form acceptable to Commission, which may be revised from time to time, and shall provide the following:

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1. *Applicant* warrants that the *development* will be rent and occupancy restricted by a Public Entity Agreement. *Applicant* further warrants that it shall provide Commission with a copy of a recorded Public Entity Agreement before the issuance of the initial building permit for the *development*.
  2. *Applicant* agrees to pay the then-current, applicable Inclusionary Affordable Housing Fee if the Public Entity Agreement is not timely recorded and a copy supplied to the Commission.
  3. The time for performance may be extended by the President and Chief Executive Officer of the Commission in his reasonable discretion.
  4. The Exemption Agreement shall be released and the Commission's deed of trust shall be reconveyed upon Commission's timely receipt of a copy of the recorded Public Entity Agreement.
- C. **Public Entity Agreement.** The Public Entity Agreement is a written agreement between *applicant* and a public entity recorded in the official records of the San Diego County Recorder's Office, which restricts the rents and occupancy of at least 10% of the *dwelling units* within the *development* to *targeted rental households* for a period of not less than 55 years (the "Public Entity Agreement"). The Public Entity Agreement shall be entered into by *applicant* 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 or as a result of *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*.
- D. **Monitoring.** *Applicant* shall provide the Commission with such documentation relating to the affordable units provided pursuant to the Public Entity Agreement, as, and when requested by the Commission. Commission shall periodically monitor and spot verify the representations and warranties made by the *applicant* in the Public Entity Agreement for compliance with the Inclusionary Regulations. The Commission shall determine a reasonable fee to be paid by the *applicant* for the costs incurred by the Commission in connection with implementing and verifying compliance with the terms of this exemption.
- E. Any *applicant* may voluntarily elect to enter into a Public Entity Agreement with the Commission, which Public Entity Agreement shall comply with all the requirements of subdivision (f) of Section 142.1303 of the Inclusionary Regulations, this section IV of the Procedures Manual, and the following:
1. The *dwelling units* affordable to *targeted rental households* 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.

2. The *dwelling units* affordable to *targeted rental households* shall be comparable in bedroom mix, design and overall quality of construction to the market rate units in the *development*, except that the affordable units shall not be required to exceed three bedrooms per unit. The square footage and interior features of the *dwelling units* affordable to *targeted rental households* shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.
3. The *dwelling units* affordable to *targeted rental households* shall be occupied by *targeted rental households* for the entire term of the Public Entity Agreement entered into by the Commission and *applicant*.
4. The *dwelling units* affordable to *targeted rental households* shall remain affordable for a period of not less than fifty-five (55) years from the date of issuance of a Certificate of Occupancy for the *development* or applicable phase of the *development*.
5. The eligibility of each prospective *targeted rental household* shall be certified by the Commission. *Applicants* shall submit documentation for certification to the Commission for a determination of tenant eligibility, prior to tenant occupancy. No *dwelling unit* affordable to *targeted rental households* may be rented to a prospective tenant or occupied by any person unless and until the Commission has determined that the prospective tenant or occupant has satisfied the eligibility requirements.
6. 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 Commission, which shall serve as the Public Entity Agreement for purposes of this section. The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position.
7. The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the Commission and such other instruments as may be required by the Chief Executive Officer of the Commission to effectuate the viability of the affordability restrictions for the entire term of required affordability. The deed of trust may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
8. In the event a subordination of the deed of trust securing the Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the *applicant's* receipt of adequate construction or permanent financing for

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the project the *applicant* shall enter into a separate agreement with the Commission for subordination of the deed of trust.

- F. *Targeted rental households* are households whose aggregate gross annual income does not exceed 65% Area Median Income (AMI). Rent calculations shall be based on 1/12 of 30% of 65% of AMI and shall include rent and all tenant paid utilities, fees and charges for a *targeted rental household*, as adjusted for household size. The current rent levels as of June 2011 as adjusted by household size and utility allowance are as follows:

2011 65% Area Median Income and Rent Restrictions			
Household Size	Unit Size	Income	Gross Rent*
One	Studio	\$37,300	\$933
Two	1 bedroom	\$42,600	\$1,065
Three	2 bedroom	\$47,950	\$1,199
Four	3 bedroom	\$53,250	\$1,331

\*Gross rent is equal to cash rent plus all tenant-paid utilities. See the "San Diego Housing Commission Utility Allocation Schedule" to calculate the tenant-paid utilities based on the project's actual utilities mix. Any fees required by owner that would otherwise be optional to the tenant (such as renter's insurance) shall be deducted from the gross rent.

## V. Election to Provide For-Sale Affordable Housing Units.

Pursuant to Section 142.1305, an *applicant* may elect to comply with the Inclusionary Regulations by providing at least ten percent (10%) of the total *dwelling units* in the proposed *development* as affordable to *targeted ownership households* (the "For-Sale Affordable Housing Units").

- A. For any partial unit calculated, the *applicant* shall pay a prorated amount of the Inclusionary Affordable Housing Fee or provide an additional For-Sale Affordable Housing Unit. Any units provided as 150% Units pursuant to an agreement entered into with the Commission shall not be included in the *dwelling units* total for purposes of applying the ten percent (10%) calculation.
- B. The "Maximum Sales Price" for each For-Sale Affordable Housing Unit shall not exceed an amount that is affordable to *targeted ownership households*. The Maximum Sales Price shall be established based on housing costs that do not exceed 35% of 100% of AMI, adjusted for household size. This amount shall be determined as of the date of the close of escrow and includes mortgage principal and interest, taxes, insurance, HOA and assessments. The Maximum Sales Price assumes a 5% down payment, payment of taxes and insurance, and prevailing 30-year fixed-rate interest rates.



Maximum Sales Prices as of 2011 are as follows:

**2011 MAXIMUM SALES PRICE  
100% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Condominium Maximum Sales Price	Single Family Residence Maximum Sales Price
Studio	\$193,992	\$221,497
One	\$218,864	\$253,060
Two	\$243,953	\$284,840
Three	\$272,760	\$316,619

**2011 MAXIMUM INCOME  
100% AREA MEDIAN INCOME**

Household Size	Income
One	\$52,450
Two	\$59,900
Three	\$67,400
Four	\$74,900
Five	\$80,900

Upon request, the Commission shall prepare and make available to *applicant* any general information that the Commission possesses regarding income limitations, sales prices, occupancy policies and restrictions which are applicable to the For-Sale Affordable Housing Units. The Maximum Sales Price applicable to specific units restricted at 100% AMI will be calculated on a project-by-project basis.

- C. Commission shall certify the eligibility of each prospective buyer and the sales price prior to the close of escrow for any For-Sale Affordable Housing Unit. *Applicants* shall submit documentation for certification to the Commission for a determination of buyer eligibility prior to close of escrow on each For-Sale Affordable Housing Unit.
- D. For-Sale Affordable Housing Units must be owner occupied unless the Commission has determined a hardship on a case-by-case basis.
- E. The equity in the For-Sale Affordable Housing Units shall be calculated and shared between the owner and Commission at the time of the first resale, as set forth in the Inclusionary Regulations.



1. “Resale” means any of the following:
  - a. The sale, conveyance or transfer of all or any part of the For-Sale Affordable Housing Unit or any interest in the For-Sale Affordable Housing Unit by a *targeted ownership household*;
  - b. If the *targeted ownership household* is not a natural person, the sale, conveyance or transfer of all or any part or any beneficial interest in the *targeted ownership household*;
  - c. Any refinancing of all or any part of the For-Sale Affordable Housing Unit by a *targeted ownership household*, except as provided in (2) below;
  - d. The failure of the *targeted ownership household* to occupy the For-Sale Affordable Housing Unit as his, her, or their primary residence;
  - e. The leasing of all or any part of the For-Sale Affordable Housing Unit, except where authorized by the Commission for a hardship determined on a case-by-case basis;
  - f. Any material breach of the documentation recorded against the For-Sale Affordable Housing Unit in favor of the Commission; or
  - g. The filing of bankruptcy by the *targeted ownership household*.
2. Notwithstanding the foregoing, a refinancing of the For-Sale Affordable Housing Unit shall not be considered a Resale, provided either:
  - a. The principal balance of the *targeted ownership household's* loan after the refinancing, does not exceed the principal balance of the *targeted ownership household's* loan before the refinancing, plus reasonable closing costs; or
  - b. All of the following conditions are met, and provided that the Commission provides advance written consent to the refinancing to the *targeted ownership household*: (A) the *targeted ownership household* receives cash from such refinancing, which does not exceed ten percent (10%) of the principal balance of the *targeted ownership household's* first loan before the refinancing; (B) such cash is borrowed for the purpose of and is used for improvements to the For-Sale Affordable Housing Unit, which improvements are preapproved by the Commission prior to the *targeted ownership*

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*household's* obtaining the refinancing; and (C) the total amount of all the loans secured by the For-Sale Affordable Housing Unit do not exceed 100% of the value of the For-Sale Affordable Housing Unit, including payment of the Commission's share of the Equity.

- F. The For-Sale Affordable Housing Unit shall be sold at no less than fair market value.
- G. The *applicant* shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. *Applicants* shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original *applicant's* successors in interest.
- H. 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 Commission. The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position.
  - 1. The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the Commission and such other instruments as may be required by the Chief Executive Officer of the Commission to effectuate the viability of the affordability restrictions for the entire term of required affordability. The deed of trust may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
  - 2. In the event a subordination of the deed of trust securing the Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the *applicant's* receipt of adequate construction or permanent financing for the project, or to enable first time home buyers to qualify for mortgages, the *applicant* shall enter into a separate agreement with the Commission for subordination of the deed of trust.



**VI. Condominium Conversions.**

**Upon the approval of the amended Procedures Manual by the City Council, the initial Condominium Conversion Inclusionary Affordable Housing Fee shall be one half the current Inclusionary Affordable Housing Fee or \$2.49/square foot.**

- A. Election to Provide 5% of Converted Condominiums as For-Sale Affordable Housing Units.
  - 1. All units provided pursuant to Section 142.1306(b) of the Regulations shall be considered For-Sale Affordable Housing Units subject to all of the provisions of the Regulations and this Procedures Manual applicable to For-Sale Affordable Housing Units.
  - 2. For any partial unit calculated, the *applicant* shall pay a prorated amount of the Condominium Conversion Inclusionary Affordable Housing Fee or provide an additional For-Sale Affordable Housing Unit. Any units provided as 150% Units pursuant to an agreement entered into with the Commission shall not be included in the *dwelling units* total for purposes of applying the five percent (5%) calculation.
  
- B. Exemption for *Condominium Conversions* Affordable Households Earning 80% AMI or less.
  - 1. Pursuant to Section 142.1306(c) of the Inclusionary Regulations, any *condominium conversion development* where all of the *dwelling units* will initially be affordable to and sold to households earning less than eighty percent (80%) of the Area Median Income are exempt from the Inclusionary Regulations.
  - 2. The *applicant* for such exempt condominium conversion *development* shall execute a declaration under penalty of perjury. Such declaration shall be on a form created by Commission for this purpose and may be revised from time to time and shall be secured with a deed of trust in favor of the Commission recorded against the property.
  - 3. Qualifying exempt *condominium conversion* units shall be sold at prices at or below the “Maximum 80% Sales Price”, as determined and published by the Commission on an annual basis. The Maximum 80% Sales Price is the Maximum Sales Price for a unit affordable to a household with an income at or below 80% Area Median Income (AMI), adjusted for unit size. The Maximum 80% Sales Price shall be determined by the Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the unit, which does not exceed the thirty-five percent (35%) of 80% of AMI adjusted for household size,



determined as of the date of the execution of a binding purchase and sale agreement for the exempt condominium unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

All *condominium conversion* units qualifying for this exemption for the year 2011 shall be affordable at or below the maximum sales prices shown below.

**2011 SALES PRICE RESTRICTIONS  
80% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$165,372
One	\$186,342
Two	\$207,311
Three	\$231,998

The maximum eligible incomes for 2011 are as follows:

**2011 MAXIMUM INCOME  
80% AREA MEDIAN INCOME**

Household Size	Income
One	\$45,850
Two	\$52,400
Three	\$58,950
Four	\$65,500

4. *Applicants* with qualifying *condominium conversion* units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers. Applicants shall provide documentation concerning purchasers of the units and sales prices to Commission, at Commission's request.
5. Compliance with Section 142.1306(c) shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed.
6. In the event that the *applicant* is unable to fulfill the requirements of Section 142.1306(c) and this Procedures Manual, the Inclusionary Regulations will be applied to the units that would have been exempt. The *applicant* shall pay the then-current, applicable Condominium Conversion Inclusionary Affordable Housing Fee in effect at the close of escrow of the first condominium sold within the *development*.



## VII. Off-Site Housing

- A. An *applicant* electing to provide affordable units pursuant to the Program, that desires to construct the affordable units on a site different than the proposed *development* within the same community planning area shall obtain the advance written approval of the Planning Director of the City and the Chief Executive Officer of the Commission (and the Executive Director of the Redevelopment Agency if the *development* is located within a Redevelopment Project Area).
- B. An *applicant* electing to provide affordable units may satisfy the requirements of the Inclusionary Regulations by the use of affordable units constructed by other developers, by transfer of credits between developers, if and when approved by the Planning Director of the City and the Chief Executive Officer of the Commission. The receiver *applicant* may not utilize any local public funds to meet the affordability requirements. The approval of the receiver site is subject to all applicable approvals set forth in this Procedures Manual and the Inclusionary Regulations.
- C. An *applicant* electing to construct the affordable units on a site different from the proposed *development* site and outside the community planning area shall comply with Section 142.1308(c).
- D. It is expected that the receiver site will be a new construction development; however, existing market-rate *developments* may be provided if the Chief Executive Officer of the Commission determines that the condition and age of the *development* will not preclude the provision of decent, safe and sanitary housing for the full 55-year period without the need for substantial rehabilitation. *Developments* with historic designation will not qualify as a receiver site. The approval of the receiver site would be subject to all applicable approvals set forth in this Procedures Manual and the Ordinance.

## VIII. Alternative Development Schedule and Phasing of Units

- A. An *applicant* approved for an alternative development schedule may provide affordable units in accordance with the following:
  1. Affordable units built subject to a variance authorized by the Inclusionary Regulations shall be constructed, completed, and ready for occupancy no later than the date that the market rate housing is constructed, completed and ready for occupancy unless there is an otherwise acceptable agreement for an alternative development schedule which is satisfactory to the Chief Executive Officer of the Commission (and the Executive Director of the Redevelopment Agency if the *development* is located within a Redevelopment Project Area).



2. The timely construction of the affordable units shall be assured by the posting of a bond and the execution of agreements satisfactory to the Chief Executive Officer of the Commission on or before the issuance of the first building permit for any unit in the proposed *development*.
- B. In the event that the *development* is proposed to be constructed in phases or the affordable units are proposed to be constructed off-site, an alternative development schedule may be approved, subject to a written agreement between the *applicant* and the Chief Executive Officer of the Commission, such as the following:
1. The issuance of building permit for the affordable units shall occur on or before the earlier of: (i) the issuance of building permits for construction of the number which represents 50% of the market rate units within the *development*; or (ii) the date which is eighteen (18) months after the filing of final map for the market rate units, or (iii) a date which is eighteen (18) months after the receipt of the building permit for the first market rate unit if no final map is filed.
  2. Completion of construction of the affordable units shall occur upon the earlier of twelve (12) months after the issuance of building permits for the affordable units as described above; or the date which is two and one-half years after the earliest date determined above.
  3. The issuance of building permits for the construction of the number which represents 75% of market rate units for the *development* shall not occur until the completion of all of the affordable units is authorized by the City.
  4. Occupancy of the affordable units by persons meeting the eligibility requirements set forth in this Manual shall occur not later than 180 days after the completion of construction as determined above.

#### **IX. Affirmative Marketing Requirements**

The conditions of approval shall specify that *applicant* shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. *Applicant* shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original *Applicant's* successors in interest to the extent that the first sales to the general public are covered.



**X. Ongoing Monitoring**

**A. Monitoring Fees – Affordable Units pursuant to Public Entity Agreement with Commission**

1. An initial monitoring fee of \$500 will be assessed as a one-time charge to cover costs for developing the compliance monitoring plan, computer database program and reporting system for the project, and training sessions for owner/manager. This fee is only applicable to *developments* electing to provide affordable units pursuant to a Public Entity Agreement with the Commission under subdivisions (f) or (g) of Section 142.1303.
2. Annual monitoring fees will be required for all affordable units pursuant to a Public Entity Agreement with Commission. The base monitoring fee per unit is \$65 for the first 40 units. The base fee charged decreases \$10 for each unit more than 40 units, and decreases \$20 for each unit more than 80 units.  
  
1 to 40 Units \$65 per unit  
  
41 to 80 Units \$55 per unit  
  
81+ Units \$45 per unit
3. *Applicants* providing affordable units pursuant to a Public Entity Agreement with any public agency other than the Commission shall pay the Commission, at the time the Certificate of Occupancy is issued by the City, a one-time initial fee and annual monitoring fees, as determined, from time to time, by Commission in schedules printed by Commission, but in no event shall such fees be higher than those established for Public Entity Agreements with the Commission.

B. The annual monitoring fee shall be adjusted upward annually for increased costs due to inflation. The adjustment shall reflect the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the County of San Diego.

C. For *developments* that contain For-Sale Affordable Housing Units, a \$1,000 per unit fee will be required for monitoring and determining eligibility for For-Sale Affordable Housing Units. The fee is due upon execution of the Declaration of Covenants, Conditions and Restrictions.

**XI. Determination of Inclusionary In Lieu Fees under Existing Agreements with the Commission.**

Any requirement to pay the “Inclusionary In Lieu Fee” or “In Lieu Fee” that is contained in any written agreement with the Commission, entered into in order to comply with prior versions of

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the Inclusionary Regulations, shall be satisfied by payment of an amount equal to the amount of the Inclusionary Affordable Housing Fee in effect at the time payment is due under the agreement. In the event that the “Inclusionary In Lieu Fee” or “In Lieu Fee” was previously applicable to a project comprised of ten or fewer units, then the amount payable in order to satisfy that obligation contained in the agreement(s) shall be one half ( $\frac{1}{2}$ ) of the Inclusionary Affordable Housing Fee in effect at the time payment is due under the terms of the agreement(s).

However, this provision setting fees, shall not apply to any agreement(s) that fixed the amount of payment due at a set rate in the agreement(s). In those cases, the amount of payment shall be the amount fixed in the applicable agreement(s) and not the rate in effect at the time that the payment is due.