Chapter 14: General Regulations

Article 2: General Development Regulations

Division 13: Inclusionary Affordable Housing Regulations
(Added 6-3-2003 by O-19189 N.S.)

§ 142.1301 Purpose of Inclusionary Affordable Housing Regulations

The purpose of this Division is to encourage diverse and balanced neighborhoods with housing available for households of all income levels. The intent is to ensure that when developing the limited supply of developable land, housing opportunities for persons of all income levels are provided.

(Added 6-3-2003 by O-19189 N.S.)

§ 142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential development of 10 or more dwelling units and to all condominium conversion development of two or more dwelling 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 dwelling 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.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(Amended 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

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§ 142.1303  Exemptions From the Inclusionary Affordable Housing Regulations

This Division is not applicable to the following:

(a) Residential development located in the North City Future Urbanizing Area that is within Proposition A Lands of the City of San Diego or any project located in an area of the City that was previously located in the North City Future Urbanizing Area and has been phase shifted into the Planned Urbanized Communities, and is subject to the inclusionary zoning requirements contained in the North City Future Urbanizing Area Framework Plan, San Diego Municipal Code section 143.0450(d), the Subarea Plans, Development Agreements, Affordable Housing Agreements, or conditions of approval of a development permit, as applicable.

(b) Rehabilitation of an existing building that does not result in a net increase of dwelling units on the premises.

(c) Density bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.

[Amended 3-8-2004 by O-19267 N.S.]
[Amended 4-8-2008 by O-19734 N.S.; effective 5-8-2008.]
[Amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.]
[Retitled from “Exemptions From the Affordable Housing Inclusionary Regulations” to “Exemptions From the Inclusionary Affordable Housing Regulations” and amended 1-28-2020 by O-21167 N.S.; effective 7-1-2020.]

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§142.1304  Inclusionary Affordable Housing Requirements

From July 1, 2020 through June 30, 2024, the requirements of Subsections (a) and (b) of this Section 142.1304 shall be implemented incrementally as set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual on file with the San Diego Housing Commission (Procedures Manual). Effective July 1, 2024, all residential development subject to this Division shall include inclusionary dwelling units as follows:
(a) Rental residential development:

At least 10 percent of the total dwelling units in the development shall be made available for rent by very low income households or low income households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of median income.

(b) For-sale residential development:

(1) At least 10 percent of the total dwelling units in the development shall be made available for purchase at a cost affordable to median income households; or

(2) At least 15 percent of the total dwelling units in the development shall be made available for purchase at a cost affordable to moderate income households.

(c) The applicant may propose a combination of inclusionary dwelling units required by this Division. The proposal shall be considered by the San Diego Housing Commission in accordance with this Division and the Procedures Manual. The proposal shall be approved if the combination provides substantially the same or greater level of affordability as required by this Division and provides the same or greater number of inclusionary dwelling units required by this Division.

(d) For any partial inclusionary dwelling unit calculated, the applicant shall pay a prorated amount of the Inclusionary In Lieu Fee in accordance with Section 142.1306 or provide an additional inclusionary dwelling unit.

(e) Development of inclusionary dwelling units shall be subject to the following:

(1) The inclusionary dwelling units shall be constructed at the same time as the market-rate dwelling units and receive final inspection approval from the Building Official no later than the date that the market-rate dwelling units receive final inspection approval from the Building Official. The applicant may seek an alternative development schedule in accordance with Section 142.1310 and Section 142.1311.
(2) The inclusionary dwelling units shall be comparable in bedroom mix, design, and overall quality of construction to the market-rate dwelling units in the development, as determined by the San Diego Housing Commission, except that the inclusionary dwelling units shall not be required to exceed three bedrooms per dwelling unit. The square footage and interior features of the inclusionary dwelling units shall be good quality and consistent with current building standards for new housing in the City of San Diego. For purposes of calculating total bedroom count for inclusionary dwelling units on a different premises from the development, the applicant may provide different bedroom mixes to meet the total dwelling unit and bedroom count minimums as follows:

(A) An affordable studio dwelling unit or a micro unit shall count as 60 percent of an affordable bedroom;

(B) An affordable SRO hotel room shall count as 40 percent of an affordable bedroom; and

(C) Any calculations resulting in fractional units shall round up to the next whole number.

(3) Sale or lease of the inclusionary dwelling units shall follow the marketing requirements and procedures in the Procedures Manual.

(4) Development of the inclusionary dwelling units shall follow all other requirements in the Procedures Manual.

(5) When the inclusionary dwelling units are located on a different premises from the development, the applicant shall record a deed restriction prior to the issuance of the first Building Permit that:

(A) Documents the required number of affordable dwelling units to be provided; and

(B) Assigns foreclosure rights of the development premises to the San Diego Housing Commission as follows:

(i) For new development, if the affordable dwelling units have not received a certificate of occupancy within 54 months of the issuance of the first Building Permit.
(ii) For an existing structure(s) if the affordable dwelling units have not received a certificate of occupancy within 36 months of the issuance of the first Building Permit.

(f) Rental inclusionary dwelling units shall remain affordable for a period of not less than 55 years from the date of final inspection for the development or applicable phase of the development.

(g) For-sale inclusionary dwelling units shall be owner-occupied and the San Diego Housing Commission shall cause the for-sale inclusionary dwelling units to be subject to documentation ensuring the following:

(1) The owner and the San Diego Housing Commission shall share equity in a for-sale inclusionary dwelling unit. For the purpose of this Section 142.1304, equity shall be defined in the Procedures Manual. Shared equity shall be measured by the difference between the unrestricted fair market value of the inclusionary dwelling unit on the date of the first resale and the original unrestricted fair market value of the inclusionary dwelling unit at the time of its initial acquisition. Any equity calculation shall be based on an appraisal approved by the San Diego Housing Commission and shall consider the actual costs of any San Diego Housing Commission-approved improvements to the inclusionary dwelling unit. If the San Diego Housing Commission’s calculation results in a negative number, the equity is deemed to be zero.

(2) The owner and the San Diego Housing Commission shall share the equity earned during the owner’s first 15 years of ownership at the time of the first resale, refinance, or transfer of the for-sale inclusionary dwelling unit in accordance with the table in the Procedures Manual. The San Diego Housing Commission may waive the requirement to share equity if the for-sale inclusionary dwelling unit is sold to another median income household or moderate income household in compliance with the Procedures Manual.

(3) Upon any sale or transfer of the inclusionary dwelling unit by the original owner, whenever it occurs, the San Diego Housing Commission shall also receive that sum calculated as the difference between the original unrestricted fair market value of the inclusionary dwelling unit and the restricted value of the inclusionary dwelling unit at the time of the original sale, as determined by an appraisal approved by the San Diego Housing Commission.
(4) The owner shall sell the inclusionary dwelling unit at no less than fair market value unless sold to another median income household or moderate income household in compliance with the Procedures Manual.

(5) Unless otherwise required by law, all promissory note repayments, shared equity payments, or other payments collected under this Section 142.1304(g) shall be deposited into the Affordable Housing Fund.

(h) Residential development that intends to provide affordable dwelling units as a condition of the development and has an application for a development permit, for a subdivision, or for a Building Permit deemed complete before July 1, 2020 shall be subject to the version of these Inclusionary Affordable Housing Regulations in effect prior to July 1, 2020, as set forth in the Procedures Manual.

(“Inclusionary Affordable Housing Requirements” added 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1304 “Inclusionary Affordable Housing Fee” retitled, amended, and renumbered to Section 142.1306.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
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(Amended 1-27-2022 by O-21416 N.S.; effective 2-26-2022.)

[Editors Note: Amendments as adopted by O-21416 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
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§142.1305 Methods of Compliance

(a) The requirement to provide inclusionary dwelling units may be met in any of the following ways:

(1) On the same premises as the development;

(2) On different premises from the development, but within the same community planning area, or within one mile of the premises of the development, as measured in a straight line from the property lines of the development premises to the property lines of the proposed premises where the inclusionary dwelling units will be constructed;

(3) On different premises from the development that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the receiver site is within a transit priority area, in an area identified as a High or Highest Resource California Tax Credit Allocation Committee Opportunity Area according to the most recent California State Treasurer TCAC/HCD Opportunity Area Maps, and less than five percent of the existing dwelling units in that community planning area are covenant-restricted to very low income, low income, or moderate income households;

(4) By payment of an Inclusionary In Lieu Fee in accordance with Section 142.1306 in lieu of constructing all or a portion of the inclusionary dwelling units required in Section 142.1304(a) or Section 142.1304(b);

(5) By rehabilitation of existing dwelling units or SRO hotel rooms or conversion of guest rooms in a motel or hotel to inclusionary dwelling units in accordance with Section 142.1307; or

(6) By land donation in accordance with Section 142.1308.

(b) When a residential development includes both for-sale and rental dwelling units, the provisions of this Division that apply to for-sale development shall apply to that portion of the development that consists of for-sale dwelling units, and the provisions of this Division that apply to rental dwelling units shall apply to that portion of the development that consists of rental dwelling units.
(c) Nothing in this Division shall preclude an applicant from using affordable dwelling units constructed by another applicant to satisfy the requirements of this Division, including contracting with an affordable housing developer with experience obtaining tax-exempt bonds, low income housing tax credits, and other competitive sources of financing, upon approval by the San Diego Housing Commission pursuant to the standards set forth in the Procedures Manual.

(“Methods of Compliance” added 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1305 “Election to Provide For-Sale Affordable Housing Units in a For-Sale Development” retitled, amended and renumbered to Section 142.1307.)

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(Amended 3-11-2022 by O–21439 N.S.; effective 4-10-2022.)

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§ 142.1306 Inclusionary In Lieu Fee

(a) From July 1, 2020 through June 30, 2024, the Inclusionary In Lieu Fee requirements shall be implemented incrementally as set forth in the Procedures Manual. Effective July 1, 2024, the Inclusionary In Lieu Fee shall be $25.00 per square foot of net building area of unrestricted market-rate residential development. The Inclusionary In Lieu Fee shall be updated annually based on the annual increase in the Construction Costs Index (CCI) published by Engineering News Record for Los Angeles, or similar construction industry index selected by the City Manager if the CCI index is discontinued.
(b) Except as provided in Section 142.1306(c), the Inclusionary In Lieu Fee shall be determined using the rate in effect at the time the applicant’s development permit application, application for subdivision under the Subdivision Map Act, or Building Permit application is deemed complete, whichever is earlier. The Inclusionary In Lieu Fee shall be paid on or before the issuance of the first residential Building Permit for the development.

(c) The Inclusionary In Lieu Fee applicable to residential development that has an application for a development permit, for a subdivision, or for a Building Permit deemed complete before July 1, 2020 shall be $12.73 per square foot multiplied by the net building area of the unrestricted market-rate residential development.

(d) All funds collected pursuant to this Section 142.1306 shall be deposited into the Affordable Housing Fund.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)
(Renumbered from former Section 142.1310, retitled to “Inclusionary Affordable Housing Fee” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011. Former Section 142.1304 repealed.)
(Renumbered from former Section 142.1304 to Section 142.1306, retitled from “Inclusionary Affordable Housing Fee” to “Inclusionary In Lieu Fee” and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1306 “Inclusionary Affordable Housing Obligations for Condominium Conversions” amended and renumbered to Section 142.1308.)

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§ 142.1307 Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms

(a) The requirements of this Division may be satisfied by the rehabilitation of existing dwelling units for conversion to inclusionary dwelling units affordable to very low income households or low income households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of median income, if the City Manager determines all of the following:

(1) The San Diego Housing Commission is satisfied that the value of each dwelling unit after the rehabilitation work is 25 percent or more than the value of the dwelling unit prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;

(2) One dwelling unit shall be rehabilitated in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b);

(3) The rehabilitated dwelling units are located in an appropriate residential zone that can accommodate at least the number of rehabilitated dwelling units required by this Division, and if those rehabilitated dwelling units are located within a Transit Priority Area, the number of dwelling units on the premises is at least 60 percent of the base floor area ratio or density designated by the zone in which the premises is located;

(4) The applicant provides evidence that the existing structure has a remaining useful life of at least 55 years from the approval of the dwelling unit as an inclusionary dwelling unit;

(5) The applicant provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;
(6) The *applicant* provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each *dwelling unit* to be rehabilitated, for the *premises* where the *dwelling units* are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the *applicant* during the rehabilitation work; and

(7) On or before the time the *applicant’s* application is deemed complete, the *applicant* complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the *dwelling units* to be rehabilitated.

(b) The requirements of this Division may be satisfied by the rehabilitation of existing *dwelling units* that are restricted for use and occupancy for *very low income* households or *low income* households earning up to 60 percent of the *median income* by agreement with a federal, state, or local government agency, if the City Manager determines all of the following:

(1) The agreement restricting the use and occupancy of the *dwelling units* for *very low income* households or *low income* households expires within 10 years of completion of *applicant’s* rehabilitation of the *dwelling units*;

(2) One restricted *dwelling unit* shall be rehabilitated in lieu of each inclusionary *dwelling unit* required pursuant to Section 142.1304(a) or Section 142.1304(b);

(3) The *applicant* provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;

(4) The *applicant* provides evidence that the existing *structure* has a remaining useful life of at least 55 years from the approval of the *dwelling unit* as an inclusionary *dwelling unit*; and
(5) The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each restricted dwelling unit to be rehabilitated, for the premises where the dwelling units are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during the rehabilitation work.

(c) The requirements of this Division may be satisfied by the rehabilitation of existing SRO hotel rooms affordable to very low income households, if the City Manager determines all of the following:

(1) The San Diego Housing Commission is satisfied that the value of each SRO hotel room after the rehabilitation work is 25 percent or more than the value of the SRO hotel room prior to rehabilitation, inclusive of land value. The Procedures Manual shall include criteria for the determination of the value of the rehabilitation work;

(2) One SRO hotel room shall be rehabilitated and affordable to a very low income household in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b);

(3) All of the SRO hotel rooms located in the SRO hotel shall be rehabilitated by the applicant;

(4) The SRO hotel is located in an appropriate residential zone;

(5) The applicant provides evidence that the existing SRO hotel has a remaining useful life of at least 55 years from completion of the rehabilitation work;

(6) The applicant provides evidence that the rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official;

(7) The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each SRO hotel room to be rehabilitated, for the SRO hotel where the SRO hotel rooms are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during the rehabilitation work; and
(8) The applicant complies with the State Relocation Act codified in California Government Code Section 7260 and provides all costs of notice to, and relocation of, any existing residents occupying the SRO hotel rooms to be rehabilitated at the time the application is deemed complete.

(d) The requirements of this Division may be satisfied by the conversion of existing guest rooms in a motel or hotel to inclusionary dwelling units affordable to very low income households or low income households at a cost, including an allowance for utilities, that does not exceed 30 percent of 60 percent of median income, if the City Manager determines all of the following:

(1) One guest room shall be converted to an inclusionary dwelling unit in lieu of each inclusionary dwelling unit required pursuant to Section 142.1304(a) or Section 142.1304(b);

(2) The motel or hotel is located in an appropriate residential zone that can accommodate at least the number of converted guest rooms required by this Division, and if the motel or hotel is located within a Transit Priority Area, the number of guest rooms in the motel or hotel is at least 60 percent of the base floor area ratio or density designated by the zone in which the motel or hotel is located;

(3) The applicant provides evidence that the existing structure has a remaining useful life of at least 55 years from conversion of the guest rooms;

(4) The applicant provides evidence that the construction or rehabilitation work complies with California Building Code requirements to the satisfaction of the Building Official; and

(5) The applicant provides a physical needs assessment to the satisfaction of the City Manager and the San Diego Housing Commission for each guest room to be converted, for the motel or hotel where the guest rooms are located, and for any associated common area. All items identified in the physical needs assessment needing repair or replacement at the time of the assessment or that will likely require repair or replacement within three years of the assessment shall be completed by the applicant during conversion of the guest rooms.
(e) Any inclusionary dwelling units or rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall be completed no later than the date the applicant’s market-rate dwelling units receive final inspection approval from the Building Official. The applicant may seek an alternative development schedule in accordance with Section 142.1310 and Section 142.1311.

(f) Inclusionary dwelling units and rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall remain affordable for a period of not less than 55 years from the date of final inspection or the date accepted by the San Diego Housing Commission.

(g) The affordability of inclusionary dwelling units and rehabilitated SRO hotel rooms provided pursuant to this Section 142.1307 shall be secured by a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission, recorded against the market-rate residential development and the premises where the inclusionary dwelling units or rehabilitated SRO hotel rooms are located. The Declaration of Covenants, Conditions and Restrictions shall comply with the provisions of Section 142.1313 and shall include the method by which a capital reserve fund for repair, replacement, and maintenance of the inclusionary dwelling units or rehabilitated SRO hotel rooms shall be maintained with provision for sufficient initial capitalization and periodic contributions to the capital reserve fund.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)
(Renumbered from former Section 142.1309, retitled to “Election to Provide For-Sale Affordable Housing Units in a For-Sale Development” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)
(Renumbered from former Section 142.1305 to Section 142.1307, retitled from “Election to Provide For Sale Affordable Housing Units in a For Sale Development” to “Rehabilitation of Existing Dwelling Units, SRO Hotel Rooms, or Conversion of Guest Rooms” and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1307 “Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations” amended and renumbered to Section 142.1310.)

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§ 142.1308 Land Donation

The requirements of this Division may be satisfied by the donation of land, if the donation is completed in accordance with California Government Section 65915(g) and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code and if the value of the land on the date of donation is equal to or greater than the Inclusionary In Lieu Fee applicable to the applicant’s development on the date of donation.

(Amended 3-8-2004 by O-19267 N.S.)
(Amended 7-5-2006 by O-19505 N.S.; effective 8-5-2006.)
(“Inclusionary Affordable Housing Obligations for Condominium Conversions” added 11-21-2011 by O-20107 N.S.; effective 12-21-2011. Former Section 142.1306 repealed.)
(Renumbered from former Section 142.1306 to Section 142.1308, retitled from “Inclusionary Affordable Housing Obligations for Condominium Conversions” to “Land Donation” and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.0308 “Findings for Variance, Waiver, Adjustment or Reduction Approval” amended and renumbered to Section 142.1311.)

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§142.1309 Incentives for On-Site Inclusionary Dwelling Units

(a) An applicant may submit a written request for density bonus, waiver, or incentives pursuant to California Government Code Section 65915 and Chapter 14, Division 7, Article 3 of the San Diego Municipal Code if the development meets the minimum thresholds for density bonus pursuant to California Government Code Sections 65915 – 65918.

(b) If an applicant has complied with this Division by providing all the inclusionary dwelling units required by this Division on the same premises as the market-rate dwelling units, then the inclusionary dwelling units shall be exempt from the payment of Development Impact Fees pursuant to Section 142.0640 of the San Diego Municipal Code.

(“Incentives for On-Site Inclusionary Dwelling Units” added 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1309 “General Rules for Inclusionary Affordable Housing Regulations” renumbered to Section 142.1312.)
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§ 142.1310 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 142.1311(a) or in Section 142.1311(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.

(Added 6-3-2003 by O-19189 N.S.)
(Renumbered from former Section 142.1304, retitled to “Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(“Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations” renumbered from former Section 142.1307 to Section 142.1310 and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1310 “Declaration of Covenants, Conditions and Restrictions” amended and renumbered to Section 142.1313.)

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§ 142.1311 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 findings that applying the requirements of this Division would take property in violation of the United States or California Constitutions.

(Added 6-3-2003 by O-19189 N.S.)
(Renumbered from former Section 142.1305, retitled to “Findings for Variance, Waiver, Adjustment or Reduction Approval” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011. Former Section 142.1308 repealed.)
(“Findings for Variance, Waiver, Adjustment or Reduction Approval” renumbered from former Section 142.1308 to Section 142.1311 and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020. Former Section 142.1311 “Reporting Requirements” amended and renumbered to Section 142.1314.)

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§ 142.1312 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.

(Added 6-3-2003 by O-19189 N.S.)
(Renumbered from former Section 142.1307, retitled to “General Rules for Inclusionary Affordable Housing Regulations” and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(“General Rules for Inclusionary Affordable Housing Regulations” renumbered from former Section 142.1309 to Section 142.1312 on 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
Click the link to view the Strikeout Ordinance highlighting changes to prior language http://docs.sandiego.gov/municode_strikeout_ord/O-21167-SO.pdf ]

§ 142.1313 Declaration of Covenants, Conditions and Restrictions

All development of inclusionary dwelling units pursuant to this Division shall be subject to the following:

(a) Each inclusionary dwelling unit and the applicable portions of the premises shall have recorded against them 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 applicable portions of the premises and dwelling unit, prior to construction or permanent financing.

(Added 6-3-2003 by O-19189 N.S.)
§ 142.1314 Reporting Requirements

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 the following:

(a) 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;

(b) 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

(c) The number of market-rate units developed subject to this Division, the number of inclusionary dwelling units along with their location, the methods of compliance with this Division, and the total Inclusionary In Lieu Fees paid.

(Added 6-3-2003 by O-19189 N.S.)
(Renumbered from former Section 142.1312, and amended 11-21-2011 by O-20107 N.S.; effective 12-21-2011.)
(“Reporting Requirements” renumbered from former Section 142.1311 to Section 142.1314 and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

[Editors Note: Amendments as adopted by O-21167 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.
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