

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* outside of the Coastal Overlay Zone, five or more *dwelling units* within the Coastal Overlay Zone, 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.)

(Amended 2-23-2022 by O-21432 N.S; effective 8-10-2022.)

§ 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.)

§142.1304 Inclusionary Affordable Housing Requirements

From July 1, 2020 through June 30, 2024, the requirements of subsections (a) and (b) of this Section 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 Sections 142.1310 and 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.
- Very low income, low income, and moderate income* households located in an area identified as a Low Resource or High Segregation and Poverty Resource California Tax Credit Allocation Committee (CTCAC) Opportunity Area when the *development* application is *deemed complete* shall receive priority preference for new covenant-restricted *dwelling units* created under this section.
- (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.)
(Amended 1-27-2022 by O-21416 N.S.; effective 2-26-2022.)
(Amended 1-16-2024 by O-21758 N.S.; effective 3-16-2024.)

[Editors Note: Amendments as adopted by O-21758 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-21758-SO.pdf]

Note: The priority preference for households that qualify for affordable homes as set forth in Sections 142.1304(e)(3), 143.0720(p), 143.0860(e), 143.1005(b)(4), and 143.1212(f) will not be implemented until a program can be developed and a funding source can be approved as part of a future action of the Housing Authority or City Council to ensure successful implementation. For Sections 143.0860(e) and 143.1005(b)(4), only portions applicable to the priority preference are delayed.

§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 lie within the City of San Diego, if the receiver site is within a *Sustainable Development Area* and in an area identified as a High or Highest Resource California Tax Credit Allocation Committee (CTCAC) Opportunity Area, and the community planning area has less than five percent of its existing *dwelling units* as covenant-restricted *very low income, low income, or moderate income dwelling units*;

Editor’s Note: The above language, added by Ordinance O-21432 (Feb. 23, 2022), was certified by the California Coastal Commission on August 10, 2022 and is effective in the Coastal Overlay Zone until the following language in Section 142.1305(a)(3) is certified by the California Coastal Commission.

- (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 *Sustainable Development 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.

Editor’s Note: The above language, added by Ordinance O-21439 (March 11, 2022), is effective outside the Coastal Overlay Zone and is pending review and certification by the California Coastal Commission. If this language is certified by the California Coastal Commission, it will supersede the language above, added by Ordinance O-21432, and will be effective Citywide.

- (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 by the conversion of *guest rooms* in a *motel* or *hotel* located outside the Coastal Overlay Zone 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.) (Amended 3-11-2022 by O-21439 N.S.; effective 4-10-2022.)

[Editors Note: Amendments as adopted by O-21439 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 2-23-2022 by O-21432 N.S.; effective 8-10-2022.)
(Amended 3-7-2023 by O-21618 N.S.; effective 5-6-2023.)*

[Editors Note: Amendments as adopted by O-21618 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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§ 142.1306 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.)

§ 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 *Sustainable Development 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* located outside of the Coastal Overlay Zone 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 *Sustainable Development 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.)

(Amended 2-23-2022 by O-21432 N.S; effective 8-10-2022.)

(Amended 3-7-2023 by O-21618 N.S.; effective 5-6-2023.)

[Editors Note: Amendments as adopted by O-21618 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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§ 142.1308 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.)

§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.)

§ 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.)

§ 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.)*

§ 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.)*

§ 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.)

(Amended 8-15-2006 by O-19530 N.S.; effective 9-14-2006.)

(Renumbered from former Section 142.1311 and amended 11-21-2011 by O-20107N.S.; effective 12-21-2011.)

(“Declaration of Covenants, Conditions and Restrictions” renumbered from former Section 142.1310 to Section 142.1313 and amended 1-28-2020 by O-21167 N.S; effective 7-1-2020.)

§ 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.)