



SAN DIEGO
HOUSING
COMMISSION

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

San Diego Housing Commission
Real Estate Department
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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.



- The applicable square foot charge for *developments* of less than 10 units shall be prorated, as follows: The base rate for proration shall be equal to the rate used for the Affordable Housing Fee calculated above. The base rate shall be prorated based upon the number of units in the *development*. The applicable square foot charge (i.e., the rate) for a *development* of 2 units shall be 20% of the base rate. The applicable square foot charge (i.e., the rate) shall increase by 10% for each additional unit in the *development*, up to 9 units, as illustrated in the Existing Prorated Affordable Housing Fee Chart. The applicable square foot charge (i.e., the rate) for a *development* containing 9 units shall be 90% of the base rate.

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 a fee level of \$2.50 per square foot for projects of 10 or more. The base rate for proration for *developments* of 9 or fewer units would be \$2.50 per square foot. This base rate is then multiplied by the percentage applicable to the *development* based on the total number of units. For a *development* with 2 units, the \$2.50 base rate is multiplied by 20%, for a resulting rate of \$0.50 per square foot. For a *development* with 9 units, the \$2.50 base rate is multiplied by 90%, for a resulting rate of \$2.25 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. The current base rate used for the proration of the Inclusionary Affordable Housing Fee applicable to *developments* containing fewer than 10 units is \$4.98, which shall be prorated as follows:

**EXISTING PRORATED AFFORDABLE HOUSING FEE CHART
DEVELOPMENTS CONTAINING 2-9 UNITS**

Units in development	Percentage of Fee Imposed	Applicable Square Foot Charge (Rate) to Calculate Fee
2 units	20%	\$1.00/sq. ft.
3 units	30%	\$1.49/sq. ft.
4 units	40%	\$1.99/sq. ft.
5 units	50%	\$2.49/sq. ft.
6 units	60%	\$2.99/sq. ft.
7 units	70%	\$3.49 /sq. ft.
8 units	80%	\$3.98 /sq. ft.
9 units	90%	\$4.48 /sq. ft.



The Housing Commission will update this table annually in connection the calculation of the Affordable Housing Fee and the Condominium Conversion Affordable Housing Fee.

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:
 - 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.
- 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 Income¹ (AMI), adjusted for unit size. The Maximum 150% Sales Price shall be determined by

¹ 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”).



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:
 - 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:
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 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 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 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 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* and 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 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 (½) 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.