



SAN DIEGO  
HOUSING  
COMMISSION

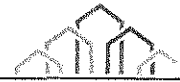
ATTACHMENT 3

# San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures 2010

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Real Estate Department  
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# Inclusionary Affordable Housing Implementation & Monitoring Procedures



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

## I. Development Review Procedures

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

The City decision maker will review applications for *development* and determine whether the proposed *development* is subject to Process One decisions or requires decisions in accordance with Process Two, Three, Four or Five. Any *applicant* of *development* electing to provide affordable for-sale housing units or exempt under Section 142.1303(b), Section 142.1305 or Section 142.1307(c) shall be referred to the San Diego Housing Commission to obtain the documentation required under the applicable Section(s).

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

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

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

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

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

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

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YEAR THREE	\$2.50/SQ FOOT
<b>PROJECTS OF LESS THAN 10 UNITS</b>	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

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

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

Example Only:

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

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

**III. Exemption from Inclusionary Affordable Housing Fee for Rental Affordable Housing Units.**



- A. Pursuant to Section 142.1305, an *applicant* may request an exemption from the requirement to pay the Inclusionary Affordable Housing Fee if *applicant* demonstrates all the requirements of Section 142.1305(a) to Commission’s satisfaction.
1. An *applicant* shall provide at least 10% of the total dwelling units as affordable to and occupied by *targeted rental households* (“Rental Affordable Housing Units”). For any partial unit calculated, the *applicant* shall pay a prorated amount of the Inclusionary Affordable Housing Fee or provide an additional Rental Affordable Housing Units.
  2. Section 142.1305(a)(3) requires *applicant* 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 to address changes in the applicable state law.
- B. The *development* of Rental Affordable Housing Units under Section 142.1305 of the Inclusionary Regulations is subject to the following:
1. The Rental Affordable Housing Units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market rate units receive final inspection approval from the Building Official.
  2. The Rental Affordable Housing Units shall be comparable in bedroom mix, design and overall quality of construction to the market rate units in the *development*, except that the affordable units shall not be required to exceed three bedrooms per unit. The square footage and interior features of the Rental Affordable Housing Units shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.
  3. 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.



4. The Rental Affordable Housing Units shall be occupied by *targeted rental households* for the entire term of the Declaration of Covenants, Conditions and Restrictions entered into by the Commission and *applicant*.
5. The Rental Affordable Housing Units 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*.

**Targeted Rental Households and Targeted Ownership Households**

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

***Targeted Rental Household***

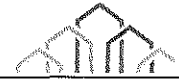
6. *Targeted Rental Household* are households whose aggregate gross annual income does not exceed 65% Area Median Income<sup>1</sup> (AMI). Rent calculations shall be based on 1/12 of 30% of 65% of the updated AMI and shall include rent and all tenant paid utilities, fees and charges for a *targeted rental household*, as adjusted for household size limits as adjusted for household size by the U.S. Department of Housing and Urban Development (HUD) for San Diego County at 65% AMI. The current rent levels as of June 2010 as adjusted by household size and utility allowance are as follows:

<b>2010 65% Area Median Income and Rent Restrictions</b>			
<b>Household Size</b>	<b>Unit Size</b>	<b>Income</b>	<b>Gross Rent*</b>
One	Studio	\$35,750	\$894
Two	1 bedroom	\$40,850	\$1,021
Three	2 bedroom	\$45,950	\$1,149
Four	3 bedroom	\$51,050	\$1,276

\*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

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

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the tenant (such as renter's insurance) shall be deducted from the gross rent.

7. ~~The eligibility of each prospective tenant and/or household~~ *targeted rental household* ~~under the restrictions set forth above~~ shall be certified by the ~~San Diego Housing Commission~~. *Applicants* shall submit documentation for certification to the ~~San Diego Housing Commission~~ for a determination of tenant eligibility, prior to tenant occupancy. No Rental Affordable Housing Affordable Unit may be rented to a prospective tenant or occupied by any person unless and until the ~~San Diego Housing Commission~~ has determined that the prospective tenant or occupant has satisfied the eligibility requirements.

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

Pursuant to Section 142.1306, any 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").

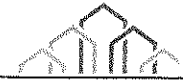
- A. For any partial unit calculated, the applicant shall pay a prorated amount of the Inclusionary Affordable Housing Fee or provide an additional for For-Sale Affordable Housing Unit. Any units provided as 150% Units pursuant to an agreement entered into with the Commission shall not be included in 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 the AMI, adjusted for household size. This amount shall be determined as of the date of the close of escrow and shall not exceed an annual payment for all housing costs, including mortgage principal and interest, taxes, insurance, HOA and assessments. The Maximum Sales Price assumes a 5% down payment, payment of taxes and insurance, and prevailing 30-year fixed-rate interest rates.

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

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

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$203,923

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One	\$230,290
Two	\$256,655
Three	\$286,893

## 2010 MAXIMUM INCOME 100% AREA MEDIAN INCOME

Household Size	Income
One	\$52,850
Two	\$60,400
Three	\$67,950
Four	\$75,500
Five	\$81,550

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

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



- a. The sale, conveyance or transfer of all or any part of the For-Sale Affordable Housing Unit or any interest in the For-Sale Affordable Housing Unit by a *targeted ownership household*;
  - 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 affordable 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 affordable unit do not exceed 100% of the value of the For-



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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.

## **V. Declaration of Covenants, Conditions and Restrictions for Affordable Units.**

The development of Rental Affordable Housing Units and For-Sale Affordable Housing Units (collectively, "Affordable Units") pursuant to the Inclusionary Regulations is subject to the following requirements:

- A. The applicable portion of the development shall have recorded against it a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the Commission. The Declaration of Covenants, Conditions and Restrictions shall enjoy first lien position.
- B. 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.
- C. 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 San Diego Housing Commission for subordination of the deed of trust.

## **VI. Exemption of Naturally Affordable For-Sale Units ("150% Units").**

Pursuant to Section 142.1303 contains exemptions from the Inclusionary Regulations, including 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) of the Inclusionary Regulations of the Municipal Code, any portion of a residential development project that meets all of the following is criteria shall be exempted from the requirements of the Program, including payment of the in-lieu fee:
- 1. The 150% Unit units contained within the residential development project are for sale to private household(s); is being sold to persons who owns no other real property, for use as the buyer's and will reside in the unit as their primary residence;

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- 2. The 150% Unit is affordable to and units are specifically targeted for, sold to, and occupied by households earning less than 150% AMI; and
- 3. The 150% Unit has Each qualifying unit must have two (2) or more bedrooms; and (not required for condo conversions).

4. The 150% Unit unit(s) subject to this exemption has recorded against it an agreement between the Applicant and the Chief Executive Officer of the San Diego Housing Commission assuring that the provisions of Section 142.1303(b) above have been met. The San Diego Housing Commission will certify the eligibility of the prospective buyers.

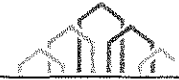
B. Applicants with qualifying 150% units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.

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

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

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

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

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

## 2010 SALES PRICE RESTRICTIONS 150% AREA MEDIAN INCOME

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$323,312
One	\$366,733
Two	\$410,154
Three	\$457,448

The maximum eligible incomes for 2010 are as follows:

## 2010 MAXIMUM INCOME 150% AREA MEDIAN INCOME

Household Size	Income
One	\$79,275
Two	\$90,600
Three	\$101,925
Four	\$113,250

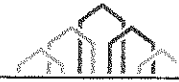
### Condominium Conversions

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

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

- F. Compliance with the exemption from the provisions of the Inclusionary Regulations Housing Ordinance shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed. ~~Applicants shall enter into an agreement with the San Diego Housing Commission to ensure compliance.~~

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

1. ~~(A) r~~Reviewing the applications of prospective or actual occupants and/or purchasers of the ~~affected 150% U~~units, to spot check the eligibility of such persons and/or households as eligible occupants and/or households;

2. ~~(B) r~~Reviewing the documentation submitted by ~~applicants~~Applicants in connection with the certification process for eligible households and/or occupants.

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

## VII. Condominium Conversions.

**The Condominium Conversion Inclusionary Affordable Housing Fee upon the approval of the amended Procedures Manual by the Council the initial Condominium Conversion Inclusionary Affordable Housing Fee shall be \$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 142.1307(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 142.1307(c) of the Inclusionary Regulations, any condominium conversion development where all of the dwelling units will

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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.
  
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 2010 shall be affordable at or below the maximum sales prices shown below.

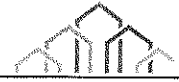
**2010 SALES PRICE RESTRICTIONS**  
**80% AREA MEDIAN INCOME**

<u>Unit Size (bedrooms)</u>	<u>Maximum Sales Price</u>
<u>Studio</u>	<u>\$156,885</u>
<u>One</u>	<u>\$176,495</u>
<u>Two</u>	<u>\$196,322</u>
<u>Three</u>	<u>\$219,638</u>

The maximum eligible incomes for 2010 are as follows:

**2010 MAXIMUM INCOME**  
**80% AREA MEDIAN INCOME**

<u>Household Size</u>	<u>Income</u>
<u>One</u>	<u>\$55,000</u>
<u>Two</u>	<u>\$62,800</u>
<u>Three</u>	<u>\$70,700</u>
<u>Four</u>	<u>\$78,500</u>



4. Applicants with qualifying condominium conversion units as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers. Applicants shall provide documentation concerning purchasers of the units and sales prices to Commission, at Commission's request.
5. Compliance with Section 142.1307(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 142.1307(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.

### **VIII. Off-Site Housing**

- A. An applicant electing to provide Affordable Units If the Applicant elects, pursuant to Section 142.1306 (b)(2) of the San Diego Municipal Code, that desires to construct the Affordable Units on a site different than the proposed development and Off-Site Units to satisfy the requirements of this Program, the Applicant shall construct the Units within the same Community Planning Area, as delineated in the General Plan of the City of San Diego, as the Principal Project. An alternate site for the construction of the Affordable Units shall obtain be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission (and the Executive Director of the Redevelopment Agency if the development is located within a Redevelopment Project Area) or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Development Project is located in a Redevelopment Project Area.
- B. An applicant Applicant electing to provide Affordable Units may satisfy the requirements of the Inclusionary Regulations this Program by the use of Affordable Units constructed by other developers, in addition to any to be built to meet their respective affordable housing requirements as set forth in the Ordinance, by transfer of credits between developers, if and when approved by the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission. The Receiver applicant Applicant would be precluded from may not utilizing any local public funds to meet the Program's affordability requirements. The approval of the Receiver Ssite would be is subject to all applicable approvals set forth in this Procedures Manual and the Inclusionary Regulations Ordinance.



- C. ~~An If the *applicant* Applicant electings, pursuant to Section 142.1306 (b)(3) of the San Diego Municipal Code, to construct the aAffordable uUnits on a site different from the proposed *development* primary development site and outside the community planning area, the applicant must shall comply obtain a variance in accordance with Section 142.1309(c). 04 in accordance with Process Four. An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Residential Development Project is located in a Redevelopment Project Area. The use of an alternate site for the construction of the Affordable Units outside of the Community Planning Area of the Principal Project must be found to support the community and economic balance and/or transit orientation goals.~~
- D. ~~It is expected that the receiver site will be a new construction development; however, existing market-rate developments may be provided if the President and CEO 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.~~

## IX. Alternative Development Schedule and Phasing of Units

- A. ~~Pursuant to San Diego Municipal Code Section 142.1309(a)(1), an Applicant may seek approval for an alternative development schedule subject to a Process Two approval. An *applicant* Applicant approved for an alternative development schedule may provide Affordable Units in accordance with the following:~~
1. ~~Affordable Units built subject to a variance authorized by the Inclusionary Regulations this Program shall be constructed, completed, and ready for occupancy no later than the date that the Mmarket Rrate Hhousing is constructed, completed and ready for occupancy unless there is an otherwise acceptable agreement for an alternative development schedule which is satisfactory to the Chief Executive Officer of the Housing Commission or the CEO of the San Diego Housing Commission (and the Executive Director of the Redevelopment Agency if the *development* in the event that the Principal Project is located within a Redevelopment Project Area).~~
  2. ~~The timely construction of the Affordable Units affordable housing shall be assured by the posting of a bond and the execution of agreements satisfactory to the Chief Executive Officer CEO of the San Diego Housing~~



Commission on or before the issuance of the first building permit for any unit in the proposed development~~Residential Development Project~~.

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

1. The issuance of building permit for the Affordable Units Housing Project shall occur on or before the earlier of: (i) the issuance of building permits for construction of the number which represents 50% of the Market Rate Units within the development~~Project~~; or (ii) the date which is eighteen (18) months after the filing of final map for the Market Rate units~~Project~~, or (iii) a date which is eighteen (18) months after the receipt of the building permit for the first Market Rate Unit if no final map is filed;
2. Completion of construction of the Affordable Units Housing Project shall occur upon the earlier of twelve (12) months after the issuance of building permits for the Affordable Units Housing Project as described above; or the date which is two and one-half years after the earliest date determined above.
3. The issuance of building permits for the construction of the number which represents 75% of market rate units for the development Project shall not occur until the completion of all of the Affordable Units is authorized by the City.
4. Occupancy of the Affordable Units Housing Project by persons meeting the Program Eligibility requirements set forth in this Manual shall occur not later than 180 days after the completion of construction as determined above.

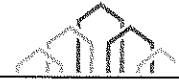
### **Determining Amount of In Lieu Fee(s)**

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

- (1) For building permits that are obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed



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~~complete, the rate of the in lieu fee shall be the rate in effect at the time the application for that first tentative map or development permit was deemed completed.~~

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

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

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

## X. Conversion of Tenure Type for of Affordable Units

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

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

~~B. Any Affordable Ownership Units to be converted to rental units must satisfy the requirements of this Procedures Manual. Any For-Sale Affordable Housing Units Affordable Ownership Units to be converted to Rental Affordable Housing Units shall be rented at or below the rents set forth herein Maximum Rental Rate to *targeted rental households* provided the applicant also demonstrates that the units are not subject to the Costa Hawkins Rental Housing Act, for any legal reason.~~



~~including but not limited without limitation: Targeted Rental Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including rental rate and length and method of restriction.~~

- ~~1. because the *applicant* has entered into an agreement with the a public agency in consideration for a direct financial contribution or any other form of assistance specified in California Government Code section 65915 *et seq.*: or~~
- ~~2. because the *applicant* has voluntarily sought and will receive tax credits, and/or be issued multifamily housing bonds, and/or be provided with below market interest rate loans or grants for the construction and/or rehabilitation of the *dwelling units* and/or a project containing the *dwelling units*.~~

## XI. Affirmative Marketing Requirements

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

## XII. Ongoing Monitoring

### A. Monitoring Fees – Rental Affordable Housing Units

- ~~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 providing Rental Affordable Housing Units* rental properties.~~
- ~~2. Annual *M*onitoring fees will be required for all *Rental Affordable Housing Units* rental affordable units developed under the Program. The base monitoring fee per unit is \$65 for the first 40 units. The base fee charged decreases \$10 for each unit more than 40 units, and decreases \$20 for each unit more than 80 units.~~

1 to 40 Units \$65 per unit



41 to 80 Units \$55 per unit

81+ Units \$45 per unit

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

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

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

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

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

### **Waivers, Adjustments and/or Reductions**

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

~~An applicant for or developer of any development, project or property subject to the requirements of the Inclusionary Ordinance may appeal for a reduction, adjustment or waiver of the requirements of the Inclusionary Ordinance by following the procedures outlined in Section~~

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~~142.1304 and/or 142.1305, based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the in lieu fee or the inclusionary housing requirement. If such lack of nexus is established under either Section 142.1304(d)(1) (variance) and/or 142.1305(d)(1) (waiver), then the findings required under 142.1304(d)(2), (3) and (4) for a variance and/or Section 142.1305(d)(2), (3) and (4) for a waiver, shall automatically be deemed established by the decision makers.~~

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