

**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 two (2) units or more*, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those units are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive of the two shall apply.

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

**§ 142.1303 Exemptions From the Affordable Housing Inclusionary 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) Residential *development* or portion of the *development* that meets the following criteria:

- (1) The unit is being sold to persons who own no other real property and will reside in the unit;
  - (2) The unit is affordable to and sold to households earning less than one hundred fifty percent (150%) of the area median income;
  - (3) The unit has two (2) or more bedrooms; and
  - (4) The unit(s) has recorded against it an agreement between the *applicant* and the San Diego Housing Commission assuring that the provisions of Section 142.1303(b) have been met.
- (c) Rehabilitation of an existing building that does not result in a net increase of *dwelling units* on the *premises*.
- (d) *Density* bonus units constructed in accordance with the provisions of Chapter 14, Article 3, Division 7.
- (e) Certain *condominium conversion developments* as set forth in Section 142.1307(c).

(Amended 3-8-2004 by O-19267 N.S.)

(Amended 4-8-2008 by O-19734 N.S.; effective 5-8-2008.)

**§ 142.130410 ~~In-Lieu-Fee Regulations~~ Inclusionary Affordable Housing Fee**

All *development* subject to this Division, except for *condominium conversion developments* which shall comply with Section 142.1307, shall pay an *Inclusionary Affordable Housing Fee* to the City.

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

- (a) The *Inclusionary Affordable Housing Fee* shall be the product of the applicable per square foot charge (i.e., the rate) multiplied by the aggregate *gross floor area* of all of the units within the *development*. ~~The rate of the in lieu fee shall be determined as follows:~~
- (1) ~~For building permits that are obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, the rate of the in lieu fee shall be the rate in effect at the time the application for that first *tentative map* or *development permit* was *deemed complete*.~~

- (2) ~~For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was deemed complete, but are issued within three (3) years of the date of approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time that first *tentative map* or *development permit* was approved.~~
- (3) ~~For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was deemed complete, and that are not issued within three (3) years of the date of the approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is *deemed complete*.~~
- (4) ~~For any *tentative map* or *development permit* approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the *tentative map* or *development permit* was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate in effect at the time the application or the building permit is *deemed complete*.~~
- (b) The applicable per square foot charge (i.e., the rate) is calculated annually by the San Diego Housing Commission according to the formula set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual. The amount of the in lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.
- (c) The Inclusionary Affordable Housing Fee shall be determined using the rate in effect at the time the building permit application is filed. The Inclusionary Affordable Housing Fee shall be paid on or before the issuance of a building permit for the *development*. No building permit may be issued without payment of the in lieu fee.
- (d) Any applicant may pre-pay the *Inclusionary Affordable Housing Fee*, which shall be determined using the rate in effect on the date of pre-payment. Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable.

— **Table 142-13C**

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

**Table 142-13D**

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

- (e) All funds collected pursuant to this Division shall be deposited into the Affordable Housing Fund. The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption of this Division, based upon 50% of the difference between the median cost of housing and housing price affordable to the median household.

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

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

**§ 142.1305 Exemption from Payment of Inclusionary Affordable Housing Fee for Rental Affordable Housing Units**

- (a) An applicant may request an exemption from the requirement to pay an Inclusionary Affordable Housing Fee if the applicant can demonstrate all of the following, to the satisfaction of the San Diego Housing Commission:
  - (1) That at least ten percent (10%) of the total dwelling units in the proposed development will be affordable to and occupied by targeted rental households for a period of not less than fifty five (55) years;
  - (2) That the dwelling units are not subject to the Costa Hawkins Rental Housing Act (California Civil Code Section 1954.50 et seq.) for any reason, including without limitation:
    - (i) because the applicant has entered into, or will enter into, a written agreement with a public entity in consideration for a direct financial contribution or any other form of

assistance specified in California Government Code Section 65915 et seq.; or

- (ii) 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*.
- (3) That *applicant* agrees to execute a declaration under penalty of perjury that the *dwelling units* satisfy the conditions set forth in (1) and (2) above.
- (b) An exemption from payment of Inclusionary Affordable Housing Fee for rental affordable housing units shall be decided administratively by the Chief Executive Officer, or designee, of the San Diego Housing Commission.
- (c) An *applicant* receiving an exemption under this Section shall record a Declaration of Covenants, Conditions and Restrictions and deed of trust in favor of the San Diego Housing Commission, which satisfy the requirements of Section 142.1311 and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.

**§ 142.13069 Election to Provide For-Sale Affordable Housing Units Requirements for Inclusionary Affordable Housing**

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

- (a) ~~Instead of paying the applicable Inclusionary Affordable Housing Fee, an *applicant* may elect to comply with this Division by providing at least ten percent (10%) of the total *dwelling units* in the proposed *development* as affordable to *targeted ownership households*. The affordable units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market rate units receive final inspection approval from the Building Official.~~
- (1) ~~The *applicant* may seek an alternative development schedule in accordance with the provisions of Sections 142.1304 and 142.1305 and decided in accordance with Process Two.~~
- (b) ~~The affordable units shall be comparable in bedroom mix, design and overall quality of construction to the market rate units in the *development*, except that the affordable units shall not be required to exceed three~~

~~bedrooms per unit. The square footage and interior features of the affordable units shall not be required to be the same as or equivalent to the market rate units, so long as they are of good quality and are consistent with current building standards for new housing in the City of San Diego.~~

~~(c) Sale or lease of the affordable units shall follow the marketing requirements and procedures contained within the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.~~

~~(d) Affordability Levels and Restrictions Rental Units:~~

~~(1) The units shall be occupied by *targeted rental households*.~~

~~(2) The monthly rent for each unit shall not exceed 1/12 of 30% of 65% average median income, as adjusted for household size, less reasonable allowances for utilities.~~

~~(3) The units shall remain affordable for a period of not less than fifty-five (55) years from the date of issuance of Certificate of Occupancy for the *development* or applicable phase of the *development* through the imposition of a declaration of covenants, conditions and restrictions in first lien position as required in Section 142.1311.~~

~~(be) Affordability Levels and Restrictions For Sale Units The development of for-sale affordable housing units is subject to the following requirements and the provisions of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:~~

~~(1) The units shall be occupied by *targeted ownership households*, subject to Section 142.1308(e)(3). The for-sale affordable housing units shall be constructed and receive final inspection approval from the Building Official no later than the date that the market-rate units receive final inspection approval from the Building Official. The applicant may seek an alternative development schedule in accordance with the provisions of Sections 142.1308 and 142.1309.~~

~~(2) The sales price for each for-sale affordable housing unit shall not exceed an amount that is affordable to a *targeted ownership households*, as determined by the San Diego Housing Commission. The amount affordable to *targeted ownership households* shall be no greater than 35% of the AMI, adjusted for household size, determined as of the date of the close of escrow and shall not exceed an annual payment for all housing costs, including mortgage principal and interests, taxes, insurance, assessments,~~

~~and five percent (5%) down payment, subject to Section 142.1308(e)(3).~~

- (3) ~~The equity in a for-sale~~the affordable housing unit shall be shared as follows: between the owner and the San Diego Housing Commission in an amount based upon length of ownership at the time of the first resale, in accordance with Table 142-13B.
- (A) ~~“Equity” means the difference between the for purposes of this Division is measured by the difference in the original unrestricted fair market value of the affordable unit at the time of the acquisition of the affordable unit and the unrestricted fair market value of the affordable unit on the date of the first resale; (as determined by an appraisal approved by the Commission) and the sum of: (i) the original unrestricted fair market value of the affordable unit at the time of its acquisition by the targeted ownership household, and (ii) the actual costs of any Commission approved improvements to the affordable unit. If the foregoing calculation of equity results in a negative number, the equity shall be deemed to be zero. and each and every transfer, lease or refinancing as determined by an appraisal approved by the City.~~
- (B) ~~“Resale” is defined in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual, and includes the sale, conveyance, transfer or refinancing of all or any part of the affordable unit by a targeted ownership household. Upon the first resale of the affordable unit during the first 15 years from the date of issuance of the certificate of occupancy, the City and owner of the affordable unit shall share the equity in accordance with the provisions of Table 142-13B.~~
- (C) Equity shall not be shared if all of the following apply:
- (i) The purchaser of the affordable unit is a targeted ownership household approved by the San Diego Housing Commission;
- (ii) The sales price does not exceed an amount that is affordable to targeted ownership households as determined by the San Diego Housing Commission; and

(iii) The purchaser assumes all of the obligations of the initial targeted ownership household.

~~Upon each transfer, lease and or refinancing during the first 15 years from the date of issuance of the certificate of occupancy, the City and the Owner shall share the equity in the affordable unit based upon an appraisal of the affordable unit in accordance with the provisions of Table 142-13B.~~

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

~~(5) The unit shall be sold at no less than fair market value.~~

**Table 142-13B**

Length of Ownership at the Time of Resale, Refinance, or Transfer	Share of Equity to Household
Months 0-12	15%
Year 2	21
Year 3	27
Year 4	33
Year 5	39
Year 6	45
Year 7	51
Year 8	57
Year 9	63
Year 10	69
Year 11	75
Year 12	81
Year 13	87
Year 14	93
Year 15 or after	100%

(4) All funds collected shall be deposited in the Inclusionary Affordable Housing Fund.



- (65) ~~The City of San Diego~~ Housing Commission shall be entitled to the first right of refusal on any ~~“for sale”~~ for-sale affordable housing unit upon its sale.
- (f6) ~~In accordance with Section 142.1311, e~~Each for-sale affordable housing unit shall have recorded against it a Declaration of Covenants, Conditions and Restrictions that complies with Section 142.1311. The Declaration of Covenants, Conditions and Restrictions shall be secured by a recorded deed of trust in favor of the City of San Diego Housing Commission.

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

**§ 142.1307 Inclusionary Affordable Housing Obligations for Condominium Conversions**

- (a) All condominium conversion developments subject to this Division shall pay a Condominium Conversion Inclusionary Affordable Housing Fee to the City.
- (1) The Condominium Conversion Inclusionary Affordable Housing Fee shall be one half of the Inclusionary Affordable Housing Fee, calculated pursuant to 142.1304 and the Inclusionary Affordable Housing Implementation and Procedures Manual.
- (2) The Condominium Conversion Inclusionary Affordable Housing Fee shall be paid at the close of escrow of the first condominium sold within the development. The Condominium Conversion Inclusionary Affordable Housing Fee shall be calculated using the rate in effect at the close of escrow of the first condominium sold within the development. The applicant and the San Diego Housing Commission shall enter into a written agreement securing payment of the Condominium Conversion Inclusionary Affordable Housing Fee, which is recorded against the project and secured by a recorded deed of trust in favor of the San Diego Housing Commission. The San Diego Housing Commission shall collect all Condominium Conversion Inclusionary Affordable Housing Fees that are paid at the time of the close of the first escrow.
- (3) Any applicant may pre-pay the Condominium Conversion Inclusionary Affordable Housing Fee, which shall be calculated using the rate in effect on the date of pre-payment. All pre-paid fees shall be collected by the City.
- (4) All funds collected shall be deposited in the Affordable Housing Fund.

- (b) Instead of paying the applicable Condominium Conversion Inclusionary Affordable Housing Fee, an *applicant* for a *condominium conversion development* subject to this Division may elect to comply with this Division by providing at least five percent (5%) of the total *dwelling units* in the *development* as affordable to and occupied by *targeted ownership households* subject to Section 142.1306 and the Inclusionary Affordable Housing Implementation Procedures Manual.
- (c) This Division is not applicable to *condominium conversion developments* that meet all of the following:
- (1) All of the *dwelling units* in the *condominium conversion development* are initially affordable to and sold to households earning at or below eighty percent (80%) of the area median income; and
  - (2) The *applicant* executes a declaration under penalty of perjury that the *dwelling units* satisfy the condition set forth in (1) above.

In the event that the San Diego Housing Commission determines the *dwelling units* do not satisfying the conditions set forth in (c)(1) and (c)(2) above, then, upon such discovery, the San Diego Housing Commission shall require the *applicant* to pay the applicable Condominium Conversion Inclusionary Affordable Housing Fee in effect at the close of escrow of the first condominium sold within the *development*.

#### **§ 142.1306 — General Inclusionary Affordable Housing Requirements**

- (a) ~~At least ten percent (10%) of the total *dwelling units* in the proposed *development* shall be as affordable to *targeted rental households* or *targeted ownership households* in accordance with Section 142.1309. For any partial unit calculated, the applicant shall pay a prorated amount of the in-lieu fee in accordance with Section 142.1310 or provide an additional affordable unit. *Condominium conversion* units affordable to and sold to households earning less than 150 percent (150%) of the *area median income* pursuant to an agreement entered into with the San Diego Housing Commission shall not be included in the *dwelling units* total for purposes of applying the ten percent inclusionary housing requirement.~~(b) ~~With the exception of condominium conversions of twenty or more *dwelling units* the requirement to provide *dwelling units* affordable to and occupied by *targeted rental households* or *targeted ownership households*, can be met in any of the following ways:~~

- ~~(1) — On the same site as the proposed project site;~~
- ~~(2) — On a site different from the proposed project site, but within the same community planning area. Nothing in this Division shall preclude an *applicant* from utilizing affordable units constructed by another in accordance with this Division upon approval by the Housing Commission in accordance with the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;~~
- ~~(3) — On a site different from the proposed project site and outside the community planning area if the *applicant* has obtained a variance in accordance with Section 142.1304. Nothing in this Division shall preclude an *applicant* from utilizing affordable units, constructed by another *applicant* in accordance with this Division, upon approval by the Housing Commission pursuant to the standards set forth in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual;~~
- ~~(4) — Payment of an in lieu fee in accordance with the provisions of Section 142.1310; or~~
- ~~(5) — Any combination of the requirements of this Section.~~
- ~~(c) — *Condominium conversions* of twenty or more *dwelling units* shall satisfy the requirement to provide *dwelling units* affordable to and occupied by *targeted rental households or targeted ownership households* on the same site as the condominium conversion project.~~

*(Amended 9-8-2004 by O-19267 N.S.)*

*(Amended 7-5-2006 by O-19505 N.S.; effective 8-5-2006.)*

**§ 142.1308(4) Variance, Waiver, Adjustment or Reduction of Rules for Inclusionary Affordable Housing Regulations**

- (a) ~~Except as provided in Section 142.1304(e), a~~ variance, adjustment, or reduction from the provisions of this Division ~~Section 142.1306 may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or reduction and shall require either that the findings in Section 142.1309(a)1304(d) or in Section 142.1309(b)1304(e) be made.~~
- (b) An application for a variance, waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and

other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, waiver, adjustment, or reduction, ~~and shall be a matter of public record.~~

- (c) A *development* located within an adopted redevelopment project area and subject to a ~~San Diego~~ Redevelopment Agency of the City of San Diego agreement may seek a variance, waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four. Waiver requests shall be reviewed in accordance with Process Five.
- ~~(d) No variance, adjustment, or reduction shall be issued unless:~~
- ~~(1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;~~
  - ~~(2) The *development* would not be feasible without the modification;~~
  - ~~(3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and~~
  - ~~(4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.~~
- ~~(e) No variance, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.~~
- ~~(f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):~~
- ~~(1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and~~

- (2) ~~The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.~~

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

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

**§ 142.13095 Findings for Variance, Waiver, Adjustment or Reduction Approval Rules for Inclusionary Affordable Housing Regulations**

- (a) ~~Except as provided in Section 142.1305(c), a waiver, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require either that the findings in Section 142.1305(d) or in Section 142.1305(e) be made.~~
- (b) ~~An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, adjustment, or reduction and shall be a matter of public record.~~
- (c) ~~A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The waiver, adjustment, or reduction shall be in accordance with Process Five.~~
- (~~d~~a) The decision maker may approve or conditionally approve an application for a variance. No waiver, adjustment, or reduction shall be issued to an *applicant* unless to the Inclusionary Affordable Housing Regulations only if the decision maker makes the following *findings*:
- (1) Special circumstances, unique to that *development* justify the granting of the variance, waiver, adjustment, or reduction;
  - (2) The *development* would not be feasible without the modificationwaiver, adjustment, or reduction;
  - (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.
- (e**b**) Alternatively to (a) above, the decision maker may approve or conditionally approve an application for a variance, ~~No~~ waiver, adjustment, or reduction to the Inclusionary Affordable Housing Regulations if the decision maker makes a *finding* that shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the ~~in-lieu-fee~~ Inclusionary Affordable Housing Fee or the Condominium Conversion Inclusionary Affordable Housing Fee, as applicable, charged or the inclusionary requirement.
- (c) For a *development* that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area, the decision maker may approve or conditionally approve a variance to the Inclusionary Affordable Housing Regulations only if the decision maker makes the following supplemental *findings*:
- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
- (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit-oriented development.

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

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

### § 142.131007 General Rules for Inclusionary Affordable Housing Regulations

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

~~Monitoring Procedures Manual which shall be included in the Land Development Manual.~~

- (be) 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.)

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

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

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

**§ 142.1311 Declaration of Covenants, Conditions and Restrictions**

All *development of affordable units pursuant to in accordance with Section 142.1305, Section 142.1306, or Section 142.1307(b) of this Division*~~1309, except Section 142.1309(b)(4)~~, shall be subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.

- (a) The applicable portion of the *development* shall have recorded against it, a Declaration of Covenants, Conditions and Restrictions approved by and in favor of the San Diego Housing Commission, ~~in favor of the City of San Diego.~~

- (b) ~~Any~~The Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- ~~(c) — The Declaration of Covenants, Conditions and Restrictions shall include the following provisions:~~
- ~~(1) — Compliance with the City of San Diego marketing and monitoring procedures.~~
- ~~(2) — The affordable units for *targeted rental households* shall remain affordable for fifty-five (55) years from the date of issuance of the first certificate of occupancy.~~
- ~~(3) — All affordable units for *targeted ownership households* shall remain affordable as follows:~~
- ~~(A) — If the affordable unit is not resold to a *targeted ownership household* at a price described in Section 142.1309(e)(2), provision shall be made in the for sale affordability restrictions for the recapture of a share of the profits on resale of the affordable unit, if the unit is not resold to a *targeted ownership household* at the sales price described in Section 142.1309(e)(2).~~
- ~~(B) — The Declaration of Covenants, Conditions and Restrictions or conditions of approval will include provisions restricting resale prices and purchaser income levels according to the formula specified in the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.~~
- ~~(C) — In the event a subordination of the deed of trust securing the affordability conditions contained in a Declaration of Covenants, Conditions and Restrictions may be necessary to ensure the *applicant's* receipt of adequate construction or permanent financing for the project, or to enable first time home buyers to qualify for mortgages, the *applicant* shall enter into a separate agreement with the City of San Diego for subordination of the deed of trust securing the affordability restrictions.~~
- ~~(4) — The timely performance of the Declaration of Covenants, Conditions and Restrictions shall be secured by a deed of trust in favor of the San Diego Housing Commission assuring performance recorded against the restricted unit or units, and such other instruments as may be required by the Chief Executive Officer of the San Diego Housing Commission to effectuate the~~



viability of the affordability restrictions for the entire term of required affordability.

~~(5) — Any other terms necessary to implement the provisions of this Division.~~

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

## § 142.1312 Reporting Requirements

- (a) The San Diego Housing Commission shall annually report to the City Council and the Housing Authority of the City of San Diego on the results of implementing this Division including, but not limited to, the following:
- (1) The number of *applicants* and location of *developments* that came before the City for ministerial or discretionary approval and the number of *applicants* and location of *developments* that were subject to the requirements of this Division;
  - (2) The number of *applicants* and location of *developments* that applied for a waiver, variance, reduction or exemption in accordance with this Division Sections 142.1304 and 142.1305 or Section 142.1303, respectively, and the number of *applicants* and location of *developments* that were granted such an exemption or a waiver, variance, reduction or exemption and the terms of each of those actions variance or waiver; and
  - (3) The number of market rate units, and the number of affordable units, including the location of all affordable units, and the total Inclusionary Affordable Housing Fees and Condominium Conversion Inclusionary Affordable Housing Fees paid.
- ~~(b) — In conjunction with the comprehensive update of the City of San Diego Progress Guide and General Plan, Housing Element, the San Diego Housing Commission and the Planning Department shall direct a study to determine the relationship in nature and amount between the production of market rate residential housing and the availability and demand for affordable housing in San Diego.~~

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