

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.)

§ 142.1304 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.

- (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*.
- (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*.
- (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*.

- (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.
- (e) All funds collected pursuant to this Division shall be deposited into the Affordable Housing Fund.

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

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

§ 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.

§ 142.1306 Election to Provide For-Sale Affordable Housing Units

- (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*.
- (b) 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 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 household*, as determined by the San Diego Housing Commission.
 - (3) The equity in a for-sale affordable housing unit shall be shared 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 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.

- (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*.
- (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*.

Table 142-13B

Length of Ownership at the Time of Resale	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 Affordable Housing Fund.

- (5) The San Diego Housing Commission shall be entitled to the first right of refusal on any for-sale affordable housing unit upon its sale.
- (6) 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 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*.

§ 142.1308 Variance, Waiver, Adjustment or Reduction of Inclusionary Affordable Housing Regulations

- (a) A variance, adjustment, or reduction from the provisions of this Division may be requested and decided in accordance with Process Four. A waiver from the provisions of this Division may be requested and decided in accordance with Process Five. Any variance, waiver, adjustment or reduction shall require either that the findings in Section 142.1309(a) or Section 142.1309(b) be made.
- (b) An application for a variance, waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, waiver, adjustment, or reduction.
- (c) A *development* located within an adopted redevelopment project area and subject to a 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.

(Added 6-3-2003 by O-19189 N.S.)
(Amended 8/15/2006 by O-19530 N.S.; effective 9/14/2006.)

§ 142.1309 Findings for Variance, Waiver, Adjustment or Reduction Approval

- (a) The decision maker may approve or conditionally approve an application for a variance, waiver, adjustment or reduction 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 modification;
 - (3) A specific and substantial financial hardship would occur if the variance, waiver, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (b) Alternatively to (a) above, the decision maker may approve or conditionally approve an application for a variance, waiver, adjustment, or reduction to the Inclusionary Affordable Housing Regulations if the decision maker makes a *finding* that there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the 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.)

§ 142.1310 General Rules for Inclusionary Affordable Housing Regulations

- (a) The Chief Executive Officer of the San Diego Housing Commission shall be responsible for determining affordability standards and occupant qualifications for any affordable units provided pursuant to this Division. The San Diego Housing Commission shall also monitor compliance with any documentation created as a result of an *applicant's* compliance with this Division.
- (b) The San Diego Housing Commission shall determine the reasonable fee to be paid by the *applicant* for the costs incurred by the San Diego Housing Commission in connection with implementation of this Division.

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

§ 142.1311 Declaration of Covenants, Conditions and Restrictions

All *development* of affordable units pursuant to Section 142.1305, Section 142.1306, or Section 142.1307(b) of this Division shall be subject to the following 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.
- (b) Any Declaration of Covenants, Conditions and Restrictions required by this Division shall enjoy first lien position and shall be secured by a deed of trust in favor of the San Diego Housing Commission recorded against the project or unit, as applicable, prior to construction or permanent financing.

(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, and the number of *applicants* and location of *developments* that were granted a waiver, variance, reduction or exemption and the terms of each of those actions; and
 - (3) The number of market rate units, 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.

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