INCLUSIONARY HOUSING ORDINANCE
ADMINISTRATIVE REGULATIONS

Adopted April 6, 2000
Amended May, 2003
Amended December, 2007
Amended May 23, 2011
Amended Sept. 27, 2013

Adopted pursuant to Chapter 1-4, B.R.C. 1981

Note: Due to a simplification of the B.R.C. 1981 Title 9 (April 2013) code citations have changed. This amended version of the regulations contains current applicable code citations.

Table of Contents

1.0 Findings 1
2.0 Purpose 1
3.0 General Inclusionary Requirements 2
3.1 Inclusionary Housing Requirements for Group Quarters 2
3.2 Inclusionary Housing Requirements for Accessory Dwelling Units and Owner Accessory Units 2
3.3 Developments Subject to Annexation Agreements 2
3.4 Alternative Methods of Compliance 2
3.4.1 Alternative Methods of Compliance Request Process 2
3.4.2 Alternative Methods of Compliance for On-Site Construction Requirement 3
3.4.3 Alternative Methods of Compliance to Required Total Floor Area of Permanently Affordable Dwelling Units 4
3.4.4 Alternative Methods of Compliance for Financial Alternatives and Timing When a Cash-in-lieu Contribution is Made 5
3.5 Rebuilt Dwelling Units 6
3.6 Covenant(s) Required 7
3.7 Good Faith Marketing Required 8
3.8 Income Eligible Household 9
3.9 Documentation Required to Verify Income of Prospective Renters or Purchasers of Permanently Affordable Dwelling Units 10
3.10 Livability Standards 11
3.11 Document, Agreement and Time Requirements 11

4.0 On-Site Development Requirements 12
4.1 Rounding Rule to Determine On-site Requirement for Fractions of a Unit 12
4.2 Required Documents to Determine On-Site Affordable Units 12
4.3 Minimum Size Calculations 12
4.4 Number of Bathrooms 13

5.0 Developments Containing a Single Dwelling Unit 14

6.0 Program Requirements for For Sale Units 14
6.1 Maximum Sales Price for Permanently Affordable Dwelling Units 14
6.2 Approved Purchasers of Permanently Affordable Dwelling Units 15
6.3 Determination of Assets for Qualified Households 16
6.4 Determination of Income Derived from Assets for Qualified Households 16
6.5 Substitute Unfinished Floor Area for Finished Floor Area 16
6.6 Size of Permanently Affordable Units 17
6.7 Live-work Unit Floor Area 17
6.8 Residency and Owner Occupancy Requirement 17
6.9 Rental Restrictions for Permanently Affordable Ownership Dwelling Units 17
6.10 Maximum Allowable Resale Prices 18

6.11 Documentation Required to Approve Purchasers on Resale of Permanently Affordable Dwelling Units 18
6.12 Home Ownership Associations 18

7.0 Program Requirements for Rental Units 19
7.1 Maximum Allowable Rent 19
7.2 Sales Price Consideration for Rental Housing Units 19

8.0 Off-site Inclusionary Housing Options 20
8.1 Off-Site Timing Requirements 20
8.2 Cash-in-lieu Adjustment 20
8.3 Cash-in-lieu Due 20
8.4 Acceptance of Off-site Units 21
8.5 Number of affordable units Required for Off-site Receiving Sites 21
8.6 Floor Area Requirements for Off-Site Receiving Sites 21
8.7 Livability Guideline and Standard Requirement 21
8.8 Financial Guarantee Required 21
8.9 Homeownership Association Assessment Required 22
8.10 Requirements for Dedicating Existing Off-Site Dwelling Units as Permanently Affordable 23
8.11 Requirements for Dedicating Newly Constructed Off-Site Dwelling Units as Permanently Affordable 23

INCLUSIONARY HOUSING ORDINANCE
ADMINISTRATIVE REGULATIONS

The purpose of these regulations is to set forth the procedures for administration and implementation of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981. It should be recognized that no set of regulations can anticipate every conceivable situation in which an ordinance may apply, and it is anticipated that these may be amended or supplemented from time to time. These rules are intended to be consistent with Chapter 9-13, and facilitate the implementation of Chapter 9-13 by specifying forms, procedures and requirements in more detail than set forth in Chapter 9-13. City staff will implement the rules consistent with the intent and as provided in Chapter 9-13.

1.0 Findings

Generally, definitions of terms used in Chapter 9-13 have the same definition as contained in Chapter 9-16 of the Code, or as provided in this chapter. However, a few definitions require additional clarification as follows:

"Dwelling Unit" means one room or rooms with internal connections for residential occupancy and including bathroom and kitchen facilities. Multiple dwelling units exist if there is more than one meter for any utility, address to the property, or kitchen; or if there are separate entrances to rooms which could be used as separate dwelling units; or if there is a lockable, physical separation between rooms in the dwelling unit such that a room or rooms on each side of the separation could be used as a dwelling unit, or rooms with no internal connections. A dwelling unit may be created as part of a new development, remodel of an existing development, or conversion from a residential or non-residential use to a residential use.

"Permanently Affordable Unit" and "Permanently Affordable Dwelling Unit" means a dwelling unit with ongoing resale or rental restrictions that are designed to keep the dwelling unit affordable, in perpetuity, to income eligible households. The terms of the resale or rental restrictions are contained in a covenant in a form provided by the city that is recorded against each property.

3.0 General Inclusionary Requirements

3.1 <u>Inclusionary Housing Requirements for Group Quarters</u> [9-13-3]

Inclusionary housing requirements do not apply to any type of group quarter accommodations as included in Section 9-6-1, Table 6-1: Use Table under the heading of “Group Quarters” unless units in the development are configured such that there is a private kitchen for the sole use of the occupant, or are otherwise configured as a dwelling unit. Inclusionary housing will apply to any such units.

3.2 <u>Inclusionary Housing Requirements for Accessory Dwelling Units and Owner Accessory Units</u> [9-13-3]

Inclusionary housing requirements do not apply to Accessory Dwelling Units (ADUs) or Ownership Accessory Units (OAUs) as defined in Chapter 9-16.

3.3 <u>Developments Subject to Annexation Agreements</u> [9-13-3]

Unless specifically provided otherwise in an annexation agreement with the city, all development shall comply with Chapter 9-13 "Inclusionary Housing" B.R.C. regardless of when annexed into the city.

3.4 <u>Alternative Methods of Compliance</u> [9-13-3(d)]

A developer may request an alternative method of compliance for any inclusionary housing requirement pursuant to Section 9-13-3(d) B.R.C. The purpose of alternative methods of compliance is to provide additional housing benefit to the community in order to provide diversity of home size, home type, home features for varying income levels.

Criteria for additional housing benefit include, but are not limited to, the provision of more or larger affordable units than required, detached homes in lieu of condominiums, duplex or town homes in lieu of “stacked” units, greater affordability, off-site affordable units as determined through a city approved point system, or a larger cash-in-lieu contribution than would otherwise be required.

3.4.1 <u>Alternative Methods of Compliance Request Process</u> [9-13-3(d)]

The Alternative Method of Compliance process is required to vary any provision of Chapter 9-13 B.R.C. To make a request for an alternative method of compliance, the developer or property owner

shall fill out, sign and submit the Request for Alternative Methods to Comply with Inclusionary Housing form as well as submit any documentation necessary to clearly demonstrate that the developer's proposed affordable housing alternative meets the criteria for approval as outlined in Section 9-13-3 (d) and these regulations. The city may initiate a request for an alternative method of compliance.

Final approval or denial will be the sole decision of the city manager. The Request for Alternative Methods to Comply with Inclusionary Housing form shall be approved or denied prior to signing the Determination of Inclusionary Housing Compliance form.

3.4.2 <u>Alternative Methods of Compliance for On-Site Construction Requirement</u> [9-13-3(d)]

An applicant may request an alternative method of compliance to provide fewer than 50% of the permanently affordable units required on-site for for-sale developments. This request will be reviewed by the city manager to determine what, if any, additional affordable housing benefit would be provided and community housing needs.

The following factors will be considered - none of which are a guarantee of approval and are not inclusive:

a. Provision of larger more desirable units provided off-site than would be provided on-site such as detached homes or town homes in lieu of condominiums.
b. A request which would result in a net increase in permanently affordable units over what would have been provided on-site.
c. A request which would result in a net increase in the total floor area of permanently affordable units.
d. In cases where the request includes some on-site units, provision of additional accessible units, or targeting lower incomes (i.e. lower selling prices).

If the request includes the following, there is a presumption that the request will be approved:

a. A request that would result in a net increase of at least fifty percent more permanently affordable units, equivalent to those that would have been provided on-site.
b. A request that would result in a net increase of fifty percent in the total floor area of permanently affordable units.

c. A request that would result in a minimum of fifty percent (1.50 times the standard cash-in-lieu amount) more than the standard amount of applicable cash-in-lieu for the units required on-site but not built on-site.

3.4.3 <u>Alternative Methods of Compliance to Required Total Floor Area of Permanently Affordable Dwelling Units</u> [9-13-3(d) & 9-13-6(f) & 9-13-7(a)(2)]

Developers of permanently affordable dwelling units may request that the city manager allow them to reduce the combined or total required floor area of the permanently affordable units for a specific project.

In evaluating such requests, the manager shall consider the following:

1. The average size of the affordable units may not be reduced by greater than 20% of the required floor area under any circumstances.
2. At least one of the following is included within the request:
    a. Dedicate one or more permanently affordable units in addition to those required with floor area that is at least equal to the total deficient amount of floor area in excess of the number of affordable units required.
    b. Take the deficient amount of floor area for all proposed affordable units combined and multiply it by the applicable per square foot cash-in-lieu amount per the table below. The amount will be added as an affordable housing cash-in-lieu contribution due at the time of the building permit for that project.

Deficiency in floor area required size per unit	Cash-in-lieu multiplier (Percent of deficient square foot amount)
1 - 10%	100%
>10% to <20%	150%
>20%	Not allowed

Any portion of the amount calculated by the chart, may, at the city's discretion, be used to reduce the selling price(s) of some or all of the permanently affordable units.

c. Reduce the selling price for the proposed units to target lower income households than required.

3.4.4 <u>Alternative Methods of Compliance for Financial Alternatives and Timing When a Cash-in-lieu Contribution is Made</u> [9-13-3(d) & 9-13-8(a)]

When choosing to meet the inclusionary requirement with a cash-in-lieu (CIL) contribution, the applicant may request that the city manager allow alternative methods of compliance when the total CIL due exceeds one million dollars. In evaluating the request, the city manager shall consider whether the development can provide acceptable surety that the cash-in-lieu can be collected with minimal risk to the city.

Provisions for deferring CIL shall include but are not limited to the following:

1. For applicants choosing to contribute CIL at the time of building permit issuance, the maximum amount of cash-in-lieu that may be deferred or provided by an alternate method may not exceed fifty percent of the cash-in-lieu amount due for the development at the time of the issuance of the building permit.
2. Applicants providing the affordable units off-site may, up until the time of issuance of a certificate of occupancy, choose to default to a CIL contribution, thereby effectively deferring 100% of the CIL.
3. Any non-deferred CIL amount will be due no later than at the time of building permit issuance.
4. For developments with only one residential building permit, the full amount of the cash-in-lieu deferred including any adjustments shall be provided to the city at the time of scheduling of final inspections pursuant to issuance of a certificate of occupancy for the development.
5. For multi-building projects with multiple residential building permits, the deferred cash-in-lieu amount will be allocated proportionally for each building. The deferred amount for each building shall be paid at the time of scheduling of final inspections pursuant to issuance of a certificate of occupancy for that building.
6. On the date of the issuance of the building permit, an adjustment of 8% shall be applied to the deferred amount. This adjustment will be applied annually, thereafter.

7. There will be no prorating of the annual adjustment for partial years.

3.5 <u>Rebuilt Dwelling Units</u> [9-13-3(e)]

In the event that a development with four or fewer dwelling units is proposed for a site at which an existing dwelling unit will be removed, inclusionary housing requirements may be waived for the new dwelling units if the applicant applies for a building permit within three years of the date of any permit that results in the removal of a unit. This waiver expires if a building permit is not issued within four years of application. This waiver shall not be issued in any of the following circumstances:

1. The dwelling unit to be removed, at the time of removal, is considered to be an unsafe structure, a structure unfit for human occupancy, or a dangerous structure under the 1997 Uniform Code for the Abatement of Dangerous Buildings, Section 302 adopted by the city by section 10-5-3, B.R.C., unless otherwise excepted by the Boulder Revised Code.
2. The development to be removed contains five or more dwelling units or the redevelopment contains five or more dwelling units.

In developments where the waiver applies, if the developer is meeting an inclusionary housing requirement on the new development by making a cash-in-lieu contribution based on the square foot calculation, the credit for the removed unit shall be equal to the average square footage of the proposed new dwelling units. When the developer is making a cash-in-lieu contribution based on the unit calculation, the credit for one removed unit shall be one unit.

3.6 <u>Covenant(s) Required</u> [9-13-3 (f)]

When permanently affordable units are provided on or off-site, a covenant to insure permanent affordability of the homes shall be signed by the owner of the property and recorded in the records of Boulder County. All covenants run with the land as a permanent encumbrance on the property. Covenants include but are not limited to an Interim Homeownership Covenant, a Permanently Affordable Homeownership Covenant or a Permanently Affordable Rental Covenant.

Definitions:

An **Interim Homeownership Covenant** is used when a development is to be subdivided or condominiums created prior to sale of the housing to the homeowner and secures the owner's commitment to produce affordable units including the following requirements:

1. How many, and which units will be deed restricted as permanently affordable;
2. The number of bedrooms, bathrooms, square footage of each unit; and
3. The initial maximum allowable sales price of the units.
4. The city's fair marketing procedures;
5. Buyer selection process;
6. Notification; and
7. Other program requirements.

The Interim Homeownership Covenant is replaced with a Permanently Affordable Covenant for each affordable unit when the subdivision or declaration of condominium is finalized.

The **Permanently Affordable Homeownership Covenant** is signed by the owner of the property. The owner may be the developer if the permanent covenant is to replace the Interim Homeownership Covenant, or it may be the ultimate purchaser of the unit and recorded at the time the purchaser receives title to the property.

The permanently affordable homeownership covenant commits the owner and all subsequent buyers to:

1. Sell only to an income-eligible purchaser;
2. Sell only at an affordable price as described in the covenant;
3. Follow the city's fair marketing procedures;
4. Grant the city a first option to buy the property;
5. Limit appreciation the seller may receive;
6. Follow the capital improvement credit policy of the city;
7. Agreements about excessive damage and home maintenance;
8. Rental restrictions; and
9. Owner occupancy requirements.

The Permanently Affordable Rental Covenant is signed by the owner of the property. Affordable rental units must be owned all or in part by a housing authority or similar agency or otherwise in the city's determination meet the requirements of section 38-12-301, C.R.S., titled "Local Control of Rents Prohibited". The permanently affordable rental covenant commits the owner as landlord to:

1. Control the rents charged and income requirements for the occupancy of the property;
2. Maintain annual leases which protect the rights of the tenant and landlord;
3. Adopt written tenant selection policies which are consistent with the fair housing marketing guidelines established by the city manager;
4. Assure the city's right to acquire the owner's interest in the event of foreclosure; and
5. Maintain the property in good, safe and habitable conditions.

3.7 <u>Good Faith Marketing Required</u> [9-13-3(g)]

Elements of a good faith marketing effort for homeownership units shall include the following:

1. Hosting at least two open houses or showing the home to all interested buyers by appointment;
2. Listing all properties in the Multiple Listings Service (MLS) or placement of at least two advertisements during separate weeks in a local newspaper of general circulation;
3. Provision of information about each property to the City of Boulder, including square foot, number of bedrooms, price and amenities, so that such information may be disseminated by the City of Boulder; and
4. Maintaining each unit on the open market for a period to be determined by the city manager which shall not exceed two months.

The seller shall maintain a marketing log that shows the advertisements and other information that were disseminated about the sale and keep a list of prospective buyers who have expressed interest in an advertised permanently affordable unit. The City of Boulder, upon request, shall have a right to review such log and written materials to ensure that a fair marketing effort was implemented.

At the conclusion of the mandatory marketing period, if more than one income-certified buyer has expressed an interest in purchasing the property, the City of Boulder Division of Housing shall utilize a fair selection process to select among the prospective purchasers. Preference may be given including but not limited to the following:

1. A household that lives and works in the City of Boulder;
2. A household that works in the City of Boulder;
3. A household that lives in the City of Boulder;
4. A household that has been income certified and placed on the City of Boulder's referral list for at least one year; and,
5. A household with dependents.

Income-certified buyers who have viewed a property and wish to be considered in the selection process shall file an Intent to Purchase form referencing the property with the city no later than twenty-four hours before the end of the mandatory marketing period.

Upon the expiration of the mandatory marketing period, if only one income-certified buyer has filed an “Intent to Purchase” the property, the seller may enter into a contract with that buyer that meets the affordable housing requirements of the city and the terms of the covenant.

3.8 Income Eligible Household [9-13-3(i)]

"Household", also referred to as qualified low-income purchaser, is defined in the same manner as in 24 CFR 92.2 of the United States Central Federal Register or such similar requirement of the United States applicable to the city.

"Income" will be defined in the same manner as it is in 24 CFR 5.609 United States Central Federal Register or such similar requirement of the United States applicable to the city.

A household seeking to be eligible to purchase a permanently affordable unit shall submit to the city manager a completed Income Certification Application, Recertification Application, or valid Income Certification with required attachments, within six months from the signing of a contract to purchase, in order to verify that the household's income qualifies it to purchase a particular permanently affordable unit.

Households entering into a contract to purchase a permanently affordable unit that is in the process of being built must be income eligible at the time the contract is signed. [9-13-8]

Affordability and income eligibility for home buyers are defined in terms of the Area Median Income (AMI).

3.9 **Documentation Required to Verify Income of Prospective Renters or Purchasers of Permanently Affordable Dwelling Units** [9-13-3(c) & 9-13-3(j)]

Prospective renters and purchasers of permanently affordable units shall be required to submit the following documents in order to verify that the prospective purchaser's or renter's income and assets qualify them to purchase or rent a particular permanently affordable unit:

1. A letter from the employer on letterhead indicating annual gross wage, start of employment, pay schedule, expected wage increases and any overtime, bonuses, tips or commissions or a completed employer verification form;
2. The most recent pay stubs for each wage-earner in the household for the past month. If wages varied, pay stubs for the most recent three months;
3. If self-employed, a year-to-date profit-loss statement plus the last three years of completed federal income tax forms and corresponding 1099 forms;
4. Verification of all benefit payments;
5. Verification of all other sources of income (Social Security, pension, etc.);
6. Complete copies of the two W-2s and attached schedules;
7. Bank verification form documenting the six-month average balance of all checking accounts or six months of all checking account statements;
8. Bank verification of all savings accounts, including interest rates;
9. A current statement from each asset indicating the current balance and interest rate or annual dividend earned;
10. If divorced with minor children, a copy of the divorce decree indicating division of marital assets, the custody arrangements and child support or maintenance payments;
11. Purchasers of permanently affordable units shall submit a copy of a prequalification letter from a lender of their choice demonstrating that they are financially able to purchase the unit or financial documentation that they can purchase the unit on their own; and
12. Any other documentation requested by the city manager to assist in ascertaining the income or assets of a prospective renter or purchaser.

All required documentation submitted to verify household income and assets shall be kept confidential and is not subject to public disclosure. The documentation shall be submitted to the city manager, or by written agreement from the city manager, a designated property owner.

3.10 Livability Standards [9-13-3(j)]

To ensure the safety and habitability of homes, units must meet the "Livability Guidelines and Standards for Permanently Affordable Housing" published and periodically amended by the city. Developers of permanently affordable dwelling units are required to submit documentation for each affordable unit to show compliance with the requirements. Units which do not meet these standards and will not be accepted until the standards are met or if the city determines that a modification for any deficiency is not feasible, these permanently affordable units may have a reduction of the maximum allowable sales price for the deficiency, or may be assessed a monetary penalty to be paid prior to receiving a certificate of occupancy for the building. Alternately, the city may reject the units and require payment of the cash-in-lieu amount.

3.11 Document, Agreement and Time Requirements [9-13-5(g)]

The following table includes required timelines for submitting Determination of Compliance and related forms.

Form or Action	By-right projects 1-4 housing units	By-right projects 5 or more housing units	Projects requiring land use approval
Preliminary Determination of IH Compliance & required unit data	not applicable	not applicable	Submit with land use application
Determination of IH Compliance Form (DOC)	Prior to building permit submittal Not applicable for development of one single family home making a CIL contribution	Prior to building permit submittal	Prior to building permit submittal
Amendment to the Determination of IH Compliance Agreement	Prior to building permit issuance Not applicable for development of one single family home making a CIL contribution	Prior to building permit issuance	Prior to building permit issuance
Restrictive Covenants for on-site or newly constructed or existing off-site units; recorded with the County Clerk	After the DOC is signed, prior to building permit issuance	After the DOC is signed, prior to building permit issuance	After the DOC is signed, prior to building permit issuance
Cash-in-lieu Contribution; added to the building permit amounts due upon issuance. Amount determined when the payment is made	No later than building permit issuance	No later than building permit issuance	No later than building permit issuance
Request for Alternative Methods of Compliance**	Submitted and approved or denied prior to signing the DOC and prior to building permit issuance	Submitted and approved or denied prior to signing the DOC and prior to building permit submittal	Submitted & approved or denied prior to signing the DOC and prior to building permit submittal

4.0 On-Site Development Requirement

4.1 Rounding Rule to Determine On-site Requirement for Fractions of a Unit [9-13-4(a)]

To determine the number of affordable units required to be provided on-site, standard rounding will apply. Any portion of an on-site unit less than 0.5 will be rounded down while any portion 0.5 or more will be rounded up.

4.2 Required Documents to Determine On-Site Affordable Units [9-13-4]

Before the city manager accepts a dwelling unit as a permanently affordable unit, an applicant shall submit such documents as may be required by city manager to determine the appropriate size, location, construction requirements and finish elements of the proposed permanently affordable unit. A list of the required documents will be published by the city and updated as needed.

4.3 Minimum Size Calculations [9-13-4(d)]

The minimum acceptable size for a bedroom is 90 sq. ft. The average unit size requirement will be based on the average size of each configuration of number of bedrooms and baths for all units in the development. For example a rental development with ten 800 square foot 2 bedroom units and ten 1200 square foot 3 bedroom units must dedicate 20% of the units, average size no smaller than 80% of the average size of all proposed units in each of the two categories; 2, 2 bedroom affordable units with a minimum floor area of 640 square feet each and 2, 3 bedroom affordable units with a minimum floor area of 960 square feet each are required.

4.4 Required Bathrooms [9-13-8(b), 9-13-7(2)]

The number of bathrooms required for permanently affordable units provided on or off-site shall be based on the following:

Market Unit Bedroom/Bath Configuration	Baths in Affordable Units
1 BR, 1BA	1
1 BR, 1.5 BA	1.5
2 BR, 1BA	1
2BR, 2 BA	2
2 BR 3BA	2
3 BR, 2 BA	2
3 BR, 2.5BA	2.5
3 BR, 3 BA	2.5
4 BR 3 BA	2.5
4BR, 4BA	2.5

5.0 Developments Containing a Single Dwelling Unit

6.0 Program Requirements for For-Sale Units

6.1 Maximum Sales Price for Permanently Affordable Dwelling Units [9-13-3(b)]

To determine the maximum allowable sales price that may be charged for a new permanently affordable homeownership unit, the following variables regarding unit size, unit configuration, household size and income shall be used:

Minimum Floor Area	Maximum Floor Area	Household Size	Minimum Bedrooms	Minimum Bathrooms	AMI
701 Square Feet	800 Square Feet	1	1	1	HUD Low Income Limit
901 Square Feet	1,000 Square Feet	2	2	1.5	HUD Low Income Limit
1,001 Square Feet	1,100 Square Feet	3	3	2	HUD Low Income Limit
1,301 Square Feet	1,400 Square Feet	4	4	2	HUD Low Income Limit

The following methodology is used to determine the maximum allowable sales price for new affordable homes in Boulder.

1. The income limit for Inclusionary Housing (IH) units is based on the US Department of Housing and Urban Development (HUD) determination of low income limit plus 10% for the region

containing the City of Boulder. The maximum Inclusionary Housing sales price is based on a household earning the HUD low income limit. This “window” between the income used to price homes and the income limit increases the range of households financially able to purchase the homes.

2. The sum total of all permanently affordable prices within a project may not exceed the sum of prices derived strictly from the pricing sheet. Within a project, prices may be averaged to reflect unit variables. However, no single permanently affordable unit may exceed a price that is affordable to a household earning ten (10) percent more than the HUD Low Income Limit for the City of Boulder.
3. The maximum sales price is calculated based on principal, interest, taxes, insurance, and homeowner’s association dues that do not exceed 28% of gross monthly household income. Taxes and insurance are assumed to be a percentage of the affordable housing payment as determined annually by the city manager.
4. The maximum sales price is based on a 30-year fixed-rate mortgage at prevailing interest rates. A 5% down payment is assumed.
5. Estimates of homeowner association dues are based on a survey of local HOAs.
6. Maximum sales prices are determined based on a fixed number of people per bedroom. The actual number of persons in a household can vary.
7. The bolded sales price on the Inclusionary Housing pricing sheet is the base price for a unit with a set number of bedrooms and bathrooms per the chart above and is the price required per chapter 9-13. Adjustments to that price are made for variations in unit size and number of bathrooms.
8. Interest rates are calculated quarterly.
9. The maximum allowable sales prices (MASP) for permanently affordable ownership dwelling units are finalized when the first interim or affordable covenant is signed for the affordable unit. The MASP may be adjusted by the city in order to reflect changes made to an affordable unit, such as the size or configuration of a given unit, or to account for deficiencies in the construction, fixtures, finish or features of an affordable unit however, any adjustments in the MASP for an Affordable unit shall be based upon the pricing schedule in effect at the time the first interim or affordable covenant is signed. The maximum allowable sale price is not a guaranteed price for the affordable units.

10. When a covenant is signed after the development has received a building permit and/or certificate of occupancy, the maximum allowable sales prices (MASP) for permanently affordable ownership dwelling units will be based on the pricing in place when the first residential building permit was issued for the development.
11. The price sheet and methodology for the pricing sheet will be reviewed and adjusted as needed by the city manager or designee.
12. The maximum allowable sales price for a permanently affordable unit may be adjusted when a developer provides a one to two car garage. The garage must be a fully enclosed structure, a minimum of 200 square feet, designed to house one or more automobiles, sold with the permanently affordable unit, and with access controlled by the unit owner**.**

6.2 Approved Purchasers of Permanently Affordable Dwelling Units [9-13-6(c)]

Only those households which have completed the forms of the city to qualify as an eligible purchaser and have a valid income certification acceptable by the City of Boulder may purchase a permanently affordable unit. No purchaser shall be approved to purchase a permanently affordable unit if the number of bedrooms in the permanently affordable unit exceeds the number of persons in the purchaser's household by more than one unless otherwise approved by the city manager. The city manager may create additional requirements for purchasers of permanently affordable units which further the goals of inclusionary housing. An example of such requirements includes without limitation, employment requirements.

6.3 Determination of Assets for Qualified Households [9-13-6(d)]

Qualified one-person households may not have more than $55,000 in liquid assets. For households over one person, $15,000 is added to the asset limit for each additional household member. The city manager may adjust the one person household and additional household member limits and will determine annually the asset limits for middle income, recently divorced and retired households. The city manager will determine a certain amount of retirement assets, depending on the ages of the household members, to be exempt from the asset limit.

6.4 Determination of Income Derived from Assets for Qualified Households [9-13-6(d)]

An asset is a cash or non-cash item that can be converted to cash based on the HUD Low Income Limit published annually by the U.S. Department of Housing and Urban Development. Annual income generated from assets or income which is imputed to assets shall be included as part of a household's annual income for purposes of determining income eligibility.

If a household has more than $5,000 in assets, an imputed income attributable to such assets shall be calculated by multiplying the value of the assets by the HUD passbook rate as reported to the city manager by CHFA (Colorado Housing Finance Authority). The greater of the actual income from assets or the imputed income attributable to assets shall be added to the household's annual income for calculating income eligibility.

Any asset disposed of for less than fair market value during two years preceding the income certification shall be considered as if the household still owned that asset.

6.5 Substitute Unfinished Floor Area for Finished Floor Area [9-13-6(f)]

Developers of permanently affordable units may request that the city manager allow them to substitute two square feet of unfinished floor area for each square foot of required finished floor area up to a maximum of 400 unfinished square feet per dwelling unit. The unfinished floor area shall be configured to allow for simple conversion to finished, habitable space.

In evaluating the requests, the manager shall consider the following:

1. Whether roughed-in plumbing fixtures for areas intended to be bathrooms or utility rooms are included in the unfinished area;
2. An adequate foundation and sound structural components;
3. Installation of adequate HVAC systems to support the finished and unfinished areas as if all is habitable;
4. Weather-resistant roofs and;
5. The ability to provide adequate automobile parking for the unfinished space once finished.

The request shall include the following information:

1. Identification of the units for which the substitution is requested;
2. A written description of the amount of substitution requested for each unit or unit type;

3. Scaled floor plans which clearly indicate the requested allowance for finished and unfinished floor area; and
4. Documentation regarding the ability of the unfinished floor area to be converted to finished, habitable floor area, including, without limitation, evidence of the soundness of the unit's structural components, ceiling heights, construction materials, location and size of exits and windows.

6.6 <u>Size of Permanently Affordable For Sale Units</u> [9-13-6(f)]

The city manager may accept permanently affordable dwelling units larger than 1,200 square feet if they are voluntarily offered by the developer. Dwelling unit measurements for on or off site permanently affordable dwelling units are calculated using the definition of "Floor Area" Chapter 9-16-1 (c) "Definitions" B.R.C.

6.7 <u>Live Work Unit Floor Area Calculation</u> [9-13-6(f)]

Units designated by Community Planning and Sustainability as "live work units" shall be discounted 20% on total floor area for purposes of cash-in-lieu calculations only.

6.8 <u>Residency and Owner Occupancy Requirement</u> [9-13-6(g)]

Owners of permanently affordable units are required to occupy those units as their primary residence. Owner occupancy means occupying the unit ten months of each calendar year.

6.9 <u>Rental Restrictions for Permanently Affordable Ownership Dwelling Units</u> [9-13-6(h)]

The property owner of a permanently affordable ownership unit shall provide written notice to the city manager of its intent to rent the permanently affordable unit prior to actually renting the unit. This written notice shall include, without limitation, the following:

1. The homeowner's name, contact telephone number and mailing address during the rental period;
2. The address of the permanently affordable unit;
3. The anticipated date the unit will be rented or leased and the duration of the lease;
4. The prospective tenant's name;
5. A copy of the lease or rental agreement to be used; and

6. A statement that the property owner agrees to comply with all applicable local, state and federal regulations pertaining to the renting of a dwelling unit.

6.10 <u>Maximum Allowable Resale Prices</u> [9-13-6(i)(2)]

The maximum allowable resale price shall be calculated on an individual basis using the original homeowner's acquisition price as the base from which calculation is made. That base price may be increased by utilization of any of the following factors:

1. An adjustment based on the value, as determined by the city manager, of eligible capital improvements installed by the seller that were approved in advance by the city manager. A list of eligible capital improvements shall be published and maintained by the city manager.
2. An annual adjustment based upon the lesser of the change in the Consumer Price Index, all Urban Areas (CPI-U) for Boulder or the AMI for Boulder up to a maximum fixed percentage change as stated in the covenant for the specific permanently affordable unit. The city manager may establish an annual minimum amount for this adjustment.

A shared appreciation factor as stated in a community land trust lease for a specific permanently affordable unit. The base price may be decreased by imposition of an excessive damage charge if the unit has not been reasonably maintained. The calculated maximum allowable sales price is not a guarantee that the unit will be resold at that price. It is anticipated that market conditions may, from time to time, cause a permanently affordable unit to be sold for less than the maximum allowable resale price.

6.11 <u>Documentation Required to Approve Purchasers on Resale of Permanently Affordable Dwelling Units</u> [9-13-6(i)(1)]

Prior to purchasing a permanently affordable unit, a prospective buyer shall be required to submit a completed Income Certification Application or valid Income Certification with required attachments in order to verify that the prospective purchaser's income qualifies them to purchase a particular permanently affordable unit.

Upon closing, the warranty deed and a copy of the HUD-1 Settlement Sheet shall be forwarded to the Division of Housing to verify the sale of the permanently affordable unit.

6.12 <u>Home Ownership Associations</u> [9-13-6]

Common Interest Ownership Communities: A) In order to preserve the affordability of the

permanently affordable units for persons of low or moderate income, the Owner acting as the Declarant of a common interest community created under the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101 et. seq. ("CCIOA") shall, for assessment purposes only, create appropriate unit type classifications for assessments for common and special expenses. The declaration of the common interest community shall contain the formula for determining the assessments for the permanently affordable units, which shall be subject to review and approval by the city manager prior to recording the declaration. It is anticipated that the formula will be based on the size of the units or a fraction or percentage of the rate of assessment for the expenses of the community for units that are not permanently affordable units; B) In accordance with C.R.S. §38-33.3-205(1)(l) of CCIOA, those portions of the declaration, and all other constituent documents of the common interest community as applicable, necessary to accomplish the restrictions and classifications for assessments and to state the restrictions necessary for the permanently affordable units, including without limitation buyer income certification, marketing to and selection of eligible buyers, sale price limitations, owner occupancy and rental limitations, shall be subject to approval by the city manager prior to the earlier of the sale of any unit or the issuance of a certificate of occupancy for the building in which such permanently affordable unit is located and may not at any time be amended without the approval of the city manager, provided that all such provisions shall be consistent with the requirements of the CCIOA.

7.0 Program Requirements for Rental Units

7.1 Maximum Allowable Rents [9-13-7(a)]

The City of Boulder shall publish annually the maximum allowable rents for required permanently affordable dwelling units developed by, in conjunction with, sold or otherwise transferred and ultimately owned entirely or in part by a Housing Authority or similar agency as permanently affordable rental units.

7.2 Sales Consideration for Rental Housing Units [9-13-7 (c)]

If a permanently affordable rental housing unit is being developed in conjunction with or sold to a Housing Authority or an approved similar agency the transaction will be regulated by the City Manager to ensure financial sustainability. Criteria for ensuring financial sustainability will include but is not limited to:

1. The income limit for renters of the unit;

2. The maximum allowed rent for the income limit;
3. Pro forma vacancy rate
4. Reasonable operating costs of the unit;
5. A calculation of net income available for debt service on the unit;
6. An identification of replacement reserve annual funding
7. Prevailing terms for multifamily debt financing; and
8. Number of persons per bedroom

8.0 Off-site Inclusionary Housing Options

When an owner of a development chooses to provide affordable units off-site, the original site that generated the inclusionary housing requirement is referred to as the "sending site". The site where the affordable units will be located is referred to as the "receiving site".

8.1 Off-Site Timing Requirements [9-13-8]

An Off-site Agreement must be signed for provision of any off-site dedicated existing or newly built affordable units or a deed signed granting land to the city prior to application for a building permit by the sending site. Cash-in-lieu contributions must be received by the city prior to issuance of a building permit.

8.2 Cash-in-lieu Adjustment [9-13-8(a)]

Cash-in-lieu amounts are adjusted annually on the first business day of July. Cash-in-lieu amounts are determined at the time payment is made to the city. For multi-building projects, the cash-in-lieu amount will be allocated proportionally for each building.

8.3 Cash-in-lieu Due [9-13-8(a)]

1. For developments with only one residential building permit, the cash-in-lieu shall be provided to the city no later than at the time of building permit issuance.
2. For multi-building projects with multiple residential building permits, the cash-in-lieu will be allocated proportionally for each building. The cash-in-lieu amount for each building shall be paid no later than at the time of the residential building permit issuance for that building.

8.4 Acceptance of Off-site Units [9-13-8(b)]

No existing unit with an existing affordability restriction, where the restriction expires in a time period greater than five years, will be accepted to meet an Inclusionary Housing requirement. Newly constructed off-site units restricted by the use of low income tax credits may be accepted by the city manager.

8.5 Number of Affordable Units Required for Off Site Receiving Sites [9-13-8(b)]

The total number of affordable units provided must equal 20% of all units built on both the sending and receiving sites. If the receiving site development only provides housing to meet the inclusionary requirement for both sites and does not include any additional market rate units, this equates to an inclusionary requirement on the receiving site equal to 25% of the total units on the sending site.

8.6 Floor Area Requirements for Off Site Receiving Sites [9-13-8(b)]

The size of the 20% affordable units required for a receiving site shall be equal, on average, to the size of all other units on that site, including affordable units provided for a separate sending site, in the development.

8.7 Livability Guideline and Standard Requirement [9-13-8 (b)]

The city manager may require that off-site affordable unit(s) be improved at the developer's expense to meet the Livability Standards described in Section 5.6 herein.

8.8 Financial Guarantee Required [9-13-8(b)]

To secure the affordable housing requirement for off-site affordable units to be completed after the sending site is issued a building permit, a financial guarantee is required.

1. When an off-site affordable unit is not accepted by the city prior to issuance of a building permit for the sending site, the applicant shall provide a financial guarantee prior to building permit issuance on the sending site to secure the affordable housing requirement until such time as the affordable unit is deemed acceptable for the affordable housing program.
2. When an on-site affordable unit is not accepted by the city prior to issuance of a certificate of occupancy on the site, the Developer shall provide a financial guarantee to secure the

affordable housing requirement until such time as the affordable unit is deemed acceptable for the affordable housing program.

3. If the financial guarantee is used to meet the inclusionary requirement, the principal plus 8% adjustment is due for the first year, plus an additional 8% adjustment annually thereafter is required.
4. The financial guarantee will be released upon issuance of a temporary certificate of occupancy and execution of an affordable covenant for the receiving site unit(s).

8.9 <u>Homeownership Association Assessment Required [9-13-8(b)]</u>

Prior to signing the Off-Site Agreement, the sending site owner is shall provide homeowner's association (HOA) documents to the city manager such that the city manager may assess the impact of the HOA on buyers of affordable units. Such information will be used to inform the city determination on acceptance or denial of the proposed unit for inclusion in the affordable housing program.

8.10 <u>Requirements for Dedicating Existing Off-Site Dwelling Units as Permanently Affordable</u> [9-13-8(b)]

Acceptance of any existing off-site unit in place of strict application of Chapter 9-13 shall be based on individual property characteristics. The city manager shall determine the process and criteria for acceptance of a deed restricted existing off-site dwelling unit as permanently affordable. Criteria for acceptance may include but is not limited to date of construction, location, initial condition of the unit, location, level of homeownership association fees and proof by the homeownership association of adequate capital reserves to ensure proper maintenance and level of required rehabilitation.

1. The city manager shall identify, if applicable, required rehabilitation or maintenance of the unit that is required before the unit will be acceptable to meet the Inclusionary Housing requirement.
2. City approval for unit rehabilitation will be based on the completed units being comparable to what would have been provided in a newly constructed unit on-site. Finishes do not have to be exactly the same as the sending site market finishes but should be functionally equivalent.
3. The city will hire, at the owner's expense, a home inspector to complete a comprehensive inspection to be used to determine the extent and scope of any required rehabilitation.

4. The city will hire, at the owner's expense, a construction inspector to monitor and ensure quality construction and all contractual requirements are met for any rehabilitation required in the Off-site Agreement.
5. The Off-site Permanently Affordable Unit (Acquisition of an Existing Unit) Agreement must be executed prior to submittal for a building permit for any sending site and may include but is not limited to the following:
    a. Process and timing requirements
    b. The total number of required affordable units;
    c. Unit type i.e. detached, town home, attached multifamily etc.;
    d. Unit size including finished and unfinished floor area;
    e. Number of bedrooms and bathrooms required;
    f. Compliance with the Livability Guidelines;
    g. Maximum allowable homeowners association dues at time of sale to an affordable buyer;
    h. Required rehabilitation and/or maintenance;
    i. Marketing and sales requirements;
    j. Maximum allowable sales price or rent;
    k. Requirement that rental units be owned all or in part by a housing authority or similar agency;
    l. Restrictive covenant requirement;
    m. Inspection requirements; and
    n. Financial guarantee requirements.

6. The city manager may require that off-site affordable unit(s) be improved at the developer's expense to meet the Livability Standards described in Section 3.10 herein.

8.11 <u>Requirements for Dedicating Newly Constructed Off-Site Dwelling Units as Permanently Affordable</u> [9-13-9(b)]

Acceptance of any newly constructed off-site unit in place of strict application of the Chapter 9-13 shall be based on individual property characteristics.

1. Process and Criteria - The city manager shall determine the process and criteria for acceptance of newly constructed off-site dwelling units as permanently affordable.
2. Location Review - Proposals to meet inclusionary housing (IH) requirements by providing newly constructed Permanently Affordable units (PAs) off-site must first have the proposed off-site location approved. The off-site location request will be reviewed to determine the degree to which it meets the following criteria:

    a. Consistent with Boulder Valley Comprehensive Plan policies for affordable housing, including 7.13 (Integration of Permanently Affordable Housing) to disperse and integrate affordable housing throughout the community;
    b. Annexed and zoned for residential use;
    c. Consistent with the land use map and the service area map;
    d. Consistent with any applicable adopted area plans;
    e. Able to support multi-modal mobility (walking, biking, and other alternatives to the single-occupant vehicle); and
    f. Compatible with adjacent uses.

    To initiate review of a proposed off-site location, the applicant submits a pre-application review form to the department of Community Planning and Sustainability (http://www.bouldercolorado.gov/www/publications/forms/201_pre-app.pdf) and includes a letter detailing specifically how the proposed location (the receiving site) will meet the above criteria. In addition, the pre-application process may also be used to request verification of the maximum residential unit density and to answer other questions the applicant may have about the proposed site.

    Staff will review the application and letter to determine if there is sufficient detail to evaluate if the proposed location adequately meets the criteria. Staff may request additional information required to make this determination. After submittal, the applicant may request a meeting with staff to discuss the pre-application.

Staff will notify the applicant in writing within 15 to 20 business days starting on the first Monday after the application is received by the city, if the off-site location is approved, approved with conditions or not approved, including a response to other questions in the pre-application.

Approval of a potential receiving site location is the first step towards approval of a proposed off-site development, however it does not ensure the off-site development will be approved. Once a determination is made the applicant may request a meeting to discuss decision and/or the comments.

3. Off-Site Affordable Housing Design Review - All proposed development sites for newly constructed affordable units where the total number of affordable units equals 20% or more and a portion of the affordable units are proposed to meet an Inclusionary Housing requirement elsewhere are required to submit an application to Community Planning and Sustainability for an Off-site Affordable Housing Design Review. Successful completion of this review is required prior to issuance of a building permit on either the sending site or the receiving site. For receiving site developments subject to other land use approvals the housing design review may be conducted concurrently with the land use review. The city manager shall determine the review process and criteria which will include but is not limited to:
    a. The review is an administrative level review approved by the city manager.
    b. The initial review will take three weeks from the start of the review track.
    c. The fees for the Off-Site Affordable Housing Design Review may be found in 4-20-43 (c), B.R.C. 1981.
    d. After the initial review, two sets of revisions are allowed at additional cost.
    e. The purpose of the review is to:

        - Ensure compliance with the Inclusionary Housing requirement that off-site affordable housing developments be of equal or better quality than the site that generated the need for the affordable units; and

- Ensure that affordable units are indistinguishable from surrounding market housing in quality, design, and general appearance.

f. The review will result in a disposition of approval, which may include conditions for building permit submittal, or denial.
g. Any review approval shall be valid for three years.

4. An Off-Site Permanently Affordable Unit (Newly Built Unit) Agreement must be executed prior to submittal for a building permit for the sending site and may include but is not limited to the following:
    a. Process and timing requirements;
    b. Total number of off-site affordable units including those affordable units required for the receiving site;
    c. Unit type i.e. detached, town home, attached multifamily etc.;
    d. Size of the unit including finished and unfinished floor area;
    e. Amount of floor area and type of use allowed in below grade space;
    f. Number of bedrooms and bathrooms required;
    g. Size of garage or location and number of parking spaces where applicable;
    h. Amount of required storage space;
    i. Maximum allowable homeowners association fees at time of sale to an affordable buyer;
    j. Successful completion of the Off-site Affordable Housing Design Review;
    k. City review and approval of proposed structural, electrical, mechanical and other system elements; City review and approval of building materials: roofing, siding, furnace, landscaping; heating and cooling systems, flooring and bath and kitchen fixtures, appliances and cabinets;
    l. Penalties for non-performance in completing the permanently affordable units;
    m. Inspections during the construction process;
    n. Process and requirements for marketing and completing the sale;
    o. Maximum allowable sales price or rent; and

p. Requirement that rental units be owned all or in part by a housing authority or similar agency; and
q. Financial Guarantee requirements.

5. The city will hire, at the applicant's expense, a construction inspector to monitor and ensure quality construction and all contractual requirements are met for any rehabilitation required in the off-site agreement.
6. When off-site units are allowed to be provided in developments with more than 20% affordable owners additional requirements may be included in the Off-site Permanently Affordable Unit Agreement as determined by the city manager. Such requirements may include but are not limited to the following:

   a. The city housing division shall review and approve the site plan. Factors that may be taken into account include: overall layout of the buildings, parking and open spaces, landscaping, location of affordable units within the development, presence of excessive noise or other nuisance conditions.
   b. The applicant will provide, at its expense, city-approved HOA training to the buyers of the Off-Site Units within one month of closing on the final unit. The HOA budget and management plan shall be based on a reserve study to determine reasonable and accurate reserve levels and shall provide for the use of a professional management company.
   c. The amount and location of parking spaces and or garages where applicable.