

INCLUSIONARY HOUSING ORDINANCE  
ADMINISTRATIVE REGULATIONS

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**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

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## 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 to which an ordinance may be applied, so it is anticipated that these may be amended or supplemented from time to time. These rules are intended to be consistent with B.R.C. Chapter 9-13 Inclusionary Housing , 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.

These regulations are organized and numbered to mirror the sections of Chapter 9-13. The chapters have the same title as the corresponding chapter in the B.R.C. For example, the administrative regulations for Chapter B.R.C. 9-13-3, General Inclusionary Housing Requirements may be found in section 3.0 General Inclusionary Housing Requirements of these regulations.

### **Definitions**

Most definitions used in Chapter 9-13 may be found in Chapter 9-16 of the B.R.C. However, some terms used in the regulations are not found in the inclusionary ordinance and are provided here:

*"Dwelling unit, attached"* means nine or more dwelling units within a structure.

*"Dwelling unit, townhome and attached small"* means any number of townhomes and buildings with two to eight attached dwelling units.

*"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.

*"Household"* also referred to as qualified low-income purchaser or renter, 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. Affordability and income eligibility for home buyers are defined in terms of the Area Median Income (AMI) or the HUD low income limit.

## **1.0 Findings**

There are no administrative regulations for this section of the B.R.C.

## **2.0 Purpose**

There are no administrative regulations for this section of the B.R.C.

## **3.0 General Inclusionary Requirements**

### **3.1 For-Sale Unit Distribution and Pricing**

- a. In developments with twenty or fewer total units (market and affordable) all required affordable units shall be priced to be affordable to middle-income households.
- b. Developments of twenty-one units or greater:
  - i. When fifty percent to seventy-four-point nine percent (50%-74.9%) of the required for-sale affordable units are provided on-site, the unit pricing mix of eighty percent (80%) low/moderate-income and twenty percent (20%) middle-income units shall apply. For example, if twenty affordable units are required and half (ten) are provided on-site, then eight shall be priced to be affordable to low/moderate-income households and two shall be priced to be affordable to middle-income households.
  - ii. If seventy-five percent (75%) or greater of the required for-sale affordable units are provided on-site, the unit pricing mix shall be fifty percent (50%) low/moderate-income and fifty percent (50%) middle-income units. For example, if twenty-four affordable units are required and three quarters (sixteen) are provided on-site, then eight shall be priced to be affordable to low/moderate-income households and eight shall be priced to be affordable to middle-income households.
- c. Unit pricing will be assigned in the following order:
  - i. All zero-bedroom units that meet the intent of Chapter 9-13 shall be assigned low/moderate-income pricing.
  - ii. Once the low/moderate-income requirement has been met, zero-bedroom units may be assigned middle-income pricing at eighty percent (80%) of AMI.
  - iii. Notwithstanding ii. above, low/moderate-income pricing shall be assigned to smaller units and middle-income pricing shall be assigned to larger units.

- iv. Middle-income units shall be allocated in a rotating manner of eighty (80%), one-hundred (100%), one-hundred twenty (120%) AMI pricing, in that order.
- v. An alternative distribution that meets the intent of Chapter 9-13 B.R.C may be approved by the city manager.
- vi. Rounding Rule: In determining the pricing of affordable units, any fractional value with a decimal point that is point five (0.5) or greater will be made whole by transferring the percent needed to make a whole number from a lower price category. The resulting unit will be assigned to the lower price category. For example; a requirement of sixteen (16) units which requires that eighty percent (80%) of the units be priced for low/moderate-income households results in twelve point eight (12.8) units priced for low/moderate-income households. The point eight (.8) will be made whole and the unit(s) assigned to the lower price category. In this case, the twelve point eight (12.8) is adjusted to thirteen (13) units priced for low/moderate-income households with the remaining three (3) units priced to be affordable to middle-income households.

### **3.2 Rental Unit Distribution and Rents**

- a. When fewer than one-hundred percent (100%) of the affordable rental units are provided on- or off-site, the low/moderate-income household requirement shall be satisfied first. For example, a project with one hundred (100) units would have an inclusionary requirement of twenty-five (25) affordable units. Of these eighty percent (80%), or twenty (20), must be affordable to low/moderate-income households. If half of the units, thirteen (13), are provided on-site, then all thirteen (13) must be affordable to low/moderate-income households.
- b. Middle-income rents shall be affordable to households at eighty percent (80%) of the AMI only.

### **3.3 Inclusionary Housing Requirements for Group Quarters**

Inclusionary housing requirements do not apply to 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 as defined in these regulations or the group quarter is a "not-for-profit- permanently affordable cooperative" per Ordinance 8119. Inclusionary housing will apply to any such group quarters.

### **3.4 Inclusionary Housing Requirements for Attached Accessory Dwelling Units and Detached Accessory Dwelling Units**

Inclusionary housing requirements do not apply to Attached Accessory Dwelling Units or Detached Accessory Dwelling Units as defined in Chapter 9-16.

### 3.5 Required Documents for Affordable Units

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 legal ownership, legal signatory, appropriate size, location, construction requirements fixtures, appliances, finish elements and compliance with the Livability Standards of the proposed permanently affordable unit. Concurrent to the execution of any Covenant, a Promissory Note and Deed of Trust in the amount of ten dollars (\$10) may be required. A list of required documents will be published by the city and updated as needed.

### 3.6 Covenant(s) Required

When permanently affordable units are provided on- or off-site, one or more deed restricting covenants to ensure permanent affordability of the homes shall be signed by the owner of the property and recorded in the records of Boulder County. Covenants include but are not limited to: The Homeownership Land Covenant, Interim Homeownership Covenant, Permanently Affordable Homeownership Covenant and the Rental Land Covenant, Permanently Affordable Rental Covenant.

#### Covenant Definitions:

- a. The **Permanently Affordable Homeownership Land Covenant** is executed with the developer when affordable for-sale units are provided within a common interest community, this covenant is used to secure permanent affordability long term in the event the common interest community is terminated. It may include, but is not limited to the following terms:
  - i. Parcel legal description;
  - ii. Total number of units to be deed restricted;
  - iii. The identifying unit number or letter for each permanently affordable unit;
  - iv. The number of bedrooms, bathrooms, and floor area of each unit;
  - v. The initial maximum allowable sales price for each unit;
  - vi. Purchaser income limits;
  - vii. Required fair marketing procedures;
  - viii. Buyer selection process;
  - ix. Notification; and
  - x. Other program requirements.
- b. The **Interim Homeownership Covenant** may be executed with the developer prior to subdivision or finalization of condominium declarations of a development parcel. This covenant secures the developer's commitment to produce affordable

units short term until the land or final covenant can be executed on the subdivided parcel or condominium. It may include, but is not limited to the following terms:

- i. Parcel legal description;
- ii. Total number of units to be deed restricted;
- iii. The identifying unit number or letter for each permanently affordable unit;
- iv. The number of bedrooms, bathrooms, and floor area of each unit;
- v. The initial maximum allowable sales price for each unit;
- vi. Purchaser income limits;
- vii. Required fair marketing procedures;
- viii. Buyer selection process;
- ix. Notification; and
- x. Other program requirements.

- c. The **Permanently Affordable Homeownership Covenant** is executed with a program certified buyer of an individual unit once the unit is legally identified as a condominium or on individual units sold with the underlying land. This covenant is executed upon the first sale to an affordable buyer and on each subsequent sale. The permanently affordable homeownership covenant commits the owner and all subsequent buyers to a set of rules and obligations which include, but are not limited to:

- i. Unit legal description;
- ii. The owner may only sell to a program-certified purchaser;
- iii. Maximum allowable income limits of purchasers;
- iv. The owner may only sell at the affordable price as described by the formula in the covenant;
- v. Owners must follow the city's fair marketing and buyer selection procedures;
- vi. Grants the city a first option to purchase the property or acquire an owner's interest;
- vii. Limits on the amount of appreciation the seller may receive;
- viii. Capital improvement credit policies;
- ix. Agreements about excessive damage and home maintenance;
- x. Limitations of financing;
- xi. Restrictions on renting the home; and
- xii. Owner occupancy requirements.

- d. The **Interim Rental Covenant** may be executed with the developer prior to subdivision or finalization of condominium declarations of a development parcel. This Covenant secures the developer's commitment to produce affordable units



short term until a Rental Covenant can be executed on the subdivided parcel or condominium. It may include, but is not limited to the following terms:

- i. Parcel legal description;
- ii. Level of rents which may be assessed;
- iii. The city's right to acquire the owner's interest in the event of foreclosure;
- iv. Compliance with the City of Boulder rental manual as it may be amended;
- v. Maintain the property in good, safe and habitable conditions; and
- vi. Reporting and record retention requirements.

- e. The **Permanently Affordable Rental Land Covenant** may be executed with the developer when affordable rental units are provided within a common interest community, this covenant is used to secure permanent affordability long term in the event the common interest community is terminated. It may include, but is not limited to the following terms:

- i. Parcel legal description;
- ii. Level of rents that may be assessed;
- iii. Income restriction requirements for renters;
- iv. The city's right to acquire the owner's interest in the event of foreclosure;
- v. Compliance with the City of Boulder rental manual as it may be amended;
- vi. Maintain the property in good, safe and habitable conditions; and
- vii. Reporting and record retention requirements.

- f. The **Permanently Affordable Rental Covenant** is executed with the developer on the parcel(s) or condominium where the affordable rental units are located. The permanently affordable rental covenant commits the owner and all subsequent buyers to a set of rules and obligations which include, but are not limited to:

- i. Parcel legal description;
- ii. Level of rents that may be assessed;
- iii. Income restriction requirements for renters;
- iv. The city's right to acquire the owner's interest in the event of foreclosure;
- v. Compliance with the City of Boulder rental manual as it may be amended;
- vi. Maintain the property in good, safe and habitable conditions; and

vii. Reporting and record retention requirements.

### **3.7 Good Faith Marketing Required**

- a. Elements of a good faith marketing effort for homeownership units shall follow a marketing plan as prescribed by the city manager which may include, but not are limited to the following:
  - i. Host a minimum of two open houses or commitment to show the home to all interested buyers by appointment;
  - ii. List all properties in the Multiple Listings Service (MLS) or place at least two notices in publicly accessible locations as approved by the city;
  - iii. Provide information about each property to the City of Boulder for marketing purposes including; square footage, number of bedrooms, number of bathrooms, type and availability of amenities, estimate of property taxes, HOA fees, photographs and similar information deemed necessary to market the home, and
  - iv. Maintain each unit on the open market for a period to be determined by the city manager which shall not exceed two months during which contracts may not be submitted or accepted.
  
- b. If a home is on the market for over one-hundred and twenty (120) days and the seller is following all city marketing requirements, then it may be rented for up to twelve (12) months through a month to month lease during which marketing must continue. After the twelve-month period the marketing must continue until the home is sold. This rental provision may only be utilized once.

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 program - 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 to the following:

- i. A household with at least one member that has worked in the City of Boulder continuously for a minimum of one year and has been continuously certified by the homeownership program for a minimum of one year;
- ii. A household with at least one member that has worked in the City of Boulder continuously for a minimum of one year and has been certified by the homeownership program for less than one year;

- iii. A household with at least one member that has worked in the City of Boulder for less than one year and has been continuously certified by the homeownership program for a minimum of one year;
  - iv. A household with at least one member that has worked in the City of Boulder for less than one year and has been certified by the homeownership program for less than one year;
  - v. A household that does not have at least one member that works in the city of Boulder and has been continuously certified by the homeownership program for a minimum of one year.
- c. Within each category above, for homes with specific characteristics, any household with these characteristics will be prioritized:
- i. Notwithstanding b. above, a household that includes a permanently disabled member will not be subject to the “work in Boulder” standard and will be placed in category i. or ii. above.
  - ii. A household with a demonstrated need for accessible design features if the available home has the needed accessible design features; and
  - iii. A household with minor dependents.
- d. 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.
- e. Program-certified buyers who have viewed a property and wish to be considered in the selection process shall file a Selection Process Entry Form and follow a selection process as determined by the city manager.

Upon the expiration of the mandatory marketing period, if only one program-certified buyer has filed a Selection Entry Form for the property, the seller may enter into a contract with that buyer that meets the affordable housing requirements of the City of Boulder and the terms of the covenant.

### **3.8 Program Certified Household**

"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.

A household seeking to be eligible to purchase a permanently affordable unit shall submit to the city manager a completed Certification Application, Recertification Application, or valid Program Certification with required attachments within a time-period determined

by the city not to exceed one year, in order to verify that the household's income and assets qualify 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.

Affordability and income eligibility for home buyers are defined in terms of the Area Median Income (AMI) or the US Department of Housing and Urban Development (HUD) low income limit.

### 3.9 Documentation Required to Verify Income of Prospective Renters or Purchasers of Permanently Affordable Dwelling Units

All adult household members seeking to reside in a permanently affordable unit shall be required to submit documentation as determined by the city manager to verify the household meets the income, assets, and other requirements needed to qualify to purchase or rent a particular permanently affordable unit. Documentation shall be submitted to the city manager or their designee, or by written agreement from the city manager.

### 3.10 Document, Agreement and Time Requirements

The following table includes required timelines for submitting the determination of compliance, covenant, agreement and other required forms and contracts.

Form or Action	By-right projects 1-4 dwelling units	By-right projects 5 or more dwelling units	Projects with 5 or more dwelling units requiring land use approval
Preliminary Determination of Inclusionary Housing Compliance	Not applicable	Not applicable	Submit with land use application
Unit Data Spreadsheet	Prior to any residential building permit submittal. Not applicable for development of one single-family home making a cash-in-lieu contribution	Prior to any residential building permit submittal	Submit with land use application
Determination of Inclusionary Housing Compliance Form (DOC)	Prior to building permit submittal Not applicable for development of one single family home making a cash-in-lieu contribution	Prior to any residential building permit submittal	Prior to any residential building permit submittal
Amendment to the DOC	Prior to building permit issuance. Not applicable for development of one single-family home making a cash-in-lieu contribution	Prior to any residential building permit issuance	Prior to any residential building permit issuance
Restrictive Covenants	Prior to any residential building permit submittal	Prior to any residential building permit submittal	Prior to any residential building permit submittal
Off-site Agreement	Not applicable	Prior to any residential building permit submittal	Prior to any residential building permit submittal

<b>On-site Agreement</b>	Not applicable	Prior to any residential building permit submittal	Prior to any residential building permit submittal
<b>Cash-in-lieu Contribution</b>	No later than any residential building permit issuance	No later than any residential building permit issuance	No later than any residential building permit issuance
<b>Request for Alternative Methods of Compliance</b>	Submitted and approved or denied prior to any residential building permit issuance	Submitted and approved or denied prior to any residential building permit issuance	Submitted and approved or denied prior to any residential building permit issuance

#### 4.0 Affordable Housing Design Review

The city manager has adopted an administrative level Affordable Housing Design Review. Any receiving site, on-site building, or development that receives city housing funding with greater than twenty five percent (25%) affordable units and located in a development with greater than five (5) units, which does not complete a site review or form-based code review pursuant to Title 9, B.R.C. 1981, is required to complete the Affordable Housing Design Review. Successful completion of this review is required prior to submittal of a building permit for the proposed development. The purpose of the review is to ensure:

- a. Exteriors of buildings present a sense of permanence and building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area;
- b. Buildings are constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing;
- c. The affordable housing is consistent with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community;
- d. The site and building are designed to a human scale and promote a safe and vibrant pedestrian experience;
- e. The development includes usable open space and safe convenient circulation, access, parking and connections that support multi-modal mobility; and
- f. The development meets all requirements of the Inclusionary Housing Ordinance, Chapter 13, B.R.C. 1981, and these Administrative Regulations.

#### 4.1 Design Review Process

Application for the affordable housing design review will be considered through a Planning and Development Services administrative review process. An attachment to the administrative review application will include a copy of these rules that will govern the review.

- a. Administrative Review
  - i. Any Off-site Affordable Housing Design Review fees, as prescribed in section 4-20-43, "Development Application Fees," B.R.C. 1981, will be applicable.
  - ii. The review will result in approved final architectural and site plans.

1. Final Approved Plans: The applicant shall file a paper or electronic copy containing the approved site plan and any conditions approved by the approving agency. The paper or electronic copy shall be filed with the city manager, who will endorse and date the approved site plan. The location of the approved development will be included on an official map showing development in the City. The paper or electronic copy will remain on file in the planning department.
  2. Expiration: Unless expressly waived by the city manager for good cause, pursuant to a request made prior to expiration of the approval, if the applicant fails to file the final approved plans according to the specifications in Subsection (b) above or sign the development agreement within ninety days of final approval, the approval expires.
- iii. The review will be approved in whole with conditions or denied. Two resubmittals are allowed to address city staff's review comments. The applicant shall be afforded a maximum of sixty days to make any corrections or changes recommended by the city manager. If corrections or changes are not submitted in the prescribed time period, the application shall be considered withdrawn.
  - iv. The city manager will provide a written disposition of approval or denial, with the reasons for denial to the applicant, appeal body, and to any person that requested notification of the final decision. A decision not referred or appealed to the planning board is final fourteen days after the date of approval indicated on the disposition.
  - v. No application for a residential building permit may be submitted until the review is completed and approved with or without conditions.
  - vi. The city manager may approve, without notice, minor modifications to the approval under the procedures prescribed by Subsection 9-2-14(k), B.R.C. 1981.
- b. Submittal requirements: A person having a demonstrable property interest in land to be included in a development review may file an application for approval on a form provided by the city manager that shall include the following
- i. Legal description;
  - ii. Written consent of all property owners;
  - iii. Improvement survey or an improvement location certificate by a registered surveyor;
  - iv. Colors and materials samples;
  - v. Written statement addressing the review criteria in Section (c) below;
  - vi. Development schedule;

- vii. Copies of any special agreements, conveyances, restrictions, or covenants that will govern the use, maintenance, and continued protection of the goals of the project and any related parks, recreation areas, playgrounds, outlots or open space;
- viii. Site development plans, drawn to a standard scale not less than 1" = 20' (not larger than 18"x24" folded to 9"x12") showing the major details of the development, including the location of existing and proposed buildings, usable open space, off-street parking areas, off-street loading areas, service and refuse areas, means of ingress and egress, circulation pattern, landscaping, screening, signs, and all easements. (The site plan should be based on an improvement survey or improvement location certificate for the property.);
- ix. Architectural plans drawn to a standard architectural scale sufficient to show the details of the drawing (no less than 18"x24" and no larger than 24"x36," folded to 9"x12") of existing structure(s), proposed structure(s), any proposed additions or renovations. The plans must include architectural floor plans and building elevations showing exterior colors and materials and any anticipated roof top appurtenances. If new residential units are proposed, include floor plans with details sufficient for the Livability Review. Label each unit with a discreet unit identifier and total floor area per B.R.C 9-16 Floor Area. Include documentation of useable open space and how the proposal accommodates pedestrians including proposed uses, percent of transparent materials (glass) on the ground level, and proposed signage and graphics;
- x. Land Use Review Project Fact Sheet. Proof of ownership of the property, in the form of a current title insurance commitment or attorney memorandum based on an abstract of title, current to within 30 days;
- xi. The fee prescribed by section 4-20-43(c)(d), " Affordable housing design review fees," B.R.C. 1981, for the type of review requested; and
- xii. Any other information the applicant wishes to submit.

## **4.2 Review Criteria**

### **a. Boulder Valley Comprehensive Plan and Area Plans**

- i. The proposed site plan and development is consistent with the land use map and the service area map and, on balance, the policies of the Boulder Valley Comprehensive Plan.
- ii. The proposed development shall not exceed the maximum density associated with the Boulder Valley Comprehensive Plan residential land use designation. Additionally, if the density of existing residential development within a three-hundred-foot area surrounding the site is at or exceeds the density permitted in the Boulder Valley Comprehensive Plan, then the maximum density permitted on the site shall not exceed the lesser of:
- iii. The density permitted in the Boulder Valley Comprehensive Plan, or

- iv. The maximum number of units that could be placed on the site without waiving or varying any of the requirements of Chapter 9-8, "Intensity Standards," B.R.C. 1981, except as permitted for building sites with permanently affordable units meeting the requirements of Paragraph 9-10-3(c)(4), "Nonconforming Permanently Affordable Units," B.R.C. 1981.
- v. The proposed development's success in meeting the broad range of BVCP policies considers the economic feasibility of implementation techniques required to meet other review criteria.
- vi. The proposed site plan and development is consistent with any applicable area plans.

b. Building Design, Livability, and Relationship to the Existing or Proposed Surrounding Area.

- i. Projects are designed to a human scale and promote a safe and vibrant pedestrian experience through the location of building frontages along public streets, plazas, sidewalks and paths, and through the use of building elements, design details and landscape materials that include, without limitation, the location of entrances and windows, and the creation of transparency and activity at the pedestrian level.
- ii. For residential projects, noise is minimized between units, between buildings, and from either on-site or off-site external sources through spacing, landscaping, and building materials.
- iii. Buildings are constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing.
- iv. Exteriors of buildings present a sense of permanence through the use of authentic materials such as stone, brick, wood, metal or similar products and building material detailing.
- v. The building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area or the character established by adopted design guidelines or plans for the area.
- vi. The height of buildings is in general proportion to the height of existing buildings and the proposed or projected heights of approved buildings or approved plans or design guidelines for the immediate area.
- vii. The orientation of buildings minimizes shadows on and blocking of views from adjacent properties.
- viii. If the character of the area is identifiable, the project is made compatible by the appropriate use of color, materials, landscaping, signs, and lighting.

c. Open space including, without limitation, parks, recreation areas, and playgrounds.



- i. Useable open space is arranged to be accessible and functional and incorporates quality landscaping, a mixture of sun and shade and places to gather.
  - ii. The project provides for the preservation of healthy long-lived trees.
  - iii. The open space provides a relief to the density, both within the project and from surrounding development.
  - iv. Open space designed for active recreational purposes is of a size that it will be functionally useable and located in a safe and convenient proximity to the uses to which it is meant to serve.
  - v. The open space provides active areas and passive areas that will meet the needs of the anticipated residents, occupants, tenants and/or visitors of the property and are compatible with the surrounding area or an adopted plan for the area.
- d. Circulation and access including, without limitation, the transportation system that serves the property, whether public or private and whether constructed by the developer or not.
  - i. High speeds are discouraged or a physical separation between streets and the project is provided.
  - ii. Potential conflicts with vehicles are minimized.
  - iii. Safe and convenient connections are provided, which support multi-modal mobility through and between properties, accessible to the public within the project and between the project and the existing and proposed transportation systems, including, without limitation, streets, bikeways, pedestrian ways and trails.
  - iv. The amount of land devoted to the street system is minimized; and
  - v. The project is designed for the types of traffic expected, including, without limitation, automobiles, bicycles, and pedestrians, and provides safety, separation from living areas, and control of noise and exhaust.
- e. Parking
  - i. The project incorporates into the design of parking areas measures to provide safety, convenience, and separation of pedestrian movements from vehicular movements.
  - ii. The design of parking areas makes efficient use of the land and uses the minimum amount of land necessary to meet the parking needs of the project.
  - iii. Parking areas are designed to reduce the visual impact on the project, adjacent properties, and adjacent streets.
- f. Inclusionary Housing Ordinance
  - i. The project meets the city livability standards for affordable housing.

- ii. The project meets all other standards and rules in the Inclusionary Housing Ordinance and these Administrative Regulations.

**5.0 Livability Standards for Permanently Affordable Units (“Livability Standards”)**

Developers of permanently affordable dwelling units are required to submit documentation to show compliance with the Livability Standard requirements. Permanently affordable units, buildings and developments that do not meet these standards will not be accepted until the deficiency is addressed per this section of the regulations.

If a deficiency is identified the affordable unit must be improved to meet these standards. If the city determines that a modification for any deficiency is not feasible, the city manager may allow a reduction of the maximum allowable sales price or rent to off-set the deficiency, or the developer may be assessed a monetary amount to off-set the deficiency. Any monetary amount must be paid prior to receiving a certificate of occupancy for the unit or building. Alternately, the city manager may reject the units and require satisfaction of the inclusionary requirement by alternate means.

If a proposed permanently affordable unit cannot meet the Livability Standards within the minimum allowable unit size, the unit shall be enlarged to accommodate the Livability Standards.

The city manager may require that on- or off-site affordable unit(s) be improved at the developer’s expense to meet the Livability Standards.

**6.0 Quality, Size and Amenities for Affordable Units**

**Permanently Affordable Dwelling Unit Size**

Permanently affordable unit sizes shall be determined based on the average size of all units in the development that generated the inclusionary requirement, including those proposed as permanently affordable unless the proposed affordable units are aggregated in one building. Such units shall not be included in the calculation for affordable unit size. The calculation shall be determined separately by number of bedrooms.

Affordable units provided off-site shall be determined based on the average size of all units in the development that generated the inclusionary requirement (i.e., the sending site). Affordable units required for a receiving site shall be equal, on average, to the size of all other units on that site regardless of the number of bedrooms, including affordable units provided by the sending site.

**Affordable Unit Size Requirements\***

<b>Affordable Units*</b>	<b>Minimum Floor Area** – as compared to the</b>	<b>Maximum Floor Area*</b>	<b>Maximum Floor Area* Middle Income (Square Feet)</b>
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	<b>average size of all units in the development</b>	<b>Low/moderate Income (Square Feet)</b>	
Micro Unit (180–300 sq. ft.)	Equal	1,200	1,200
Studio/Zero-bedroom	Equal or 600 sq. ft., whichever is smaller	1,200	1,200
One-bedroom	Equal or 700 sq. ft., whichever is smaller	1,200	1,200
Two-bedroom	80%	1,200	1,200
Three-bedroom	80%	1,400	1,600
Four-bedroom	80%	1,400	1,600

This table is not applicable to affordable units proposed to satisfy the inclusionary requirement on a receiving site.

For any unit with two (2) or more bedrooms, the first bedroom shall be a minimum of one-hundred twenty (120) square feet. Additional bedrooms shall be a minimum of ninety (90) square feet. No bedroom shall be less than nine (9') feet wall to wall.

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 unless the proposed affordable units are aggregated in one building. Such units shall not be included in the calculation for affordable unit size. For example, a rental development with twelve (12) eight-hundred (800) square foot, two-bedroom units, and; twelve (12) twelve-hundred (1,200) square foot, three-bedroom units must dedicate twenty five percent (25%) of the number of units. Each dedicated unit must be at least eighty percent (80%) of the average size of all proposed units in each of the two-bedroom size categories. In this example, the development would owe:

- Three (3) two-bedroom affordable units with a minimum floor area of six-hundred forty (640) square feet in each unit; and
- Three (3) three-bedroom affordable units with a minimum floor area of nine-hundred sixty (960) square feet in each unit.

The city manager may accept permanently affordable dwelling units larger than the maximum floor area if voluntarily offered by the developer.

## 7.0 Required Bathrooms

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

<b>Market Unit Bedroom (BR)/ Bath (BA) Configuration</b>	<b>Minimum Baths in Affordable Units</b>
0 or 1 BR, 1BA	1

1 BR, 1.5 BA	1.5
2 BR, 1BA	1
2BR, 2 or more BA	2
3 BR, 2 BA	2
3 or 4 BR, 2.5 or more BA	2.5

## 8.0 Location and Timing

There are no administrative regulations for this section of the B.R.C.

## 9.0 Developments Containing a Single Dwelling Unit

There are no administrative regulations for this section of the B.R.C.

## 10.0 Options for Satisfaction of the Inclusionary Housing Requirement

### 10.1 Cash-in-lieu

#### a. Cash-in-lieu Amounts.

- i. Unless otherwise authorized by the city manager pursuant to Section 3.4.4 herein, developments shall provide any applicable cash-in-lieu to the city no later than at the time of issuance of the residential building permit;
- ii. Developments with multiple buildings and multiple residential building permits shall be required to provide a proportional, based on number of units, amount of cash-in-lieu determined for each building;
- iii. For-sale developments that provide fifty percent (50%) or greater of the required affordable units on-site will have the remaining cash-in-lieu reduced by fifty percent (50%); and
- iv. Cash-in-lieu amounts are adjusted annually on the first business day of July. Cash-in-lieu amounts are based on the amount in place when the payment is made to the city.
- v. Cash-in-lieu amounts shall be adjusted base on unit size up to a maximum of 1,200 square feet.

- b. **Affordability Gap.** The affordability gap is used to determine the cash-in-lieu amount and is the difference between the market price of a representative type and size dwelling unit and the price that is affordable to a household earning the US Department of Housing and Urban Development (HUD) low-income limit for the Boulder primary metropolitan statistical area. The city manager will calculate the affordability gap annually. The median sale price for all dwelling units shall be calculated using county assessor sales data for the preceding year.

- i. The market rate price for “detached dwelling units” is the median sale price for all non-affordable detached dwelling units of two thousand or fewer square feet.
  - ii. The market rate price for “townhome and attached small dwelling units” is the median sales price of all non-affordable townhomes and attached dwelling units in buildings containing between two and eight dwelling units where, on average, all units in the building do not exceed and average size of two thousand square feet and were constructed no earlier than fifteen years from the date of the affordability gap study.
  - iii. The market rate price for “attached dwelling units” is the median sales price of all non- affordable attached dwelling units in buildings containing nine or more dwelling units where, on average, all units in the building do not exceed one thousand five hundred square feet and were constructed no earlier than ten years from the date of the affordability gap study.
- c. Live-work Units. Units designated by the city manager as “live-work units” where the live and work portions have an internal connection shall be discounted twenty percent (20%) on total floor area for purposes of cash-in-lieu calculations only.

## **10.2 Off-Site Requirements**

These administrative regulations apply to affordable units provided on a site separate from the one that initially generated the inclusionary requirement.

- a. Required Agreements and Approvals. An off-site agreement must be executed and off-site location approval granted prior to application for any residential building permit by the sending site.
- b. Acceptance of Off-site Units with Existing Affordability Restrictions. No unit with an existing affordability restriction will be accepted to meet an Inclusionary Housing requirement.
- d. Floor Area Requirements for Off-Site Receiving Sites. The size of the affordable units provided to satisfy the inclusionary requirement for a receiving site shall be equal, on average, to the size of all other units on that site, including affordable units provided by the sending site.
- e. Financial Guarantee Required. A financial guarantee may be required to secure the inclusionary affordable housing requirement for receiving sites. The city manager has adopted a financial guarantee policy that includes, but is not limited to, details on the financial guarantee amount, circumstances of release, and adjustments to the amount due if the financial guarantee is cashed.
- f. Off-Site Location Review Required. Proposed off-site locations must be approved by the city. The city manager has adopted an off-site location review procedure

that includes details on documentation, process, and timelines. Approval of a potential receiving site location is the first step towards approval of a proposed off-site development. However, approval of a location does not ensure the off-site development will be approved.

An off-site location request will be reviewed to determine the degree to which it meets the following criteria:

- i. Consistent with Boulder Valley Comprehensive Plan policies for affordable housing, including 7.14 (Integration of Permanently Affordable Housing), to be dispersed throughout the community and where appropriate provided on the site of and integrated into new housing developments;
- ii. Annexed and zoned for residential use;
- iii. Consistent with the land use map and the service area map;
- iv. Consistent with any applicable adopted area plans;
- v. Able to support multi-modal mobility (walking, biking, and other alternatives to the single-occupant vehicle); and
- vi. Compatibility with adjacent uses.

### **10.3 Requirements for Dedicating Newly Constructed Off-Site Dwelling Units as Permanently Affordable**

Acceptance of any newly constructed off-site building, site or unit shall be based on individual property characteristics. The city manager shall determine the requirements, process and criteria for acceptance of newly constructed off-site dwelling units including the site or building as permanently affordable which shall include, but is not limited to:

- a. The city may hire, at the applicant's expense, a construction inspector or assign city staff to monitor and ensure that affordable units are of comparable quality, design and materials to the market units creating the inclusionary housing obligation and constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing. The affordable units shall also be comparable to the surrounding market housing in quality, design, and general appearance. The housing inspector shall ensure that the livability standards and all contractual requirements are met.
- b. Successful completion of Site Review or the Affordable Housing Design Review.
- c. Execution of an Inclusionary Housing Agreement for Newly Constructed Off-site Affordable Units (the "Off-site Agreement"). Terms of the agreement may include, but are not limited to:
  - i. Process and timing requirements;

- ii. The total number of required affordable units including those affordable units required to satisfy the inclusionary requirement for the receiving site;
  - iii. Unit type (e.g., detached, town home, attached multi-family, etc.);
  - iv. Unit size including finished and unfinished floor area;
  - v. Number of bedrooms and bathrooms;
  - vi. Compliance with the Livability Standards;
  - vii. Marketing and sales requirements;
  - viii. Maximum allowable unit sales price or rent;
  - ix. Requirement that rental units be owned all or in part by a housing authority or similar agency;
  - x. Compliance with the Rental Manual, as it may be amended;
  - xi. Deed-restricting covenant requirement;
  - xii. Financial guarantee requirement;
  - xiii. City review and approval of proposed open space elements including uses, play structures, amenities and other recreational elements;
  - xiv. Successful completion of Site Review or the Affordable Housing Design Review as applicable;
  - xv. The method by which homeownership association (HOA) fees are assessed and proof by the HOA of adequate capital reserves as determined by the city manager to ensure proper maintenance.
  - xvi. Penalties for non-performance; and
  - xvii. Construction inspection requirements.
- d. Number of Affordable Units Required for Off-Site Receiving Sites. For newly constructed off-site units the total number of affordable units provided must equal the required inclusionary percentage of all units constructed on both the sending and receiving sites.

#### **10.4 Requirements for Dedicating Existing Off-Site Dwelling Units as Permanently Affordable**

Acceptance of any existing off-site building, site or unit shall be based on individual property characteristics. The city manager shall determine the requirements, process and criteria for acceptance of an existing dwelling unit as permanently affordable which may include, but is not limited to, date of construction, location, initial and rehabilitated condition of the unit, the method by which homeownership association (HOA) fees are assessed and proof by the HOA of adequate capital reserves as determined by the city manager to ensure proper maintenance.

- a. The city manager shall identify any required rehabilitation or maintenance of the building, site and or units before they will be acceptable to meet the Inclusionary Housing requirement.
- b. The city manager will identify the required review process to determine the scope of any rehabilitation or maintenance requirements to ensure that the receiving site

units will be of comparable quality to the market units at the sending site. This may include hiring, at the owner's expense, a city-selected qualified professional to evaluate the current condition of the proposed off-site units and buildings to recommend rehabilitation scope of work and monitor the rehabilitation to ensure quality materials and workmanship that meets or exceeds industry standards and contractual requirements between the owner and the city.

- c. City approval for unit rehabilitation will be based on the completed units being comparable quality to what would have been provided in a newly constructed unit on-site. Interior finishes do not have to be the same as those provided in the sending site market units but must be functionally equivalent as determined by the city manager.
- d. The city may request a copy of any capital needs assessments required by a lender.
- e. Before any residential building permit may be submitted for either the sending site or the receiving site, an Off-site Agreement must be executed. The terms of the agreement may include, but are not limited to, the following:
  - i. Process and timing requirements;
  - ii. The total number of required affordable units;
  - iii. Unit type (e.g., detached, town home, attached multi-family, etc.);
  - iv. Unit sizes including finished and unfinished floor area;
  - v. Amount of floor area and type of use allowed in below grade space;
  - vi. Number of bedrooms and bathrooms;
    - i. Compliance, where possible, with the Livability Standards;
    - ii. Process to determine the scope of any required rehabilitation and/or maintenance;
  - iii. Required rehabilitation and/or maintenance, if applicable;
  - iv. Marketing and sales requirements;
    - xi. Maximum allowable unit sales price or rent;
    - xii. Requirement that rental units be owned all or in part by a housing authority or similar agency;
  - xiii. Compliance with the City of Boulder Rental Manual, as it may be amended;
  - xiv. Restrictive covenant;
  - xv. Financial guarantee;
  - xvi. City review and approval of structural, electrical, mechanical and other system elements for each building where the affordable units are proposed to be located;
  - xvii. City review and approval of building materials including but not limited to, roofing, siding, furnace, windows, landscaping, heating and cooling systems, flooring, bath and kitchen fixtures, appliances and cabinets in each building where the affordable units are proposed to be located;



- xviii. Penalties for non-performance; and
- xix. Inspection requirements.

### **10.5 Land Dedication**

A signed deed granting land to the city or it's designee must be executed prior to application for any residential building permit by the sending site.

Dedicated land must be in the form of a fee simple parcel that will be fully owned by the city or its designee.

A financial guarantee may be required to secure the inclusionary affordable housing requirement for dedicated land. The city manager has adopted a financial guarantee policy that includes, but is not limited to, details on the financial guarantee amount and circumstances of release and adjustments to the amount due if the financial guarantee is cashed.

### **10.6 Alternative Methods of Compliance**

A developer may request city manager approval of an alternative method of compliance for any inclusionary housing requirement pursuant to Section 9-13-10(e) B.R.C., 1981. The purpose of alternative methods of compliance is to provide additional housing benefit to the community through provision of a diversity of home sizes, types, or 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" multi-family attached units, lower prices or rents, an alternative mix of unit types, sizes or number of bedrooms, or a larger cash-in-lieu contribution than would otherwise be required.

### **10.7 Alternative Methods of Compliance Request Process**

To make a request for an alternative method of compliance, the owner shall submit a letter and include any documentation required by the city manager to clearly demonstrate how the proposed affordable housing alternative meets the criteria for approval as outlined in Section 9-13-10(e) B.R. C. 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. A request for an alternative method to comply with Inclusionary Housing shall be approved or denied prior to signing the Determination of Inclusionary Housing Compliance form and application for a residential building permit.

### **10.8 Alternative Methods of Compliance for On-Site Construction Requirement**

An applicant may request an alternative method of compliance to provide fewer than fifty percent (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 additional affordable housing community benefit would be provided and how the proposal meets community housing needs.

Such request must result in a minimum of fifty percent (50%) more (1.5 times the standard cash-in-lieu amount) than the standard amount of applicable cash-in-lieu for for-sale units required on-site but not built on-site.

**10.9 Alternative Methods of Compliance to Required Total Floor Area of Permanently Affordable Dwelling Units**

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:

- a. The average size of the affordable units may not be reduced by greater than ten percent (10%) of the required floor area under any circumstances;
- b. At least one of the following is included within the request:
  - i. 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;
  - ii. Reduce the selling price for the proposed units to target lower income households than required.
  - iii. Cash-in-lieu or a rent or price reduction to off-set the deficiency as follows:

Deficiency in floor area required size per unit	Cash-in-lieu per square foot multiplier*
1 - 5%	150%
5% to 10%	200%
>10%	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) or rents of some, or all, of the permanently affordable units.

**10.10 Alternative Methods of Compliance for Financial Alternatives and Timing When a Cash-in-lieu Contribution is Made**

- 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 to defer the payment when the total CIL due exceeds one million dollars (\$1,000,000). In evaluating the request, the city manager shall

consider whether the development can provide acceptable surety that the CIL can be collected with minimal risk to the city.

- b. Provisions for deferring CIL shall include, but are not limited to, the following:
- i. The maximum amount of CIL that may be deferred may not exceed fifty percent (50%) of the CIL amount due for the development at the time of the issuance of the building permit;
  - ii. Any non-deferred CIL amount will be due no later than at the time of building permit issuance;
  - iii. For developments with only one residential building permit, the full amount of the CIL 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;
  - iv. For multi-building projects with multiple residential building permits, the deferred CIL 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;
  - v. The deferred CIL is subject to an annual adjustment of eight percent (8%) of the amount deferred. On the date of the issuance of the residential building permit, the eight percent (8%) adjustment shall be applied to the deferred amount. This adjustment will be applied annually, thereafter.
  - vi. There will be no pro-rating of the annual adjustment for partial years.
- c. Applicants providing newly constructed affordable units off-site may, up until the time of scheduling of final inspections pursuant to issuance of a certificate of occupancy for the development, choose to default to a CIL contribution, thereby effectively deferring one hundred percent (100%) of the CIL.

The deferred CIL is subject to any standard annual CIL adjustment and an additional annual adjustment to off-set the opportunity cost of the deferral (the "off-set adjustment") of eight percent (8%) of the amount deferred. On the date of the issuance of the building permit, the off-set adjustment shall be applied to the deferred amount and will be applied annually, thereafter.

There will be no pro-rating of the standard annual or off-set adjustments for partial years

## **11.0 Rebuilt Dwelling Units**

There are no administrative regulations for this section of the B.R.C.

## **12.0 Program Requirements for For-Sale Units**

## 12.1 Maximum Sales Price for Permanently Affordable Dwelling Units

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

**Affordable Unit Characteristics and Price**

Minimum Floor Area (Square Feet)	Maximum Floor Area (Square Feet)	Household Size Income	Minimum Bedrooms	Minimum Bathrooms	Price
501	600	.75	0	1	HUD Low Income Limit
701	800	1	1	1	HUD Low Income Limit
901	1,000	2	2	1.5	HUD Low Income Limit
1,001	1,100	3	3	2	HUD Low Income Limit
1,301	1,400	4	4	2	HUD Low Income Limit
601	700	.75	0	1	80%, 100%, 120% AMI
801	900	1	1	1	80%, 100%, 120% AMI
1101	1200	2	2	1.5	80%, 100%, 120% AMI
1401	1500	3	3	2	80%, 100%, 120% AMI
1601	1700	4	4	2.5	80%, 100%, 120% AMI

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

- a. Low/moderate-income prices are based on the mortgage payment affordable to a household earning the US Department of Housing and Urban Development (HUD) determination of low income for the region containing the Boulder PMSA. Middle-income prices are based on the mortgage payment affordable to a household earning between eighty percent (80%) and one hundred and twenty percent (120%) of the area median income as determined by HUD. Income limits to purchase the homes are set higher than those used to determine the permanently affordable prices. This “window” between the income used to price homes and the income limit for households purchasing the homes expands the number of households financially able to purchase the homes.

- b. The maximum affordable sales price is calculated based on estimates of principal, interest, taxes, insurance, private mortgage insurance and an adjustment that represents homeowner's association dues and unit type. The resulting monthly mortgage payment for low/moderate-pricing may not exceed twenty-eight percent (28%) of gross monthly household income and for middle-income pricing may not exceed thirty (30%) of gross monthly household income.
- c. Taxes, insurance and private mortgage insurance are calculated to be a percentage of the affordable housing payment as determined annually by the city manager.
- d. The maximum sales price is based on a thirty-year fixed-rate mortgage at prevailing interest rates. A five percent (5%) down payment is assumed.
- e. The HOA and unit type estimate is a reduction to the sales price intended to account for HOA dues and to differentiate between "detached", "attached" and "townhome and small attached unit" types as determined annually by the city manager.
- f. Maximum sales prices are determined based on a fixed number of people per bedroom. The actual number of persons in a household can vary.
- g. The bolded sales price on the inclusionary pricing sheet is the base price for a unit with a set number of bedrooms and bathrooms per the "Affordable Unit Characteristics and Price" chart in this chapter and is the price required per chapter 9-13. Adjustments to that price are made for variations in unit size and number of bathrooms.
- h. Mortgage interest rates are calculated quarterly. Pricing is based on an eighteen-month trailing interest rate average.
- i. The Maximum Allowable Sales Prices (MASP) for permanently affordable ownership units are finalized when the first interim, land or affordable covenant is signed for the affordable unit. The MASP is not a guaranteed price for the affordable units.
- j. If a covenant is signed after the development has received a building permit and/or certificate of occupancy, the 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.
- k. The price sheet and methodology for the pricing sheet will be reviewed and adjusted as needed by the city manager.
- l. The maximum allowable sales price for a permanently affordable unit may be adjusted by the city manager when a developer provides a one- or two-car garage. The garage must be a fully enclosed structure, a minimum of two hundred fifty-

two (252) square feet, designed to house one or more automobiles, sold with the permanently affordable unit and with access controlled by the unit owner.

### **12.2 Real Estate Commission for First Sale**

Upon the first sale of an affordable unit by an owner (including the developer, the developer's agent or subsequent sales by affordable owners), the seller shall pay the buyers realtor fee. The amount shall be based upon a determination by the city manager of an amount sufficient to ensure reasonable access to professional real estate services for the sale of an affordable unit.

### **12.3 Approved Purchasers of Permanently Affordable Dwelling Units**

Only those households which are deemed to have a valid income certification acceptable by the City of Boulder may purchase a permanently affordable unit.

### **12.4 Determination of Assets for Qualified Households**

The city manager will determine annually the asset limits for all household types. Some types of retirement assets, depending on the ages of the household members, may be exempt from the asset limit.

### **12.5 Determination of Income Derived from Assets for Certified Households**

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 (HUD). 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 five thousand dollars (\$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.

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

### **12.6 Residency and Owner Occupancy Requirement**

Owners of permanently affordable units are required to occupy those units as their primary residence. Owner occupancy on an annual basis means occupying the affordable unit as a primary residence for ten (10) months of each calendar year. Owner occupancy on a multi-year basis means occupying the affordable unit as a primary residence for six (6) out of seven (7) years.

### **12.7 Rental Restrictions for Permanently Affordable Ownership Dwelling Units**

The provisions of this section shall apply to all rental or lease arrangements under which any person (other than the initial or subsequent program-eligible owner, his or her spouse, his or her domestic partner and dependent children or parents) occupies any part of a privately owned affordable property for any valuable consideration, whether that agreement is called a lease, rental agreement or something else.

- a. The owner of a permanently affordable ownership unit shall provide written notice to the city manager of their intent to rent the permanently affordable unit at least thirty (30) days prior to the first day of the lease period. This written notice shall include, without limitation, the following:
  - i. The homeowner's name, contact telephone number and mailing address during the rental period;
  - ii. The address of the permanently affordable unit;
  - iii. The date the unit will be rented or leased and the duration of the lease;
  - iv. The prospective tenant's name;
  - v. A copy of the lease or rental agreement; and
  - vi. A statement that the property owner agrees to comply with all applicable local, state and federal regulations and local program requirements pertaining to the renting of a dwelling unit.
- b. Short term rental (less than thirty (30) days) is not allowed. This prohibition is applicable even if the owner will continue to occupy the home during the rental period.

### **12.8 Maximum Allowable Resale Prices**

The maximum allowable resale price shall be calculated by the city manager on an individual basis using the original homeowner's acquisition price as the base from which calculation is made and may be adjusted downward by the amount of grant funds the city may have provided and or increased by any of the following factors:

- a. An adjustment based on the value of eligible capital improvements installed by the seller that were approved in advance by the city. A list of eligible capital improvements shall be published and maintained by the city.
- b. 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 may establish an annual minimum amount for this adjustment.
- c. A shared appreciation factor as stated in a community land trust lease for a specific permanently affordable unit.

- d. An allowance for reasonable marketing, sales and closing fees as established an annual basis.

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.

### **12.9 Documentation Required to Purchase a Permanently Affordable Dwelling Unit**

Prior to purchasing a permanently affordable unit, a prospective buyer is required to submit a completed program certification application or valid program certification with required attachments to verify the prospective purchaser is qualified to purchase a 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.

After closing, the warranty deed and a copy of the settlement summary shall be forwarded to the Division of Housing to verify the sale of the permanently affordable unit.

### **12.10 Homeowners Associations (HOA)**

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.

Prior to signing any affordable housing agreement or covenant, the owner shall provide HOA documents to the city manager for approval 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. The city may require the following HOA related requirements in the affordable housing agreement:

- a. Maximum allowable HOA fees at time of sale to an affordable buyer;
- b. HOA fees based on unit size;
- c. A requirement that the applicant provide, at its expense, city-approved HOA training to the buyers of affordable units within one month of closing on the final unit in a development or phase of development;
- d. The HOA budget and management plan be based on a reserve study to determine reasonable and accurate reserve levels; and
- e. Provision and use of a professional management company.

## **13.0 Program Requirements for Rental Units**

### **13.1 Maximum Allowable Rents**

The City of Boulder shall publish annually the maximum allowable rents for required permanently affordable dwelling units including those 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.

### **13.2 Sales Consideration for Rental Housing Units**

If a permanently affordable rental housing unit proposed to meet an inclusionary requirement is 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 may include, but is not limited to:

- a. The income limit for renters of the unit;
- b. The maximum-allowed rent for the income limit;
- c. Pro forma vacancy rate;
- d. Reasonable operating costs of the unit;
- e. A calculation of net income available for debt service on the unit;
- f. An identification of replacement reserve annual funding; and

g. Prevailing terms for multi-family debt financing.

#### **14.0 Residential Developments with Prior Affordable Housing Agreements**

Unless an affordable housing requirement is 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.

#### **15.0 No Taking of Property Without Just Compensation**

There are no administrative regulations for this section of the B.R.C.

#### **16.0 Administrative Regulations**

There are no administrative regulations for this section of the B.R.C.

#### **17.0 Monitoring**

There are no administrative regulations for this section of the B.R.C.