



**CITY OF BOULDER
DIVISION OF HOUSING**

**INCLUSIONARY HOUSING
Off-site Process and Timelines**

Updated 6/2013

This document contains an overview of the requirements, processes and timelines for meeting Inclusionary Housing (IH) requirements by providing affordable units on a different site than the site that generated the original requirement. This is referred to as the “off-site” option.

The Inclusionary Housing Ordinance may be found in Chapter 9-13 of the Boulder Revised Code, 1981 and associated IH Administrative Regulations. Both may be found on the city website at www.boulderaffordablehomes.com.

Table of Contents

1. Off-site Requirements for New Construction
2. Off-site Requirements when Deed Restricting Existing Units
3. The Off-site Agreement



CITY OF BOULDER

DIVISION OF HOUSING

1. Off-site Requirements for New Construction

Off-site affordable units may be provided as for-sale or rental and may be either a by-right project or subject to land use review. These variations may have implications for the process and requirements of Inclusionary Housing.

The table below includes the steps needed to propose an complete newly constructed affordable units “off-site”. The initial development generating an IH requirement is referred to as the “sending site” and the location where the off-site units will be provided is referred to as the “receiving site”. The table is laid out to indicate the sequence of steps.

Process and Timeline for Providing NEWLY CONSTRUCTED Affordable Units Off-site

Sending Site	Receiving Site
<ol style="list-style-type: none"> 1. Developments subject to a land use approval such as site review or use review start that process with the planning department. 2. Discuss options for meeting the IH requirement with a housing planner; choose to provide some or all of the required affordable units off-site. 3. A preliminary estimate of the IH requirement for the sending site is determined and an initial program for the receiving site may be proposed. 	
	<ol style="list-style-type: none"> 4. An off-site location is proposed & approved
<ol style="list-style-type: none"> 5. Land use approval granted. If applicable, complete tec doc process. 	
	<ol style="list-style-type: none"> 6. IH program finalized. 7. Developments subject to a land use approval such as site review or use review start that process with the planning department. 8. Housing design review is completed. If applicable, any land use or technical document review is completed concurrently
<ol style="list-style-type: none"> 9. Documents and guarantees are executed; may submit for a building permit. 	
	<ol style="list-style-type: none"> 10. Documents and guarantees are executed; may submit for a building permit. 11. Certificate of Occupancy.

1. SENDING SITE – Land Use Process

Applicants with residential developments subject to Site Review, Use Review or other land use approval start that process with Community Planning & Sustainability (“planning”). The development review comments from planning will include comments concerning the IH requirement.

2. SENDING SITE – Initial Inclusionary Housing Discussion

Applicants in a land use process will receive comments concerning the IH requirement through the process.

Applicants proposing a by-right residential development not subject to a land use process should contact a housing planner as soon as possible prior to building permit submittal.

Preliminary estimates for all options to meet the IH requirement are discussed. A final decision for how the IH requirement will be met is required before the sending site building permit may be issued. Any changes made after that point are subject to penalties.

3. SENDING SITE – Preliminary IH Requirement

The housing planner provides a preliminary estimate for the sending site IH requirement. The applicant will need to provide the following information:

- a. A scaled site plan and detailed floor plans. May be provided as part of a land use review submittal.
- b. An Excel spreadsheet with the following information for all units:
 1. Address and unit number (that corresponds to site plan location);
 2. Unit type (single family, townhouse, condo);
 3. Finished square feet;
 4. Garage square feet (completely enclosed garages controlled solely by the owner or renter, no parking structures);
 5. Unfinished square feet (if any);
 6. Number of bedrooms;
 7. Number of bathrooms;
 8. Number of parking spaces or garages per unit and location;
 9. If a unit is accessible and what type of accessibility;
 10. Total number of attached and or detached units in the development; and
 11. Total square footage of all attached and or detached units in the development.

The IH requirement is a proportional determination of unit type, number of bedrooms and unit size to what is provided on the sending site. For example, a sending site with half single family homes and half stacked flats will be required to provide half of the affordable units as single family and half as stacked flats. Similarly, if the sending site units are half one bedroom and half two bedroom the affordable units will reflect that mix. The number of required baths are based on the number of bedrooms per the following:

- 1 bedroom – equivalent number of baths in the sending units up to 1.5
- 2 bedroom - equivalent number of baths in the sending units up to 2
- 3 bedroom - equivalent number of baths in the sending units up to 2.5
- 4 bedroom - equivalent number of baths in the sending units up to 2.5

The sizes of the affordable units are determined based on a percentage of the average size of the units on the sending site by bedroom/bathroom configuration as follows:

	Rental	For-sale
Single family	min. 80%	min. 48%
Multi-family	min. 80%	min. 80%

The initial sales price is determined by the city to be affordable to a household earning no more than the HUD low income limit for their family size, or approximately 70% of the area median income. Prices are adjusted quarterly. Pricing is determined when the deed restricting covenant is executed.

Rents are set by the city to be affordable to a household earning no more than 60% of the area median income. Rents are adjusted annually.

In all cases, the minimum IH requirements may be exceeded at the developer’s option and in some cases may result in a higher initial sales price or rent.

Once the IH requirement for the sending site is determined, a preliminary proposal for the receiving site may be discussed and proposed. The off-site units may be proposed as rental or for-sale.

4. RECEIVING SITE – Off-site Location Approval

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.

Process:

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). Include 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.

5. SENDING SITE – Land Use Approval

Once the Site Review approval is finalized, the sending site IH requirement is finalized. Based in these final numbers, the receiving site proposal can also be finalized. Sending site developments subject to technical document review should start that process with the Planning Department. Steps 6-9 below may be completed concurrent to the technical review process.

6. RECEIVING SITE – IH Program

The receiving site program must be finalized prior to sending site building permit submittal. The applicant will need to provide the following information:

- a. A one page document summarizing the receiving site development including details on how the proposal meets the IH requirement.
- b. A scaled site plan and floor plans including appliances and cabinetry of the proposed affordable units.
- c. An Excel spreadsheet that lists all units (affordable and market) proposed:
 1. Address and unit number (that corresponds to site plan location);
 2. Unit type (single family, townhouse, condo);
 3. Finished square feet;
 4. Garage square feet (completely enclosed garages controlled solely by the owner or renter, no parking structures);
 5. Unfinished square feet (if any);
 6. Number of bedrooms;
 7. Number of bathrooms;
 8. Location of required additional storage (see the Livability Guidelines)
 9. Number of parking spaces or garages per unit and location;

10. If a unit is accessible and what type of accessibility;
11. Total number of attached and or detached units in the development; and
12. Total square footage of all attached and or detached units in the development.

7. RECEIVING SITE – Land Use Process

Once the receiving site program is finalized, receiving site developments subject to Site Review, Use Review or other land use approval should start that process with the Planning Department. The development review comments from planning will include comments concerning the IH requirement. For these developments the housing design review, step #8 below, may be conducted concurrently with the land use review.

8. RECEIVING SITE – Housing Design Review

All proposed receiving sites must complete an *Off-site Affordable Development Design Review* to ensure compliance with the Inclusionary Housing Ordinance and Regulations. For receiving site developments subject to other land use approvals the housing design review may be conducted concurrently with the land use review. By-right projects should consult with a housing planner on any additional submittal requirements needed.

9. SENDING SITE – Requirements Prior to Building Permit Submittal

The following are required prior to building permit submittal for the sending site:

- a. *Inclusionary Housing Agreement for Newly Constructed Off-site Affordable* – Documents all requirements and responsibilities for the off-site development. Additional information concerning the Off-site Agreement may be found section #4 of this document.
- b. *Determination of Inclusionary Housing Compliance form* - Documents the basic agreement for the sending site IH requirement and how it will be met.
- c. *Financial Guarantee* - security is provided to ensure the affordable units are completed.
- d. *Receiving Site Location Approved*
- e. *Receiving Site Affordable Housing Design Review Approved*

10. RECEIVING SITE – Requirements Prior to Building Permit Submittal

The following are required prior to building permit submittal for the receiving site:

- a. *Inclusionary Housing Agreement for Newly Constructed Off-site Affordable Housing* – Must have been executed by the sending site developer. Documents all requirements and responsibilities for the off-site development. Additional information concerning the Off-site Agreement may be found in section #4 of this document.
- b. *Determination of Inclusionary Housing Compliance form* - Documents the agreement for the receiving site IH requirement and how it will be met.
- c. *Deed restricting Covenants* for all affordable units are executed. Additional information concerning permanently affordable deed restricting covenants may be found on page 10 of this document.

- d. *Housing Inspection Fee* – a cost estimate for the housing inspector will be added to the building permit due on issuance per the Off-site Agreement.
- e. *Off-site Location Approved*
- f. *Off-site Affordable Development Design Review Approved*

11. RECEIVING SITE – Final Certificates of Occupancy

The following items will be finalized once all of the receiving site affordable units receive a final Certificate of Occupancy:

- a. **Housing inspection costs** - If the final cost was in excess of the estimate paid at building permit issuance, the balance will be due to the city. If the final cost was less than the estimate paid at building permit issuance, the applicant shall receive a refund of the excess amount or a credit against other fees owed to the city. Any such adjustment will be added or credited to the balance due on the receiving site building permit for final inspections pursuant to the issuance of a final CO for any affordable unit.
- b. **Financial Guarantee** - The financial guarantee will be released when all of the off-site agreement requirements have been met, primarily that the affordable units at the receiving site have been issued final CO's and a deed restricting covenant has been executed and recorded.
- c. **Financial Guarantee Annual Adjustments** – If any annual adjustments to the financial guarantee have been placed on the Receiving site building permit due at final inspections the developer must request a temporary certificate of occupancy to ensure the affordable units are complete. The annual adjustments will be removed when the affordable units at the receiving site have been issued temporary CO's and a deed restricting covenant has been executed and recorded.

2. Off-site Requirements when Deed Restricting Existing Units

Off-site affordable units may be provided as for-sale or rental. These variations may have implications for the process and requirements of Inclusionary Housing.

The table below includes the steps needed to propose deed restricting existing units “off-site”. The initial development generating an IH requirement is referred to as the “sending site” and the location where the off-site units will be provided is referred to as the “receiving site”. The table is laid out to indicate the sequence of steps.

Process and Timeline for DEED RESTRICTING EXISTING UNITS Off-site

Sending Site	Receiving Site(s) Off-site Existing Units
<ol style="list-style-type: none"> 1. Developments subject to a land use approval such as site review or use review start that process with the planning department. 2. Discuss options for meeting the IH requirement with a housing planner; choose to provide some or all of the required affordable units off-site. 3. A preliminary estimate of the IH requirement for the sending site is determined and existing units may be proposed. 	
	<ol style="list-style-type: none"> 4. Off-site existing unit preliminary proposal.
<ol style="list-style-type: none"> 5. Land use approval granted. If applicable, start tec doc process. 6. Sending Site IH program finalized. 	<ol style="list-style-type: none"> 7. Off-site existing unit final proposal. 8. City issues an initial letter of acceptance pending rehabilitation.
<ol style="list-style-type: none"> 9. Documents are executed; may submit for a building permit. 	<ol style="list-style-type: none"> 10. Units are rehabilitated & inspected. 11. Covenant Executed and Certificate of Occupancy issued.

1. SENDING SITE – Land Use Process

Applicants with residential developments subject to Site Review, Use Review or other land use approval start that process with Community Planning & Sustainability (“planning”). The development review comments from planning will include comments concerning the IH requirement.

2. SENDING SITE – Initial Inclusionary Housing Discussion

Applicants in a land use review process will receive comments concerning the IH requirement through the process.

Applicants proposing a by-right residential development not subject to a land use process should contact a housing planner as soon as possible prior to building permit submittal.

Preliminary estimates for all options to meet the IH requirement are discussed. A final decision for how the IH requirement will be met is required before the sending site building permit may be issued. Any changes made after that point are subject to penalties.

3. SENDING SITE – Preliminary IH Requirement

The housing planner provides a preliminary estimate for the sending site IH requirement. The applicant will need to provide the following information:

A scaled site plan and detailed floor plans. May be provided in the land use review submittal.

An Excel spreadsheet with the following information for all units on the sending site:

1. Address and unit number (that corresponds to site plan location);
2. Unit type (single family, townhouse, condo);
3. Finished square feet;
4. Garage square feet (completely enclosed garages controlled solely by the owner or renter, no parking structures);
5. Unfinished square feet (if any);
6. Number of bedrooms;
7. Number of bathrooms;
8. Number of parking spaces or garages per unit and location;
9. If a unit is accessible and what type of accessibility;
10. Total number of attached and or detached units in the development; and
11. Total square footage of all attached and or detached units in the development.

The IH requirement is a 20% proportional determination of unit type, number of bedrooms and unit size to what is provided on the sending site. For example, a sending site with half single family homes and half stacked flats will be required to provide half of the affordable units as single family and half as stacked flats. Similarly, if the sending site units are half one bedroom and half two bedroom the affordable units will reflect that mix. The number of required baths are based on the number of bedrooms per the following:

- 1 bedroom – equivalent number of baths in the sending units up to 1.5
- 2 bedroom - equivalent number of baths in the sending units up to 2
- 3 bedroom - equivalent number of baths in the sending units up to 2.5
- 4 bedroom - equivalent number of baths in the sending units up to 3

The size of the affordable units is determined based on a percentage of the average size of the units on the sending site by bedroom/bathroom configuration as follows:

	Rental	For-sale
Single family	min. 80%	min. 48%
Multi-family	min. 80%	min. 80%

The initial sales price is set to be affordable to a household earning no more than the HUD low income limit for their family size, or approximately 70% of the area median income. Prices are adjusted quarterly. Pricing is determined at the time the deed restricting covenant is executed.

Rents are set to be affordable to a household earning no more than 60% of the area median income. Rents are adjusted annually.

In all cases, the minimum standards may be exceeded at the developer's option and in some cases may result in a higher initial sales price or rent.

Sending Sites subject to Site Review will receive a preliminary determination for the IH requirement that may change based on final site review approval. By-right developments will receive a final determination for the IH requirement assuming that what was provided to the housing planner is the same as what is submitted for a building permit.

4. OFF-SITE EXISTING UNITS – Preliminary Proposal

Once a preliminary estimate of the IH requirement for the sending site is determined, off-site existing units may be proposed by the sending site applicant to meet the requirement. After a walk-through of the unit(s), the will issue an "Off-site Existing Affordable Unit Preliminary Determination" letter indicating the proposed units(s) meet the preliminary criteria pending acceptable rehabilitation.

Detached Single Family Home Preliminary Criteria:

- a. Determination that the property is habitable and in good condition and can be successfully rehabilitated to meet the final requirements as an affordable home.
- b. Minimum 1,200 square feet of finished space the majority of which must be above grade but can include finished basement space w/ egress. Total size may be up to 2,000 square feet.
- c. 3 or more bedrooms above grade or with egress that meets code requirements.
- d. One and one half (1.5) or up to 3 bathrooms.
- e. Not located in a majority student neighborhood preferred.
- f. Not located on a block with a high percentage of pre-existing affordable housing units preferred.
- g. No portion of the property in the 100-year flood plain or the high hazard or conveyance zones.
- h. Home must have been constructed after 1980.

Attached Home Preliminary Criteria:

- a. Determination that the property is habitable and in good condition and can be successfully rehabilitated to meet the final requirements as an affordable home.
- b. Not located in a majority student neighborhood preferred.
- c. Not located on a block with a high percentage of pre-existing affordable housing units preferred.
- d. No portion of the property in the 100-year flood plain or the high hazard or conveyance zones.
- e. Home must have been constructed within the last ten years from the date of the proposal.

5. SENDING SITE – Land Use Approval

For sending sites subject to site review, once site review approval is in place, an off-site proposal can be finalized. Sending site developments subject to technical document review

should start that process with the Planning Department. Steps 6-9 below may be completed concurrent to the technical review process.

6. SENDING SITE – IH Program Finalized

If there are any changes to the sending site from the time the preliminary IH requirement was done, the requirement may need to be adjusted. The final requirement will include the type and number of units, size, number of bedrooms and baths.

7. OFF-SITE EXISTING UNITS – Final IH and Rehabilitation Proposal

Once a final IH requirement for the sending site is determined, existing units proposal may be finalized.

In some cases, the IH requirement for the sending site and proposed existing unit(s) will not match exactly. In this case the sending site applicant and housing planner will discuss equivalencies based on additional community benefit. A cash-in-lieu contribution or a downward adjustment to the maximum allowable sales price or rent may be required to make up any deficiencies.

The city will hire, at the Owner's expense, an ASHI-certified home inspector (or other nationally recognized home inspection program) to complete a comprehensive inspection. In addition, city housing staff will inspect the home.

The applicant may propose a rehabilitation program which will be subject to city review and approval. City approval will be based on the proposal addressing all items identified in the home inspection, meeting the criteria listed below and the completed units be comparable to what would have been provided in a newly constructed unit on the sending site. Finishes do not have to be exactly the same as the sending site market finishes but should be functionally equivalent. For example counter tops in the market units may be granite, the affordable unit counters may be laminate.

The following requirements and standards must be met for the property to be deemed acceptable as a permanently affordable unit. Replacement does not apply to items maintained by the HOA however these items must be in excellent condition:

- a. Meets all Livability Guidelines.
- b. No HOA dues are preferred; single family homes must be below \$50/month, and multi-family homes below \$250/month.
- c. The HOA must have adequate capital reserves for major capital expenditures anticipated in the subsequent 10 year period.
- d. Kitchen and baths have finishes and fixtures similar to new products or replaced.
- e. Muted, neutral paint, trim, tile and cabinet colors in excellent condition or replaced.
- f. Appliances that are in excellent condition or under warranty or replaced.
- g. Floor in excellent condition or replaced; wood floors in excellent condition or refinished.
- h. Attractive, thriving, complete landscaping or replacement.
- i. Windows sealed and refinished or repainted or replaced.

- j. Systems, heating, plumbing, electrical, roof, foundation, structure, driveway in average or above average condition with no additional work anticipated in the next five years or replaced.
- k. Clean and insured title.
- l. Home is eligible for FHA financing.

A rehabilitation plan agreed upon by both the city and applicant will be included in the Off-site Agreement per H.(b.) below.

8. SENDING SITE – Requirements Prior to Building Permit Submittal

The following are required prior to building permit submittal for the sending site:

- a. *Off-site Existing Affordable Unit Preliminary Determination* letter indicating the proposed units(s) meet the preliminary criteria pending acceptable rehabilitation.
- b. *Inclusionary Housing Agreement for Existing Unit Off-site Affordable Housing* documents all requirements and responsibilities for the off-site development. Additional information concerning the Off-site Agreement may be found in Chapter 3 of this document.
- c. *Financial Guarantee* provided as security in an amount equal to the cash-in-lieu due on the sending site.
- d. A *Determination of Inclusionary Housing Compliance form* - Documents the basic agreement for the sending site IH requirement and how it will be met.

9. OFF-SITE EXISTING UNITS – Units are Rehabilitated and Inspected

Applicant completes the rehabilitation which is inspected by a housing inspector for quality construction and to meet all contractual obligations and standards.

10. OFF-SITE EXISTING UNITS – Covenants and Final Certificates of Occupancy

The following items will be finalized once all of the receiving site affordable units receive a final Certificate of Occupancy:

- a. A *deed restricting Covenant* for each affordable unit is executed. Additional information concerning permanently affordable deed restricting covenants may be found on page 10 of this document.
- b. Housing inspection costs - If the final cost was in excess of the estimate paid at building permit issuance, the balance will be due to the city. If the final cost was less than the estimate paid at building permit issuance, the applicant shall receive a refund of the excess amount or a credit against other fees owed to the city. Any such adjustment will be added or credited to the balance due on the receiving site building permit for final inspections pursuant to the issuance of a final CO for any affordable unit.
- c. Financial Guarantee - The financial guarantee will be released when all of the off-site agreement requirements have been met, primarily that the affordable units at the receiving site have been issued final CO's and a deed restricting covenant has been executed and recorded.

3. OFF-SITE AFFORDABLE HOUSING AGREEMENT

The Off-site Affordable Housing Agreement documents all requirements and responsibilities for the off-site development must be executed before the sending site may submit for a building permit.

The Agreement includes details about the following major topics:

- A. The IH requirement is for both the sending and receiving sites.
Both sites are subject to the IH requirement. However, the sending site generated and is responsible for producing the affordable units on both sites. Should the sending site default to cash-in-lieu, the two sites are then considered separately. [Newly constructed off-site units]
- B. Maximum allowable rents and pricing as applicable.
For rental units the maximum allowable rents are determined annually and are based on a household income 60% of the area median income. The maximum allowable rent may be adjusted to make up for deficiencies. Maximum allowable rents are not guarantee and actual rents may vary.
For for-sale units the maximum allowable sales price is determined when the covenant is signed and is based on a household income of approximately 70% of the area median income. The maximum allowable sales price may be adjusted to make up for deficiencies. Maximum allowable sales prices are not guarantee and actual sales price may vary.
- C. Livability Guidelines.
The affordable units must meet the requirements of the Livability Guidelines which may be found on the city website at www.boulderaffordablehomes.com.
- D. Finish Specification Approval.
City approval is required for all appliances, fixtures, flooring, cabinetry, lighting. heating and cooling systems prior to building permit issuance.
- E. Housing Design Review.
City review and approval is required for the site plan, building design, unit design and building materials. This administrative review is conducted by the planning department. Applications and submittal requirements may be found on-line at XXXXX. [Newly constructed units]
- F. Rehabilitation Requirements.
Items to be rehabilitated or replaced including: specifications, required warranty periods, and similar details where appropriate. [Existing units]
- G. Operation as Rental Units.
City rental requirements found in the City of Boulder Housing Division Rental Compliance Manual, as it may be amended. The current manual and all updates are available at: www.boulderaffordablehomes.com.
- H. Deed restricting Covenant Required.

A permanently affordable rental covenant required by Chapter 9-13, B.R.C. 1981 is required for all affordable units prior to building permit issuance on the receiving site. For rental units the Covenant must be executed by a housing authority, 501(c)(3) nonprofit corporation or other entity that meets the City requirements for a housing authority or similar agency pursuant to C.R.S. Section 31-12-301(b)(5).

I. Housing Inspections.

The city will retain an inspector to ensure quality construction and compliance with all housing requirements and agreements. The receiving site is responsible for the costs of the inspector.

J. Financial guarantee.

To ensure compliance with IH, prior to issuance a building permit for any units on the sending site, the applicant will provide the City with a financial guarantee equal to the cash-in-lieu due by the sending site at that time plus 8% for possible deferred payment. The financial guarantee will be released in full once all contractual requirements have been met and the affordable units on the receiving site are covenanted and have received a certificate of occupancy.

K. Concurrent Construction.

The Affordable Units should receive a final Certificate of Occupancy within twelve months following the issuance of any temporary or final Certificates of Occupancy for the Sending Site.

L. Breach of the Agreement and Remedies.

M. Homeowner Associations (HOA's).

In off-site developments where greater than 20% of the units are affordable and the units are for-sale 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.