

**CITY OF PASADENA
INCLUSIONARY
HOUSING REGULATIONS**

**THIS DOCUMENT INTEGRATES ALL OF THE AMENDMENTS MADE TO
THE REGULATIONS ORIGINALLY ADOPTED ON 9/10/01 BY RESOLUTION
NO. 8042, PER THE ACTIONS LISTED BELOW.**

Adopted September 10, 2001 by Resolution No. 8042
Amended July 21, 2003 by Resolution No. 8272
Amended August 16, 2004 by Resolution No. 8386
Amended September 19, 2005 by Ordinance No. 7020
Amended January 30, 2006 by Resolution No. 8558
Amended December 16, 2013 and updated administratively with corrections on
December 26, 2017

INCLUSIONARY HOUSING REGULATIONS

I. INTRODUCTION

A. Purpose

These regulations augment and give further detail to the inclusionary housing ordinance adopted by the City Council and codified at Chapter 17.42 of the Municipal Code.

B. Definitions

Unless expressly defined herein, capitalized terms herein shall have the same meaning as in Chapter 17.42 of the Pasadena Municipal Code. In the event of any conflict, the definitions in Chapter 17.42 shall control.

In addition, the following terms shall have the following meanings:

“City Manager” shall mean the City Manager or the Assistant City Manager.

“Income-Eligible” shall mean a Very Low, Low or Moderate Income Household (as applicable) eligible to own or rent the particular Inclusionary Unit at issue;

“Building Official” shall mean the building official of the City;

“Owner” shall mean the owner of the completed Residential Project, including any property manager or agent of the owner (this definition shall apply only to Section VI.C of these regulations).

II. IMPLEMENTATION PROCESS

Chapter 17.42 is implemented primarily through two documents: the Inclusionary Housing Plan, and the Inclusionary Housing Agreement. The Inclusionary Housing Plan, described in Section “A” of this Part II, provides the basis for determining how the provisions of Chapter 17.42 will be satisfied. The Inclusionary Housing Agreement, described in Section “B” of this Part II, sets forth the ongoing affordability and other restrictions applicable to the Inclusionary Units once they have been completed.

A. Inclusionary Housing Plan

1. Submittal of Supplemental Application for an Inclusionary Housing Plan. Concurrent with the Developer’s submittal of a Master Application for Plan Review, Developer shall submit a Supplemental Application for an Inclusionary Housing Plan (“Supplemental Application”). The Supplemental Application serves as the basis for the preparation of an Inclusionary Housing Plan.

2. Submittal of Inclusionary Housing Plan. Concurrent with the Developer's application for the first Discretionary Approval for a Residential Project, the Developer shall submit to the City Manager an Inclusionary Housing Plan for review and approval. The Inclusionary Housing Plan shall be accompanied by a processing fee in an amount prescribed by resolution of the City Council. No Discretionary Approval shall be granted without submission of the Inclusionary Housing Plan.

3. Contents of Inclusionary Housing Plan. The Inclusionary Housing Plan shall contain the following information:

a. A brief description of the Residential Project including the number of Market Rate Units and Inclusionary Units proposed, and the basis for the calculation of the number of Inclusionary Units.

b. The unit-mix, location, structure type, and size of the Market Rate and Inclusionary Units, and whether the Residential Project is an ownership or rental project. A floor plan depicting the location of the Inclusionary Units shall be provided.

c. The income level of the Inclusionary Units;

d. In the event the Developer proposes a phased project, a phasing plan that provides for the timely development of the Inclusionary Units as the Residential Project is built out. The phasing plan shall provide for development of the Inclusionary Units concurrently with the Market Rate Units

e. A description of the specific incentives being requested of the City.

f. If the Developer intends to satisfy the Inclusionary Unit requirement by payment of an in-lieu fee, a statement to that effect, and a calculation of the total in-lieu fee payment required.

g. If a conveyance of land or an off-site Inclusionary Units alternative is proposed, information necessary to establish compliance with Part IV.B or C of these Regulations.

4. Review and Approval of Inclusionary Housing Plan.

a. The City Manager shall approve, conditionally approve or reject the Inclusionary Housing Plan within forty-five (45) days from the date the application for the applicable discretionary approval (including but not limited to any building permit) is deemed complete. If the Inclusionary Housing Plan is rejected for incompleteness or if the City Manager requires further information, the Inclusionary Housing Plan shall be returned to the Developer along with a list of the deficiencies or the information required. At any time during the review process, the City Manager may require additional information from the Developer.

b. Approval of both the Inclusionary Housing Plan and the Inclusionary Housing Agreement (see Section II.B.1.) or the In-lieu Fee Certificate (see Section IV.A.1.d.) by the City Manager shall be a condition of approval of any Discretionary Approval or building permit for the Residential Project.

B. Inclusionary Housing Agreement

1. Requirement. Except for those cases where the requirements of Chapter 17.42 are satisfied by payment of an in-lieu fee or the conveyance of land to the City, all Developers whose projects are not exempt from Chapter 17.42 shall enter into an Inclusionary Housing Agreement with the City. The City's standard form of the Inclusionary Housing Agreement may be obtained from the Housing and Career Services Department. The City Manager is hereby authorized to execute the Inclusionary Housing Agreement on behalf of the City. No building permit shall be issued for all or any portion of the Residential Project unless the Inclusionary Housing Agreement has been recorded in accordance with this Section "B".

2. Contents. The form of the Inclusionary Housing Agreement will vary, depending on the manner in which the provisions of Chapter 17.42 are satisfied for a particular Residential Project. All Inclusionary Housing Agreements shall include, at minimum, the following information:

a. Indicate whether the Residential Project is an ownership or rental project;

b. The number and size of Very Low, Low or Moderate Income Units, location of units, square-footage of units;

c. The inclusionary incentives (if any), including the nature and amount of local public funding;

d. Provisions for resale or rental restrictions, monitoring affordability of the units, and the determination of Income-Eligible households.

3. Recordation of Agreement.

a. The Inclusionary Housing Agreement must be executed and recorded prior to the issuance of a building permit for all or any portion of the Residential Project. The Inclusionary Housing Agreement shall be recorded as a covenant running with the land against the real property of the Residential Project. Except as set forth in paragraph "b", the Inclusionary Housing Agreement shall be recorded in first position, superior to other liens and encumbrances, except for (i) liens to secure payment of real estate taxes and assessments, not delinquent; and (ii) non-monetary matters affecting the title which, in the discretion of the City Manager, do not unreasonably impact the security of the Inclusionary Housing Agreement.

b. In order to facilitate the ability of the Developer to obtain construction financing, the City will agree to subordinate the Inclusionary Housing

Agreement to a deed of trust securing construction financing. In that event, however, the Inclusionary Housing Agreement must be superior to all liens and deeds of trust, except as set forth in paragraph “a”, prior to issuance of a certificate of occupancy for all or any portion of the Residential Project.

c. In the case where the requirements of Chapter 17.42 are satisfied through the development of off-site Inclusionary Units, the Inclusionary Housing Agreement shall simultaneously be recorded on title to the property where the off-site Inclusionary Units are to be developed. Upon the completion of the Inclusionary Units and their occupancy by Income-Eligible households, the Inclusionary Housing Agreement shall be released from record title of the Residential Project site.

III. INCENTIVES

The Developer may request that the City provide one or more of the following incentives: Density Bonus. A density bonus pursuant to procedures set forth in Chapter 17.43 of the Municipal Code. If density bonus units pursuant to Chapter 17.43 are also being counted towards compliance with the requirements of Chapter 17.42, whichever term of affordability restrictions (Chapter 17.42 or Chapter 17.43) is longer shall apply. Furthermore, if density bonus units dedicated to persons aged 55 years and older (and to those residing with them) are also being used to satisfy the requirements of Chapter 17.42, the more restrictive income limit and longer term of affordability shall apply.

A. Fee Waivers. Fee waivers for Inclusionary Units, including but not limited to, the partial or full waiver of the construction tax as set forth in Section 4.32.050.A of the Municipal Code.

B. Marketing of Inclusionary Units. Technical assistance for the marketing of Inclusionary Units at www.pasadenahousingsearch.com, an online housing finder co-sponsored by the City of Pasadena and County of Los Angeles.

C. Financial Assistance for Excess Units. Financial assistance to the Developer for units in excess of the 15% Inclusionary Unit requirement or to make Low Income Units affordable to Very Low Income Households.

D. Reduction in Inclusionary Unit Requirement. A reduction in the total Inclusionary Unit requirement as set forth in Section 17.42.040 of Chapter 17.42. The reduction of Inclusionary Units is calculated as follows:

1. If Very Low Income Units are provided in lieu of the required Low Income Units, a credit of 1.5 units to every 1 unit shall be provided.

2. If Low Income Units are provided in lieu of the required Moderate Income Units, a credit of 1.5 units to every 1 unit shall be provided.

3. If Very Low Income Units are provided in lieu of the required Moderate Income Units, a credit of 2 units to every 1 unit shall be provided.

EXAMPLE: If the Residential Project consists of 29 for-sale units, the inclusionary requirement is 4 Moderate Income Units [29 units x 15% = 4.35]. If the Developer proposes 2 Low Income Units, a credit of 1.5 units for every 1 unit is provided. In this case the Developer receives a credit for 3 units for building 2 Low Income Units [2 x 1.5 = 3]. Accordingly, the Developer's Inclusionary Unit requirement will consist of two (2) Low Income Units and (1) Moderate Income Unit.

E. Additional Incentives. In its sole discretion, the City Council may consider, on a case-by-case basis, the provision of other incentives consistent with state law and the City's General Plan.

IV. ALTERNATIVES

A. In-Lieu Fee Alternative

1. Payment of In-Lieu Fee.

a. The Developer may pay a fee in lieu of developing the Inclusionary Units on-site. The amount of the in-lieu fee is set forth in the fee schedule adopted by the City Council. The fees collected shall be deposited in the Inclusionary Housing Trust Fund.

b. One-half of the in lieu fee shall be paid prior to issuance of a building permit for all or any part of the Residential Project. Alternatively, with approval from the City Manager the Developer may post a letter of credit in the full amount of the fee.

c. The remainder of the fee, or if applicable, the entire fee, shall be paid before a certificate of occupancy or a temporary certificate of occupancy is issued for any unit in the Residential Project. If a limited temporary certificate of occupancy is requested for a specific purpose (e.g., showing of model units, access to utilities), and if the Building Official is prepared to issue such a limited temporary certificate of occupancy, in the City Manager's discretion, five percent (5%) of the outstanding in-lieu fee may be paid prior to issuance of a limited temporary certificate of occupancy. In that event, the remainder of the in-lieu fee shall be paid before issuance of the certificate of occupancy or general temporary certificate of occupancy.

d. Developers who elect to pay the in-lieu fee shall execute before a notary public, and deliver to the City Manager, in a form approved by the City Manager, an In-Lieu Fee Certificate acknowledging the Developer's obligation to pay the in-lieu fee.

2. Refund of In-Lieu Fee. If a building permit or certificate of occupancy is never issued for the Residential Project and the in-lieu fee has already been paid, the Developer may be eligible for a refund from the City. The right to a refund of the in-lieu fee will expire as follows: if a building permit is never issued, upon the

expiration of the first Discretionary Approval for the Residential Project; if a certificate of occupancy is never issued, upon the expiration of the building permit for the Residential Project. In order to obtain a refund, the Developer must send a notarized statement to the City Manager requesting a refund, and stating, on penalty of perjury, the following: (a) the amount of the in-lieu fee actually paid; (b) the payment receipt number; (c) whether any Discretionary Approval or building permit has expired and, if so, the expiration date; (d) if any or all Discretionary Approvals or building permits have not expired, a statement that the Developer (on behalf of itself and its successors and assigns) thereby relinquishes all rights granted by such Discretionary Approval or building permit; and (e) that the Developer (on behalf of itself and its successors and assigns) does not intend to proceed with the Residential Project.

3. Once every five (5) years the City Council shall adopt a new In-Lieu Fee Schedule (“Fee Schedule”) based upon a real estate market study. The baseline Fee Schedule thus derived shall include an across-the-board 10% surcharge to mitigate the potential loss in revenue to the City resulting from bifurcated In-Lieu Fee payments that are made over an extended time period. However, if a Developer elects to pay 100% of the In-Lieu Fee at building permit issuance, a 10% fee discount shall be granted automatically. The Fee Schedule shall also be adjusted annually based upon changes in the Consumer Price Index (“CPI”) for the Los Angeles – Long Beach Standard Metropolitan Statistical Area (LA-LB SMSA), the House Price Index for the LA-LB SMSA, a hybrid of these two indices, or some other appropriate housing market index as may be determined by the Assistant City Manager or his designee.

B. Off-site Inclusionary Units Alternative

Upon application by the Developer and at the discretion of the City Manager, the Developer may satisfy the requirements of providing Inclusionary Units on-site, in whole or in part, by constructing the Inclusionary Units off-site. If the off-site proposal is approved, the relevant elements of the Inclusionary Housing Plan shall be included in the Inclusionary Housing Agreement, which shall be recorded against both the site of the Residential Project and the site where all or part of the Inclusionary Unit requirement will be provided. If the off-site proposal is rejected, the Inclusionary Units shall be provided on-site or the Developer may pay the in-lieu fee.

1. Application. As part of the submission of the Inclusionary Housing Plan, the Developer shall: (a) identify the proposed off-site location and the number of proposed units to be credited to its Inclusionary Unit requirement; (b) provide evidence of site control of the off-site location; and (c) demonstrate that the proposed off-site location satisfies the requirements of Chapter 17.42 and this Part IV.B. The City Manager may approve, conditionally approve or reject the proposal to construct the required Inclusionary Units off-site.

2. Entitlement Schedule. Before or at the same time a Residential Project receives a building permit for all or any portion of the Residential Project, the off-site land shall have received all the necessary project-level approvals and/or entitlements necessary for development of the Inclusionary Units on such land.

3. Site Suitability. The land proposed for the off-site Inclusionary Units must be suitable from the perspective of size, configuration, physical characteristics, physical and environmental constraints, access, location, adjacent use, and other relevant planning criteria. The site must allow development of Inclusionary Units in a manner that complies with the provisions of Chapter 17.42 and the Revised Zoning Ordinance.

a. Eligible Land. Only land parcels meeting the following minimum characteristics shall be eligible for off-site construction of Inclusionary Units:

(i) Zoning. The parcel shall be located where the City zoning permits residential use at the density to achieve the number of Inclusionary Units proposed.

(ii) Infrastructure. The parcel shall be served with the infrastructure necessary for residential development on that property (i.e. sewer, utilities, water, streets and sidewalks).

(iii) Environmental. The parcel shall be free of characteristics that would make it difficult or impossible to develop (i.e., irregular shape, excessive sloping, land-locked or otherwise inaccessible, soil or other contamination, adjacent to incompatible land use). The Developer shall submit a Phase I environmental evaluation report before any parcel can be considered.

(iv) Clear Title. The parcel shall be free of any monetary liens, or any other liens, encumbrances or easements that adversely affect the parcel's title. All property taxes and special taxes must be current.

(v) Over concentration. The proposed construction of the Inclusionary Units on the parcel proposed shall not result in an over concentration of low income housing in any specific neighborhood. As used herein, an "over concentration" exists when either 50 rental units legally restricted (by means of a recorded instrument) to occupancy by Very Low and/or Low Income Households are located within one-eighth mile from the parcel proposed for the off-site Inclusionary Units, or when 200 rental units legally restricted (by means of a recorded instrument) to occupancy by Very Low and/or Low Income Households are located within one-quarter mile from the parcel proposed for the off-site Inclusionary Units.

(vi) Neighborhood Character. The proposed construction of the Inclusionary Units on the off-site parcel shall not adversely affect the character, historical or architectural integrity of any existing structure or neighborhood in which the Inclusionary Units will be located.

b. Proximity Requirement. In addition to the requirements set forth in paragraph "a", the land proposed for off-site Inclusionary Units may be located anywhere within the City limits. However, for projects located outside Sub-Area B as shown in the attached map, the off-site location may not be within Sub-Area B. This notwithstanding, residential projects located in any Sub-Area may provide Off-Site units

in Sub-Area B under an “Off-Site Exception” in which the following conditions shall be met: i) The Off-Site units are located within a homeownership project which eliminates both a nuisance and a legal non-conforming use; ii) the determination of nuisance shall be made by a finding of the City Council on a project-by-project basis, on recommendation of staff; and iii) the nuisance and legal non-conforming use comprise at least 15% of the total site area of the entire project site.

Residential Projects proposed in Sub-Area B may propose land within Sub-Area B, or anywhere within the City limits.

4. Standards for Off-site Inclusionary Units. The proposed off-site Inclusionary Units must be comparable with the design or use of the base units of the Residential Project in terms of size, appearance, materials and finished quality. However, such comparability standards may be modified at the discretion of the City Manager on a project-by-project basis, to provide flexibility for Off-site Inclusionary Units with respect to, but not limited to the following: a) the required number of Off-site Inclusionary Units to be provided (while maintaining the total square footage of the required number of Off-site Inclusionary Units); b) the design, appearance, materials, and finished quality of habitable spaces within the Off-site Inclusionary Units (while maintaining the total bedroom count of the required Off-site Inclusionary Units); and c) the appearance, materials and finished quality of the Off-site Inclusionary Units in order to achieve compatibility with the architectural style and other physical characteristics of the neighborhood in which such units are to be located.

Off-site for-sale units are prohibited if the residential project that is subject to the Inclusionary Housing Requirements is a rental project (however, a for-sale residential project that provides rental Off-site units is acceptable). This prohibition shall not apply to Off-Site for-sale units located in Sub-Area B that are developed to eliminate a nuisance and legal non-conforming use, pursuant to Section IV.B.3.b.

5. Implementation.

a. The Developer shall demonstrate to the City Manager that the off-site location is and will remain committed to the timely development of the Inclusionary Units as provided in the Inclusionary Housing Plan prior to the issuance of the building permit for the Residential Project. This commitment may be demonstrated through ownership of the off-site location, or through evidence of site control of the off-site location through joint ownership, joint venture or other contractual means (i.e. copies of purchase or option agreements, etc.). The City Manager may also condition the Residential Project or occupancy of the Residential Project on development or occupancy of the off-site Inclusionary Units. Upon the completion of the Inclusionary Units and their occupancy by Income-Eligible households, the Inclusionary Housing Agreement shall be released from record title of the Residential Project site.

b. If necessary to ensure that Inclusionary Units are developed contemporaneously with the Market Rate Units, the City Manager may require that the

Developer provide evidence of site-control of the land for the off-site Inclusionary Units as early as the first Discretionary Approval for the Residential Project.

c. Notwithstanding paragraphs 2 or 5(a) of this Section, upon the discretion of the City Manager, an alternative schedule for entitlement of the off-site land and/or the completion of infrastructure necessary for the off-site land, and/or completion of the Inclusionary Units, may be approved if the Developer:

(i) demonstrates that the alternative schedule is necessary due to financial hardship; and

(ii) posts a bond or letter of credit, in an amount satisfactory to the City Manager, and in a form satisfactory to the City Attorney, to ensure the entitlement of the off-site land and/or completion of infrastructure necessary for the off-site land, and/or completion of the Inclusionary Units.

C. Conveyance of Land Alternative

Upon application by the Developer and at the discretion of the City Manager, the Developer may satisfy the requirements of providing Inclusionary Units on-site, in whole or in part, by a conveyance of land to the City. If the conveyance proposal is rejected, the Inclusionary Units shall be provided on-site or the Developer may pay an In-Lieu Fee.

1. Application. The application process shall be as set forth in paragraph 1 of Section B of this Part IV.

2. Entitlement Schedule.

a. The land to be conveyed to the City shall be fully served with the infrastructure necessary for Residential Project on that property, prior to its conveyance to the City.

b. Notwithstanding paragraph (a) above, upon the discretion of the City Manager, an alternative schedule for the completion of infrastructure necessary for the land to be conveyed to the City may be approved if the Developer:

(i) demonstrates that the alternative schedule is necessary due to financial hardship; and

(ii) posts a bond or letter of credit, in an amount satisfactory to the City Manager, and in a form satisfactory to the City Attorney, to ensure the completion of infrastructure necessary for the land to be developed.

3. Site Suitability. The standards for site suitability shall be the same as those set forth in paragraph B.3 of this Part IV. In addition, (a) the fair market value of the parcel(s) shall be at least equal to the amount of the applicable in-lieu fee that would otherwise apply were the Developer to elect that alternative; and (b) all property taxes and special taxes must be current before title is conveyed to the City. The

fair market value of the parcel shall be supported by an estimate of value prepared by a qualified real estate appraiser, subject to the City's reasonable review of the appraisal.

4. Number of Inclusionary Units Credited to the Property to be Conveyed. The number of Inclusionary Units credited to the property to be conveyed shall consist of the number of Inclusionary Units which can, with a reasonable degree of certainty, be developed on the land given: (1) the mix of Inclusionary Unit sizes and type of structure set forth in the Inclusionary Housing Plan; (2) densities permitted by applicable planning and zoning designations; and (3) site, infrastructure, environmental and other physical and planning constraints.

5. Conveyance. Title to the land shall be conveyed to the City before a building permit is issued for all or any portion of the Residential Project.

D. Substitution of Inclusionary Ownership Units for Rental Units, On-Site or Off-Site

Upon the application by the Developer and at the discretion of the City Manager, the Developer may satisfy the requirements of providing Inclusionary for sale units on-site, in whole or in part by constructing rental units on-site or off-site. For both the on-site and off-site proposal, Developer will be required to comply with the income provisions outlined in Section 17.42.040 of the Municipal Code. If an off-site location is proposed, the Developer will have to comply with the provisions of the Section IV.B of these Regulations.

V. INCLUSIONARY UNIT STANDARDS

A. Unit Type and Location. All Inclusionary Units shall be reasonably dispersed throughout the Residential Project and shall be proportional, in number, bedroom size and location, to the Market Rate Units. If the Residential Project offers a variety of unit plans with respect to design, materials and optional interior amenities, the Inclusionary Units shall be comparable with the Residential Project's base-plan in terms of design, appearance, materials, finished quality and interior amenities.

B. Construction Schedule. All Inclusionary Units in a Residential Project shall be constructed concurrently with or prior to the construction of the Market Rate Units. In the event the City approves a phased project, the Inclusionary Units shall be provided within each phase of the Residential Project as it is built out. With the approval of the City Manager, the phasing plan may be adjusted away from strict concurrency where necessary in order to account for the different financing and funding environments,

economies of scale, and infrastructure needs applicable to development of the Market Rate Units and the Inclusionary Units.

VI. SALE AND RENTAL OF INCLUSIONARY UNITS

A. General

1. Persons Ineligible to Occupy an Inclusionary Unit. The following individuals, by virtue of their position or relationship, are ineligible to rent or purchase an Inclusionary Unit:

a. All employees and officials of the City or its agencies, authorities, or commission who have, by virtue of their position, policy-making authority or influence over the implementation of the inclusionary housing program, as well as the immediate relatives of such employees or officials, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

b. The immediate relatives of the Developer and/or the property owner, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

2. General Standards.

a. Inclusionary Units are reserved for either Low or Moderate Income Households at an Affordable Housing Cost. The income limits and maximum allowable rents and sales prices for the Inclusionary Units are set forth in Exhibit "A", attached hereto and incorporated herein by this reference. The City Manager shall biannually update Exhibit "A".

b. Any person who occupies a rental Inclusionary Unit or purchases an Inclusionary Unit shall occupy that unit as his or her principal residence.

3. Notice of Non-Compliance. Except as otherwise provided herein, if it is determined that a violation of Chapter 17.42 or of these regulations has occurred, the City Manager shall issue a notice of non-compliance and require the owner or tenant (as applicable) to cure the violation within 30 days, unless a different period is provided at the City Manager's discretion.

B. Ownership Units

1. Initial Eligibility. As a condition of the close of escrow of the Inclusionary Unit to the initial purchaser, the Developer of a for-sale Inclusionary Unit shall certify the income of the initial purchaser. The certification shall be on a form provided by the City.

2. Resale to an Income-Eligible Purchaser. After the initial sale of the Inclusionary Unit, the for-sale unit shall remain affordable to subsequent Income-Eligible buyers pursuant to a resale restriction with a term of forty-five years. The owner of an Inclusionary Unit may sell that unit to an Income-Eligible purchaser at the applicable Affordable Housing Cost.

3. Resale to an Above Moderate-Income Purchaser. After the initial sale of the Inclusionary Unit, the for-sale Inclusionary Unit may be sold to an above Moderate Income purchaser provided that the sale results in a recapture by the City or its designee of a financial interest in the unit equal to: (1) the difference between the sales price paid by the Income-Eligible household that first purchased the Inclusionary Unit and the appraised value (determined as if not an Inclusionary Unit) at the time of the initial sale, plus (2) twenty percent of any appreciation. The City Manager may allow for forgiveness of all or some of the recapture amount if the resale value of the Inclusionary Unit falls below the market value of the unit at its last sale.

4. Penalty for Ineligible Resale or Use.

a. In the event of a sale of the Inclusionary Unit to a non-Income-Eligible purchaser (other than as set forth in Paragraph 3 of this Section VI.B), that portion of the actual sales price in excess of the sales price that would have been obtained had the Inclusionary Unit been sold to an Income Eligible purchaser at an Affordable Housing Cost shall be immediately paid to City.

b. In the event of a change of use from an owner-occupied residential unit to any other use, including if the Inclusionary Unit is rented, all income generated by that change in use, including all rent obtained there from, shall be immediately paid to City.

c. City shall apply all recaptured funds to subsidize other Inclusionary Units.

5. Resale; Right of First Refusal to City. At initial sale of the Inclusionary Unit, buyer shall enter into a Purchaser Affordability Agreement wherein it is acknowledged that City shall have a right of first refusal in the event of a resale. The City option of first refusal granted by the owner shall be in effect for a period of 60 days. The City shall in writing inform the seller that it intends to exercise the option and purchase the dwelling unit, assign its option to a qualified buyer, or abandon the option. The same conditions shall apply to any successors or assigns.

C. Rental Units

1. Eligibility of Tenants. The Owner of rental Inclusionary Units shall be responsible for certifying the income of the tenant to the City Manager at the time of initial rental and annually thereafter. This shall be completed by viewing acceptable documentation, such as income tax statements or a W-2 for the previous calendar year, and submitting, on a form approved by the City, a certification that the tenant qualifies as an Income-Eligible household.

2. Selection of Tenants. The Owner of rental Inclusionary Units is required to fill vacant units in either one of two ways:

a. Selecting Income-Eligible households themselves as long as the Owner complies with the publication requirements set forth in paragraph 3 of this Section.

b. Selecting Income-Eligible households from the City's Section 8 Housing Choice Voucher Waiting List available from the Planning and Development Department.

3. Publication of Availability of Units. Whenever an Inclusionary Unit(s) becomes available, the Owner shall publish notices of the availability of Inclusionary Units in newspapers circulated widely in the City of Pasadena, including newspapers that reach minority communities. At least one notice shall be published in a Spanish language newspaper of general circulation. Examples of appropriate newspapers include the Star News, Pasadena Weekly, Pasadena/San Gabriel Valley Journal and La Opinion. The notice should briefly explain what inclusionary housing is, state the applicable income requirements, indicate where applications are available, state when the application period opens and closes, and provide a telephone number for questions. Applications may require the name, address, and telephone number of the applicant; the number of persons to occupy the household; and any other information relevant to determine whether the applicant is eligible to occupy an Inclusionary Unit. The Owner shall submit proof of publication to the City Manager.

4. Notification to City. Whenever an Inclusionary Unit(s) becomes available, the Owner shall immediately notify, in writing, the City Manager.

5. Subsequent Rental to Income-Eligible Tenant. The Owner of rental Inclusionary Units shall apply the same rental terms and conditions to tenants of Inclusionary Units as are applied to all other tenants, except as otherwise required to comply with Chapter 17.42 (i.e., rent levels, occupancy restrictions and income requirements) and/or government subsidy programs. Discrimination based on subsidies received by the prospective tenant is prohibited.

6. Changes in Income of Tenant. If after moving into an Inclusionary Unit the tenant's income eventually exceeds the income limit for that unit, the tenant may remain in the unit (the "original unit") as long as his/her income does not exceed 140% of the income limit for the original unit. Once the tenant's income exceeds 140% of the income limit for the original unit, the following shall apply:

a. If the tenant's income does not exceed the income limits of other Inclusionary Units in the Residential Project, the Owner may, at the Owner's option, allow the tenant to remain in the original unit at the tenant's new applicable Affordable Housing Cost, as long as the next vacant unit is re-designated for the same lower income category applicable to the original unit. If the Owner does not want to re-designate the next vacant unit, the tenant shall be given one year's notice to vacate the

unit. If during the year, an Inclusionary Unit becomes available and the tenant meets the income eligibility for that unit, the Owner shall provide the tenant with the opportunity to submit an application for that unit.

b. If there are no units designated for a higher income category within the Residential Project that may be substituted for the original unit, the tenant shall be given one year's notice to vacate the unit. If within that year, another unit in the Residential Project is vacated, the Owner may, at the Owner's option, allow the tenant to remain in the original unit and raise the tenant's rent to market rate and designate the newly vacated unit for the original unit at the applicable Affordable Housing Cost. The newly vacated unit must be comparable in size (i.e. number of bedrooms, bathrooms, square-footage, etc.) and location (i.e. same floor, same view, etc.) as the original unit.

D. Preference and Priority System.

The Developer of inclusionary units shall afford persons and households who live or work in Pasadena a priority in the rental or purchase of inclusionary units in accordance with the following priority.

1. **First priority** is given to eligible households that live and work in the City of Pasadena;
2. **Second priority** is given to eligible households that live in the City of Pasadena;
3. **Third priority** is given to eligible households that work within the City of Pasadena boundaries;
4. **Fourth priority** is given to eligible households that have been involuntarily displaced from the City of Pasadena;

The Pasadena Local Preference and Priority System Guidelines shall be used to implement the preference and priority system for inclusionary units and shall apply to all developers/owners and their agents, successors and assigns proposing inclusionary units.

VII. INCLUSIONARY HOUSING TRUST FUND

The Inclusionary Housing Trust Fund (the "Fund") is a separate City fund established for the specific purpose of providing the City with funds to assist in the development of housing that is affordable to Very Low, Low and Moderate Income Households. All in lieu fees collected pursuant to Chapter 17.42, all penalties and other monies generated by monies in the Fund, shall be deposited in the Fund. Monies in the Fund shall be used solely for the development of housing affordable to Very Low, Low and Moderate Income Households. Priority for the use of those monies shall be to assist in the development of housing affordable to Very Low and Low Income Households.

Such monies may also be used to provide financial assistance to developers of new construction, rehabilitation, and acquisition of real property that will provide housing for Low and Moderate Income Households. Such monies may also be used to acquire properties necessary to maintain affordable housing. In addition, Inclusionary Housing Trust Funds may be used to: a) purchase affordability covenants on existing market rate housing; and b) lengthen the term of existing deed restrictions or affordability covenants on currently restricted affordable housing. Should the City recover monies pursuant to Section 17.42.080.A, those monies may be distributed to the affected tenants or buyers, to the extent the tenants or buyers are Low or Moderate Income Households eligible to occupy the Inclusionary Unit(s) and made payments in excess of the applicable Affordable Housing Cost. Up to ten percent (10%) of Inclusionary Housing In-Lieu Fees collected or deposited into the Inclusionary Housing Trust Fund may be utilized for administrative costs associated with implementation of Chapter 17.42.

Inclusionary Housing Trust Funds shall be allocated on a citywide basis and in accordance with the “over concentration” criteria defined in Section IV. B 3 a. (v). of the Regulations. However, for proposed projects located in Sub-area B and seeking Inclusionary Housing Trust Fund assistance over concentration will exist when 40 rental units legally restricted for occupancy by very low and/or low income households are located within one-eighth mile from the parcel proposed for Inclusionary units, or when 100 rental units legally restricted to occupancy by very low and/or low income households are located within one-quarter mile of the parcel proposed for the provision of Inclusionary units.

Proposed projects located in Sub-area B will also be initially reviewed by the City Council/Pasadena Community Development Commission (Commission) on a case-by-base basis prior to the preparation of an Agreement for the allocation of Inclusionary Housing Trust Funds. At the time of its initial review, City Council/Commission may utilize certain threshold criteria (e.g., advisory bodies recommendation; number of proposed covenanted affordable units; City/Commission’s per unit affordable housing assistance; amount of Inclusionary Housing Trust Funds approved to assist developments in Sub-area B during the fiscal year; total number of covenanted affordable units sited within Sub-area B and assisted with Inclusionary Housing Trust Funds during the fiscal year; etc) in its consideration of the proposed development.

On or before the date that is twenty-four months from July 1, 2005 and bi-annually thereafter, the City Manager or her designee shall prepare and present to the City Council and Planning Commission an evaluation of the effectiveness of the Inclusionary Housing Program (Biennial Inclusionary Housing Performance Assessment), including the use of Inclusionary Housing Trust Funds, during the preceding twenty-four month period.

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