

INCLUSIONARY HOUSING ORDINANCE  
ADMINISTRATIVE REGULATIONS

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Adopted pursuant to Chapter 1-4, B.R.C. 1981 and Section 9-13-16, B.R.C. 1981.

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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 Chapter 9-13, B.R.C. 1981, and facilitate the implementation of the chapter by specifying forms, procedures, and requirements in more detail. City staff will implement the rules consistent with the intent and as provided in Chapter 9-13 of the land use code.

These regulations are organized and numbered to mirror the sections of Chapter 9-13. The sections of these regulations have the same title as the corresponding section in the B.R.C. For example, the administrative regulations for Section 9-13-3, *"General Inclusionary Housing Requirements"*, B.R.C. 1981 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 below:

*" 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.

*" 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 Housing Requirements**

### **3.1 Rounding and Partial Requirements**

In determining the number of permanently affordable units required on or off-site, any inclusionary housing requirement resulting in a fractional value with a decimal point that is 0.5 or greater will be rounded up to the next whole number. Any remaining fraction may be met through other options as allowed in Section 9-13-10, “*Options for Satisfaction of Inclusionary Housing Requirement*,” B.R.C. 1981. To calculate a cash-in-lieu obligation on a partial unit, the per square foot rate based on the overall project will be applied proportionally to size of the partial unit. For example, if the applicable cash-in-lieu amount is \$47 per square foot the applicant would owe \$39,480 (1,200 s.f. unit x 0.7 = 840 s.f. x \$47).

### **3.2 Rental Unit Distribution Allocation**

When fewer than one hundred percent (100%) of the affordable rental units are provided on- or off-site, the 50% AMI rents shall be satisfied first. For example, a project with ninety six (96) units would have an inclusionary requirement of twenty-four (24) affordable units. Of these twenty percent (20%), or five (5) units, must be affordable to households earning no greater than 50% of the AMI households. The requirement for 50% AMI rents is rounded up from 4.8 units to 5 units and the remaining 19 units must be affordable to low/moderate (60% AMI) households. If 8 of the units are provided on-site, then all the required 50% AMI rents must be provided first on five units satisfying this requirement.

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

Inclusionary housing requirements do not apply to group living accommodations as included in Table 6-1, “Use Table”, B.R.C. 1981 under the heading of “Group Living” 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. Inclusionary Housing requirements do not apply to a “not-for-profit-permanently affordable cooperative” per Ordinance 8119. Inclusionary housing will apply based on the typology to any cooperative housing unit not defined as a “not-for-profit-permanently affordable cooperative” in Section 9-16-1, B.R.C. 1981.

### **3.4 Inclusionary Housing Requirements for 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. However, if cash-in-lieu is used to satisfy the inclusionary requirement as allowed in Section 9-13-10, B.R.C. 1981 the floor area of any accessory unit internal to the principal dwelling will be included in the residential floor area calculation to determine the amount of cash-in-lieu owed.

### 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, shared amenities, land dedication details, and compliance with the Livability Standards of the proposed permanently affordable unit. Concurrent to the execution of a Covenant, a Promissory Note and Deed of Trust in the amount of ten dollars (\$10) may be required.

### 3.6 Covenant(s) Required

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

#### **Covenant Definitions:**

- a. 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 Permanently Affordable Homeownership 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 area median income that will determine the initial maximum allowable sales price for each unit;
  - vi. Purchaser income limits;
  - vii. Required fair marketing procedures;
  - viii. Describes who is eligible to purchase;
  - ix. Buyer selection process;
  - x. Notification; and
  - xi. Other program requirements.

- b. 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. Period of affordability (permanent)
  - ii. Unit legal description;
  - iii. The owner may only sell to a program-certified purchaser;
  - iv. Maximum allowable initial sales price
  - v. Income limits and other buyer eligibility requirements;
  - vi. Restrictions on the affordable price for subsequent sales including limits on the amount of appreciation the seller may receive;
  - vii. City fair marketing and buyer selection procedures;
  - viii. Grants the city a first option to purchase the property or acquire an owner's interest;
  - ix. Capital improvement credit policies;
  - x. Agreements about excessive damage and home maintenance;
  - xi. Limitations of financing;
  - xii. Restrictions on renting the home; and
  - xiii. Owner occupancy requirements.
  
- c. The **Interim Permanently Affordable 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 Permanently Affordable 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. Requirement to maintain the property in good, safe, and habitable conditions; and
  - vi. Reporting and record retention requirements.

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

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

- a. Elements of a good faith marketing effort for homeownership units shall follow the established marketing and buyer selection process 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; unit floor area, number of bedrooms, number of bathrooms, building type, 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. 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.

- c. 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.
- d. Within each category above, for homes with specific characteristics, any household with these characteristics will be prioritized:
  - i. 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., ii., iii., or iv. 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 dependents.
- e. 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.
- f. 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.
- g. 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 once the City determines the buyer meets the affordable housing requirements of the City of Boulder and the buyer accepts the terms of the covenant.

- h. If the home has been marketed per the Good Faith Marketing requirements and has not gone under contract within 120 days the seller/developer may enter into a voluntary rental agreement with a tenant for a limited time as described in the Rental Conditions of the covenant.

### **3.8 Program Certified Household**

*“Household”* means the definition of household under 24 CFR 92.2 and includes all the people who intend to occupy a housing unit. A Household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as Domestic Partners or roomers is also counted as a Household.

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 during the first year of occupancy 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 Timing Requirements**

The city housing division requires a notarized, recorded Statement of Authority for any contract, agreement, covenant, or other legal document that requires notarization and or recording and is executed on behalf of a limited liability corporation, limited liability

company or corporation. The Statement of Authority shall be provided on the state form "Statement of Authority" (38-30-172, C.R.S.) or any similar form acceptable to the city.

A financial guarantee may be required to secure the inclusionary affordable housing requirement. The guarantee is required when on-site units receive a certificate of occupancy after a certificate of occupancy is issued for the on-site market rate units. 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.

The following table includes some but not necessarily all required documents and the timeline for submitting the documents.

<b>Form or Action</b>	<b>By-right projects 1-4 dwelling units</b>	<b>By-right projects 5 or more dwelling units</b>	<b>Projects with 5 or more dwelling units requiring land use approval</b>
<b>Preliminary Determination of Inclusionary Housing Compliance</b>	Not applicable	Not applicable	Submit with land use application
<b>Unit Data Spreadsheet</b>	Prior to any residential building permit submittal	Prior to any residential building permit submittal	Submit with land use application
<b>Determination of Inclusionary Housing Compliance Form (DOC)</b>	Prior to building permit submittal	Prior to any residential building permit submittal	Prior to any residential building permit submittal
<b>Amendment to the DOC</b>	Prior to building permit issuance	Prior to any residential building permit issuance	Prior to any residential building permit issuance
<b>Restrictive Covenants</b>	Prior to any residential building permit submittal	Prior to any residential building permit submittal	Prior to any residential building permit submittal
<b>Off-site Agreement</b>	Not applicable	Prior to any residential building permit submittal	Prior to any residential building permit submittal
<b>On-site Agreement</b>	Prior to any residential building permit submittal	Prior to any residential building permit submittal	Prior to any residential building permit submittal

<b>Form or Action</b>	<b>By-right projects 1-4 dwelling units</b>	<b>By-right projects 5 or more dwelling units</b>	<b>Projects with 5 or more dwelling units requiring land use approval</b>
<b>Request for Alternative Methods of Compliance</b>	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal
<b>Shared Amenity Agreement</b>	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal
<b>Designee Agreement for Land Dedications</b>	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal	Submitted and approved or denied prior to any residential building permit submittal

#### **4.0 Affordable Housing Design Review**

The city manager has adopted an administrative level Affordable Housing Design Review. Successful completion of this review is required prior to submittal of a building permit for the proposed development. This design review is completed during the site review or the form-based review process. For projects that are not subject to a discretionary process the review is done administratively. The purpose of the review is to ensure:

- a. Improve the character and quality of new development;
- b. Projects preserve and enhance the community's unique sense of place through creative design that respects historic character and the project's relationship to the natural environment, public realm, and surrounding area;
- c. Projects provide multi-modal transportation connectivity and promote use of modes other than the single-occupant vehicles;
- d. Open space in projects enhance the pedestrian experience, is functional, and incorporates high-quality sustainable landscaping;
- e. Open space in projects meets the needs of the users of the project;
- f. Buildings exemplify high-quality, enduring architecture with facades that are simple and human scaled;
- g. Buildings provide pedestrian interest and are consistent with the character established in adopted subcommunity plans, area plans, or design guidelines or, if none apply, are compatible with the character of the surrounding area or improve upon that character; and
- h. The development meets all requirements of the Inclusionary Housing Ordinance, Chapter 13, B.R.C. 1981, and these Administrative Regulations.

#### **4.1 Review Process**

- a. An application for the affordable housing design review will be considered through the administrative review process described in Section 9-2-2, B.R.C. 1981. An attachment to the administrative review application will include a copy of these rules that will govern the review.
- b. The city manager will review and decide on the application in accordance with the provisions of Section 9-2-6, "Development Review Application," B.R.C. 1981.
- c. Applications for administrative reviews are not meant to be iterative. The application fee covers two staff reviews. 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. The city manager may extend the sixty-day period if requested by the applicant prior to its expiration and upon the applicant's demonstrating good cause for the additional delay.
- d. The review will be approved in whole with conditions or denied. The city manager will provide a written disposition of approval or denial, with the reasons for denial to the applicant. No application for a residential building permit may be submitted until the review is completed and approved.
- e. The city manager may approve minor modifications to the approval under the procedures prescribed by Subsection 9-2-14(k), B.R.C. 1981. Changes to the site plan, building plans, and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed, and dated on the approved site plan.
- f. The review will result in approved final architectural and site plans. The electronic copies of the approved plans will remain on file in the planning department.
- g. The applicant must begin and substantially complete the approved affordable housing design review within three years from the time of the final approval or as modified by a development schedule. For the purposes of this section, substantially complete means the time when the construction is sufficiently complete so the owner can occupy the work or portion thereof for the use for which it is intended. If the project is to be developed in stages, the applicant must begin and substantially complete the development of each stage within three years of the time provided for the start of construction of each stage in the development agreement. Failure to substantially complete the development or any development stage within three years of the approved development schedule shall cause the unbuilt portion of the development approval to expire.

#### **4.2 Application Requirements**

- a. An applicant for an affordable housing design review shall pay the fees prescribed in Section 4-20-43, "Development Application Fees," B.R.C. 1981.

- b. Submittal requirements: An application for approval of a site plan may be filed by any person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager that includes, without limitation:
  - i. The written consent of the owners of all property to be included in the development;
  - ii. Improvement survey or an improvement location certificate by a registered surveyor;
  - iii. Land Use Review Project Fact Sheet.
  - iv. A written statement containing the following information:
    - A. A statement of the current ownership and a legal description of all of the land included in the project;
    - B. An explanation of the objectives to be achieved by the project, including, without limitation, building descriptions, sketches or elevations that may be required to describe the objectives;
    - C. A development schedule indicating the approximate date when construction of the project or phases of the project can be expected to begin and be completed; and
    - D. 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.
  - v. A site plan with a north arrow showing the major details of the proposed development, prepared on a scale of not less than one inch equals one hundred feet providing sufficient detail to evaluate the features of the development required by this section. The site plan shall contain, insofar as applicable, the following information:
    - A. The existing topographic character of the land;
    - B. The site and location of proposed uses with dimensions indicating the distance from lot lines;
    - C. The location and size of all existing and proposed buildings, structures and improvements, and the general location of adjacent streets, structures, and properties;
    - D. The internal traffic and circulation systems, off-street parking areas, service areas, loading areas and major points of access to public rights-of-way;
    - E. The location, height and size of proposed signs, lighting, and advertising devices;
    - F. The areas that are to be conveyed, dedicated, or reserved as parks, recreation areas, playgrounds, outlots or open space;

- G. The areas that are to be conveyed, dedicated, or reserved for streets, alley, and utility easements;
- H. The areas subject to the one hundred-year flood as defined in Chapter 9-16, "Definitions," B.R.C. 1981, and any area of the site that is within a designated space conveyance zone or high hazard zone.
- vi. Architectural plans drawn to a standard architectural scale sufficient to show the details of the drawing 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. Floor plans must contain details sufficient for the Livability Review.
- vii. 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.
- viii. Any other information the applicant wishes to submit.

### **4.3 Review Criteria**

- a. No design review application shall be approved unless the approving agency finds that the project is consistent with the following criteria:
  - i. Site Design Criteria: The project creates safe, convenient, and efficient connections for all modes of travel, promotes safe pedestrian, bicycle, and other modes of alternative travel with the goal of lowering motor vehicle miles traveled. Usable open space is arranged to be accessible; designed to be functional, encourage use, and enhance the attractiveness of the project; and meets the needs of the anticipated residents, occupants, tenants, and visitors to the project. In determining whether this is met, the approving agency will consider the following factors:
    - A. Access, Transportation, and Mobility:
      - I. The project enables or provides vehicular and pedestrian connectivity between sites consistent with adopted connections plans relative to the transportation needs and impacts of the project, including but not limited to construction of new streets, bike lanes, on-street parking, sidewalks, multi-use paths, transit stops, streetscape planting strips, and dedication of public right-of-way or public access easements, as applicable considering the scope of the project. Where no adopted connections plan applies, the applicant shall, in good faith, and in coordination with the city manager, attempt to coordinate with adjacent property owners to establish, where practicable, reasonable, and useful pedestrian connections or vehicular circulation connections, such as between parking lots on abutting properties, considering existing connections, infrastructure, and topography.

- II. Alternatives to the automobile are promoted by incorporating site design techniques, land use patterns, and infrastructure that support and encourage walking, biking, and other alternatives to the single-occupant vehicle.
  - III. Streets, bikeways, pedestrian ways, trails, open space, buildings, and parking areas are designed and located to optimize safety of all modes and provide connectivity and functional permeability through the site.
  - IV. The design of vehicular circulation and parking areas make efficient use of the land and minimize the amount of pavement necessary to meet the circulation and parking needs of the project.
  - V. Where practicable and needed in the area and subject to coordination with the city manager, the project provides curbside parking or loading or both consistent with city policies on curbside management.
- B. Open Space:
- I. Useable open space is arranged to be accessible and designed to encourage use by incorporating quality landscaping, a mixture of sun and shade, hardscape areas and green spaces for gathering.
  - II. The open space will meet the needs of the anticipated residents, occupants, tenants, and visitors of the property. In mixed-use projects, the open space provides for a balance of private and common areas for the residential uses and includes common open space that is available for use by residents of the residential uses and their visitors and by tenants, occupants, customers, and visitors of the non-residential uses.
  - III. If the project includes more than 50 dwelling units, including the addition of units that causes a project to exceed this threshold, and is more than one mile walking distance to a public park with any of the amenities described herein, at least 30 percent of the required outdoor open space is designed for active recreational purposes.
  - IV. On-site open space is linked to adjacent public spaces, multi-use paths, city parks, or public open space if consistent with Department of Open Space and Mountain Parks or Department of Parks and Recreation plans and planning for the area, as applicable.
- ii. Building Siting and Design Criteria: Building siting and design are consistent with the character established in any adopted plans or guidelines applicable to the site or, if none apply, are compatible with the character of the area or improves upon that character, consistent with the intent specified in this paragraph. Buildings are positioned and oriented towards the public realm to promote a safe and vibrant pedestrian experience including welcoming, well-defined entries and facades. Building exteriors are designed with a long-lasting appearance and high-quality materials. Building design is simple and

to a human scale, it creates visual interest and a vibrant pedestrian experience. Building roof design contributes to a city skyline that has a variety of roof forms and heights. In determining whether this is met, the approving agency will consider the following factors:

A. Building Siting and Public Realm Interface:

- I. New buildings and, to the extent practicable, additions to existing buildings are positioned towards the street, respecting the existing conditions or the context anticipated by adopted plans or guidelines. In urban contexts, buildings are positioned close to the property line and sidewalk along a street; whereas, in lower intensity contexts, a greater landscaped setback may be provided to match the surrounding context.
- II. Wherever practical considering the scope of the project, parking areas are located behind buildings or set back further from the streetscape than the building façade.
- III. Along the public realm, building entries are emphasized by windows and architectural features that include one or more of the following: increased level of detail, protruding or recessed elements, columns, pilasters, protruding bays, reveals, fins, ribs, balconies, cornices, eaves, increased window glazing, or changes in building materials or color.
- IV. Defined entries connect the building to the public realm. Unless inconsistent with the context and building's use, along the public realm, one defined entry is provided every 50 feet. Buildings designed for residential or industrial uses may have fewer defined entries.
- V. If the project is adjacent to a zoning district of lower intensity in terms of allowable use, density, massing, or scale, the project is designed with an appropriate transition to the adjacent properties considering adopted subcommunity and area plans or design guidelines applicable to the site, and, if none apply, the existing development pattern. Appropriate transitions may be created through design elements such as building siting and design or open space siting and design.
- VI. The building's siting and relationship to the public realm is consistent with the character established in any adopted plans or guidelines applicable to the site or, if none apply, is compatible with the character of the area or improves upon that character, consistent with the intent of Paragraph (3), Building Design Criteria.

B. Building Design:

- I. Larger floor plate buildings and projects with multiple buildings have a variety of forms and heights.

- II. To the extent practical considering their function, mechanical appurtenances are located within or concealed by the building. If they cannot be located within or concealed by the building, their visibility from the public realm and adjacent properties is minimized.
  - III. On each floor of the building, windows create visual interest, transparency, and a sense of connection to the public realm. In urban, pedestrian main street-built environments, it is a best practice to design at least 60 percent of each ground floor façade facing the street as window area. Otherwise, it is a best practice to design at least 20 percent of the wall on each floor of a building as window area. Blank walls along the most visible portions of the building are avoided.
  - IV. Simple detailing is incorporated into the façades to create visual interest, without making the façade overly complicated. This detailing may include cornices, belt courses, reveals, alternating brick or stone patterns, expression line offsets, window lintels and sills, and offsets in window glass from surrounding materials.
  - V. Balconies on buildings with attached dwelling units are integrated into the form of the building in that exterior walls partially enclose the balcony. Balcony platform undersides are finished.
  - VI. The building's design, including but not limited to use of materials, color, roof forms, and style, is consistent with the character established in any adopted plans or guidelines applicable to the site or, if none apply, is compatible with the character of the area or improves upon that character, consistent with the intent of paragraph (3), Building Design Criteria.
- C. Building Materials:
- I. Building facades are composed of high-quality, durable, human-scaled materials. High-quality materials include brick, stone, polished concrete masonry units, wood, architectural high pressure laminate panels, cementitious or composite siding, architectural metal panels, or any combination of these materials. Split-faced concrete masonry units, stucco, vinyl siding, EIFS, and unfinished or untreated wood are not considered durable, high-quality materials, but may be used on a limited basis and not on facades facing the public realm. High quality materials are focused on the ground floor facades on all sides of a building and on all floors of facades facing the public realm, and, overall, comprise the vast majority of all building facades.
  - II. Monolithic roofing membranes, like Thermoplastic Polyolefin, are not used on roof surfaces that are visible from the street level.

- III. The number of building material types is limited, and the building materials are applied to complement the building form and function. The organization of the building materials logically expresses primary building features, such as the spatial layout, building entries, private and common spaces, anchor corners, stairwells, and elevators.
  - IV. Building cladding materials turn convex corners and continue to the inset wall. This criterion does not apply to changes that occur at an interior corner nor to detailing elements, such as cornices, belt courses, reveals, offsets in expression lines, lintels, and windowsills. Building cladding materials do not change in-plane unless there is at least a 12-inch wall offset.
  - V. Any newly constructed building that includes residential units and is located within 200 feet of a railroad, freeway, or expressway is designed to achieve an interior day-night average noise level of no more than forty-five decibels. Noise shall be measured in a manner that is consistent with the federal Housing and Urban Development's standards in Sections 24 CFR §§ 51.100 to 51.106 for the "measure of external noise environments," or similar standard adopted by the city manager in the event that such rule is repealed. The applicant shall provide written certification prior to the issuance of a certificate of occupancy that the sound abatement and attenuation measures were incorporated in the construction and site design as recommended by a professional engineer.
- iii. Inclusionary Housing:
- A. The project meets the city livability standards for affordable housing;
  - B. The project meets all other standards and rules in the Inclusionary Housing Ordinance and these Administrative Regulations.

## 5.0 Livability Standards

With the exception of the city Housing Authority, Boulder Housing Partners, 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.

The Livability Standards can be found on the city's Inclusionary Housing website: <https://bouldercolorado.gov/services/inclusionary-housing>.

If a deficiency is identified the affordable unit must be improved to meet these standards. Or at the city manager's discretion 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 of Permanently Affordable Units

- a. Permanently affordable unit sizes shall be determined based on the average size of each bedroom configuration (0,1,2,3 or more bedrooms) 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.
- b. Affordable units provided off-site shall be determined based on the average size of each bedroom configuration (0,1,2,3 or more bedrooms) for all units in the development that generated the inclusionary requirement (i.e., the sending site). Affordable units required for the off-site development 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

Affordable Units*	Minimum Floor Area Compared to the Average. Size of All Units with a Similar Bedroom Count	Maximum Floor Area (Sq. Ft.)
Micro Unit (<476 sq. ft.)	Equal	1,200
Studio/Zero-bedroom	Equal or 700 sq. ft., whichever is smaller	1,200
One-bedroom	Equal or 700 sq. ft., whichever is smaller	1,200
Two-bedroom	80%	1,200
Three-bedroom	80%	1,400
Four-bedroom	80%	1,400

\*See 10.2 (d) in these regulations for size requirement for affordable units proposed to satisfy the inclusionary requirement on a receiving site.

- c. The average unit size requirement will be based on the average size of each configuration of number of bedrooms 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.

- d. 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 a minimum size that equals eighty percent (80%) of the average size of all proposed units in each of the 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.
- e. The city manager may accept permanently affordable dwelling units larger than the maximum floor area if voluntarily offered by the developer.

## 7.0 Relationship of Permanently Affordable Units to Market Units

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

Market Unit Bedroom (BR)/ Bath (BA) Configuration	Minimum Baths in Affordable Units
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 for Providing Permanently Affordable Units

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. The “residential square footage” used to determine the applicable cash-in-lieu contribution applies solely to principal structures included in new residential development, not future building additions or accessory structures.
- b. Cash-in-lieu Amounts.
  - i. Developments with a cash-in-lieu requirement less than \$1,000,000 shall satisfy the requirement no later than at the time of issuance of the residential building permit;
  - ii. Developments with a cash-in-lieu requirement that is equal or greater than \$1,000,000 may satisfy the requirement no later than at the time of issuance of the residential building permit or may defer no more than half of the total cash-in-lieu requirement to the time of calling for final inspections;
  - iii. For multi-building projects with multiple residential building permits the CIL amount will be allocated proportionally for each building.
  - iv. Cash-in-lieu amounts are adjusted annually on the first business day of January to reflect changes in the cost of producing the affordable units. The CIL amounts are adjusted using a composite of the Construction Cost Index (CCI) and the Building Cost Index (BCI) for the Denver area and published by the Engineering News Record.
  - v. 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%).
  - vi. Cash-in-lieu amounts are based on the amount in place when the payment is made to the city.
  - vii. The CIL obligation is based on the total residential floor area in a project.
  - viii. Multi-unit Projects. A set amount per square foot is applied to developments with two or more units that have 18,000 sq. ft or greater and reduced on a sliding scale downward for less floor area.
  - ix. A set amount per square foot is applied to all single-family homes.
  - x. Cash-in-lieu amounts are the same for rental and for-sale developments.
  - xi. A feasibility analysis will be conducted at least every five years from the date of this update to verify the base cash-in-lieu rates and ensure the base rates keep up with the cost of producing units, remain feasible, and continue to incentivize the compliance outcomes desired.
- 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.

## **10.2 General Off-Site Requirements**

These administrative regulations apply to affordable units provided on a site separate from the one that initially generated the inclusionary requirement (i.e., a receiving site).

- a. A pre-application review is required when an applicant is proposing a location for off-site affordable units. The city manager shall determine the requirements, process, and criteria for assessing the off-site location. However, approval of a location does not ensure the off-site development will be approved.
- b. 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.
- c. 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 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 guarantee is required when an applicant is providing newly constructed units off-site that do not have a certificate of occupancy at the time of building permit submittal for the sending site. It is also necessary when providing existing units off-site that, per the city, must be rehabbed and do not have a letter of completion for the necessary work at the time of building permit submittal for the sending site. 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. The city will review and approve 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.

## **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 affordable units shall be comparable to the surrounding market housing in quality, design, and general appearance.

- 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 (i.e., an 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 sending site and 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. Compliance with the Rental Manual, as it may be amended;
  - x. Deed-restricting covenant requirement;
  - xi. Financial guarantee requirement;
  - xii. City review and approval of proposed open space elements including uses, play structures, amenities, and other recreational elements;
  - xiii. 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.
  - xiv. Penalties for non-performance; and
  - xv. 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.

- 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 require 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;
  - vii. Compliance with the Livability Standards or a waiver of compliance for elements of with the Livability Standards if compliance is determined by the city to be unfeasible due to existing unit constraints;
  - viii. Process to determine the scope of any required rehabilitation and/or maintenance;
  - ix. Required rehabilitation and/or maintenance, if applicable;
  - x. Marketing and sales requirements;
  - xi. Maximum allowable unit sales price or rent;
  - xii. Compliance with the City of Boulder Rental Manual, as it may be amended;
  - xiii. Restrictive covenant;
  - xiv. Financial guarantee;

- xv. City review and approval of structural, electrical, mechanical, and other system elements for each building where the affordable units are proposed to be located;
- xvi. City review and approval of rehabilitation building materials including but not limited to, flooring, bath and kitchen fixtures, appliances, and cabinets in each building where the affordable units are proposed to be located;
- xvii. Penalties for non-performance; and
- xviii. Inspection requirements.

### **10.5 Land Dedication**

- a. A pre-application review is required when an applicant is proposing to dedicate land to meet the IH obligations.
- b. A signed deed granting land to the city or its designee must be executed prior to application for any residential building permit by the sending site.
- c. Any required cash-in-lieu shall be paid at the time of permit issuance for the development dedicating the land.
- d. Dedicated land must be in the form of a fee simple parcel that will be fully owned by the city or its designee.

### **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(a)(4), B.R.C., 1981. The purpose of alternative methods of compliance is to provide equivalent or additional housing benefit to the community through provision of a diversity of home sizes, types, or features for varying income levels. Projects funded by the city are not held to the same standard as other developments due to the amount of housing benefits provided. These developments may require modifications to the standards in these regulations, including but not limited to required livability standards and housing inspections.

Alternative methods of compliance may include, but are not limited to, the provision of alternative affordable unit types, variation of the bedroom count to obtain family sized units, a greater number of units with lower prices or rents or waiving certain requirements to support permanently supportive housing.

### **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(a)(4), B.R.C. 1981 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.

## 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 eighty percent (80%) one hundred percent (100%) and one hundred and twenty percent (120%) of the area median income as determined by HUD.

- b. 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.
- c. 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.
- d. Taxes, insurance, and private mortgage insurance are calculated to be a percentage of the affordable housing payment as determined annually by the city manager.
- e. 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.
- f. 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.
- g. Maximum sales prices are determined based on a fixed number of people per bedroom. The actual number of persons in a household can vary.
- h. 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.
- i. Mortgage interest rates are calculated quarterly based on rates posted on the Fannie Mae 30 day historical daily require net yields for a 30-year fixed mortgage and calculated as an 18 month trailing average.
- j. The Maximum Allowable Sales Prices (MASP) for permanently affordable ownership units are based on the price in place when the building permit is issued for each relevant building that contains an Affordable Unit. The MASP is not a guaranteed price for the affordable units.
- k. 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.

- l. The price sheet and methodology for the pricing sheet will be reviewed and adjusted as needed by the city manager.
- m. 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 buyer's 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. Assets used for down payment may be exempted from the asset limit based on established program guidelines.

## **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 based on tax records or income which is imputed to assets shall be included as part of a household's annual income for the 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, lease arrangements, or other occupancy 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. During the first year of ownership the owner of a permanently affordable unit may not rent the entirety or any part of the property. Following the first year the Owner may rent or lease a single bedroom so long as the Property remains the Owner's primary residence. After five years of ownership the owner may rent or lease the entirety of the property for no more than a period or periods of time aggregating one year out of every seven-year period. (The five-year period mentioned in the third sentence of this paragraph shall be considered to be part of the first seven-year period.) Rental periods cannot exceed 12 months during any two-year period if the entirety of the property is rented or leased. The property must be occupied by the Owner immediately prior to any rental period. The owner must re-occupy the property upon termination of any rental period.
- b. If the home has been marketed per the Good Faith Marketing requirements and has not gone under contract within 120 days the seller/developer may enter into a voluntary rental agreement with a tenant for a limited time as described in the Rental Conditions of the Permanently Affordable covenant.
- c. 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 (HOAs)**

Common Interest Ownership Communities: 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. 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 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.

### **13.2 Owning Affordable Rental Units**

Permanently affordable rental units provided to meet the requirements of the city's Inclusionary Housing Ordinance, through an Annexation Agreement, or that have received City funding must meet the requirements of the Affordable Rental Ownership Policy and the Rental Compliance Manual as they may be amended.

### **13.3 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 Reserved**

#### **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.