

Chapter 13 Inclusionary Housing¹

9-13-1. Findings.

- (a) A diverse housing stock is necessary in this community to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this chapter are necessary to preserve a diversity of housing opportunities for the city's residents and working people.
- (b) The program defined by this chapter is necessary to provide continuing housing opportunities for very low-, low-, moderate-, and middle-income households. It is necessary to help maintain a diverse housing stock and to allow people to have better access to jobs and upgrade their economic status. It is necessary to provide housing to persons of all needs and abilities to have a place in the community. The strong employment base in this region, combined with the special attractiveness of Boulder, its University-related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low-, low-, moderate and middle-income and working people in Boulder a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low-, low-, moderate and middle-income households. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.
- (c) It is essential that appropriate housing options exist for university students, faculty and staff so that the housing needs of university-related populations do not preclude non-university community members from finding affordable housing.
- (d) A housing shortage for persons of very low-, low-, moderate and middle-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the city negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.
- (e) Because remaining land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low-, low-, moderate and middle-income residents and working people. This is particularly true because of the tendency, in the absence of interventions, for large expensive housing to be developed within the city, which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the city.
- (f) The primary objective of this chapter is to obtain a significant amount of permanently affordable dwelling units. Provisions of this chapter provide for various approaches to creating additional affordable housing units. Those provisions recognize the fact that individual site, legal and economic factors have an impact on which alternatives will work for different developments.

¹**Editor's note**—Ord. No. 8201, § 1, adopted October 3, 2017 and effective November 2, 2017, repealed the former Ch. 13, §§ 9-13-1—9-13-11, and enacted a new Ch. 13 as set out herein. The former Ch. 13 pertained to similar subject matter and derived from Ord. 7701 (2010), 7718 (2010), 7762 (2010), 7895 (2013).

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- (g) The intent of this chapter is that any resulting affordable housing units and developments will be distributed either within each development when provided on-site or at a building/neighborhood level when provided off-site and will be found throughout the community and not concentrated in certain areas of the city.
 - (h) As land for new residential development becomes scarcer, redevelopment of existing housing will increase. The newly built housing that results will likely be more expensive than the housing it replaces. This is especially true of larger redevelopments. Smaller scale developments are less able to absorb development costs than are larger developments that can benefit from economies of scale. This chapter recognizes the differences between developments of different sizes and the inherent inefficiencies in smaller developments and seeks to not disproportionately affect smaller redevelopments within the City.
 - (i) This inclusionary housing requirement is based upon the city's power to enact zoning regulations that promote the health, safety and welfare of the community. For the reasons cited above, the promotion and maintenance of a diverse housing stock is an important component of the city's zoning regulations.

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9-13-2. Purpose.

The purposes of this chapter are to:

- (a) Implement the housing goals of the Boulder Valley Comprehensive Plan;
- (b) Promote the construction of housing that is affordable to the community's workforce;
- (c) Retain opportunities for people that work in the city to also live in the city;
- (d) Maintain a balanced community that provides housing for people of all income levels; and
- (e) Ensure that housing options continue to be available for very low-income, low-income, moderate, and middle-income residents, for special needs populations and for a significant proportion of those who work or live in the city.

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9-13-3. General Inclusionary Housing Requirements.

- (a) Inclusionary Housing Requirements.
 - (1) Developments Containing Five or More Dwelling Units:
 - (A) Any development containing five or more dwelling units is required to include at least twenty-five percent of the total number of dwelling units as permanently affordable dwelling units.
 - (B) Twenty percent of the required affordable units shall be affordable to low/moderate income households.

Five percent of the required affordable units shall be affordable to middle income households.

 - i. The city manager is authorized to use rule-making authority to annually adjust the percentages in A and B to incentivize on-site affordable units.
 - (C) In for sale developments a minimum of fifty percent of the units shall be built on the site of the development, unless such units are provided for in another manner consistent with the provisions of this chapter.

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- (D) Rental developments do not have a minimum on-site requirement and may provide the permanently affordable units through any combination of the alternative means of compliance set forth in Section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement," B.R.C. 1981.
- (2) Developments with One to Four Dwelling Units: Any development containing one to four dwelling units must include at least twenty percent of the total number of dwelling units as permanently affordable dwelling units. Developments of this size may comply with this obligation either by including one permanently affordable dwelling unit within the development or through any combination of the alternative means of compliance set forth in Section 9-13-10, "Options for Satisfaction of Inclusionary Housing Requirement," B.R.C. 1981(b) Rounding Rule: In determining the number of affordable units required on or off-site, any inclusionary housing obligation 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) Scope of Chapter: No person shall fail to conform to the provisions of this chapter for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this chapter.
- (c) Income Eligibility Required: No person shall sell, rent, purchase or lease a permanently affordable dwelling unit created pursuant to this chapter except to a program eligible household. A private owner of a single affordable unit may rent the unit in accordance with the provisions of this chapter as set forth in Section 9-13-6 "Program Requirements for For Sale Units." All sales, rentals, purchases and leases shall comply with the provisions of this chapter.
- (d) Deed Restriction Required: No person offering a permanently affordable dwelling unit for rent or sale shall fail to lawfully reference in the grant deed conveying title of any such unit, and record with the county recorder, a covenant or declaration of restrictions in a form approved by the city. Such covenant or declaration of restrictions shall reference applicable contractual arrangements, restrictive covenants and resale restrictions as are necessary to carry out the purposes of this chapter.
- (e) Good Faith Marketing Required: All sellers or owners of permanently affordable dwelling units shall engage in good faith marketing and public advertising efforts each time a permanently affordable dwelling unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units.
- (f) Reference Information: Whenever this chapter refers to information generated by HUD but no such information is generated by or available from that agency, the city manager is authorized to adopt or create any necessary equivalent information, which can be utilized in the enforcement of the provisions of this chapter.
- (g) Required Agreements: Those applicants creating residential developments shall enter into a permanently affordable housing agreement with the city manager and shall execute such restrictive covenants and additional agreements, in a form acceptable to the city, as necessary to carry out the purposes of this chapter. Such agreements shall be on a form provided by the city manager and shall document how the applicant will meet the requirements of this chapter. The applicant shall provide all documentation and any other material requested by the city manager. An applicant shall not be eligible to submit for a building permit until the affordable housing agreement and any required restrictive covenants are approved by the city manager.
- (h) Residency Requirement: No owner of a permanently affordable dwelling unit shall fail to occupy the purchased dwelling unit as a primary residence, except as otherwise agreed by the city manager.

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9-13-4. Affordable Housing Design Review.

- (a) Purpose: The Affordable Housing Design Review is established to provide a uniform and consistent method for evaluating proposals for meeting inclusionary housing obligation where site review is not required.
- (b) Affordable Housing Design Review Required: All developments with more than five units providing affordable units on-site to meet an inclusionary housing obligation and all off-site developments in excess of five units providing affordable units shall be subject to the Affordable Housing Design Review unless the development is approved pursuant to a site review

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9-13-5. Livability Standards.

The city manager is authorized to establish minimum livability standards which will address size, distribution within a project, design and materials of all affordable units to ensure that the affordable housing is comparable to the market rate units which created the obligation. No person shall fail to comply with the adopted livability standards.

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9-13-6. Quality, Size, and Amenities of Affordable Units.

- (a) Quality of Units. Affordable units shall be of comparable quality, design and materials to the market units creating the inclusionary housing obligation and constructed with durable materials that promote sustainable, energy efficient and attractive affordable housing. If provided off-site, the affordable units shall also be comparable to the surrounding market housing in quality, design, and general appearance.
- (b) Size of Permanently Affordable Dwelling Units: The city manager is authorized to establish minimum and maximum sizes for permanently affordable units annually to reflect the type of units that are being constructed in the previous year and are sized to meet unmet community needs.
- (c) Affordable Owner and Renter Access to Amenities: When affordable units are provided on-site in any location or configuration, the affordable owners and renters shall have access equal to that of the owners and renters of the market units. Such amenities shall include but not be limited to; parks, outdoor play areas, pools, exercise facilities and equipment, dog washing rooms, bicycle repair facilities, internet cafes, and similar on-site amenities.

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9-13-7. Relationship of Affordable Units to Market Units.

- (a) Purpose: Affordable housing shall be comparable in quality, design and general appearance to the market units creating the inclusionary housing obligation.
- (b) Detached Dwelling Units: When a development contains single-family detached dwelling units, a proportional number of the required permanently affordable dwelling units shall also be single-family detached dwelling units.
- (c) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types, including, without limitation, single family detached dwelling units, townhomes, duplex, triplex, four-plex, eight-plex, stacked flats, the required permanently affordable dwelling units shall be comprised of the different dwelling unit

types in the same proportion as the dwelling units that are not permanently affordable within the development.

- (d) Number of Bedrooms and Bathrooms: Affordable units shall have the same proportion of zero bedroom/studio, one-, two-, three- and four-bedroom dwelling units as in its market rate dwelling units. The city manager will determine the minimum numbers of bathrooms required for affordable units with these numbers of bedrooms. Middle income affordable units shall have at least one bedroom.
- (e) Ownership Type: Permanently affordable dwelling units shall be for sale in the same proportion as the dwelling units intended for sale that are not permanently affordable within the development; for example, if fifty percent of the units in the original development are for sale units, then at least fifty percent of the affordable units must be for sale units. Rental developments may provide either rental or for-sale units.

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9-13-8. Location and Timing.

Except as otherwise provided in this chapter, permanently affordable dwelling units shall be provided as follows:

- (a) Location of For Sale Permanently Affordable Units: For sale permanently affordable units shall be distributed evenly throughout the development to achieve integration and avoid concentration or segregation of the affordable households unless otherwise approved by the city manager.
- (b) Location of Rental Permanently Affordable Units: Rental permanently affordable units do not have a requirement for distribution throughout the development.
- (c) Timing of Construction: The construction of on-site permanently affordable dwelling units in any development shall be timed such that the units shall be constructed and pass final inspection concurrently or prior to the market-rate dwelling units in that development.
- (d) Timing of Marketing: On-site permanently affordable dwelling units shall be marketed concurrently with or prior to the market-rate dwelling units in that development.

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9-13-9. Developments Containing a Single Dwelling Unit.

A single lot owner that intends to construct one single dwelling unit on one buildable site that will be the primary residence of the owner for not less than three years immediately following the issuance of a certificate of occupancy shall meet the standards set forth in Subsection 9-13-3(a), "Inclusionary Housing Requirements" B.R.C. 1981, or meet the following standards:

- (a) Designation of Home as a Permanently Affordable Dwelling Unit: The owner shall make the dwelling unit a permanently affordable dwelling unit, except that such initial owner does not have to meet income or asset qualifications imposed by this chapter. The income and asset limitations shall apply to subsequent owners of the affordable dwelling unit.
- (b) In-Lieu Contribution: If the owner of a dwelling unit described in this subsection chooses to comply with inclusionary housing requirement by making a cash-in-lieu contribution, the owner shall have the option of deferring payment of that contribution until the property is conveyed to a subsequent owner or ten years from the date of execution of an agreement to that effect whichever is sooner, subject to the following:
 - (1) Amount: The amount of the cash-in-lieu contribution shall be based on the in-lieu amount for a similar single-family home that is in place at the time the contribution is made, no later than at the time of

transfer of title to a subsequent owner or ten years from the date of execution of an agreement to that effect whichever is sooner.

- (2) Legal Documents: The owner executes legal documents, the form and content of which are approved by the city manager, to secure the city's interest in receipt of the deferred in-lieu contribution.

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9-13-10. Options for Satisfaction of Inclusionary Housing Requirement.

- (a) Purpose: To obtain a significant amount of permanently affordable dwelling units. To the extent permitted by this chapter, developers may satisfy the inclusionary housing requirement through any combination of the following alternate means:
 - (b) Cash-in-Lieu Contribution: Developers may satisfy permanently affordable housing requirements by making cash contributions to the city's affordable housing fund. The cash-in-lieu contribution will be calculated by the city manager annually. The city manager may consider the number of units in the development, the size and type of units which created the obligation (including small attached units and townhomes), the amount that would incentivize on-site construction of affordable units, and the affordability gap between market and affordable home prices when determining the cash-in-lieu calculation.
 - (1) Annual Escalator for Developments with Five or More Dwelling Units: The city manager is authorized to increase the cash-in-lieu contribution annually on July 1 of each year up to a maximum of ten percent, compounded each year until seventy-five percent of the affordability gap in a given year is reached.
 - (2) Annual Escalator for Developments with One to Four Dwelling Units: The city manager is authorized to increase the cash-in-lieu contribution for developments with one to four dwelling units annually on July 1 of each year by up to a maximum of ten percent compounded each year until fifty percent of the affordability gap in any given year is reached.
 - (3) Affordable Housing Fund Established: The city manager will establish an affordable housing fund for the receipt and management of permanently affordable dwelling unit cash-in-lieu contributions. Monies received into that fund will be utilized solely for the construction, purchase and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this chapter.
- (c) Provision of Affordable Units Off-site:
 - (1) The intent of this option is that the off-site unit mix of building type (attached, townhome, detached) and number of units with specific number of bedrooms will be proportionate to the mix of market units on the sending site. Recognizing that an off-site location is unique and may have different zoning and other planning considerations than the sending site, the city manager may meet the intent of this chapter by modifying the requirements in Chapters 9-13-6 and 9-13-7 to accommodate receiving site constraints.
 - (2) To the extent permitted by this chapter, inclusionary housing requirements may be satisfied by restricting existing or newly constructed rental or for sale off-site dwelling units which are approved by the city as suitable affordable housing dwelling units through covenants, contractual arrangements or resale restrictions, the form and content of which are acceptable to the city manager. Off-site affordable dwelling units shall be located within the City of Boulder.
 - (3) Off-site Agreement: Any development meeting the requirements of this chapter by providing affordable units off-site shall be subject to the provisions of an off-site Agreement as approved by the city manager. The off-site Agreement must be executed prior to any residential building permit submittal for the sending site.

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- (4) Financial Guarantee: The city manager may require a financial guarantee to secure the off-site units prior to issuing a building permit for the sending site, the development generating the need for the affordable units.
 - (5) Timing of Construction for Off-site Units: The intent of this section is to provide concurrency of construction and marketing between affordable units and market rate units.
 - (A) If a newly constructed dwelling unit is used to satisfy the requirements of this chapter, the units shall pass final inspection no later than one year after the first market-rate dwelling unit in the site that generated the requirement passes final inspection.
 - (B) If an existing dwelling unit is used to satisfy the requirements of this chapter, the applicant shall provide a letter of completion for any rehabilitation or remodeling, subject to city manager review and approval, that establishes that the unit is habitable no later than one year after the first market rate dwelling unit in the site that generated the requirement passes final inspection.
 - (6) Timing of Marketing: The marketing of the permanently affordable dwelling units should start within two months of when the units can be occupied. Marketing shall occur no later than ten months after the first residential building permit for the site that generated the requirement is issued.
 - (7) Off-Site Location Subject to Inclusionary Requirement: All newly constructed dwelling units on the receiving site are subject to the requirements of this chapter.
 - (8) Off-Site Location Review and Approval: Any proposed off-site location is required to be approved by the city manager.
- (d) Land Dedication:
- (1) Purpose: The inclusionary housing requirement may be fully or partially satisfied by the dedication of land to the City of Boulder or an entity designated by the City of Boulder for permanently affordable dwelling units in accordance with the provisions of this chapter.
 - (2) General Requirements: A land dedication shall meet all of the following criteria to the satisfaction of the city manager:
 - (A) Any proposed off-site location is required to be approved by the city manager.
 - (B) The land is in the City of Boulder and has either a medium or high density residential land use and zoning classification or the city manager determines that such classification may be pursued;
 - (C) The land is in an environmentally acceptable condition as supported by a Phase I Environmental Assessment as approved by the city manager. The city manager may require other studies or assessments to make this determination;
 - (D) No greater than ten percent of the land may be within the high hazard, or conveyance floodplain. No greater than twenty-five percent of the land may be within the one-hundred-year floodplain. If any portion of the land is in the high hazard, conveyance or one-hundred-year flood plain the city manager will have the sole discretion to determine if the land is appropriate for affordable housing development.
 - (E) Satisfactory proof of fee title is provided to the city manager within thirty days of the effective date of dedication to the city. The land will be free of all liens and encumbrances and all property taxes and special taxes will be current before the title for the dedicated land is conveyed. The land will be conveyed by general warranty deed before issuance of a building permit for the originating residential development.
 - (F) Dedicated land plus any cash-in-lieu contributed must be of equivalent or greater value to the total cash-in-lieu contribution amount. The land must equal no less than seventy-five percent of

the cash-in-lieu contribution amount, including any in-lieu requirements of Subsection 9-13-3(d), B.R.C. 1981, for providing less than one-half of the required affordable dwelling units on-site that would have been required of the originating residential development. The value of land to be dedicated will be determined, at the cost of the developer, by an independent appraiser, who will be selected from a list of Colorado Certified General Appraiser provided by the city, or by such alternative means of valuation to which a developer and the city may agree.

- (G) If the land does not equal the full amount of the cash-in-lieu owed, the applicant shall contribute cash-in-lieu to make up any gap between the value of the donated land and the total cash-in-lieu contribution amount.
- (e) Alternative methods of compliance. The city manager is authorized to enter into agreements to allow alternative methods of compliance for the inclusionary housing requirements contained within this chapter. The applicant shall provide all documentation and any other material requested by the city manager. An applicant for an alternative method of compliance will demonstrate that the proposed method of compliance:
- (1) Will result in additional affordable housing benefits for the city consistent with the purposes of this chapter; or
 - (2) Will result in additional affordable housing benefits that are equivalent to or greater than the cash-in-lieu contribution as set forth in Subsection 9-13-9(a), including any additional cash-in-lieu that is contributed if less than fifty percent of any for-sale permanently affordable units are not provided on-site; or
 - (3) Is necessary to prevent an unlawful taking of property without just compensation in accordance with Section 9-13-10, "No Taking of Property Without Just Compensation," B.R.C. 1981.

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9-13-11. Rebuilt Dwelling Units.

The provisions of this chapter apply to any dwelling unit that is removed and rebuilt, except as provided in this subsection.

- (1) **Developments with Four or Fewer Dwelling Units:** An applicant may request an exemption from the inclusionary housing requirements of this section for each dwelling unit removed and replaced by a dwelling unit in a development that has four or fewer units proposed for construction. The exemption shall be valid for three years after the issuance of any permit that results in the removal of a unit if the applicant applies for a building permit for a dwelling unit, uses due diligence to commence and complete the construction of such building and meets all deadlines set by city building codes or that otherwise may be set by the city manager. Any removal of a dwelling unit undertaken without the issuance of a permit will not qualify for the above exemption regardless of the number of units removed.
- (2) **Developments with Five or More Dwelling Units:** When the total number of redeveloped or newly constructed dwelling units in a development equals five or more dwelling units, the requirements of this chapter shall apply regardless of the date of issuance of any permit resulting in the removal of a unit.
- (3) **Calamity:** The provisions of this subsection shall not apply to non-affordable dwellings that may have been removed or caused to be removed by fire, flood, wind, act of nature or another calamity. Such dwelling units may be replaced without meeting the inclusionary housing requirements of this chapter at the time preferred by the property owner. Deed restricted affordable dwelling that may have been

removed or caused to be removed by fire, flood, wind, act of nature or other calamity must be replaced and include the deed restriction.

- (4) **Safe and Habitable:** The provisions of this subsection shall not apply to dwellings to be removed, if, at the time of removal, such unit is considered to be an unsafe structure, a structure unfit for human occupancy, or a dangerous structure under the 1997 Uniform Code for the Abatement of Dangerous Buildings, Section 302 adopted by the city by Section 10-5-3, B.R.C., unless otherwise excepted by the Boulder Revised Code.

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9-13-12. Program Requirements for For-Sale Units.

- (a) **Affordable Unit Price:** The city manager will set the maximum allowable sales price for affordable dwelling units required by this chapter based upon the unit type, total floor area, number of bedrooms and bathrooms.
- (1) The prices charged for permanently affordable low/moderate priced dwelling units shall not exceed a price that is affordable to a household earning the HUD low-income limit for the Boulder PMSA.
- (2) Middle Income priced dwelling units shall not exceed a price that is affordable to one hundred and twenty percent of the area median income as determined by HUD for the Boulder PMSA. The city manager is authorized to adopt or create pricing categories within this income range to be utilized in the enforcement of the provisions of this chapter.
- (b) **Maximum Sales Price for Permanently Affordable Dwelling Units:** The maximum sale price for an affordable ownership unit shall be set by the city on at least a quarterly basis.
- (c) **Real Estate Commissions:** A real estate commission shall be paid by any seller of an affordable unit to a real estate agent representing the buyer. This amount shall be established by the city manager and specified in the inclusionary housing administrative regulation.
- (d) **Approved Purchasers for Permanently Affordable Dwelling Units:** A developer or owner shall sell to a qualified purchaser after completing a good faith marketing and selection process approved by the city manager.
- (e) **Asset Limitations for Program-eligible Households:** Program-eligible households that wish to purchase affordable dwelling units shall be subject to reasonable asset limitations set by the city manager. The city manager will establish maximum asset limitation requirements for purchasers of affordable dwelling units in order to accomplish the purposes of this chapter. The standard that the city manager will use to set the asset limitation is that the housing be available to people who, without assistance, would have difficulty marshaling the financial resources to obtain appropriate housing within the city.
- (f) **Sale Restriction:** No person shall sell a permanently affordable dwelling unit except to a person that meets the income, asset and other eligibility requirements of this chapter or any asset and income eligibility requirement that is included in any contract, covenant or any other agreement to which the city is a party or beneficiary.
- (g) **Rental Restrictions for For-Sale Permanently Affordable Units:**
- (1) **Rental Restrictions Pursuant to Sale:** Newly constructed or existing units that are deed restricted are initially owned by a developer. Prior to the first sale of such units to a program eligible buyer and after receipt of a temporary or final certificate of occupancy a developer who initially owns an affordable unit is required to actively market the affordable unit for a minimum of one hundred twenty days to facilitate a sale. Subsequent program-eligible owners must also market the affordable unit for a

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- minimum of one hundred twenty days to facilitate a sale. If, after this period, the affordable home has not sold, the unit may be rented for a one-time period not to exceed eighteen months. The developer or owner is required to continue to market the unit while it is being rented but may defer the sale to the end of the lease period. A written lease or rental agreement is required. The lease or agreement must be provided to the city division of housing.
- (2) An owner may rent one bedroom in an affordable unit for any period of time subject to city requirements concerning the renting of residential property.
 - (3) The provisions below apply to rental of the entirety of the affordable units. The provisions of this section do not apply to any affordable housing developer who owns the affordable unit initially prior to the first sale to a program-eligible owner.
 - (A) No owner shall fail to occupy an affordable unit for a minimum of five years before renting the entirety of the unit.
 - (B) No owner shall fail to provide thirty days' notice to the city manager of intent to rent an affordable unit.
 - (C) No owner shall allow an affordable unit to be rented for more than one year out of seven years. The one-year period may be continuous or an aggregation of shorter time periods.
 - (D) No owner shall fail to provide a written lease or rental agreement to the city division of housing when renting the entirety of an affordable unit. The city manager may require additional documents the city finds reasonably necessary to comply with this section.
 - (E) No owner shall allow an affordable unit to be rented for a period of less than thirty days.
 - (h) Resale Restrictions: All permanently affordable ownership dwelling units developed under this chapter shall be subject to the following resale restrictions:
 - (1) Approved Purchasers: A seller of a permanently affordable dwelling unit must select an income-eligible purchaser by a method that complies with the good faith marketing and selection process approved by the city manager. All purchasers of permanently affordable dwelling units shall be part of program eligible households.
 - (2) Resale Price: The resale price of any permanently affordable dwelling unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:
 - (A) Closing Costs: Customary closing costs and costs of sale as reviewed and approved by the city manager.
 - (B) Permanent Capital Improvements: Consideration of eligible permanent capital improvements installed by the seller that have been approved in advance by the city manager in accordance with rules or administrative guidance established by the city manager.
 - (C) Resale Price: The resale price may include an inflationary factor or shared appreciation factor as applied to the original sale price pursuant to rules as may be established by the city manager to provide for such consideration. In developing rules, the city manager may consider the purposes of this chapter, common private, nonprofit and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing. In the event that the city has not adopted rules that contemplate a particular arrangement for the use of an inflationary factor or shared appreciation factor, the city manager is authorized to approve a resale price formula that is consistent with the purposes of this chapter, common private, nonprofit and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing.

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- (3) Special Fees: The seller of a permanently affordable dwelling unit shall neither levy nor charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.
 - (i) Ownership Associations: When accepting a for sale unit as meeting the inclusionary housing obligation, the city manager will review the condominium association declarations to assess the impact on buyers of affordable units. The city manager is authorized to establish rules regarding allowable terms in condominium declarations in order to ensure that the purposes of this chapter are accomplished.

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9-13-13. Program Requirements for Rental Units.

- (a) Maximum Rent: Rents charged for permanently affordable units in any one development must be affordable to households earning no more than sixty percent of the AMI for low/moderate permanently affordable rental units and eighty percent of the AMI for middle income permanently affordable rental units.
- (b) Conversion of Rental Developments to Ownership Dwelling Units.
 - (1) A rental development may be converted to a for sale development. If the inclusionary housing requirement for a rental development was met with a cash-in-lieu contribution and the rental development is converted to a for sale development within five years of the issuance of a final Certificate of Occupancy, the property owner shall pay the city the difference between the cash-in-lieu amount paid and the amount that would have been due at the time of building permit issuance for a for sale development.
 - (2) An owner of a rental development shall enter into an agreement with the city to agree to pay the difference if the rental development is converted to for sale units in the five-year period.
 - (3) An agreement shall be executed in a form acceptable to the city manager and shall indicate the difference between the cash-in-lieu amount owed if the development were a for sale development instead of a rental development at issuance of the initial residential building permit. The term of the agreement shall be for five years starting from the date of the issuance of a residential building permit. After this period, no additional cash-in-lieu is required if such a conversion occurs. The agreement shall provide for the appropriate adjustment to the inclusionary housing requirements of this chapter.

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9-13-14. Residential Developments with Prior Affordable Housing Agreements.

Developments of the type described in this subsection will be permitted to develop utilizing the following provisions:

- (a) Prior Development Approvals and Applications: The inclusionary housing requirements of Sections 9-13-3(a)(1)(A) and (C), 9-13-4(a) and (b) in place prior to the adoption of this chapter will apply to the following developments:
 - (1) A development for which a site review application was filed prior to July 1, 2018;
 - (2) A development subject to an affordable housing agreement and requirements imposed by prior inclusionary housing agreements; or
 - (3) A dwelling unit for which a building permit has been submitted prior to July 1, 2018.

After July 1, 2018 any development subject to this subsection for which the site review, affordable housing agreement or building permit is expired, denied, revoked, or otherwise is not diligently pursued must conform to the rule in effect at the time of application.

- (b) City Subsidized Developments: Developments subject to agreements with the city executed prior to the effective date of this chapter in order to receive Affordable Housing Funds, Community Housing Assistance Program, HOME or Community Development Block Grant funds may either:
 - (1) Develop in compliance with affordable housing and restricted housing agreements executed prior to the effective date of this chapter and provide restricted units as required pursuant to ordinances in effect at the time such developments were approved;
 - (2) Enter into a new agreement with the city manager to allow the development to retain funding pursuant to the earlier agreements, provide permanently affordable units as required pursuant to the earlier agreements and law, be relieved of all obligations to provide restricted units and provide ten percent additional permanently affordable units as such units are defined by this title; or
 - (3) Refund all monies received pursuant to such agreements and agree that contracts providing for the provision of such funding shall be void. The development shall then develop in compliance with the provisions of this chapter.
- (c) Developments Subject to Annexation Agreements: Developments subject to affordable housing requirements imposed by annexation contracts may develop in conformity with those contract provisions.
- (d) Moderate Income Housing Program: Any development subject to Ordinance No. 4638, "Moderate Income Housing," as amended, and which has not entered into a separate agreement with the city manager to fulfill those requirements prior to the effective date of this chapter shall be relieved of its obligations under Ordinance 4638, as amended, and shall be subject to the requirements of this chapter.

Ordinance No. 8201 (2017)

9-13-15. No Taking of Property Without Just Compensation.

- (a) Purpose: It is the intention of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.
- (b) Request for Review: Any applicant for the development of a housing project who feels that the application of this chapter would effect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter.
- (c) City Manager Review: If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that there is no unlawful uncompensated taking.
- (d) Administrative Hearing: If, after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this chapter. Any such hearing shall be conducted pursuant to the procedures prescribed by Chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would effect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the state of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would effect an illegal taking without just compensation, the city manager will alter, lessen or adjust permanently affordable dwelling unit requirements as applied to the particular development under consideration such that no illegal uncompensated taking takes place.

Ordinance No. 8201 (2017)

9-13-16. Administrative Regulations.

To the extent the city manager deems necessary, rules and regulations pertaining to this chapter will be developed, maintained and enforced in order to assure that the purposes of this chapter are accomplished. No person shall violate any rule or regulation issued by the city manager under this chapter.

Ordinance No. 8201 (2017)

9-13-17. Monitoring.

Periodically, the city manager will present sufficient information to the city council so that it can effectively review the operation of this chapter and determine whether any of the provisions of this chapter should be amended, adjusted or eliminated. Such information should be sufficient to allow the city council to evaluate the following:

- (a) Effectiveness: The effectiveness of this chapter in contributing to the purposes of this chapter;
- (b) Trends: Any demographic trends affecting housing affordability indicating the need for amendments or alterations to the provisions of this chapter;
- (c) Integration: The level of integration of the provisions of this chapter with other tools being utilized by the city as part of a comprehensive approach toward obtaining the goals of this chapter.

Ordinance No. 8201 (2017)