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Land Use Code

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TITLE 9

Land Use Code

Chapter 13 Inclusionary Housing¹

9-13-1. Findings.

- (a) A diverse housing stock is necessary in this community in order 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 in order to preserve some 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- and moderate-income households and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. It is necessary in order to decrease social conflict by lessening the degree of separateness and inequality. The strong employment base in this region, combined with the special attractiveness of Boulder, its increasing 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- and moderate-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- and moderate-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- and moderate-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- and moderate-income residents and working people. This is particularly true because of the tendency, in the absence of intervention, 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 on-site, privately owned, permanently affordable dwelling units. Some provisions of this chapter provide for alternatives to the production of such on-site dwelling units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this chapter is that, wherever possible, permanently affordable units constructed pursuant to these provisions be located on-site and be privately produced, owned and managed.
- (g) As land for new residential development becomes scarcer, redevelopment of existing housing will become the norm. 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.

¹ Chapter 9-13, Inclusionary Zoning, adopted by Ordinance 7476. Repealed and readopted as Chapter 9-13, Inclusionary Housing, by Ordinance 7701.

- (h) 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.

Ordinance No. 7701 (2010)

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 and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the City.

Ordinance No. 7701 (2010)

9-13-3. General Inclusionary Housing Requirements.

- (a) Inclusionary Housing Requirements.
 - (1) Developments Containing Five or More Dwelling Units: Any development containing five or more dwelling units is required to include at least twenty percent of the total number of dwelling units within the development as permanently affordable dwelling units. 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.
 - (2) Developments Containing 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 within the development 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 9-13-9, "Off-Site Inclusionary Housing Options," B.R.C. 1981.
- (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. No building permit or certificate of occupancy shall be issued, nor any development approval granted, which does not meet the requirements of this chapter.
- (c) Prohibitions: No person shall sell, rent, purchase or lease a permanently affordable dwelling unit created pursuant to this chapter except to an income eligible household that meets the asset limitations of this section. All sales, rentals, purchases and leases shall comply with the provisions of this chapter.
- (d) 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. An applicant may request an alternative method to comply with the requirements of this chapter on a form provided by the city manager. The applicant shall provide all documentation and any other material requested by the city manager. An applicant for an alternative method of compliance shall 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;

- (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 the permanently affordable units are not provided on-site;
 - (3) Is necessary because zoning, environmental or other legal restrictions make a particular level of compliance unfeasible; or
 - (4) 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.
- (e) Rebuilt Dwelling Units: The provisions of this chapter apply to any dwelling unit that is demolished 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 that is demolished and replaced by a dwelling unit in a development that has four or fewer units proposed for construction. The exemption shall be valid for one year after the demolition permit approval 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.
 - (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 demolition permit.
 - (3) Calamity: the provisions of this subsection shall not apply to dwellings that may have been demolished or caused to be demolished by fire, flood, wind, act of nature or other calamity. Such dwelling units may be replaced without meeting the inclusionary housing requirements of this chapter at the time preferred by the property owner.
- (f) Deed Restriction Required: No person offering a permanently affordable dwelling unit for 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) Approved Purchasers for Permanently Affordable Dwelling Units: A developer or owner shall sell to a qualified low-income purchaser after completing a good faith marketing and selection process approved by the city manager.
- (k) Eligibility: No person shall sell, lease or rent a permanently affordable dwelling unit except to income eligible households.
- (l) Asset Limitations for Income Eligible Households: Income 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.

- (m) **Sale Restriction:** No person shall sell a permanently affordable dwelling unit except to a person that meets the income and asset 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.
- (n) **Residential Developments With Prior Affordable Housing Agreements:** Developments of the type described in this subsection shall be permitted to develop utilizing the following provisions:
 - (1) **Developments Approved Prior to 2010:** Developments which entered into affordable housing agreements or received development plan approvals prior to March 1, 2010, shall conform to the provisions of this chapter or, in the alternative, may develop in compliance with the conditions of the affordable housing agreement or development plan approvals so long as the construction of dwelling units is completed by December 31, 2010.
 - (2) **City Subsidized Developments:** Developments subject to agreements with the City executed prior to the effective date of this chapter in order to receive Community Housing Assistance Program, HOME or Community Development Block Grant funds may either:
 - (A) 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;
 - (B) 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
 - (C) 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.
 - (3) **Developments Subject to Annexation Agreements:** Developments subject to affordable housing requirements imposed by annexation contracts may develop in conformity with those contract provisions.
 - (4) **Developments With Pending Project Approval Applications:** Developers of developments for which applications were filed prior to the effective date of this chapter may request that the city manager vary the standards of this chapter to allow for development in conformity with the approvals. The city manager will grant such requests by finding that the proposed request will result in benefits to the City that are equivalent to the benefits that would otherwise have been created by the application of the provisions of this chapter.
 - (5) **Moderate Income Housing Program:** Any development subject to Ordinance 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. 7701 (2010)

9-13-4. On-Site Inclusionary Housing Requirement.

- (a) **Developments With For-Sale Dwelling Units:** Except as otherwise provided in this chapter, in developments that include five or more ownership dwelling units, the developer shall construct a minimum of fifty percent of the required permanently affordable dwelling units on-site, subject to rounding such that any portion fifty percent or more of a required on-site permanently affordable dwelling unit will be rounded up to one full on-site unit required.
- (b) **Developments With Privately Owned Rental Dwelling Units:** All permanently affordable dwelling unit obligations for developments containing privately owned rental dwelling units may be met through on-site ownership dwelling units, on-site rental dwelling units owned by a housing authority or similar agency, off-site ownership dwelling units

or off-site rental dwelling units owned by a housing authority or similar agency, a cash-in-lieu contribution calculated according to section 9-13-9 "Off-Site Inclusionary Housing Options," or by any combination of on-site and off-site options, which satisfy such permanently affordable dwelling unit obligation. In developments that include only privately owned rental dwelling units, the developer may satisfy the entire inclusionary housing requirement with any off-site option and is not required to construct any permanently affordable dwelling units on-site.

Ordinance Nos. 7701 (2010); 7718 (2010)

9-13-5. Development Requirements.

- (a) Dwelling Unit Types: Except as otherwise provided in this chapter, permanently affordable dwelling units shall be provided as follows:
- (1) For-Sale Dwelling Units: Permanently affordable dwelling units that are required to be constructed on-site and permanently affordable dwelling units that the developer may be allowed to provide off-site 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 off-site units must be for-sale units.
 - (2) Detached Dwelling Units: In single-family detached dwelling unit developments, the required on-site permanently affordable dwelling units shall also be single-family detached dwelling units.
 - (3) Mixed Dwelling Unit Types: In developments with a mixture of dwelling unit types, including, without limitation, single-family detached dwelling units, attached dwelling units, multi-family apartment type dwelling units or other dwelling unit types, the required on-site 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.
- (b) Distribution: The distribution within a development of permanently affordable dwelling units shall be as follows:
- (1) Number of Bedrooms: Each development shall have the same proportion of one-, two-, three- and four-bedroom dwelling units in its affordable dwelling units as in its market rate dwelling units.
 - (2) Location: The location of those permanently affordable dwelling units to the market-rate dwelling units within each development shall be distributed throughout the development to achieve integration and avoid concentration or segregation of the affordable households unless a different distribution will result in a greater affordable housing benefit.
- (c) Size of Permanently Affordable Dwelling Units: The size of permanently affordable dwelling units shall be as follows:
- (1) Detached Dwelling Unit: The average floor area of the detached permanently affordable dwelling units in a development shall be a minimum of forty-eight percent of the average floor area of all the nonpermanently affordable detached dwelling units which are part of the same development, up to a maximum average size of one thousand two hundred square feet of floor area.
 - (2) Attached Dwelling Unit: The average floor area of the attached permanently affordable dwelling units in a development shall be a minimum of eighty percent of the average floor area of all the nonpermanently affordable attached dwelling units which are part of the same development, up to a maximum average size of one thousand two hundred square feet of floor area.
 - (3) Alternative Method of Compliance for Finished Floor Area: The city manager will permit a decrease in size of the finished floor area of an affordable dwelling unit, as set forth in paragraphs (1) and (2) above if the dwelling unit is increased in size by two square feet of unfinished and potentially habitable space for each finished square foot of floor area that is decreased, up to a maximum of four hundred unfinished square feet, upon finding that the unfinished space will be designed and configured in such a way as to allow for a simple conversion of the space at some future time. The factors that the city manager will consider to determine whether a simple con-

version is possible include, without limitation, an adequate foundation, sound structural components, floor to ceiling heights, weather resistant roofs, appropriate exits, window placement and the ability to provide adequate automobile parking for the unfinished space once finished.

- (d) **Timing of Construction:** The construction of required permanently affordable dwelling units in any development shall be timed such that the units shall be constructed and pass final inspection concurrently with or prior to the market-rate dwelling units in that development.
- (e) **Timing of Marketing:** Permanently affordable dwelling units shall be marketed concurrently with or prior to the market-rate dwelling units in that development.
- (f) **Price Within Development:** The city manager will set the maximum allowable sales prices for affordable dwelling units required by this chapter based upon the unit type, total finished floor area, number of bedrooms and bathrooms. The prices charged for permanently affordable dwelling units in any one development shall not exceed a price that is affordable to a household earning the HUD low-income limit for the Boulder PMSA.
- (g) **Required Agreements:** Applicants for 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 specify the number, type, location, approximate size and level of affordability of permanently affordable dwelling units or specify the off-site methods that shall be used to meet the requirements of this chapter. The applicant shall provide all documentation and any other material requested by the city manager. Such affordable housing agreements shall be approved by the city manager subject to the following:
 - (1) **Residential or Mixed Use Developments Subject to Any Land Use Approval:** The affordable housing agreement shall be approved by the city manager prior to approval of any development agreement pursuant to sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, or a subdivision pursuant to chapter 9-12, "Subdivision," B.R.C. 1981. Any required restrictive covenants shall be approved by the city manager prior to application for a building permit.
 - (2) **Residential or Mixed Use Developments Not Subject to Any Land Use Approval:** The affordable housing agreement and any required restrictive covenants shall be approved by the city manager prior to application for a building permit.
 - (3) **No Application Approvals Without Required Agreements:** No development review application or subdivision application shall be approved in the absence of proof of the execution of required agreements. No building permit application shall be accepted in the absence of proof of the execution of required agreements and covenants.

Ordinance Nos. 7701 (2010); 7718 (2010)

9-13-6. Developments Containing a Single Dwelling Unit.

A lot owner that intends to construct a single dwelling unit that will be the primary residence of the owner for not less than one year immediately following the issuance of a certificate of occupancy shall meet the standards set forth in subsection 9-13-3(a), 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 section chooses to comply with inclusionary housing requirements by making a cash-in-lieu contribution, the owner shall have the option of deferring payment of that contribution until such time as the property is conveyed to a subsequent owner, subject to the following:
 - (1) **Amount:** The amount of the cash-in-lieu contribution shall be based on the in-lieu amount for a single-family home that is in place at the time of transfer of title to a subsequent owner.

- (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.
- (c) Waiver of Inclusionary Housing Requirement for Certain Size-Restricted Developments: The owner of a lot who constructs a single dwelling unit upon that lot may elect to be exempted from the inclusionary housing requirements imposed by this chapter if all of the following conditions are met:
 - (1) Primary Residence of Lot Owner: The dwelling unit is intended to be the primary residence of the owner and, following completion of the dwelling unit, the lot owner lives in the dwelling unit continuously for no less than one year immediately following the issuance of a certificate of occupancy;
 - (2) Maximum Size: The floor area of the single detached residential dwelling unit does not exceed one thousand six hundred square feet;
 - (3) Restriction on Size: Restrictive covenants or other legal documents, the form and content of which are acceptable to the city manager, are executed to ensure that the single detached residential dwelling unit remains size restricted in perpetuity to a floor area not exceeding one thousand six hundred square feet; and
 - (4) One-Time Exemption: No person shall be permitted to use the exemption set forth in this subsection more than one time.

Ordinance No. 7701 (2010)

9-13-7. Homeownership Requirements.

- (a) Residency: A purchaser of a permanently affordable dwelling unit shall occupy the purchased dwelling unit as a primary residence, except subject to rental restrictions for permanently affordable ownership dwelling units.
- (b) Rental Restrictions for Permanently Affordable Ownership Units: No person shall rent a permanently affordable ownership unit, except as follows:
 - (1) Unit Initially Occupied: The owner shall initially reside in the permanently affordable ownership unit for a period of not less than five years.
 - (2) Notice: The owner shall provide notice to the City prior to renting of the permanently affordable ownership unit of its intent to rent the unit.
 - (3) Limitation on Lease Period: The owner shall not rent or lease the entirety of the affordable unit for one or more periods aggregating not more than one year out of every seven-year period.
 - (4) Lease Documentation: Any lease or rental agreement for the lease or rental of a permanently affordable ownership unit pursuant to this section shall be in writing.
 - (5) Prior Approval: Before the date upon which it becomes effective, a copy of any lease or rental agreement for a permanently affordable unit shall be provided to the City, along with those documents which the City finds to be reasonably necessary in order to determine compliance with this section.
 - (6) Scope: The provisions of this section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any valuable consideration, whether that agreement is called a lease, rental agreement or something else.
 - (7) Rental of a Bedroom Permitted: At all other times, the only part of a permanently affordable unit which an owner may rent or lease is a bedroom, subject to all requirements of City ordinances concerning the renting of residential property.
- (c) 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 a low-income 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 income 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.
 - (B) **Real Estate Commissions:** Costs of real estate commissions paid by the seller if a licensed real estate agent is employed 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.
 - (C) **Permanent Capital Improvements:** Consideration of eligible permanent capital improvements installed by the seller that have been approved in advance by the city manager.
 - (D) **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 shall 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.
- (3) **Special Fees:** The seller of a permanently affordable dwelling unit shall not levy or charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.

Ordinance No. 7701 (2010)

9-13-8. Affordable Housing Requirements for Rental Developments.

- (a) **Manner of Compliance:** For developments containing rental units, permanently affordable unit obligations for such units shall be met in the following manner:
 - (1) **On-Site or Off-Site Units Permitted:** All permanently affordable housing obligations of rental housing developments may be met through on-site dwelling units, off-site dwelling units or by any combination of on-site and off-site dwelling units that satisfy such permanently affordable housing obligation. Off-site dwelling units shall be equivalent in size and quality of on-site dwelling units that otherwise would be required by this chapter.
 - (2) **Conversion of Rental Developments to Ownership Dwelling Units:** A rental housing development with all of the following characteristics shall enter into a covenant or agreement with the City:
 - (A) The development is not owned by the Housing Authority of the City of Boulder or its agents;
 - (B) The development is one in which the City does not have an interest through the Housing Authority of the City of Boulder or a similar agency consistent with section 38-12-301, C.R.S; and
 - (C) The landowner chooses to fulfill its permanently affordable housing obligations off-site.

The covenant or other agreement shall be in a form acceptable to the city manager and shall ensure that the number of permanently affordable dwelling units that would have been provided if the development was an ownership development with off-site dwelling units used to meet the total inclusionary housing requirements will be provided in the event that the proposed rental development converts to an ownership development within five years of the final dwelling unit in the development receiving a certificate of occupancy. Such covenant

or agreement shall provide for the appropriate adjustment to the inclusionary housing requirements of this chapter.

- (b) Determination of Rental Rates for Permanently Affordable Units: If a developer of a rental housing development chooses to meet the permanently affordable unit requirements imposed by this chapter through the provision of on-site or off-site affordable rental housing, affordability of rental units shall be determined as follows:
 - (1) Maximum Rent: Rents charged for permanently affordable units in any one development must, on average, be affordable to households earning ten percentage points less than the HUD low-income limit for the Boulder PMSA, with no unit renting at a rate which exceeds affordability to a household earning more than the HUD low-income limit for the Boulder PMSA.
 - (2) Maximum Income for Tenants: No single household in a permanently affordable unit development shall have an income that exceeds the HUD low-income limit for the Boulder PMSA.

Ordinance No. 7701 (2010)

9-13-9. Off-Site Inclusionary Housing Options.

Developers of developments subject to the requirements of this chapter may satisfy fifty percent of the total inclusionary housing requirement through any combination of the following alternate means:

- (a) Cash-in-Lieu Contribution: To the extent permitted by this chapter, developers may satisfy permanently affordable housing requirements by making cash contributions to the City's affordable housing fund. The cash-in-lieu contribution shall be calculated on the total number of dwelling units included in a development as follows:
 - (1) Detached Dwelling Unit: The cash-in-lieu contribution for each required detached permanently affordable dwelling unit for the calendar year 2009-2010 is the lesser of \$119,922 or \$100 multiplied by twenty percent of the total floor area of all unrestricted dwelling units. The floor area calculation will be less than the per unit calculation if the average floor area for the unrestricted units is less than one thousand two hundred square feet.
 - (2) Attached Dwelling Unit: The cash-in-lieu contribution for each required attached permanently affordable dwelling unit for the calendar year 2009-2010 is the lesser of \$110,178 or \$92 multiplied by twenty percent of the total floor area of all unrestricted dwelling units. The floor area calculation will be less than the per unit calculation if the average floor area for the unrestricted units is less than one thousand two hundred square feet.
 - (3) 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 by seven percent compounded each year until seventy-five percent of the affordability gap in a given year is reached. The cash-in-lieu contribution amount shall be calculated by the city manager each year. Once the cash-in-lieu contribution amount is equal to seventy-five percent of the affordability gap in any given year, an annual adjustment will maintain the cash-in-lieu contribution amount at seventy-five percent of the affordability gap each year thereafter.
 - (4) 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 seven percent compounded each year until fifty percent of the affordability gap in any given year is reached. The cash-in-lieu contribution amount shall be calculated by the city manager each year. Once the cash-in-lieu contribution amount is equal to fifty percent of the affordability gap, an annual adjustment will maintain the cash-in-lieu contribution amount at fifty percent of the affordability gap each year thereafter.
 - (5) Affordability Gap: *Affordability gap* means the difference between the market purchase price of a dwelling unit and the amount affordable to a household earning the HUD low-income limit for the Boulder PMSA. The market rate price for single-family detached homes is the average sale price for all nonaffordable, single-family dwelling units of two thousand or fewer square feet. The market rate price for multifamily dwelling units is the average sale price of all nonaffordable, multifamily dwelling units of one thousand five hundred or fewer square feet that are ten years of age or younger. The average sale price for single-family and multifamily dwelling units shall be calculated using county assessor sales data for the preceding year. The amount affordable to a house-

hold earning the HUD low-income limit for the Boulder PMSA shall be based on common definitions of affordability, such as that provided by the U.S. Department of Housing and Urban Development, and the standard costs of ownership, such as principal, interest, taxes, insurance and homeowner association dues. The city manager shall publish a specific formula for calculating the affordable price on a periodic basis. The city manager will calculate the affordability gap each year.

- (6) Affordable Housing Fund Established: The city manager shall establish an affordable housing fund for the receipt and management of permanently affordable dwelling unit cash-in-lieu contributions. Monies received into that fund shall 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.
- (b) Dwelling Unit Dedication: To the extent permitted by this chapter, inclusionary housing requirements may be satisfied by restricting existing 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 dwelling units shall be located within the City of Boulder. The restriction of such existing units must result in the creation of dwelling units that are of equivalent or better quality, as determined by the city manager, and size of the permanently affordable dwelling units which would have been constructed on-site if this alternative had not been utilized.
- (c) Land Dedication: The inclusionary housing requirement may be 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. The land dedication requirement may be satisfied in either of two ways:
 - (1) Land That Meets Requirements: Through dedication of land that meets all of the following requirements:
 - (A) The land dedication and location of site have been approved by the city manager;
 - (B) The dedicated land is located in the City of Boulder and has a residential zoning classification;
 - (C) The land allows for the provision of affordable units of equivalent type (single-family, multifamily, town home, etc.), floor area and number of bedrooms to that which would have been provided on-site;
 - (D) The land is certified free of toxic substances and contaminated soils;
 - (E) Any portion of the land that is within the one-hundred-year floodplain shall not be included toward the satisfaction of this provision unless, prior to dedication, it is demonstrated that the land in the floodplain is capable for use for residential development;
 - (F) The land is free of all liens and encumbrances and all property taxes and special taxes shall be current before the title for the dedicated land is conveyed. The land shall be conveyed by general warranty deed before issuance of a building permit for the originating residential development; and
 - (G) The total units possible on the land dedicated shall be two and one-half times the number of units required by the inclusionary housing requirement above for the originating residential development and shall be determined based on the following:
 - (i) The mix of inclusionary housing dwelling unit sizes, types and number of bedrooms that would have been provided on-site for the originating residential development.
 - (ii) Densities permitted by applicable planning and zoning designations, area plans, connections plans, required open space, automobile parking, right of ways, site, infrastructure and other planning constraints.
 - (iii) Environmental, floodplain, steepness of the site and other physical constraints.
 - (2) Land of Equivalent Value: Through dedication of land that has an equivalent or greater value to 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 origi-

nating residential development. The value of land to be dedicated shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected from a list of certified appraisers provided by the City, or by such alternative means of valuation to which a developer and the City may agree. An applicant may use cash to make up any gap between the value of the donated land and the cash-in-lieu contribution amount.

Ordinance Nos. 7701 (2010); 7718 (2010); 7762 (2010)

9-13-10. 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. 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 shall 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. 7701 (2010)

9-13-11. 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.

Ordinance No. 7701 (2010)

9-13-12. 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. 7701 (2010)