

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: July 12, 2006

REPORT NO:

ATTENTION: Council President and City Council

ORIGINATING DEPARTMENT: Land Use And Economic
Development

SUBJECT: Amendment To Affordable Housing Inclusionary
Regulations

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: James T. Waring: 235-5716

REQUESTED ACTION:

Authorize amendments to San Diego Municipal Code sections 142.1304, 142.1305, and 142.1310, and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual, to clarify the regulations and to assess the in-lieu fee at the date the first tentative map or development permit is deemed complete, in light of recent litigation in the case *Building Industry Association of San Diego County, Inc., v. City of San Diego*, Superior Court Case No. GIC 817064.

STAFF RECOMMENDATION:

Authorize the proposed amendments.

EXECUTIVE SUMMARY:

On April 18, 2006, the San Diego Housing Commission recommended that the Council consider amending the Municipal Code to change the timing of the inclusionary housing in lieu fee from the date a building permit is issued to the date the first tentative map or development permit is deemed complete. See attached Report Nos. CCR06-001 and 06-7. This recommendation was made in conjunction with a potential settlement of the pending litigation, *Building Industry Association of San Diego County, Inc., v. City of San Diego*, Superior Court Case No. GIC 817064. The potential settlement did not materialize.

On May 24, 2006, the court issued a ruling adverse to the City. The City filed motions for reconsideration and vacation of the decision. While the City believes that the decision should be reversed, to resolve the litigation, the City and the Building Industry Association have reached a potential settlement of the lawsuit. As part of the settlement, the Council will consider the proposed amendments before you today. If the amendments are approved and other terms are met, the litigation will be resolved without invalidating the City's inclusionary housing regulations. If not, the litigation will continue.

FISCAL CONSIDERATIONS:

The changing of the in-lieu fee assessment timeframe is expected to result in a lower overall in-lieu fee collection and thus limit the City's ability to provide more affordable housing opportunities.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Housing Commission approved this recommendation in concept on October 29, 2004; the Planning Commission rejected this recommendation in concept on April 7, 2005. The Council considered the issues on April 18, 2006, and May 30, 2006, without taking any action.

Originating Department

Deputy Chief/Chief Operating Officer



REPORT TO THE CITY COUNCIL

DATE ISSUED: March 28, 2006

REPORT NO: CCR06-001

ATTENTION: Council President and Members of the City Council

SUBJECT: Inclusionary Housing – Timing of In-Lieu Fee Calculations

REQUESTED ACTION:

That the City Council consider adjusting the time at which the Inclusionary in-lieu fee is assessed from the application of a development's building permit to an earlier point in the project review cycle. Specifically, it is requested that the in-lieu fee be assessed at the date the application for the first tentative map or development permit is deemed complete.

STAFF RECOMMENDATION:

Direct the City Attorney to amend Municipal Code Chapter 14, Article 2, Division 13 to assess the in-lieu fee at the date the application for the first tentative map or development permit is deemed complete and to re-assess the fee at current levels each time the developer pulls a building permit not within three years of such date.

SUMMARY:

In August 2002, the San Diego City Council adopted a framework for an inclusionary housing program for the City of San Diego. The San Diego Housing Commission and City of San Diego formed a team to craft implementation documents in consultation with various interested parties. On May 20, 2003 the City Council adopted the Inclusionary Housing Ordinance which took effect citywide on July 3, 2003. The basic requirements of the ordinance are:

- 10 % of the units in a residential development are to be set-aside at 65% AMI for rental units and at 100% AMI for for-sale units.
- At the developer's discretion, inclusionary units could be constructed on the original development site or off the site within the same community planning area as the original site.
- The obligation applies to any residential development of more than two units.
- Rents are restricted for 55 years. Individual purchasers are allowed to resell, with financial recapture provisions.
- As an alternative to constructing the affordable housing, a developer can choose to pay an in-lieu fee. The fee amount was phased in to provide time for the market to adjust to the new fee structure. Currently, the fee is \$2.50 per sq. ft. and is scheduled to rise again in July 2006 to a formula that takes into consideration the median priced home in San Diego and the median income of a family of four. Fees for projects of 10 or fewer units will pay half of these amounts. *Currently, the in-lieu fee is calculated at the time the building permit is issued.*
- Modestly priced units affordable to families earning up to 150 percent of area median income are exempt from the inclusionary housing provisions.

In August 2004, a summary report on inclusionary housing was provided to Council during the Affordable Housing Update. Among the many details included in the summary was the issue of in-lieu fees. The summary stated that the in-lieu fees are assessed when a completed building permit application is submitted and collected at the time of building permit issuance; the fee amount was designed to phase in over three years and will convert to a formula at the onset of year 4 (July 3, 2006).

The BIA filed a lawsuit against the City of San Diego in 2003 disputing the interpretation of when the in-lieu fee should be assessed. The BIA contends that Council gave direction that the fee would be calculated at the time the City deems a development application complete. In May 2004, the City Council voted 7-1 to approve a settlement agreement with the Building Industry Association (BIA) over the issue of when the in-lieu fee is assessed on a development. This acceptance obligates the Council to consider an amendment to the inclusionary ordinance to assess the in-lieu fee at the time a development application is deemed complete (favored by the BIA) rather than at the time a developer applies for a building permit (current City practice). The City Council retains full discretion to approve or deny this proposal. The BIA retains the option to resume its lawsuit if the amendment is defeated or a mutually agreeable compromise is not reached.

During staff discussions on this matter it was noted that assessing the fee when the development application is deemed complete could result in fees not being collected for three to nine years for many projects. The resulting fee, assessed currently but paid in future years, would be artificially low and would not be sufficient at the time of payment to provide the affordable housing.

Housing Commission and City staff have also met with representatives from the BIA and discussions have revolved around a variety of possible resolutions. Chief among the developers' concerns is the certainty of the fee they will be charged and at what point in the development timeline it will be assessed. Potential options presented to the Housing Commission Board, LU&H and Planning Commission included:

- a. Retain the current provisions.
- b. Re-assess the fee each time the developer extends the project's development approvals. This option would allow for the fee to be re-assessed every three years and the developer would have some certainty as to what that fee would be and when it would be assessed. However, the fee amount would still be out of date by two or three years.
- c. Assess the fee at the time the discretionary application is deemed complete, but require a non-refundable fee to be paid at the time of assessment.

The San Diego Housing Commission voted in 2004 to support option b. The Planning Commission voted in 2004 to support option a, the status quo. LU&H directed staff to forward the three options to the City Attorney's office for a legal analysis. The resulting analysis can be found as Attachment 1. The analysis explains the illegality of option c, regarding the collection of non-refundable fees for a project that may never be built. Therefore, options a and b are the only viable options listed that retain legal merit.

Members of City Staff and representatives met recently to discuss the nature of the compromise position listed as option b above. It was decided that the staff recommendation should be a variation of the

compromise option. Further discussions resulted in the understanding that the in-lieu fee should be assessed and subject to the following understanding:

For building permits that are pulled within three years of the date that the application for the first Tentative Map or Development Permit encompassing the proposed residential building permit was deemed complete the rate of the Inclusionary in-lieu fee will be the rate in effect at the time the application was deemed complete.

For building permits that are not pulled within three years of the date that the application for the first tentative map or development permit encompassing the proposed residential building permit was deemed complete but are pulled within three years of the date of the approval of the Tentative Map or Development Permit the rate of the Inclusionary lieu fee will be the rate in effect at the time the Tentative Map or Development Permit was approved.

For building permits that are not pulled within three years of the date that the application for the first tentative map or development permit encompassing the proposed residential building permit was deemed complete and that are not pulled within three years of the date of the approval of the Tentative Map or Development Permit the rate of the Inclusionary in-lieu fee will be the rate in effect on the date the application for the building permit is deemed complete.

Grandfathering Language: For any Tentative Map or Development Permit deemed complete or approved prior to the adoption of this ordinance amendment, upon which a condition to pay Inclusionary in-lieu fees has been placed, the fee at building permit application shall be fixed at not less than \$1.25/SF for projects of 9 or less residential units or \$2.50/SF for projects of 10 or more residential units for a period of three years from the date Tentative Map or Development Permit was approved or until July 1, 2006, whichever occurs later. The fee thereafter will be the rate in effect on the date the application for the building permit is deemed complete.

Alternative: Maintain the time at which the in-lieu fee is calculated to be at the application of a building permit.

Consequences: The Inclusionary Housing Ordinance is designed to increase the existing stock of affordable housing to families at the 65% AMI level for rental units and 100% AMI for for-sale units. This recommendation provides three benefits: it creates some certainty to the development community as to their expected fees for a set three year period, it allows the City to rely on the time value of money in their assisting low income families and it eliminates the threat of defending the BIA lawsuit in court. However, changing the in-lieu fee assessment timeframe is expected to result in a lower overall in-lieu fee collection and thus limit the City's ability to provide more affordable housing opportunities. Such results are unquantifiable at present due to the fact that the in-lieu fee shall be based upon a formula which will take into consideration figures that will change and be ascertained from year to year.

FISCAL CONSIDERATIONS:

By changing the point at which the in-lieu fee is assessed to an earlier point in the project review timeline, the City is forgoing whatever amount of increase the in-lieu fee realizes from year to year. At this time, it is impossible to effectively gauge the total impact due to the fact that the in-lieu fee is entering the first year of the formulaic determination. Because future years' fees are at this time

unknowable, it is not possible to estimate the lost revenue such a change to the in-lieu fee will cause. However, it is certain that if the real estate market continues to escalate as it has over the past eight years, and if wages remain stagnant or increase only incrementally, then by changing the assessment time of the in-lieu fee, the City will stand to lose expected affordable housing revenue that in the aggregate may reach into the millions of dollars.

PREVIOUS BOARD and COMMITTEE ACTION:

The San Diego Housing Commission considered this matter as part of a larger report on October 29, 2004 and voted to support the re-assessment of the fee upon discretionary permit extension; the Land Use and Housing Committee considered this matter as part of a larger report on December 1, 2004 and asked for a legal opinion on the various options for assessing the fee (the analysis is included as Attachment 1); the Planning Commission considered this matter as part of a larger report on April 7, 2005 and voted to maintain the time of assessment at the issuance of the building permit.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Building Industry Association (BIA) is in support of the recommendation. Housing advocacy groups such as the Affordable Housing Coalition (AHC) and the San Diego Organizing Project (SDOP) have both indicated to Housing Commission staff their opposition to the recommended action.

Respectfully submitted,

Approved by,

Elizabeth C. Morris
President & Chief Executive Officer
San Diego Housing Commission

Jim Waring
Deputy Chief Operating Officer
City of San Diego

Attachments:

1. City Attorney Analysis on In-Lieu Fee Assessment Options
2. Copy of Original Report
3. and Original Attachment 1

Distribution of these attachments may be limited. Copies available for review during business hours at the Housing Commission offices at 1625 Newton Avenue.



REPORT TO THE CITY COUNCIL

EXECUTIVE SUMMARY SHEET

DATE REPORT ISSUED: March 28, 2006

REPORT NO: CCR06-001

ATTENTION: Council President and Members of the City Council

ORIGINATING DEPARTMENT: San Diego Housing Commission

SUBJECT: Inclusionary Housing – Timing of In-Lieu Fee Calculations

COUNCIL DISTRICTS: Citywide

STAFF CONTACT: D. Todd Philips (619-578-7558)

REQUESTED ACTION:

That the City Council consider adjusting the time at which the Inclusionary in-lieu fee is assessed from the application of a development's building permit to an earlier point in the project review cycle. Specifically, it is requested that the in-lieu fee be assessed at the date the application for the first tentative map or development permit is deemed complete.

STAFF RECOMMENDATION:

Direct the City Attorney to amend Municipal Code Chapter 14, Article 2, Division 13 to assess the in-lieu fee at the date the application for the first tentative map or development permit is deemed complete and to re-assess the fee at current levels each time the developer pulls a building permit not within three years of such date.

EXECUTIVE SUMMARY:

In August 2002, the San Diego City Council adopted a framework for an inclusionary housing program for the City of San Diego. The San Diego Housing Commission and City of San Diego formed a team to craft implementation documents in consultation with various interested parties. On May 20, 2003 the City Council adopted the Inclusionary Housing Ordinance which took effect citywide on July 3, 2003.

The BIA filed a lawsuit against the City of San Diego in 2003 disputing the interpretation of when the in-lieu fee should be assessed. The BIA contends that Council gave direction that the fee would be calculated at the time the City deems a development application complete. Upon learning of the City's efforts to update the Inclusionary Housing Ordinance, the BIA placed the lawsuit in abeyance pending the outcome of Council action with respect to the calculation of the in-lieu fee.

In May 2004, the City Council voted 7-1 to approve a settlement agreement from the Building Industry Association (BIA) over the issue of when the in-lieu fee is assessed on a development. This acceptance obligates the Council to consider an amendment to the inclusionary ordinance to assess the in-lieu fee at the time a development application is deemed complete (favored by the BIA) rather than at the time a developer applies for a building permit (current City practice). The City Council retains full discretion to approve or deny this proposal. The BIA retains the option to resume its lawsuit if the amendment is defeated or a mutually agreeable compromise is not reached.

Members of City Staff and representatives met recently to discuss the nature of the compromise position listed as option b on page two of the full report. It was decided that the staff recommendation should be a variation of the compromise option. Further discussions resulted in the understanding that the in-lieu fee should be assessed and subject to the following understanding: for building permits that are pulled within three years of the date that the application for the first tentative map or development permit encompassing the proposed residential building permit was deemed complete the rate of the Inclusionary in-lieu fee will be the rate in effect at the time the application was deemed complete or within three years of the date of the approval of the Tentative Map or Development Permit, the rate of the

Inclusionary in-lieu fee will be the rate in effect at the time the Tentative Map or Development Permit was approved.

For those building permits not pulled within three years of the date of the approval of the Tentative Map or Development Permit the rate of the Inclusionary in-lieu fee will be the rate in effect on the date the application for the building permit is deemed complete. This proposal also contemplates a grandfathering of pipeline projects.

FISCAL CONSIDERATIONS:

By changing the point at which the in-lieu fee is assessed to an earlier point in the project review timeline, the City is forgoing whatever amount of increase the in-lieu fee realizes from year to year. At this time, it is impossible to effectively gauge the total impact due to the fact that the in-lieu fee is entering the first year of the formulaic determination. Because future years' fees are at this time unknowable, it is not possible to estimate the lost revenue such a change to the in-lieu fee will cause. However, it is certain that if the real estate market continues to escalate as it has over the past eight years, and if wages remain stagnant or increase only incrementally, then by changing the assessment time of the in-lieu fee, the City will stand to lose expected affordable housing revenue that in the aggregate may reach into the millions of dollars.

PREVIOUS BOARD and COMMITTEE ACTION:

The San Diego Housing Commission considered this matter as part of a larger report on October 29, 2004 and voted to support the re-assessment of the fee upon discretionary permit extension; the Land Use and Housing Committee considered this matter as part of a larger report on December 1, 2004 and asked for a legal opinion on the various options for assessing the fee (the analysis is included as Attachment 1); the Planning Commission considered this matter as part of a larger report on April 7, 2005 and voted to maintain the time of assessment at the issuance of the building permit.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Building Industry Association (BIA) is in support of the recommendation. Housing advocacy groups such as the Affordable Housing Coalition (AHC) and the San Diego Organizing Project (SDOP) have both indicated to Housing Commission staff their opposition to the recommended action.

Respectfully submitted,

Approved by,

Elizabeth C. Morris
President & Chief Executive Officer
San Diego Housing Commission

Jim Waring
Deputy Chief Operating Officer
City of San Diego

OLD LANGUAGE: ~~STRIKEOUT~~

NEW LANGUAGE: DOUBLE UNDERSCORED

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2,
DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 142.1304, 142.1305, AND 142.1310,
ALL RELATING TO INCLUSIONARY HOUSING.

§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations

- (a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.
- (b) An application for a variance, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, adjustment, or reduction, and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance,

adjustment, or reduction request shall be reviewed in accordance with Process Four.

- (d) No variance, adjustment, or reduction shall be issued unless:
- (1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;
 - (2) The *development* would not be feasible without the modification;
 - (3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No variance, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.
- (f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):

- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
- (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

§ 142.1305 Waiver Rules for Inclusionary Affordable Housing Regulations

- (a) Except as provided in Section 142.1305(c), a waiver, [adjustment, or reduction](#) from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require [either](#) that the findings in Section 142.1305(d) [or in Section 142.1305\(e\)](#) be made.
- (b) An application for a waiver, [adjustment, or reduction](#) shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, [adjustment, or reduction](#), and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver, [adjustment, or reduction](#) from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five

Year Redevelopment Plan for the Redevelopment Project Area. The waiver, [adjustment, or reduction](#) shall be in accordance with Process Five.

- (d) No waiver, [adjustment, or reduction](#) shall be issued to an *applicant* unless:
- (1) Special circumstances, unique to that *development* justify the grant of the waiver, [adjustment, or reduction](#);
 - (2) The *development* would not be feasible without the waiver, [adjustment, or reduction](#);
 - (3) A specific and substantial financial hardship would occur if the waiver, [adjustment, or reduction](#) were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) [No waiver, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.](#)

§142.1310 In Lieu Fee Regulations

In accordance with Section 142.1306(b)(4), an *applicant* may pay an in lieu fee subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual:

(a) The rate of the in lieu fee shall be determined ~~at the time the building permit application is filed~~ as follows:

- (1) For building permits that are obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, the rate of the in lieu fee shall be the rate in effect at the time the application for that first tentative map or development permit was deemed complete.
- (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, but are issued within three (3) years of the date of approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time that first tentative map or development permit was approved.
- (3) For building permits that are not obtained within three (3) years of the date that the subject application for the first tentative map or development permit was deemed complete, and that are not issued within three (3) years of the date of the approval of the first tentative map or development permit, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is deemed complete.

(4) For any tentative map or development permit approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the tentative map or development permit was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate in effect at the time the application for the building permit is deemed complete.

(b) The amount of the in lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.

(c) No building permit may be issued without payment of the in lieu fee.

(d) Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable.

Table 142-13C

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT

YEAR THREE	\$2.50/SQ FOOT
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Table 142-13D

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

- (e) The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption of this Division, based upon 50% of the difference between the median cost of housing and housing price affordable to the median household.

CBC:LAF:pev
07/12/06
Org: Land Use & Econ. Dev.
O-2007-11
MMS #3484

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 2,
DIVISION 13 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 142.1304, 142.1305 AND 142.1310,
ALL RELATING TO INCLUSIONARY HOUSING.

WHEREAS, the Council of the City of San Diego adopted Inclusionary Affordable Housing Regulations (Ordinance No. O-19189 N.S.) on June 3, 2003, adding sections 142.1301 through 142.1312 to the San Diego Municipal Code requiring that most new residential development provide a percentage of affordable housing or pay an in lieu fee; and

WHEREAS, the City enacted the Inclusionary Affordable Housing Regulations to further geographic and community balance by providing a range of housing opportunities throughout the City, to increase the City's affordable housing supply in a balanced manner, to comply with state law, to meet the goals of the City's Housing Element, and to promote the health, safety, and welfare of the City's residents; and

WHEREAS, the City Council desires to clarify that the regulations provide protection to applicants under the case of *Home Builders Association of Northern California v. City of Napa, et al.*, 90 Cal.App.4th 188 (2001), and desires to change the timing of the in lieu fee payment;

NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 2, Division 13 of the San Diego Municipal Code is amending by amending Sections 142.1304, 142.1305 and 142.1310 to read as follows:

§ 142.1304 Variance Rules for Inclusionary Affordable Housing Regulations

- (a) Except as provided in Section 142.1304(c), a variance, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Four and shall require either that the findings in Section 142.1304(d) or in Section 142.1304(e) be made.
- (b) An application for a variance, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* basis for the variance, adjustment, or reduction, and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency agreement may seek a variance, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The variance, adjustment, or reduction request shall be reviewed in accordance with Process Four.
- (d) No variance, adjustment, or reduction shall be issued unless:
 - (1) Special circumstances unique to that *development* justify the granting of the variance, adjustment, or reduction;

- (2) The *development* would not be feasible without the modification;
 - (3) A specific and substantial financial hardship would occur if the variance, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No variance, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.
- (f) A project that proposes to provide affordable housing on a site different from the proposed project site and outside the community planning area may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 142.1304(d):
- (1) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing economically balanced communities; and
 - (2) The portion of the proposed *development* outside of the community planning area will assist in meeting the goal of providing transit oriented development.

§ 142.1305 Waiver Rules for Inclusionary Affordable Housing Regulations

- (a) Except as provided in Section 142.1305(c), a waiver, adjustment, or reduction from the provisions of Section 142.1306 may be requested and decided in accordance with Process Five and shall require either that the findings in Section 142.1305(d) or in Section 142.1305(e) be made.
- (b) An application for a waiver, adjustment, or reduction shall be filed in accordance with Section 112.0102 and shall include financial and other information that the City Manager determines is necessary to perform an independent evaluation of the *applicant's* rationale for the waiver, adjustment, or reduction, and shall be a matter of public record.
- (c) A *development* located within an adopted redevelopment project area and subject to a San Diego Redevelopment Agency Agreement may seek a waiver, adjustment, or reduction from the requirements of this Division, upon an express finding that the *development* is fulfilling a stated significant objective(s) of the Redevelopment Agency's approved Five Year Redevelopment Plan for the Redevelopment Project Area. The waiver, adjustment, or reduction shall be in accordance with Process Five.
- (d) No waiver, adjustment, or reduction shall be issued to an *applicant* unless:
 - (1) Special circumstances, unique to that *development* justify the grant of the waiver, adjustment, or reduction;

- (2) The *development* would not be feasible without the waiver, adjustment, or reduction;
 - (3) A specific and substantial financial hardship would occur if the waiver, adjustment, or reduction were not granted; and
 - (4) No alternative means of compliance are available which would be more effective in attaining the purposes of this Division than the relief requested.
- (e) No waiver, adjustment, or reduction shall be issued to an *applicant* unless there is an absence of any reasonable relationship or nexus between the impact of the *development* and either the amount of the in lieu fee charged or the inclusionary requirement.

§142.1310 In Lieu Fee Regulations

In accordance with Section 142.1306(b)(4), an applicant may pay an in lieu fee subject to the following regulations and the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual

- (a) The rate of the in lieu fee shall be determined as follows:
 - (1) For building permits that are obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, the rate of the in lieu fee shall be the rate in effect at the time the application for that first *tentative map* or *development permit* was *deemed complete*.

- (2) For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, but are issued within three (3) years of the date of approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time that first *tentative map* or *development permit* was approved.
- (3) For building permits that are not obtained within three (3) years of the date that the subject application for the first *tentative map* or *development permit* was *deemed complete*, and that are not issued within three (3) years of the date of the approval of the first *tentative map* or *development permit*, the rate of the in lieu fee shall be the rate in effect at the time the application for the building permit is *deemed complete*.
- (4) For any *tentative map* or *development permit* approved on or before July 3, 2006, that contains a condition to pay the inclusionary housing in lieu fees, the rate of the in lieu fee at building permit issuance shall be fixed at not more than \$1.25 per square foot for projects of nine (9) or less residential units or \$2.50 per square foot for projects of ten (10) or more residential units for a period of three (3) years from the date the *tentative map* or *development permit* was approved, or until July 3, 2006, whichever occurs later. The rate of the in lieu fee thereafter shall be the rate

in effect at the time the application for the building permit is *deemed complete*.

- (b) The amount of the in lieu fee shall be the sum of the applicable per square foot charge multiplied by the aggregate *gross floor area* of all of the units within the *development*.
- (c) No building permit may be issued without payment of the in lieu fee.
- (d) Collection of in lieu fees during the first three (3) years after the initial adoption of this Division shall be in accordance with Table 142-13C or 142-13D, as applicable.

Table 142-13C

PROJECTS OF 10 OR MORE UNITS	
YEAR ONE	\$1.00/ SQ. FOOT
YEAR TWO	\$1.75/SQ. FOOT
YEAR THREE	\$2.50/SQ FOOT

Table 142-13D

PROJECTS OF LESS THAN 10 UNITS	
YEAR ONE	\$0.50/SQ FOOT
YEAR TWO	\$0.875/SQ FOOT
YEAR THREE	\$1.25/SQ FOOT

- (e) The amount of the in lieu fees shall be adjusted by San Diego Housing Commission, annually, commencing with the fourth year after the initial adoption of this Division, based upon 50% of the difference between the

median cost of housing and housing price affordable to the median household.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Leslie A. FitzGerald
Deputy City Attorney

CBC:LAF:pev
07/12/06
Or.Dept:Land Use & Econ Dev
O-2007-11
MMS #3484

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor