



## POLICY

**EFFECTIVE DATE:** January 23, 2012

**NO:** PO-BEF-301.08

**REVISION HISTORY:** (No revision history.)

**SUBJECT:** **COMMISSION RESPONSIBILITIES RELATED TO THE IHF AND THE IHP**

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### 1. Purpose

To state Housing Commission policy concerning general issues related to the San Diego Inclusionary Housing Fund (IHF) and the San Diego Inclusionary Housing Program (IHP). This policy shall fulfill, in part, the Housing Commission's responsibility to publish administrative rules and guidelines for the implementation of the IHF and the IHP.

### 2. Background

The City of San Diego's Performance Audit of the San Diego Housing Commission dated July 29, 2009 recommended that this policy be created to reflect the audit's recommendations.

IHF fees are collected by the City of San Diego and are transmitted to the Housing Commission on a quarterly basis.

### 3. Definitions

3.1 The IHF is part of the Affordable Housing Fund (AHF), which was established to help meet the housing needs of San Diego's very-low to moderate-income households. The AHF is governed by San Diego Municipal Code Chapter 9, Article 8, Division 5.

3.2 The IHP carries out the Inclusionary Housing regulations found at San Diego Municipal Code Chapter 14, Article 2, Division 13.

### 4. POLICY

4.1 The Housing Commission shall be responsible for oversight and support of the IHF in accordance with the provisions of this policy and San Diego Municipal Code Chapter 9, Article 8, Division 5.

4.2 The Housing Commission shall retain sufficient staff to undertake the activities for which it is responsible and as enumerated by this policy and San Diego Municipal Code Chapter 9, Article 8, Division 5 and Chapter 14, Article 2, Division 13.

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- 4.3 The Housing Commission shall maintain and report within Housing Commission accounts a separate IHF account. The IHF account and its sub-accounts shall be maintained separately from the Housing Trust Fund account. The IHF shall be reported separately from the Housing Trust Fund in the Housing Commission's audited financial statements and the audit for compliance with the Affordable Housing Fund Ordinance. , The Housing Commission shall reconcile its accounts of Inclusionary Funds with City reports of Inclusionary Funds transmitted to the Housing Commission. The reconciliations shall be performed at least quarterly.
- A. The Housing Commission shall prepare an annual plan that details how funds will be used for the following fiscal year.
  - B. The Housing Commission shall, within 90 days following the close of each fiscal year, submit an annual report to the City Council on the activities undertaken with IHF monies.
  - C. The Housing Commission shall prepare any reports legally mandated for financing sources of the IHF.
- 4.4 The Housing Commission shall not accept direct payments of Inclusionary Fund fees. The Housing Commission shall refer any attempted payments to the City of San Diego's Development Services Department for payment.
- 4.5 The President & Chief Executive Officer shall schedule for consideration by the Housing Commission all IHF commitments in accordance with Housing Commission Administrative Regulation AR000.003.
- 4.6 The Housing Commission shall monitor programs and projects which receive monies from the IHF to assure compliance with contract terms and conditions, particularly those concerning affordability and occupancy restrictions.
- 4.7 The Housing Commission shall enforce terms and conditions of contracts pursuant to provisions of the Inclusionary Housing Ordinance.
- 4.8 In cases where Housing Commission responsibility is not specifically addressed by provisions of San Diego Municipal Code Chapter 9, Article 8, Division 5 and Chapter 14, Article 2, Division 13, its involvement in IHF related activities shall be governed by

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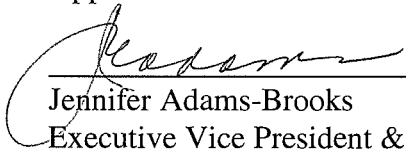
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established Housing Commission policy, including the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual.

4.9 Administration of the IHP is governed by the San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures manual (Attachment 1).

Approved:

  
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Jennifer Adams-Brooks  
Executive Vice President & Chief of Staff

1/7/2013  
Date

Attachment 1: San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures manual



SAN DIEGO  
HOUSING  
COMMISSION

# San Diego Housing Commission Inclusionary Affordable Housing Implementation and Monitoring Procedures 2010

San Diego Housing Commission  
Real Estate Department  
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[www.sdhc.org](http://www.sdhc.org)



# **Inclusionary Affordable Housing Implementation & Monitoring Procedures**



Regulations pertaining to the City of San Diego’s Inclusionary Housing Program (“Program”) are incorporated in San Diego Municipal Code Chapter 14, Article 2, Division 13. The purpose of the Inclusionary Affordable Housing Implementation and Monitoring Procedures Manual (“Procedures Manual”) is to provide additional detail in the implementation and administration of the Program.

## **Development Review Procedures**

Specific development procedures are summarized in the Development Services Department Information Bulletin 532. Applicants constructing affordable units pursuant to the requirements of the Program will be eligible for expedited permit processing through the Affordable/Infill Housing and Sustainable Buildings Expedite Program as implemented by Council Policy 600-27 (See Information Bulletin 538).

## **Targeted Rental Households and Targeted Ownership Households**

Program requirements can be fulfilled through the provision of rental or for-sale housing. Rental units meeting program requirements shall be affordable at rents affordable to households earning 65% or less of the Area Median Income (“AMI”). For-sale units meeting program requirements shall be affordable to households earning 100% AMI or less. Income restrictions shall be adjusted annually based upon the revisions to Area Median Income limits as promulgated from time to time by HCD.

### ***Targeted Rental Household***

*Targeted Rental Household* rent calculations shall be based on the updated AMI limits as adjusted for household size by the U.S. Department of Housing and Urban Development (HUD) for San Diego County at 65% AMI. Current rent levels as of June 2010 as adjusted by household size and utility allowance are as follows:

<b>2010 65% Area Median Income and Rent Restrictions</b>			
<b>Household Size</b>	<b>Unit Size</b>	<b>Income</b>	<b>Gross Rent*</b>
One	Studio	\$35,750	\$894
Two	1 bedroom	\$40,850	\$1,021
Three	2 bedroom	\$45,950	\$1,149
Four	3 bedroom	\$51,050	\$1,276



\*Gross rent is equal to cash rent plus all tenant-paid utilities. See the “San Diego Housing Commission Utility Allocation Schedule” to calculate the tenant-paid utilities based on the project’s actual utilities mix. Any fees required by owner that would otherwise be optional to the tenant (such as renter’s insurance) shall be deducted from the gross rent.

The eligibility of each prospective tenant and/or household under the restrictions set forth above shall be certified by the San Diego Housing Commission. Applicants shall submit documentation for certification to the San Diego Housing Commission for a determination of tenant eligibility, prior to tenant occupancy. No Affordable Unit may be rented to a prospective tenant or occupied by any person unless and until the San Diego Housing Commission has determined that the prospective tenant or occupant has satisfied the eligibility requirements.

***Targeted Ownership Household***

*Targeted Ownership Household* price restrictions shall be based on the updated AMI limits adjusted for household size by HUD for San Diego MSA at 100% AMI. Program sales price restrictions as of 2010 are as follows:

**2010 SALES PRICE RESTRICTIONS  
100% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$203,923
One	\$230,290
Two	\$256,655
Three	\$286,893

**2010 MAXIMUM INCOME  
100% AREA MEDIAN INCOME**

Household Size	Income
One	\$52,850
Two	\$60,400
Three	\$67,950
Four	\$75,500
Five	\$81,550

The sales price restrictions shall be established based on housing costs that do not exceed 35% of the annual median household income, including mortgage principal and interests, taxes, insurance, HOA and assessments. Purchase price assumes 5% down payment, payment of taxes and insurance, and prevailing 30-year fixed-rate interest rates. Upon request, the San Diego Housing Commission shall prepare and make available to Applicant any general information that the San Diego Housing Commission possesses regarding income limitations, sales prices,

## **Inclusionary Affordable Housing Implementation & Monitoring Procedures**

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occupancy policies and restrictions which are applicable to the affected units. Actual sales prices for units restricted at 100% AMI will be calculated on a project-by-project basis.

The eligibility of each prospective buyer and the sales price under the restrictions set forth above shall be certified by the San Diego Housing Commission. Applicants shall submit documentation for certification to the San Diego Housing Commission for a determination of buyer eligibility prior to close of Escrow on each restricted unit. Affordable Units must be owner occupied unless the San Diego Housing Commission has determined a hardship on a case-by-case basis. Except where authorized by the San Diego Housing Commission for a specific unit, renting a restricted unit would trigger a recapture in equity pursuant to San Diego Municipal Code Section 142.1309 (e).

### **Exemption of Naturally Affordable For-Sale Units**

Pursuant to Section 143.1303 of the Municipal Code, any portion of a residential development project that meets all of the following criteria shall be exempted from the requirements of the Program, including payment of the in-lieu fee:

- The units contained within the residential development project are for-sale to private household(s), who owns no other real property, for use as the buyer's primary residence;
- The units are specifically targeted for, sold to, and occupied by households earning less than 150% AMI; and
- Each qualifying unit must have two (2) or more bedrooms (not required for condo conversions).

The unit(s) subject to this exemption has recorded against it an agreement between the *Applicant* and the Chief Executive Officer of the San Diego Housing Commission assuring that the provisions above have been met. The San Diego Housing Commission will certify the eligibility of the prospective buyers.

In the event that the Applicant is unable to fulfill the requirements of this provision, the Program requirements will be applied to the units that would have been exempted. The Applicant may choose to pay the then-current, applicable in-lieu fee or provide the affordable units as provided for in the Inclusionary Housing Ordinance.

Qualifying 150% units shall be sold at prices at or below the "Maximum Sales Price". The Maximum Sales Price shall be the sales price determined and published by the San Diego Housing Commission on an annual basis to be the Maximum Sales Price for a unit affordable to a household with income at 150% AMI, adjusted for unit size, based upon the number of bedrooms located within the 150% Unit(s). The Maximum Sales Price shall be determined by the San Diego Housing Commission in its reasonable discretion as the amount which will result in an annual housing cost to the purchaser of the 150% Unit, which does not exceed the thirty-five percent (35%) of one hundred fifty percent (150%) of Area Median Income adjusted for household size, determined as of the date of the execution of a binding purchase and sale

# Inclusionary Affordable Housing Implementation & Monitoring Procedures



agreement for the 150% Unit and shall include, without limitation, mortgage principal and interest, taxes, insurance, HOA and assessments.

Maximum eligible incomes and Maximum Sales Price restrictions shall be adjusted based upon the revisions to Area Median Income limits as promulgated from time to time by HUD.

All units qualifying for this exemption for the year 2010 shall be affordable at or below the maximum sales prices shown in the chart below.

## **2010 SALES PRICE RESTRICTIONS 150% AREA MEDIAN INCOME**

Unit Size (bedrooms)	Maximum Sales Price
Studio	\$323,312
One	\$366,733
Two	\$410,154
Three	\$457,448

The maximum eligible incomes for 2010 are as follows:

## **2010 MAXIMUM INCOME 150% AREA MEDIAN INCOME**

Household Size	Income
One	\$79,275
Two	\$90,600
Three	\$101,925
Four	\$113,250

### **Condominium Conversions**

Pursuant to Section 143.1306 of the Municipal Code, condominium conversion units affordable to and sold to households earning less than 150% AMI shall be exempted from the requirements of the Program, including payment of the in-lieu fee. Qualifying units shall be sold to private household(s), who owns no other real property, for use as a primary residence.

Applicants with qualifying condominium conversion units (“150% units”) as described above shall be allowed to self-certify that units meet the required affordability level and eligibility of buyers.

Compliance with the exemption from the provisions of the Inclusionary Housing Ordinance shall be determined at the time of the execution of the purchase and sale agreement, when the purchase price is fixed. Applicants shall enter into an agreement with the San Diego Housing Commission to ensure compliance.



## **Inclusionary Affordable Housing Implementation & Monitoring Procedures**

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The San Diego Housing Commission may, but shall not be obligated to, perform the following monitoring functions and services, on a periodic basis: (A) reviewing the applications of prospective or actual occupants and/or purchasers of the affected units, to spot check the eligibility of such persons and/or households as eligible occupants and/or households; (B) reviewing the documentation submitted by Applicants in connection with the certification process for eligible households and/or occupants. Notwithstanding the foregoing description of the San Diego Housing Commission's functions, no person or entity, including the Applicant shall have any claim or right of action against the San Diego Housing Commission based on any alleged failure to perform such function, except that Applicant may reasonably rely upon the San Diego Housing Commission's tenant eligibility determination and the Applicant shall not be liable to the San Diego Housing Commission for any damages, attributable to the San Diego Housing Commission's sole negligence or willful misconduct in conducting any eligibility determinations and/or monitoring. )

### **Off-Site Housing**

If the Applicant elects, pursuant to Section 142.1306 (b)(2) of the San Diego Municipal Code, to construct Off-Site Units to satisfy the requirements of this Program, the Applicant shall construct the Units within the same Community Planning Area, as delineated in the General Plan of the City of San Diego, as the Principal Project. An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Development Project is located in a Redevelopment Project Area.

An Applicant may satisfy the requirements of this Program by the use of Affordable Units constructed by other developers, in addition to any to be built to meet their respective affordable housing requirements as set forth in the Ordinance, by transfer of credits between developers, if and when approved by the Planning Director of the City of San Diego and the CEO of the San Diego Housing Commission. The Receiver Applicant would be precluded from utilizing any local public funds to meet the Program's affordability requirements. The approval of the Receiver Site would be subject to all applicable approvals set forth in this Procedures Manual and the Ordinance.

If the Applicant elects, pursuant to Section 142.1306 (b)(3) of the San Diego Municipal Code, to construct the affordable units on a site different from the primary development site and outside the community planning area, the applicant must obtain a variance in accordance with Section 142.1304 in accordance with Process Four. An alternate site for the construction of the Affordable Units shall be subject to the advance written approval of the Planning Director of the City of San Diego and the Chief Executive Officer of the San Diego Housing Commission or the Redevelopment Agency and the Chief Executive Officer of the San Diego Housing Commission, in the event the Affordable Residential Development Project is located in a Redevelopment Project Area. The use of an alternate site for the construction of the Affordable Units outside of the Community Planning Area of the Principal Project must be found to support the community and economic balance and/or transit orientation goals.



**Alternative Development Schedule and Phasing of Units**

Pursuant to San Diego Municipal Code Section 142.1309(a)(1), an Applicant may seek approval for an alternative development schedule subject to a Process Two approval. An Applicant approved for an alternative development schedule may provide Affordable Units in accordance with the following:

Affordable Units built subject to this Program shall be constructed, completed, and ready for occupancy no later than the date that the Market Rate Housing is constructed, completed and ready for occupancy unless there is an otherwise acceptable agreement for an alternative development schedule which is satisfactory to the CEO of the Housing Commission or the CEO of the San Diego Housing Commission and the Redevelopment Agency in the event that the Principal Project is located within a Redevelopment Project Area.

The timely construction of the affordable housing shall be assured by the posting of a bond and the execution of agreements satisfactory to the CEO of the San Diego Housing Commission on or before the issuance of the first building permit for any unit in the Residential Development Project.

In the event that the development is proposed to be constructed in phases or the affordable housing is proposed to be constructed off-site, an alternative development schedule may be approved, subject to a written agreement between the Applicant and the CEO of the San Diego Housing Commission, such as the following:

The issuance of building permit for the Affordable Housing Project shall occur on or before the earlier of: (i) the issuance of building permits for construction of the number which represents 50% of the Market Rate Units within the Project; or (ii) the date which is eighteen (18) months after the filing of final map for the Market Rate Project, or (iii) a date which is eighteen months after the receipt of the building permit for the first Market Rate Unit if no final map is filed;

Completion of construction of the Affordable Housing Project shall occur upon the earlier of twelve (12) months after the issuance of building permits for the Affordable Housing Project as described above; or the date which is two and one-half years after the earliest date determined above.

The issuance of building permits for the construction of the number which represents 75% of market rate units for the Project shall not occur until the completion of all of the Affordable Units is authorized by the City.

Occupancy of the Affordable Housing Project by persons meeting the Program Eligibility requirements shall occur not later than 180 days after the completion of construction as determined above.



**In-Lieu Fees**

Pursuant to Section 143.1310, an Applicant may pay a fee in lieu of constructing affordable units.

Where no building permit application is filed in connection with a condominium conversion project, the in-lieu fees shall be paid in full no later than the close of escrow of the first unit sold within the project, subject to an agreement with the San Diego Housing Commission. The Applicant shall pay the then current, applicable in-lieu fee amount

The amount of the in lieu fees to be charged and collected for each Residential Development Project shall be the product of the applicable per square foot charge multiplied by the aggregate gross floor area, as defined in the San Diego Municipal Code, of all of the units within the Residential Development Project (excluding garages and carports).

The following In Lieu Fees shall be collected during the first three (3) years after the Program is effective:

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

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

The level of the in-lieu fee shall be revised annually commencing on the fourth year based on the following formula:

- Fifty percent of the difference between the median sales price of all homes sales in the City of San Diego for the last quarter of the year prior to the time of adjustment (as established by an independent and reputable real estate data firm that publishes data on no less than a quarterly basis) and the amount of money a median-income family of four is able to afford to purchase a home.
- The product of the above calculation shall then be divided by 10, in order to represent the level of obligation under the Program.
- The product of the above calculation shall then be divided by 2,000 Square Feet which represents the average size (Square Feet) of a unit constructed within the City of San Diego, in order to determine the level of the in-lieu fee for projects of ten or more units. Average size of a unit may be adjusted from time to time.
- The level of the in-lieu fee for projects of less than 10 units shall be 50% of the amount set for projects of 10 or more units.



Example:

Assume that the median income household can afford to purchase a home priced at \$174,000. The median home price within the City of San Diego is \$274,000. Fifty percent of the difference between the median home price and that which the median income household can afford is \$50,000. Ten percent of this number is \$5,000. This number is divided by 2,000 SF to produce an in-lieu fee level of \$2.50 per square foot for projects of 10 or more. The level of the in-lieu fee for projects of less than 10 units would be 50% of this or \$1.25 per square foot.

Pursuant to the above formula, the in-lieu fee from July 3, 2009 to present is \$4.98/square foot for projects with 10 or more units and \$2.49 for projects with 9 or fewer units.

**Determining Amount of In Lieu Fee(s)**

The San Diego Municipal Code Section 142.1310(a), provides “the rate of the in lieu fee shall be determined at the time the building permit application is filed”. Therefore, at the time the building permit application is filed, Development Services shall determine the amount of the in lieu fee and will advise the applicant of the amount of the applicable in lieu fee, in accordance with the following:

- (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 completed.
- (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.



**Conversion of Tenure Type for Affordable Units**

Any Affordable Units constructed pursuant to the Program, proposed to change the type of tenure from rental to for-sale or for-sale to rental must satisfy the requirements of this Procedures Manual.

Any Affordable Rental Units to be converted to ownership units must satisfy the requirements of this Procedures Manual. Any Rental Units to be converted to For-Sale Units shall be sold at or below the Maximum Purchase Price to Targeted Ownership Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval, with a right of first refusal for the occupant(s) of such Units at the time of conversion. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including sales price and length and method of restriction.

Any Affordable Ownership Units to be converted to rental units must satisfy the requirements of this Procedures Manual. Any Affordable Ownership Units to be converted to Rental Units shall be rented at or below the Maximum Rental Rate to Targeted Rental Households meeting the income qualifications specified in the Notice of Affordable Restrictions or conditions of approval. All provisions of the Program at the time of said conversion shall apply to the conversion of the Unit, including rental rate and length and method of restriction.

**Affirmative Marketing Requirements**

The conditions of approval shall specify that Applicant shall adhere to the marketing, monitoring, and enforcement procedures outlined in this section. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. Applicants shall comply with the terms of their approved affirmative marketing plan, as may be amended from time to time, consistent with City Council Policy 600-20 and Fair Housing Law. The requirements of the affirmative marketing program shall be binding on the original Applicant's successors in interest to the extent that the first sales to the general public are covered.

**Ongoing Monitoring**

An initial monitoring fee of \$500 will be assessed as a one-time charge to cover costs for developing the compliance monitoring plan, computer database program and reporting system for the project, and training sessions for owner/manager. This fee is only applicable to rental properties.

Annual Monitoring will be required for all rental affordable units developed under the Program. The base monitoring fee per unit is \$65 for the first 40 units. The base fee charged decreases \$10 for each unit more than 40 units, and decreases \$20 for each unit more than 80 units.



1 to 40 Units \$65 per unit

41 to 80 Units \$55 per unit

81+ Units \$45 per unit

The Annual Monitoring fee shall be adjusted upward annually for increased costs due to inflation. The adjustment shall reflect the change in the Consumer Price Index for all Urban Consumers (CPI-U) for the County of San Diego.

For projects that contain affordable for-sale units, a \$1,000 per unit fee will be required for monitoring and determining eligibility for price restricted units. The fee is due upon execution of a cooperation agreement between the Applicant and the Housing Commission.

**Waivers, Adjustments and/or Reductions**

The City Council of the City of San Diego desires to clarify the procedures that allow potential lack of nexus challenges to the constitutionality of the Inclusionary Ordinance under the provisions of San Diego Municipal Code Section 142.1305. The Council declares that this amendment to the Procedures Manual is declaratory of its existing intent and policy and remedies that exist under the current ordinance and under state law. This Procedures Manual was adopted by Resolution Number R-298003, adopted on May 20, 2003, and may be updated, revised and/or clarified by resolution.

An applicant for or developer of any development, project or property subject to the requirements of the Inclusionary Ordinance may appeal for a reduction, adjustment or waiver of the requirements of the Inclusionary Ordinance by following the procedures outlined in Section 142.1304 and/or 142.1305, based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of the in lieu fee or the inclusionary housing requirement. If such lack of nexus is established under either Section 142.1304(d)(1) (variance) and/or 142.1305(d)(1) (waiver), then the findings required under 142.1304(d)(2), (3) and (4) for a variance and/or Section 142.1305(d)(2), (3) and (4) for a waiver, shall automatically be deemed established by the decision makers.

It is the intent of this policy to be applicable until the City Council amends the Inclusionary Ordinance to reflect this policy concerning reduction, adjustment and waivers.