

DRAFT

Inclusionary Housing Study

2001

**Pima County, Arizona
Board of Supervisors**

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**County Administrator
Chuck Huckelberry**

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MEMORANDUM

Date: October 2, 2001

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Inclusionary Housing Study**

Background

In Pima County and other places across the nation, working families are unable to afford housing in the same community where they work. This problem is often referred to as a job-housing imbalance. According to a report by the Center for Housing Policy, more than 14 million families in the United States have a critical housing problem. Three million of these families have at least one family member earning above minimum wage, but are still spending more than 50 percent of their household income on housing, or living in substandard housing. Many of these workers are employed as teachers, police officers, and services workers, providing work that is essential to the community.

This problem expresses itself in Pima County in a variety of ways. In 2000, 20 percent of households had incomes below \$15,000. According to Tucson Association of Realtor's Residential Sales Statistics for 2000, less than 4 percent of all residential units sold in 2000 were affordable by the lowest earning fifth of the community: less than 446 of the 11,077 units sold (assuming a 30 year fixed rate mortgage at 8.06 percent). Furthermore, only those individuals who were at the high end of the low-income range could afford any of the houses that were for sale in Pima County. Rental housing becomes the only available option. However, according to the American Community Survey (2000), 47 percent of renters in Pima County are spending one third or more of their household income on housing. With almost half of the renters in Pima County experiencing a cost burdened housing dilemma, the ability to save or invest in home ownership become even more attenuated.

To provide solutions to affordable housing problems, some communities have adopted inclusionary housing programs. This memorandum describes existing inclusionary housing ordinances and programs, with a focus on those in Montgomery County, Maryland, Fairfax County, Virginia, Santa Fe, New Mexico, and the states of California and New Jersey. It is often argued that inclusionary housing is the best tool, and sometimes the last remaining alternative, for increasing the supply of affordable housing, and integrating affordable housing into communities where the operation of market forces has created affordability gaps. Inclusionary Housing may be a viable policy proposal as we consider the Land Use and Cost of Growth Elements of the Pima County Comprehensive Plan.

What is Inclusionary Housing?

Inclusionary housing or inclusionary zoning, refers to a requirement or voluntary program in which new residential developments include a specific percentage of affordable housing units within their developments in return for density bonuses and/or other incentives. Typically, the affordable units must remain affordable for a certain number of years. Affordable housing often refers to housing that is affordable for households with incomes below 50 to 80 percent of the median area income, and housing in which the tenants or owners pay no more than 30 percent of their household income for housing. The inclusionary housing concept emerged in the 1960s, as a reaction to zoning being used as an exclusionary device since World War II. Montgomery County, Maryland, is often cited as adopting the first successful mandatory inclusionary housing ordinance in 1974. Montgomery's ordinance provides for a density bonus. At approximately the same time, several voluntary and mandatory inclusionary housing programs began appearing in California jurisdictions. In 1983, Boulder, Colorado adopted a mandatory program, and by 1985, the state of New Jersey was requiring inclusionary policies in all of its municipalities, due to a land mark decision in the 1975 and 1983 Mt. Laurel cases. Today it has been estimated that approximately 50 to 100 jurisdictions have inclusionary housing ordinances.

What is in an Inclusionary Housing Ordinance?

Ordinance Elements -- Inclusionary housing ordinances often have the following elements:

- Minimum percent of residential units that must be affordable to households of a specific income level, to be applied to particular developments;
- A minimum number of years these affordable units must remain affordable;
- Incentives such as density bonuses, waivers of development fees, and fast track permitting;
- Phasing requirements that state the percentage of affordable units that must be constructed before a particular percentage of market rate units can be constructed;
- Requirement that affordable units are of a similar architectural style to market rate units, and that affordable units be dispersed through out the development; and
- Provisions that allow for payment in-lieu of constructing affordable units.

Such ordinances often apply to rezonings, special exemptions, site plan and sub-division plat approvals, for projects of a particular size. In Montgomery County, Maryland, the ordinance applies to developments of 50 units or more. Fairfax County, Virginia and Montgomery County, Maryland, have an additional requirement in their ordinances that give the County the exclusive right to purchase a percentage of the affordable housing units for County housing programs.

Payment In-lieu of Option -- Most mandatory inclusionary housing programs in California permit the option of payment in-lieu of constructing the affordable units. Santa Fe, New Mexico, Montgomery County, Maryland, and Loudoun County, Virginia also allow for the payment option. But in the case of many of the California jurisdictions, and Santa Fe and Montgomery County, specific limits are included. Montgomery County's option is so limited that it has only been approved for use three times.

Voluntary vs. Mandatory Programs -- Voluntary programs differ in that they typically offer developers various incentives such as density bonuses, waiver of devolvement fees, or fast track permitting, in exchange for the developer voluntarily constructing a percentage of affordable units. A problem with voluntary programs is that they often produce few units. As of 1994, 66 percent of the inclusionary housing programs in California were mandatory, and it is these mandatory programs that produced the most very low and low income affordable units.

According to an American Planning Association planning advisory report, with mandatory programs there is a need to ensure developers a fair return on their investment, and ensure that the affordable units are constructed and requirements are enforced (White, 1992). Adjusting the required percentage of affordable units, and the density bonus incentive, if offered, can result in a zero profit loss to the developer, and can even result in increased profit.

To enforce the construction of the affordable units, many ordinances require a phasing mechanism in which only a particular amount of market rate houses can be built before a particular amount of the affordable units can be built. To ensure that the affordable units remain affordable for the stated number of years, many jurisdictions rely on deed restrictions.

Inclusionary Housing Costs

Costs typically attributed to inclusionary housing programs by their opponents are twofold: (1) property values of surrounding market rate housing; and (2) costs to developers.

Property Values -- A study by Innovative Housing Institute, titled "The House Next Door", focused on Fairfax County, Virginia, and Montgomery County, Maryland, both of which have inclusionary housing programs that mandate the construction of a percentage of affordable units within developments of a certain number of units (Innovative Housing Institute, 2001a). The study concluded that there was no significant difference in resale prices between the market rate units in the inclusionary subdivisions and the market as a whole. The study also found that the affordable units had no affect on the resale prices of the market rate units immediately adjacent to the affordable units.

Cost to Developers -- Do developers lose money due to compliance with inclusionary housing programs? A review of studies and articles indicates that the answer to this depends on the size of the density bonus, if the density bonus can be fully achieved, and how infrastructure costs are allocated. A president of a development company that has built hundreds of affordable units throughout Montgomery County, Maryland, states that, "One doesn't really make money building MPDUs [moderately priced dwelling units], but if you do it right, you don't really lose money either (Swope, 2000)." Along the same lines, Bernard Tetreault, Executive Director of Montgomery County's housing authority from 1971 to 1995, says that with the right density bonuses, a developer shouldn't lose money on the affordable units, and can often make a greater profit due to the additional market rate housing permitted by the density bonus (2000).

Other Jurisdictions

It is estimated that between 50 and 100 jurisdictions across the nation have some type of inclusionary housing program (Burchell & Galley, 2000). The Moderately Priced Dwelling Unit (MPDU) ordinance in Montgomery County, Maryland, is often cited as a national model. Loudoun County, Virginia, and Fairfax County, Virginia, have similar ordinances. King County, Washington, and Santa Fe, New Mexico, serve as examples of inclusionary housing ordinances in the west. The states of California and New Jersey have the most number of jurisdictions with inclusionary housing ordinances. Table 1 shows the major features of inclusionary housing ordinances across the country, some of which are discussed in more detail below.

**Table 1
 Inclusionary Housing Ordinances**

<i>Jurisdiction</i>	<i>Type</i>	<i>Applicability</i>	<i>Required % of Affordable Units</i>	<i>Affordability Control, and other requirements</i>	<i>Incentives, and alternatives</i>
Cherry Hill, New Jersey	Mandatory		20%	Phasing required, 30 yr price controls	
Chula Vista, California	Voluntary	Residential developments of 50+ units	May set aside 5% for low-income and 5% for moderate income		Mortgage credit certificate program, density bonuses, non-profits can help build/manage units
Fairfax County, Virginia	Mandatory	Residential developments of 50+ units, buildings of 4+ stories and with elevator are exempt.	6.25 for multifamily housing, 12.5% for single family attached or detached	15 yr price controls, housing authority has exclusive right to purchase 1/3 of affordable units.	10% density bonus for multifamily, 20% density bonus for single family

King County, Washington	Voluntary, Mandatory for Master Planned Developments	Only permitted in specific zones, site must be served by public sewer	Any % because voluntary 30% for mandatory program	0 to 30 yr price control depending on level of density bonus achieved.	.75 to 1.5 bonus units per affordable unit Impact fee waivers per affordable unit Credit enhancements for affordable units
Loudoun County, Virginia	Mandatory	50+ dwelling units at density greater than 1 unit per acre, buildings of 4+ stories and with elevator are exempt.	At least 6.25%	Phasing required, Affordable units must be similar in style and building type, and must be interspersed with market rate units, monetary fines for non-compliance	10% density bonus Cash in lieu of for single family detached Fee waivers for voluntary compliance (if otherwise exempt)
Montgomery County, Maryland	Mandatory	Residential developments of 50+ units, where zoning is 2 residence per acre or more	12.5% to 15%	Phasing requirement, 20 yr price controls, housing authority has exclusive right to purchase 1/3 of affordable units, affordable units must be dispersed through out the developments	Density bonus up to 22% In extreme situations, payment in-lieu of , or provide units offsite (approved only 3 times so far)
Orange County, California	Voluntary	Residential developments 5+ units	25%: 10% affordable to low income, 10% moderate, 5% moderate II	Phasing requirement, deed restrictions must be recorded with resale restrictions and monitored by County	25% density bonus Excess affordable unit credits can transfer to other projects in same area
Orlando, Florida	Voluntary	Applies in specified zoning districts, no size requirement	Construction of affordable units equal to density bonus		14 to 33% density bonus (64% in one district) Payment in lieu of 3% bonus in traffic capacity

Santa Fe, New Mexico	Mandatory	Annexations, rezonings, subdivision plats, development plans, multi- family projects of 6+ units	Market rate unit price: \$227,969 to \$379,949 = 11% Over \$379,949 = 16%	Max price for affordable units = \$133,220 20 yr price controls	11% and 16% density bonus For developments with market rate unit price below \$139,348: 16% density bonus Development fee waivers Fee in lieu of, in extreme hardship
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Chart adapted from American Planning Association, Planning Advisory Service Report Number 441 pp.24-25 (White 1992); Innovative Housing Institute, 2001b & 2001c; California Association of Realtors, 1991; County and City ordinances and program descriptions.

Montgomery County, Maryland - Model Ordinance

Montgomery County's Moderately Priced Dwelling Unit (MPDU) program (Attachment 1) has produced almost 11,000 affordable units since its inception in 1974. For this reason, it is often referred to as the largest and most successful inclusionary housing program in the nation. In 1997, the average price of a for-sale affordable unit was \$90,180, and the average income of a household purchasing these units was \$29,014 (Swope, 2000).

For new developments of 50 or more units on property zoned 2 or more residences per acre, between 12.5 to 15 percent must be units affordable to households with incomes of approximately 60 percent of the median area income. As compensation for providing these affordable units, developers are permitted density bonuses up to 22 percent above the underlying zoning. Montgomery County's ordinance has never been legally challenged (Innovative Housing Institute, 2001b).

In extreme situations, a developer may be permitted to provide payment in-lieu of building the affordable units, or may be permitted to provide the required units offsite. These options were added to the program in order to provide alternatives for development projects in which units could never be made affordable due to high homeowner association or condominium fees. These options have only been permitted for three projects since 1989.

In 1989, the MPDU ordinance was amended to allow developers to increase the sales prices of affordable units in order to provide improved designs to make the units more compatible with market rate units. The County housing authority has the exclusive right to purchase one-third of the affordable units, and the households meeting the income limit requirements are able to purchase the other two-thirds. County residents and those who work in the County are given preference. Local non-profits are permitted to purchase a small share of the units exclusively reserved for the housing authority.

A common example given is that in a subdivision of 100 units, 85 would be market rate, 10 would be sold to low to moderate income home buyers, and 5 would be purchased by the housing commission and/or local non-profits. Units purchased by the housing authority are rented to very low-income residents who are expected to pay 30 percent of their household income for rent. For-sale affordable units must remain affordable for 10 years. If units are sold during this time, resale prices are limited to price paid, increase in inflation, and fair market rate of improvements. If the unit is sold after the 10 years, half of the profit must be paid to the housing authority. Rental units must remain affordable for 20 years.

The County has experienced a high demand for both the for-sale affordable units, and those rented out by the housing authority (Innovative Housing Institute, 2001b). As a result, the County holds a lottery for the for-sale units. The County housing authority has a waiting list of approximately 8,000 households for its rental units. While developers criticized the program at first, many now report zero profit loss, and some even report increased profit due to the additional market rate units they can build with the density bonus.

Fairfax County, Virginia

Since 1990, Fairfax County's Affordable Dwelling Unit (ADU) program has resulted in approximately 1,700 units (Whoriskey, 2001). The sales price of a typical affordable unit in Fairfax County is \$115,000. The inclusionary housing ordinance (Attachment 2) applies to new developments of 50 or more units, in zones where the density is greater than 1 house per acre, with the exception of four or more story buildings with an elevator.

The ordinance differs from Montgomery County's in that it differentiates between multi-family and single-family units, requires less affordable units, provides less of a density bonus, and controls the price of the affordable units for less years. Multi-family developments are required to provide 6.25 percent affordable units within the development, and are compensated with a 10 percent density bonus. Single family attached or detached units are required to provide 12.5 percent affordable units, with compensation of a 20 percent density bonus. The price of the affordable units are controlled for 15 years, and the housing authority has the exclusive right to purchase one-third of the units. Building specifications and maximum sales prices for the affordable units are set by the County. Households with incomes 70 percent or less than the median area household income are eligible for the affordable units.

A new aspect of this program, is the "great house" design option. Fairfax County rewards developers who design the affordable units to look more like the surrounding market rate homes. The reward is allowing the developers to charge 5 to 10 percent more per unit. Currently, only one development has taken advantage of this option, but two other projects are already planned. The development currently under construction will blend \$125,000 town houses, with \$800,000 single family detached houses. The town houses are set 4 side-by-side, but are designed to appear as one single house. One of the goals of the "great house" option, is to appease market rate owners who complain about the substandard designs of the typical affordable units.

Santa Fe, New Mexico

Santa Fe's inclusionary housing program, called "Housing Opportunity Program (HOP)," went into effect in April 1998 (Attachment 3). The program is mandatory and bases the amount of affordable units required, on the cost of the market rate units. The more expensive the market rate units are, the more affordable units that must be included. For developments with market rate housing priced below \$139,348, no affordable units are required, and a density bonus of 16 percent is permitted. Developments with a market rate price between \$227,969 and \$379,949, are required to include 11 percent at a maximum price of \$113,220, and receive an 11 percent density bonus. And developments with a market rate price over \$379,949, are required to include 16 percent at a maximum price of \$113,220, and receive a 16 percent density bonus. Other compensation includes fee waivers and variance to development standards.

The ordinance applies to annexations, rezonings, subdivision plats, development plans for multi-family projects of 6 or more, and developments outside city limits receiving city water, sewer, or refuse collection. Fees in-lieu of construction are available in extreme hardships. Rental units are price controlled for 20 years, and for-sale units are governed by agreements allow the city to capture a portion of the profit if not sold to an income qualifying household.

According to the Innovative Housing Institute, the City of Santa Fe is almost built out and therefore this program probably won't be able to generate a significant amount of affordable units (2001c). They were correct. Senior Planner and Housing Opportunity Coordinator, Jeanne Price, states that only one house has been built so far (2001). Price feels this is due to limited developable land, and a lack of high end residential development within the City since the ordinance's adoption. When asked what opposition the ordinance faced, Price replied by stating that before adopting the ordinance, the City did a comprehensive nexus study and spent a year drafting the ordinance with a study group that included developers. As a result, the ordinance faced little opposition.

California

Since the 1970s, California has been experiencing one of the worst housing affordability crises in the nation (Calavita & Grimes, 1998). State law requires that jurisdictions prepare a housing element as part of their comprehensive plan. The housing element must identify potential housing sites for all income ranges, and lay out policies that state how the jurisdiction will house its fair share of low-income households. Regional governments define what is each jurisdiction's fair share. During the late 1970s and early 1980s, California's Department of Housing and Community Development prepared a model inclusionary housing ordinance, and advocated for jurisdictions to adopt such ordinances, so as to meet their legal housing element requirement. It was during this time period that inclusionary housing took off in California.

As of 1994, 64 jurisdictions had inclusionary housing programs, and these programs had produced over 25,000 affordable units (Innovative Housing Institute, 2001c). As stated above, 66 percent of the programs were mandatory, and these mandatory programs produced the most low and very low-income residential units. Two-thirds of the jurisdictions permit a payment in-lieu of constructing the affordable housing. Most don't require that the affordable units be built on-site. Almost all of the programs provide density bonuses as an incentive or for compensation if mandatory. Phasing of market rate and affordable units is required by 66 percent of jurisdictions. Most require between 10-15 percent of the units to be affordable, and the majority also have at least 30 year price controls (Calavita & Grimes, 1998).

Most mandatory programs in California provide the option of payment in-lieu of building the required affordable units (California Association of Realtors, 1991). The following examples show how much these payments vary per jurisdiction:

<u>Jurisdiction</u>	<u>Payment In-lieu of / Unit</u>
Livermore	\$1,833
Marin County	\$100,000
Mill Valley	\$3,600
Oceanside	\$58,000
Petaluma	\$2,400
Pleasanton	\$800 single-family \$600 multi-family
Santa Barbara County	\$35,000

Recent actions in California – According to the California Association of Realtor's updates, the Cities of Pasadena and Pleasanton recently adopted mandatory inclusionary housing ordinances. Pasadena's, adopted July 2001, requires rental projects of 10 or more units to set aside 10 percent of the units for affordable housing, and for-sale projects of 10 or more units to set aside 15 percent.

Pleasanton, adopted November 2000, requires multi-family projects of more than 15 units to set aside 15 percent for affordable housing, and single-family projects of more than 15 units to set aside 20 percent. In June 2001, a state appeals court ruled in favor of the City of Napa's inclusionary housing ordinance.

New Jersey

In 1975, the NAACP sued the Township of Mt. Laurel, arguing that Mt. Laurel's zoning excluded low income households. New Jersey's State Supreme Court ruled in favor of the NAACP, and stated that municipalities in New Jersey must permit their fair share of affordable housing. The problem was not rectified, and as a result of a second law suit, the State now requires all municipalities to develop fair share housing plans to serve households who's incomes are below 80 percent of the median area incomes. Most of these plans include mandatory inclusionary housing programs (Innovative Housing Institute, 2001c).

Summary

Inclusionary housing programs across the United States have requirements or goals that assign a percentage of affordable units to developments, typically of a specific size or larger, and in return provide density bonuses and other forms of compensation.

Payment in-lieu of construction is often an option in these ordinances, but limited in its applicability. The affordable units are often required to be designed similarly to the market rate units, and dispersed throughout the development. In many programs, these units are also price controlled for a number of years.

Barriers to inclusionary housing programs are growing smaller in number. The argument that inclusionary housing programs result in decreased property values, has been found to be false. The stigma of affordable units has been mitigated through architectural design incentives and housing authority programs that orientate low and moderate income households on suburban living. Furthermore, with the appropriate density bonus to affordable unit ratio, developers should not face decreased profits.

Inclusionary housing programs with provisions such as density bonuses, have withstood legal challenges in California, and have yet to be challenged in Montgomery County, Maryland. While administratively intensive, these programs have resulted in thousands of affordable units for low to moderate income households. For cities and counties experiencing shortages in affordable houses and rentals, but that have high rates of residential development, inclusionary housing appears to be a plausible tool.

I have directed staff to work with the County Attorney to explore Pima County's ability to implement an Inclusionary Housing program so that the Board can consider such proposals as part of the Comprehensive Plan adoption process later this year.

Attachments

Chapter 25A. Housing, Moderately Priced. [Note]

§ 25A-1. Legislative findings.

§ 25A-2. Declaration of public policy.

§ 25A-3. Definitions.

§ 25A-4. Income and eligibility standards.

§ 25A-5. Requirement to build MPDU's; agreements; alternatives.

§ 25A-6. Optional zoning provisions; waiver of requirements.

§ 25A-7. Maximum prices and rents of moderately priced dwelling units.

§ 25A-8. Sale or rental of moderately priced dwelling units.

§ 25A-9. Control of rents and resale prices; foreclosures.

§ 25A-10. Executive regulations; enforcement.

§ 25A-11. Appeals.

§ 25A-12. Applicability.

Sec. 25A-1. Legislative findings.

The County Council hereby finds that a severe housing problem exists within the County with respect to the supply of housing relative to the need for housing for residents with low and moderate incomes. Specifically, the County Council finds that:

(1) The County is experiencing a rapid increase in residents of or approaching retirement age, with consequent fixed or reduced incomes; young adults of modest means forming new households; government employees in moderate income ranges; and mercantile and service personnel needed to serve the expanding industrial base and population growth of the County;

(2) A rising influx of residents into higher priced housing in the County with resultant demands for public utilities, governmental services, and retail and service businesses has created an increased need for housing for persons of low and moderate income who are employed in the stated capacities;

(3) The supply of moderately priced housing was inadequate in the mid-1960's and has grown since then at a radically slower pace than the demand for such housing;

(4) The inadequate supply of housing in the County for persons of low and moderate income results in large-scale commuting from outside the County to places of employment within the County, thereby overtaxing existing roads and transportation facilities, significantly contributing to air and noise pollution, and engendering greater than normal personnel turnover in the businesses, industry and public agencies of the County, all adversely affecting the health, safety and welfare of and resulting in an added financial burden on the citizens of the County;

(5) A careful study of market demands shows that approximately one-third of the new labor force in the County for the foreseeable future will require moderately priced dwelling units;

(6) Demographic analyses indicate that public policies which permit exclusively high-priced housing development discriminate against young families, retired and elderly persons, single adults, female heads of households, and minority households; and such policies produce the undesirable and unacceptable effects of exclusionary zoning, thus failing to implement the Montgomery County housing policy and the housing goal of the general plan for the County;

(7) Experience indicates that the continuing high level of demand for more luxurious housing, with a higher profit potential, discourages developers from offering a more diversified range of housing; and the production of moderately priced housing is further deterred by the high cost of land, materials, and labor;

(8) Actual production experience in the County indicates that if land costs can be reduced, houses of more modest size and fewer amenities can be built to be sold at a profit in view of the existing ready market for such housing;

(9) Every indication is that, given the proper incentive, the private sector is best equipped and possesses the necessary resources and expertise required to provide the type of moderately priced housing needed in the County;

(10) Rapid regional growth and a strong housing demand have combined to make land and construction costs very high and to have an effect on the used housing market by causing a rise in the prices of those units;

(11) In past years efforts have been made to encourage moderately priced housing construction through zoning incentives permitting greater density and through relaxation of some building and subdivision regulations. Very little moderately priced housing had resulted; and

(12) In some instances existing housing for persons of low and moderate income is substandard and overcrowded. (1974 L.M.C., ch. 17, § 1; 1979 L.M.C., ch. 21, § 1; 1989 L.M.C., ch. 27, § 1.)

Sec. 25A-2. Declaration of public policy.

The County Council hereby declares it to be the public policy of the County to:

(1) Implement the Montgomery County housing policy and the general plan goal of providing for a full range of housing choices, conveniently located in a suitable living environment, for all incomes, ages and family sizes;

(2) Provide for low- and moderate-income housing to meet existing and anticipated future employment needs in the County;

(3) Assure that moderately priced housing is dispersed within the County consistent with the general plan and area master plans;

(4) Encourage the construction of moderately priced housing by allowing optional increases in density in order to reduce land costs and the costs of optional features that may be built into such moderately priced housing;

(5) Require that all subdivisions of 50 or more dwelling units include a minimum number of moderately priced units of varying sizes with regard to family needs;

(6) Ensure that private developers constructing moderately priced dwelling units under this Chapter incur no loss or penalty as a result thereof, and have reasonable prospects of realizing a profit on such units by virtue of the MPDU density bonus provision of Chapter 59 and, in certain zones, the optional development standards; and

(7) Allow developers of residential units in qualified projects more flexibility to meet the broad objective of building housing that low- and moderate-income households can afford by letting a developer, under specified circumstances, comply with this Chapter by contributing to a County Housing Initiative Fund. (1974 L.M.C., ch. 17, § 1; 1989 L.M.C., ch. 27, § 1.)

Sec. 25A-3. Definitions.

The following words and phrases, as used in this Chapter, have the following meanings:

(a) *Applicant* means any person, firm, partnership, association, joint venture, corporation, or any other entity or combination of entities, and any transferee of all or part of the land at one location, who:

(1) Submits for approval or extension of approval a preliminary plan of subdivision under Chapter 50, which plan provides for the development of a total of 50 or more dwelling units at one location in one or more subdivisions, parts of subdivisions, resubdivisions, or stages of development, regardless of whether any part of the land has been transferred to another party; or

(2) Submits to the Planning Board or to the Director of Permitting Services a plan of housing development for any type of site review or development approval required by law, which plan includes construction or development of 50 or more dwelling units at one location; or

(3) With respect to all land in zones not subject to subdivision approval or site plan review, applies for a building permit or permits under Chapter 8, which permit is or permits are for the construction of a total of 50 or more dwelling units at one location.

In determining whether a development contains a total of 50 or more dwelling units for the purpose of applying this Chapter, all land at one location within the County available for building development under common ownership or control by an applicant, including land owned or controlled by separate corporations in which any stockholder or family of the stockholder owns 10 percent or more of the stock, must be included. An applicant must not avoid this Chapter by submitting piecemeal applications or approval requests for subdivision plats, site or development plans or building permits. Any applicant may submit a preliminary plan of subdivision for approval, site or development plans for approval, record plat or request for building permits for less than 50 dwelling units at any time; but the applicant must agree in writing that upon the next such application or request the applicant will comply with this Chapter when the total number of dwelling units at one location has reached 50 or more. All applicants, with respect to land to which this Chapter applies, have local official approval to participate in the federal rent supplement program.

(b) *At one location* means all adjacent land of the applicant if:

(1) The property lines are contiguous or nearly contiguous at any point; or

(2) The property lines are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or

(3) The property lines are separated only by other land of the applicant which is not subject to this Chapter at the time of any permit, site plan, development or subdivision application by the applicant.

(c) *Available for building development* means all land:

(1) Owned by, or under contract to, the applicant;
applicant;

(2) Zoned for any type of residential development to which an optional density bonus provision applies;

(3) Which will use public water and sewerage; and

(4) Which is already subdivided or is ready to be subdivided for construction or development.

(d) *Closing costs* means statutory charges for transferring title, fees for obtaining necessary financing, title examination fees, title insurance premiums, house location survey charges and fees for preparation of loan documents and deed of conveyance.

(e) *Commission* means the Housing Opportunities Commission of Montgomery County.

(f) *Consumer Price Index* means the latest published version of the Consumer Price Index for All Urban Consumers (CPI-U) of the U.S. Department of Labor for the Washington metropolitan area, or any similar index selected by the County Executive.

(g) *Control period* means the time an MPDU is subject to either resale price controls and owner occupancy requirements or maximum rental limits, as provided in Section 25A-9. The control period is 10 years for sale units and 20 years for rental units, and begins on the date of initial sale or rental. If a rental MPDU is sold to an eligible person within 10 years after its initial rental, the unit must be treated as a new sale MPDU and a new control period must begin on the date of the sale.

(h) *Date of original sale* means the date of settlement for purchase of a moderately priced dwelling unit.

(i) *Date of original rental* means the date the first lease agreement for a moderately priced dwelling unit takes effect.

(j) *Department* means the Department of Housing and Community Affairs.

(k) *Director*, except as otherwise indicated, means the head of the Department of Housing and Community Affairs, or the Director's designee.

(l) *Dwelling unit* means a building or part of a building that provides complete living facilities for one family, including at a minimum facilities for cooking, sanitation and sleeping.

(m) *Eligible person* means a person or household whose income qualifies the person or household to participate in the MPDU program, and who holds a valid certificate of eligibility from the Department which entitles the person or household to buy or rent an MPDU during the priority marketing period.

(n) *Housing Initiative Fund* means a fund established by the County Executive to achieve the purposes of Section 25B-9.

(o) *Low income* means levels of income within the income range for "very-low income families" established from time to time by the U.S. Department of Housing and Urban Development for the Washington metropolitan area, under federal law, or as defined by executive regulations.

(p) *Moderate income* means those levels of income, established in executive regulations, which prohibit or severely limit the financial ability of persons to buy or rent housing in Montgomery County.

(q) *Moderately priced dwelling unit* or *MPDU* means a dwelling unit which is:

(1) offered for sale or rent to eligible persons through the Department, and sold or rented under this Chapter; or

(2) sold or rented under a government program designed to assist the construction or occupancy of housing for families of low or moderate income, and designated by the Director as an MPDU.

(r) *Optional density bonus provision* means any increase in density under Chapter 59, in a zoning classification that allows residential development, above the amount permitted in the base or standard method of development density, whether by exercise of the optional provisions of Chapter 59 or by any special exception.

(s) *Planning Board* means the Montgomery County Planning Board.

(t) *Priority marketing period* is the period an MPDU must be offered exclusively for sale or rent to eligible persons, as provided in Section 25A-8. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 12, § 1; 1976 L.M.C., ch. 35, § 2; 1978 L.M.C., ch. 31, § 1; 1979 L.M.C., ch. 21, § 2; 1980 L.M.C., ch. 63, § 1; 1982 L.M.C., ch. 6, § 11; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1.)

Editor's note-1998 L.M.C., ch. 12, §1, amending Section 5 of 1996 L.M.C., ch. 20, reads: "Sunset. On July 1, 2001, any function transferred by this Act to the Department of Permitting Services reverts to the Department which administered that function before this Act took effect [August 1, 1996]."

Sec. 25A-4. Income and eligibility standards.

(a) The County Executive must establish standards of eligibility for the MPDU program in regulations adopted under method (1), and must revise the standards when changes in market conditions affect the ability of moderate-income households to buy or rent housing. These standards must establish moderate-income levels for varying sizes of households which will qualify a person or household to buy or rent an MPDU. The Executive may establish different income eligibility standards for buyers and renters.

(b) In establishing standards of eligibility and moderate-income levels, the Executive must consider:

- (1) the price established for the sale or rental of MPDUs under this Chapter,
- (2) the term and interest rate that applies to the financing of MPDUs,
MPDUs,
- (3) the estimated levels of income necessary to carry a mortgage on an MPDU, and
- (4) family size and number of dependents.
dependents.

(c) A person who rents an MPDU and lawfully occupies it when the unit is offered for sale may buy the unit, regardless of the person's income at the time of sale, if the person met all eligibility standards when the person first rented the unit.

(d) To be eligible to buy or rent an MPDU, a person and members of that person's household must not have owned any residential property during the previous 5 years. The Director may waive this restriction for good cause. (1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29.)

Sec. 25A-5. Requirement to build MPDU's; agreements; alternatives.

(a) Any applicant, in order to obtain a building permit, must submit to the Department of Permitting Services, with the application for a permit, a written MPDU agreement approved by the Director and the County Attorney. Each agreement must require that:

- (1) a specific number of MPDUs must be constructed on an approved time schedule;
- (2) in single-family dwelling unit subdivisions, each MPDU must have 2 or more bedrooms; and
- (3) in multi-family dwelling unit subdivisions, the number of efficiency and one-bedroom MPDUs each must not exceed the ratio that market-rate efficiency and one-bedroom units respectively bear to the total number of market-rate units in the subdivision.

(b) When the development at one location is in a residential zone in which a density bonus is provided, and

- (1) is covered by a plan of subdivision, or
- (2) is covered by a plan of development or a site plan, or
- (3) requires a building permit to be issued for construction,

the required number of moderately priced dwelling units is a variable percentage that is not less than 12.5 percent of the total number of dwelling units at that location. Except as specified in subsections (c) and (d), the required number of MPDUs must vary according to the amount by which the approved development exceeds the normal or standard density for the zone in which it is located. Chapter 59 permits bonus densities over the presumed base density where MPDUs are provided. If the use of the optional MPDU development standards does not result in an increase over the base density, the Director must conclude that the base density could not be achieved under conventional development standards, in which case the required number of MPDUs must not be less than 12.5 percent of the total number of units in the subdivision. The amount of density bonus achieved in the approved development determines the percentage of total units that must be MPDUs, as follows:

<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>		<i>Achieved Density Bonus</i>	<i>MPDUs Required</i>
Zero	12.5%		Up to 11%	13.6%
Up to 1%	12.6%		Up to 12%	13.7%
Up to 2%	12.7%		Up to 13%	13.8%
Up to 3%	12.8%		Up to 14%	13.9%
Up to 4%	12.9%		Up to 15%	14.0%

Up to 5%	13.0%		Up to 16%	14.1%
Up to 6%	13.1%		Up to 17%	14.2%
Up to 7%	13.2%		Up to 18%	14.3%
Up to 8%	13.3%		Up to 19%	14.4%
Up to 9%	13.4%		Up to 20%	14.5%
Up to 10%	13.5%		Up to 22%	15.0%

(c) In planned development zones, mixed use zones, transit station zones, and central business district zones (standard method of development) containing flexible development standards, the number of MPDUs must not be less than either the number of density bonus units or 12.5 percent of the total number of dwelling units, whichever is greater.

(d) In central business district zones, for development under the optional method, at least 15 percent of the total number of dwelling units must be MPDUs.

(e) (1) In exceptional cases, instead of building the required number of MPDUs, an applicant may offer to:

(A) Build significantly more MPDUs at one or more other sites in the same or an adjoining planning area;

(B) Convey land in the same or an adjoining planning area that is suitable in size, location and physical condition for significantly more MPDUs;

(C) Contribute to the Housing Initiative Fund an amount that will produce significantly more MPDUs; or

(D) Do any combination of these alternatives that will result in building significantly more MPDUs.

(2) If the Director finds that:

(A) In the project or subdivision originally proposed by the applicant, an indivisible package of resident services and facilities to be provided to all households would cost the occupants of the MPDUs so much that it is likely to make the MPDUs effectively unaffordable by eligible households; and

(B) An offer made by an applicant under subsection (e)(1) will achieve significantly more MPDUs or units which low- and moderate-income households can more easily afford; and

(C) These public benefits outweigh the benefit of constructing MPDUs in each subdivision throughout the County, and acceptance of the applicant's offer will achieve the objective of providing

a broad range of housing opportunities throughout the County; the Director must accept the offer made by the applicant instead of requiring the construction of MPDUs by the applicant. If the applicant can feasibly build significantly more MPDUs at another site, the Director must not approve any other alternative under subsection (e)(1).

(3) The procedures for considering and implementing alternative offers must be established by executive regulation. To implement an offer, the applicant must sign an agreement with the Director not later than a time provided in the regulations.

(f) (1) An applicant may satisfy this Section by obtaining approval from the Director to transfer land to the County before applying for a building permit. The applicant must sign a written land transfer agreement approved by the Director and by the County Attorney. For the Director to consider the request and take timely action, a written notice of the applicant's intent to submit an agreement should be served upon the Director at least 90 days before the application for a building permit is filed. The land transfer agreement must covenant that so much of the land, designated in the approved preliminary plan or site plan as land to which the optional zoning provisions for MPDUs apply, as is necessary in order to construct the number of MPDUs required by subsection (a) will be transferred, as finished lots, to Montgomery County or to the County's designee before the building permit is issued, so that the County might cause MPDUs to be constructed on the transferred land. After the submission of supporting documentation and review and approval by the County for the transfer of finished lots, the County must reimburse the applicant for the costs the applicant actually incurred, which are directly attributable to the finishing of the MPDU lots so transferred. Reimbursable costs include but are not limited to engineering costs; clearing, grading, and paving streets, including any required bonds and permits; installation of curbs, gutters and sidewalks; sodding of public right-of-way; erection of barricades and signs; installation of storm sewers and street lighting; and park and other open space and recreational development directly benefiting the MPDU lots transferred. The County must not reimburse an applicant for the cost or value of the transferred lots.

(2) If an applicant transfers land to the County under this subsection and no funds have been appropriated to reimburse the applicant for his finishing costs, the County may accept from the applicant undeveloped land rather than finished lots, or the applicant may transfer the finished lots to the County without requiring payment for finishing the lots.

(3) Notwithstanding any other provisions of the subsection, the County may reject an election by an applicant to transfer land to the County in whole or in part whenever the public interest would best be served thereby. Any rejection and the reasons for the rejection may be considered by the Planning Board or the Director of Permitting Services in deciding whether to grant the applicant a waiver of this Chapter under Section 25A-7(b).

(4) Any transfer of land to the County hereunder is not subject to Section 11B-33, and any land so transferred is not property subject to Section 11B-31A regulating the disposal of surplus land. The Director may dispose of the lots in a manner that furthers the objectives of this Chapter.

(g) The MPDU agreements must be signed by the applicant and all other parties whose signatures are required by law for the effective and binding execution of contracts conveying real property. The agreements must be executed in a manner that will enable them to be recorded in the land records of the County. If the applicant is a corporation, the agreements must be signed by the principal officers of the corporation individually and on behalf of the corporation. Partnerships, associations or corporations must not evade this Chapter through voluntary dissolution. The agreements may be assigned if the County approves, and if the assignees agree to fulfill the

requirements of this Chapter.

(h) The Department of Permitting Services must not issue a building permit in any subdivision or housing development in which MPDUs are required until the applicant submits a valid MPDU agreement which applies to the entire subdivision or development. The applicant must also file with the first application for a building permit a statement of all land the applicant owns in the County that is available for building development. In later applications, the applicant need only show additions and deletions to the original landholdings available for building development.

(i) The MPDU agreement must include the number, type, location, and plan for staging construction of all dwelling units and such other information as the Department requires to determine the applicant's compliance with this Chapter. The MPDU staging plan must be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU agreement for all dwelling units must be sequenced so that:

- (1) MPDUs are built along with or before other dwelling units;
- (2) no or few market rate dwelling units are built before any MPDUs are built;
- (3) the pace of MPDU production must reasonably coincide with the construction of market rate units; and
- (4) the last building built must not contain only MPDUs.

This subsection applies to all developments, including any development covered by multiple preliminary plans of subdivision.

(j) If an applicant does not build the MPDUs contained in the staging plan along with or before other dwelling units, the Director of Permitting Services must withhold any later building permit to that applicant until the MPDUs contained in the staging plan are built.

(k) *Recording of covenants.* The applicant must execute and record covenants assuring that:

- (1) The restrictions of this Chapter run with the land for the entire period of control; and
- (2) The covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to the property. These covenants must be senior to all instruments securing permanent financing.

(l) *Later deeds.* The grantor must state, in any deed or instrument conveying title to an MPDU, that the conveyed property is a MPDU and is subject to the restrictions contained in the covenants required under this Chapter during the control period until the restrictions are released. (1974 L.M.C., ch. 17, § 1; 1974 L.M.C., ch. 40, § 1; 1976

L.M.C., ch. 34, § 1; 1976 L.M.C., ch. 35, § 3; 1978 L.M.C., ch. 31, § 2; 1979 L.M.C., ch. 21, § 3; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1.)

Editor's note-The requirement of providing for moderately priced dwelling units contained in § 25A-5 is mentioned in connection with Montgomery County's growth policy in P. J. Tierney, *Maryland's Growing Pains: The Need for State Regulation*, 16 U. of Balt. L. Rev. 201 (1987) at pp.

236, 237.

1998 L.M.C., ch. 12, §1, amending Section 5 of 1996 L.M.C., ch. 20, reads: "Sunset. On July 1, 2001, any function transferred by this Act to the Department of Permitting Services reverts to the Department which administered that function before this Act took effect [August 1, 1996]."

Note-Formerly, § 25A-4.

Sec. 25A-6. Optional zoning provisions; waiver of requirements.

(a) *Optional zoning provisions.* The County Council, sitting as a District Council for the Maryland-Washington Regional District within the County, to assist in providing moderately priced housing has enacted zoning standards in Chapter 59, establishing in certain zones optional density bonus provisions which increase the allowable residential density above the maximum base density of the zoning classification and permit alternative dwelling unit types other than those allowed under the standard method of development. Land upon which the applicant must build MPDUs may, at the applicant's election, be subject to optional zoning provisions. If the applicant elects the optional density provisions, permitting the construction of an increased number of dwelling units, the requisite percentage and number of MPDUs must apply to the total number of dwelling units as increased by application of the optional density provisions or by the approval of a special exception that increases the density above the otherwise permitted density of the zoning classification in which the property is situated.

(b) *Waiver of requirements.* Any applicant who presents sufficient evidence to the Director of Permitting Services in applying for a building permit, or to the Planning Board in submitting a preliminary plan of subdivision for approval or requesting approval of a site or other development plan, may be granted a waiver from part or all of Section 25A-5. The waiver must relate only to the number of MPDUs to be built, and may be granted only if the Director of Permitting Services or the Board, after consulting with the Department of Housing and Community Development Affairs, finds that the applicant cannot attain the full density of the zone because of any requirements of the zoning ordinance or the administration of other laws or regulations. When any part of the land that dwelling units cannot be built on for physical reasons is used to compute permitted density, the applicant's inability to use the optional density bonus provisions is not in itself grounds for waiving the MPDU requirements. Any waiver must be strictly construed and limited. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1989 L.M.C., ch. 27, § 1; 1996 L.M.C., ch. 13, § 1; 1996 L.M.C., ch. 20, § 1.)

Editor's note-1998 L.M.C., ch. 12, §1, amending Section 5 of 1996 L.M.C., ch. 20, reads: "Sunset. On July 1, 2001, any function transferred by this Act to the Department of Permitting Services reverts to the Department which administered that function before this Act took effect [August 1, 1996]."

Note-Formerly, § 25A-5.

Sec. 25A-7. Maximum prices and rents of moderately priced dwelling units.

Moderately priced dwelling units must not be sold or rented at prices or rents that exceed the maximum prices or rents established under this Section.

(a) Sales.

(1) The sale price of any MPDU, including closing costs and brokerage fees, must not exceed an applicable maximum sale price established from time to time by the County Executive in regulations adopted under method (1).

(2) The County Executive in issuing MPDU sale price regulations must seek appropriate information, such as current general market and economic conditions and the current minimum sale prices of private market housing in the County, and must consult with the building industry, employers, and professional and citizen groups to obtain statistical information which may assist in setting a current maximum sale price. The County Executive must, from time to time, consider changes in the income levels of persons of low and moderate income and their ability to buy housing. The County Executive must also consider the extent to which, consistent with code requirements, the cost of housing can be reduced by the elimination of amenities, the use of cost-reducing building techniques and materials, and the partial finishing of certain parts of the units.

(3) The County Executive must issue maximum sale prices for MPDUs which continue in effect until changed by later regulation. The maximum sale prices must be based on the necessary and reasonable costs required to build and market the various kinds of MPDUs by private industry. The sale prices for any succeeding year must be based on a new finding of cost by the County Executive, or on the prior year's maximum MPDU price adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(4) The County Executive may make interim adjustments in maximum MPDU sale prices when sufficient changes in costs justify an adjustment. Any interim adjustment must be based on the maximum MPDU sale prices previously established, adjusted by the percentage change in the relevant cost elements indicated in the Consumer Price Index.

(5) If the Director finds that other conditions of the design, construction, pricing, or amenity package of an MPDU project will lessen the ability of eligible persons to afford the MPDUs, the Director, under executive regulations, may restrict those conditions that will impose excessive mandatory homeowner or condominium fees or other costs that reduce the affordability of the MPDUs.

(6) The Director may let an applicant increase the sale price of a MPDU when the Director, under executive regulations, finds in exceptional cases that a price increase is justified to cover the cost of modifying the external design of the MPDUs when a modification is necessary to reduce excessive marketing impact of the MPDUs on the market rate units in the subdivision. The Director must approve the amount of any increase for this purpose, which must not exceed 10 percent of the allowable base price of the unit.

(b) Rental.

(1) The rent, including parking but excluding utilities when they are paid by the tenant, for

any MPDU must not exceed a maximum rent for the dwelling unit established by the County Executive in regulations adopted under method (1). Different rents must be established for units when utility costs are paid by the owner and included in the rent.

(2) The County Executive, in setting the maximum rent, must consider the current cost of building MPDUs, available interest rates and debt service for permanent financing, current market rates of return or investments in residential rental properties, operating costs, vacancy rates of comparable properties, the value of the MPDU at the end of the control period, and any other relevant information. The County Executive must consult with the rental industry, employers and professional and citizen groups to obtain statistical information and current general market and economic conditions which may assist in setting a current maximum rent. The County Executive must consider the extent to which, consistent with County codes and housing standards, the cost of rental housing can be reduced by the elimination of amenities. The County Executive must also consider from time to time changes in the income levels of persons of low and moderate income and their ability to rent housing. (1989 L.M.C., ch. 27, § 1

Sec. 25A-8. Sale or rental of moderately priced dwelling units.**(a) Sale or rental to general public.**

(1) Every moderately priced dwelling unit required under this Chapter must be offered to the general public for sale or rental to a good-faith purchaser or renter to be used for his or her own residence, except units offered for sale or rent with the assistance of, and subject to the conditions of, a subsidy under a federal, state or local government program, identified in regulations adopted by the County Executive under method (1) whose purpose is to provide housing for persons of low or moderate income.

(2) Before offering any moderately priced dwelling units, the applicant must notify the Department of the proposed offering and the date on which the applicant will be ready to begin the marketing to eligible persons. The notice must set forth the number of units offered, the bedroom mix, the floor area for each unit type, a description of the amenities offered in each unit and a statement of the availability of each unit for sale or rent, including information regarding any mortgage financing available to buyers of the designated unit. The applicant must also give the Department a vicinity map of the offering, a copy of the approved development, subdivision or site plan, as appropriate, and such other information or documents as the Director finds necessary. The Department must maintain a list of eligible persons of moderate income and, in accordance with procedures established by the County Executive, must notify eligible persons of the offering.

(3) After receiving the offering notice, the Department must notify the Commission of the offering. If the Department finds that the offering notice is complete, it must decide whether the offering of the units to eligible persons will be administered by lottery or by another method that will assure eligible persons an equitable opportunity to buy or rent a MPDU. The Department must notify the applicant of the method and when the 90-day priority marketing period for the MPDUs may begin.

(4) The Executive may by regulation establish a buyer and renter selection system which considers household size, County residency, employment in the County, and length of time since the person was certified for the MPDU program. Each eligible person must be notified of the availability of any MPDU which would meet that person's housing needs, and be given an opportunity to buy or rent an MPDU during the priority marketing period in the order of that person's selection priority ranking.

(5) The priority marketing period for new units ends 90 days after the initial offering date approved by the Department. The priority marketing period for resold or rerented units ends 60 days after the Department notifies the seller of the approved resale price or vacancy of the rental unit. The Department may extend a priority marketing period when eligible persons are interested in buying or renting a unit.

(6) Moderately priced dwelling units, except those built, sold, or rented under a federal, state, or local program designated by regulation, must not be offered for rent by an applicant during the priority marketing period, except in proportion to the market rate rental units in that subdivision as follows:

(A) In a subdivision containing only single-family dwellings, the proportion of rental MPDUs must not exceed the proportion of market rate rental units to all market rate units.

(B) In a subdivision containing both single-family and multiple-family dwellings, the proportion of rental single-family MPDUs to all one-family MPDUs must not exceed the proportion of

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market rate rental single-family units to all market rate single-family units; and the proportion of rental multiple-family MPDUs to all multiple-family MPDUs must not exceed the proportion of market rate rental multiple-family units to all market rate multiple-family units.

Applicants must make a good-faith effort to enter into contracts with eligible persons during the priority marketing period and for an additional period necessary to negotiate with eligible persons who indicate a desire to buy or rent an MPDU during that period.

(7) Every buyer or renter of an MPDU must occupy the unit as his or her primary residence during the control period. Each buyer and renter must certify before taking occupancy that he or she will occupy the unit as his or her primary residence during the control period. The Director may require an owner who does not occupy the unit as his or her primary residence to offer the unit for resale to an eligible person under the resale provisions of Section 25A-9.

(8) An owner of an MPDU, except the Commission or a housing agency or nonprofit corporation designated by the Director, must not rent the unit to another party unless the Director finds sufficient cause to allow temporary rental of the unit under applicable regulations, which may include maximum rental levels. Any MPDU owner who is allowed to rent a unit temporarily must agree to amend the applicable MPDU covenants to extend the control period for a time equal to the temporary rental period.

(9) Any rent obtained for an MPDU that is rented without the Director's authorization must be paid into the Housing Initiative Fund by the owner within 90 days after the Director notifies the owner of the rental violation. Any amount unpaid after 90 days is grounds for a lien against the unit, and the Director may obtain a judgment and record the lien.

(10) An applicant must not sell or lease any unit without first obtaining a certificate of eligibility from the buyer or lessee. A copy of each certificate must be furnished to the Department and maintained on file by the Department. Before the sale by an applicant or by the Commission or a designated housing agency or nonprofit corporation to any buyer of any MPDU who does not possess a certificate of eligibility, the applicant, the Commission, or the agency or corporation must ask the Department whether the certificates on file show that the proposed buyer had previously bought another MPDU. A person must not buy a second MPDU unless no first-time buyer is qualified to buy that unit. The Director may waive this restriction for good cause.

(11) If an MPDU owner dies, at least one heir, legatee, or other person taking title by will or by operation of law must occupy the MPDU during the control period under this Section, or the owner of record must sell the MPDU as provided in Section 25A-9.

(b) *Housing Opportunities Commission or other designated housing development agency or corporation.*

(1) In view of the critical, long-term public need for housing for families of low and moderate income, the Commission or any other housing development agency or nonprofit corporation designated by the County Executive has the option to buy or lease, for its own programs or programs administered by it, up to 40 percent of all MPDUs which are not sold or rented under any other federal, state, or local program. The Commission may buy or lease upon to 33 percent of the MPDUs not sold or rented under any other federal, state, or local program. Any other designated agency or corporation may buy or lease (A) any MPDUs in the first 33 percent that HOC has not bought or leased, and (B) the remainder of the 40 percent. This option may be assigned to persons of low or moderate income who are eligible for assistance under any federal, state, or local program identified in regulations adopted by the County Executive. The County Executive must, by regulation, adopt

standards and priorities for designating nonprofit corporations under this subsection. These standards must require the corporation to demonstrate its ability to operate and maintain MPDUs satisfactorily on a long-term basis.

(2) The Department must notify the Commission or other designated agency or corporation promptly after receiving notice from the applicant under subsection (a) of the availability of MPDUs. If the Commission or other designated agency or corporation exercises its option, it must submit to the applicant, within 21 calendar days after the Department notifies the Commission under subsection (b), a notice of intent to exercise its option for specific MPDUs covered by this option. Any MPDUs not bought or leased under this subsection must be sold or rented only to eligible persons under subsection (b) during the priority marketing period for eligible persons to buy or lease.

(3) In exercising this option, the Commission and any designated agency or corporation must designate the units by reference to number, type, size and amenities of the units selected if the designation does not result in any one type of unit exceeding by more than 40 percent the total units of that type which are sold or rented under this Section, unless the applicant agrees otherwise. The notice required under subsection (b)(2) must state which MPDUs are to be offered for sale and which are to be offered for rent, and the Commission and any designated agency or corporation may buy only units which are offered for sale and may lease only units which are offered for rent. The Commission and any designated agency or corporation must decide whether it will exercise its option within 45 days after it receives the original notice. (1974 L.M.C., ch. 17, § 1; 1976 L.M.C., ch. 35, § 4; 1978 L.M.C., ch. 31, § 4; 1979 L.M.C., ch. 21, § 4; 1980 L.M.C., ch. 28, § 1; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29.)

Editor's note-Formerly, § 25A-6.

Sec. 25A-9. Control of rents and resale prices; foreclosures.

(a) *Resale price and terms.* Except for foreclosure proceedings, any MPDU constructed or offered for sale or rent under this Chapter must not be resold during the control period for a price greater than the original selling price plus:

(1) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(2) The fair market value of improvements made to the unit between the date of original sale and the date of resale;

(3) An allowance for closing costs which were not paid by the initial seller, but which will be paid by the initial buyer for the benefit of the later buyer; and

(4) A reasonable sales commission if the unit is not sold during the priority marketing period to an eligible person from the Department's eligibility list.

The resale price of an MPDU may be reduced if the physical condition of the unit reflects abnormal wear and tear because of neglect, abuse, or insufficient maintenance. Any personal property transferred in connection with the resale of an MPDU must be sold at its fair market value. In calculating the allowable resale price of an MPDU which was originally offered for rent, the Department must estimate the price for which the unit would have been sold if the unit had been offered for sale when it was first rented.

(b) *Resale requirements during the control period.*

(1) Any MPDU offered for resale during the control period must first be offered exclusively for 60 days to the Department. The Department may buy a unit when funds are available and the Director finds that the Department's buying and reselling the unit will increase opportunities for eligible persons to buy the unit. If it does not buy the unit, the Department must notify eligible persons and the Commission of the availability of a resale MPDU. The unit may be sold through either of the following methods:

(A) The Department may by lottery establish a priority order under which eligible persons who express interest in buying the unit may buy it at the approved resale price.

(B) The Department may notify the MPDU owner that the owner may sell the unit directly to any eligible person under the resale provisions of this Chapter.

(2) A resale MPDU may be offered for sale to the general public only after:

(A) the priority marketing period expires; and

(B) all eligible persons who express an interest in buying it have been given an opportunity to do so.

(3) The Executive by regulation may adopt requirements for reselling MPDUs. The regulations may require a seller to submit to the Department for approval:

(A) a copy of the proposed sales contract, including a list and the price of any personal property included in the sale;

(B) a signed copy of the settlement sheet; and

(C) an affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.

(4) A transfer of an MPDU does not comply with this Chapter until all required documents and affidavits have been submitted to and approved by the Department.

(c) *First sale after control period ends.*

(1) If an MPDU originally offered for sale or rent after March 21, 1989, is sold or resold after its control period ends, upon the first sale of the unit the seller must pay to the Housing Initiative Fund one-half of the excess of the total resale price over the sum of the following:

(A) The original selling price;

(B) A percentage of the unit's original selling price equal to the increase in the cost of living since the unit was first sold, as determined by the Consumer Price Index;

(C) The fair market value of capital improvements made to the unit between the date of original sale and the date of resale; and

(D) A reasonable sales commission.

The Director must adjust the amount paid into the fund in each case so that the seller retains at least \$10,000 of the excess of the resale price over the sum of the items in (A)--(D).

(2) The Director must find that the price and terms of a sale covered by subsection (c)(1) are bona fide and accurately reflect the entire transaction between the parties so that the full amount required under subsection (c)(1) is paid to the fund. When the Director finds that the amount due the fund is accurate and the Department of Finance receives the amount due, the Department must terminate the MPDU controls and execute a release of the restrictive covenants.

(3) The Commission has the right for 30 days after the offer is made to match any bona fide offer to buy an MPDU the first time the MPDU is offered for sale after 10 years after the original sale or rental.

(4) The Commission and any partnership in which the Commission is a general partner need not pay into the Housing Initiative Fund any portion of the resale price of any MPDU that it sells after 10 years after the original sale or rental.

(d) *Initial and subsequent rent controls.* Unless previously sold under subsection (c)(1), moderately priced dwelling units built or offered for rent under this Chapter must not be rented for 20 years after the original rental at a rent greater than that established by regulations adopted by the County Executive under method (1). Whenever any moderately priced dwelling unit (other than those built, sold or rented under any federal, state or local program offered by the Commission) is offered for rent during the 20-year control period, it must be offered exclusively for 60 days to eligible persons, as determined by the Department, for use as his or her own residence and to the Commission. The Commission may assign its right to rent such units to persons of low or moderate income who are eligible for assistance under any federal, state or local program identified in regulations adopted by the County Executive under method (1).

(e) *Foreclosure or other court-ordered sales.* If an MPDU is sold through a foreclosure or other court-ordered sale, a payment must be made to the Housing Initiative Fund as follows:

(1) If the sale occurs during the first 10 years after the original sale or rental, any amount of the foreclosure sale price which exceeds the total of the approved resale price under subsection (a), reasonable foreclosure costs, and liens filed under the Maryland Contract Lien Act, must be paid to the Housing Initiative Fund. If the remaining balance under the original first deed of trust or mortgage exceeds the resale price under subsection (a), then the difference between the foreclosure sales price and the balance of the original first deed of trust (plus reasonable foreclosure costs) must be paid to the Fund.

(2) If the sale occurs after the first 10 years after the original sale or rental, and the unit was originally offered for sale or rent after March 20, 1989, the payment to the Fund must be calculated under subsection (c).

(3) If the MPDU is a rental unit, the resale price under subsections (a) and (c) must be calculated using the maximum sales price in effect when the unit was originally offered for rent.

(4) If the MPDU is sold subject to senior liens, the lien balances must be included in calculating the sale price.

All MPDU covenants must be released after the required payment is made into the Housing Initiative Fund.

(f) *Waivers.* The Director may waive the restrictions on the resale and re-rental prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible persons from buying or renting units under the MPDU program.

(g) *Bulk transfers.* This section does not prohibit the bulk transfer or sale of all or some of the rental MPDUs in a subdivision within 20 years after the original rental if the buyer is bound by all covenants and controls on the MPDUs.

(h) *Compliance.* The County Executive must adopt regulations to promote compliance with this section and prevent practices that evade controls on rents and sales of MPDUs. (1974 L.M.C., ch. 17, § 1; 1978 L.M.C., ch. 31, § 5; 1979 L.M.C., ch. 21, § 5; 1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1990 L.M.C., ch. 46, § 1; 1994 L.M.C., ch. 29.)

Editor's Note-Section 25A-9(e) is interpreted in May Department Stores v. Montgomery County, 118 Md.App. 441, 702 A.2d 988 (1977), *affirmed*, 352 Md. 183, 721 A.2d 249 (1998), wherein this section is declared to be preempted by State law due to a conflict; the State provides for the priority of liens and the County may not change that priority.

Note-Formerly, § 25A-7.

Sec. 25A-10. Executive regulations; enforcement.

(a) The Department must maintain a list of all moderately priced dwelling units constructed, sold or rented under this Chapter; and the County Executive may, from time to time, adopt regulations under method (1) necessary to administer this Chapter.

(b) This Chapter applies to all agents, successors and assigns of an applicant. A building permit must not be issued, and a preliminary plan of subdivision, development plan, or site plan must not be approved unless it meets the requirements of this Chapter. The Director of Permitting Services may deny, suspend or revoke any building or occupancy permit upon finding a violation of this Chapter. Any prior approval of a preliminary plan of subdivision, development plan or site plan may be suspended or revoked upon the failure to meet any requirement of this Chapter. An occupancy permit must not be issued for any building to any applicant, or a successor or assign of any applicant, for any construction which does not comply with this Chapter.

(c) Any violation of this Chapter or regulations adopted under it is a class A violation.

(d) The Director may take legal action to stop or cancel any transfer of an MPDU if any party to the transfer does not comply with all requirements of this Chapter. The Director may recover any funds improperly obtained from any sale or rental of an MPDU in violation of this Chapter.

(e) In addition to or instead of any other available remedy, the Director may take legal action to:

(1) enjoin an MPDU owner who violates this Chapter, or any covenant signed or order issued under this Chapter, from continuing the violation; or

(2) require an owner to sell an MPDU owned or occupied in violation of this Chapter to an eligible buyer. (1974 L.M.C., ch. 17, § 1; 1980 L.M.C., ch. 28, § 1; 1983 L.M.C., ch. 22, § 30; 1984 L.M.C., ch. 24, § 28; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29; 1996 L.M.C., ch. 20, § 1.)

Editor's note-1998 L.M.C., ch. 12, §1, amending Section 5 of 1996 L.M.C., ch. 20, reads: "Sunset. On July 1, 2001, any function transferred by this Act to the Department of Permitting Services reverts to the Department which administered that function before this Act took effect [August 1, 1996]."

Note-Formerly, § 25A-8.

Sec. 25A-11. Appeals.

(a) Any person aggrieved by any denial, suspension or revocation of a building or occupancy permit or denial, suspension or revocation of approval of a preliminary plan of subdivision, development plan, or site plan may appeal to the official, agency, board, Commission or other entity designated by law to hear such appeal.

(b) Any person aggrieved by a final administrative action or decision under this Chapter may appeal to the Circuit Court for the County in accordance with the Maryland Rules of Procedure for a review of such action or decision. (1974 L.M.C., ch. 17; 1989 L.M.C., ch. 27, § 1.)

Note-Formerly, § 25A-9.

Sec. 25A-12. Applicability.

(a) This Chapter applies to all applicants and housing units developed by applicants, regardless of when an MPDU was originally offered for sale or rent, except as provided in subsections (b) and (c).

(b) Section 25A-9(c) does not apply to any MPDU originally offered for sale or rent on or before March 21, 1989.

(c) Section 25A-9(e) does not apply to any MPDU owned or transferred by the Commission directly or through a partnership and originally offered for sale or rent on or before March 21, 1989. (1982 L.M.C., ch. 6, § 1; 1984 L.M.C., ch. 24, § 28; 1984 L.M.C., ch. 27, § 19; 1989 L.M.C., ch. 27, § 1; 1994 L.M.C., ch. 29.)

Note-Formerly, § 25A-10.



KEY PROVISIONS OF THE FAIRFAX COUNTY AFFORDABLE DWELLING UNIT (ADU) ORDINANCE (Effective March 31, 1998)

Purpose and Intent (2-801): To assist in the provision of affordable housing for persons of low and moderate income whose income is seventy percent or less of the median income for the Washington Standard Metropolitan Statistical Area:

Applicability (2-802): Applies to all developments which are subject to rezoning, special exception, site plan or subdivision plat approval where:

- The site is to be developed at a density greater than one (1) dwelling unit per acre,
- The site yields fifty (50) units or more,
- The site is located within an approved sewer service area.

Developments Exempt from the Affordable Dwelling Unit Program (2-803):

- Any multiple family dwelling unit or housing for the elderly structure with four stories or more and having an elevator.
- Rezoning and special exception applications or amendments thereto, approved before July 31, 1990, which are subject to the following:
 - Proffered or approved generalized, conceptual, or final development plans or development plans or special exception plats which contain a lot layout,
 - A proffered or approved total maximum number of dwelling units, or FAR,
 - A proffered or approved unit yield per acre that is less than the number of units per acre otherwise permitted by the zoning district regulations.
- Amendment applications filed after 12:01 a.m., July 31, 1998 which deal exclusively with issues of building relocation, ingress/egress, storm water drainage or other engineering or public facilities issues, the preservation of historic structures, child care facilities, changes in the size of units, a reduction in the number of units, or a change in unit type which proposes no increase in density over previous approvals, or which request the addition of a special exception or special permit use.
- Amendment applications filed after 12:01 a.m., March 31, 1998, which add land area to a previously exempt development, provided such additional land area shall be subject to Sect. 2-802.
- Site plans filed and preliminary subdivision plats approved on or before July 31, 1990, provided that the conditions of 2-803 (5) are met.

Affordable Dwelling Unit Adjuster (2-804):

- Purchasers must occupy the unit as their domicile and provide an affidavit of continuing occupancy to the FCRHA on an annual basis.
- At the first sale or resale after the expiration of the control period one half of the difference between the net sales price and the initial price plus the gain permitted during the control period must be contributed to the Housing Trust Fund to promote the development of affordable housing.

Administration of Rental Affordable Units (2-811, 2-812 and 2-813):

- The Fairfax County Redevelopment and Housing Authority has the right to lease 1/3 of the affordable single family attached or detached units.
- In multiple family developments, 1/3 of the affordable units are to be leased to eligible households at rents affordable to households with incomes up to 50% of the Metropolitan Statistical Area median, with state or local subsidies, and the balance of the affordable units to those who meet program income criteria (70% of median).
- The rental of units initially leased on or after March 31, 1998 is controlled for 20 years. The control period for ADUs rented prior to March 31, 1998 may be modified to be 20 years from that date if the owner so elects; otherwise it is 50 years. However, for multiple family rentals, after the initial 10 years of the control period, owners of rental properties are able to be released from the requirements of the Ordinance by providing notice and paying to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land for all bonus and affordable dwelling units and providing relocation assistance to the tenants of affordable dwelling units. The controls will be incorporated in a covenant to be recorded before the first residential use permit for the development is issued.
- Tenants leasing affordable units must meet program eligibility requirements, must occupy the unit as their domicile, may not sublease the unit and must annually verify to the landlord that they continue to meet income and other eligibility requirements. If tenant no longer meets eligibility requirements, fails to provide an affidavit of continuing occupancy, or fails to occupy the unit for a period in excess of 60 days without prior approval, then the lease terminates. However, in any of these cases the landlord may designate another comparable unit as an affordable unit in lieu of terminating the lease.
- Owners of developments with affordable rental units must submit a monthly status report concerning the number of affordable units which are vacant or leased and the tenants occupying the units.

Phasing of Affordable Dwelling Units to Market Rate Units (2-808):

- For single family detached or attached developments residential use permits (RUPs) must be issued for all affordable dwelling units before building permits for more than 75% of the market rate units will be issued. Building permits for up to 90% of the market rate units can be allowed by the Zoning Administrator if the ADUs are distributed throughout the development and 75% of the RUPs for the ADUs have been issued at the time of the request.
- For multiple family developments, RUPs must be issued for all affordable dwelling units before RUPs will be issued for more than 75% of the market rate units. RUPs for up to 90% of the market rate units can be allowed by the Zoning Administrator if the ADUs are distributed throughout the development and 75% of the RUPs for the ADUs have been issued at the time of the request.

Affordable Dwelling Unit Advisory Board (2-814):

- Comprised of 9 members:
 - 2 Engineers or Architects,
 - 1 Lender,
 - 1 From Fairfax County Department of Housing and Community Development,
 - 1 Builder of single family detached or attached developments,
 - 1 From Fairfax County Staff,
 - 1 From a non-profit housing group,
 - 1 citizen.

- Responsibilities:
 - Hears and grants requests for modifications to the Program,
 - In extenuating circumstances may permit the substitution of land or cash for the provision of units,
 - No authority to modify or reduce the Affordable Dwelling Units adjuster,
 - No authority to modify the unit specifications,
 - Provides advice on sales and rental prices.

Subsequent Zoning Ordinance Amendment (2-805): In order to accommodate the provisions of the ADU program, other amendments to the Zoning Ordinance were required addressing unit type, open space, lot sizes, and bulk regulations for developments which include ADUs.

Effective Date of the Ordinance (2-821): The effective date was July 31, 1990. Amendments were adopted, effective March 31, 1998.

Amendment of Subdivision Ordinance: In order to conform with the state legislation approving the ADU Program, the Subdivision ordinance has been amended to provide that subdivision plats proposing development or construction of ADUs shall be processed within 280 days from receipt provided that such plats substantially comply with ordinance provisions when submitted.

Section 1
Applicability

- 1.1 These prototypes and specifications apply to units developed in fulfillment of the Affordable Dwelling Unit Program, Part 8 of Article 2 of the Zoning Ordinance (the ADU ordinance). They have been developed by the Fairfax County Redevelopment and Housing Authority pursuant to Section 2-809 of the ADU ordinance and have been approved by the Affordable Dwelling Unit Advisory Board.

Section 2
Unit Types and Square Footage

- 2.1 The definitions of detached, attached and multifamily units shall be those in the Zoning Ordinance (Chapter 112, Zoning, of the Code of the County of Fairfax).
- 2.2 For each unit type, there is established a minimum, base and maximum square footage depending on the number of bedrooms in the unit as shown on the attached schedule. Affordable Dwelling Units (ADUs) shall not be smaller than the specified minimum square foot size. The base square foot size will be used as the base for establishing allowable sales prices. There will be no compensation of costs for construction of square footage in excess of the maximum unit size specified.
- 2.3 All building plans for ADUs shall comply with these specifications including the number of baths to be provided for each unit type and size and the ADU Minimum Specifications attached.

**SCHEDULE OF
AFFORDABLE DWELLING UNIT PROTOTYPE SIZES**

Unit types as defined in Fairfax County Zoning Ordinance.

<u>Unit Description</u>			<u>Unit Size</u>		
<u>Unit Type</u>	<u>No. of Min. Bedrooms</u>	<u>No. of Baths</u>	<u>Min</u>	<u>Base</u>	<u>Max</u>
Detached	0-1	1	480	600	1000
Detached	2	1	725	925	1150
Detached	3	1 1/2	925	1050	1200
Detached	4	2	1200	1200	1400
Detached	5	2	1325	1325	1500
Attached	0-1	1	480	600	1000
Attached	2	1	725	925	1150
Attached	3	1 1/2	925	1050	1200
Attached	4	2	1200	1200	1400
Attached	5	2	1325	1325	1500
M-family	0-1	1	300	550	680
M-family	2	1	725	800	900
M-family	3	1 1/2	925	1000	1100
M-family	4	2	1200	1200	1250
M-family	5	2	1325	1325	1375

ADU MINIMUM SPECIFICATIONS

1. All ADUs must meet the requirements of the Virginia Uniform Building Code and Zoning Ordinance of Fairfax County, as amended, for the ADU program.
2. The minimum bedroom size for all ADUs is ninety (90) square feet. All single family ADUs shall have a master bedroom of at least one hundred (100) square feet. Second bedrooms in all single family ADUs, with three or more bedrooms, shall also be at least one hundred (100) square feet. All bedroom sizes are exclusive of closets, which must be provided with each bedroom.
3. All ADUs must have a minimum sized frost free refrigerator of 12 cubic feet for 0-

1 bedroom units, 14 cubic feet for 2 bedroom units, 15 cubic feet for 3 bedroom units, and 18 for 4 or more bedroom units. Ranges shall be 30 inches wide, minimum, and include range hoods. Ovens in all ADUs shall be, at a minimum, continuous clean.

4. All single family ADUs must have a garbage disposal and dishwasher.
5. Plumbing, mechanical, and electrical rough-in will be required for a washer and dryer (if washers and dryers are not placed in the common area). All ADUs must be pre-wired for telephone and cable service. All systems must pass applicable testing, as per County code.

Plumbing rough-in is defined as the completion of all parts of the plumbing system which can be completed prior to installation of fixtures, appliances and equipment, including drainage, water supply, vent piping, supports and backboards. All piping is to be tied in and capped after wall or floor penetration, and all exhaust ductwork is installed. Electrical rough-in includes wiring from the service panel to the location served such as a junction box or outlet, as per County code.

6. Mechanical systems shall be sized and a duct rough-in provided to accommodate a finished basement, where applicable.
7. A Builder Landscaping Package will be required for single family lots. In addition to the Code required seeded lawn, the Builder Landscaping Package will consist of 3-4 foundation plantings, 18" to 24" in height, of azaleas, hollies, or their equal, a 36" conical evergreen, or a 6' to 8' ornamental tree, including mulched beds. A proffered lot landscaping standard will constitute the Builder Landscaping Package, if applicable.
8. Hose bibs on the front and rear of single family ADUs are required.
9. Multiple-family ADUs shall be comparable to non-ADUs in the project with the same number of bedrooms, in terms of standard features and amenities, with the exception of luxury amenities, (e.g. fireplace, jacuzzi, balcony, patio, garage, security or other monitoring systems, ceiling fans, etc.). Comparability means the same, or equal, in terms of standard finishes, floor treatments, fixtures, appliances, heating and cooling, plumbing and electrical. Floor areas and layouts for multiple family ADUs may be unique for the project, but finished floor areas and number of bathrooms must meet or exceed the standards in the above Schedule of Prototype Sizes.
10. All ADUs must include a central HVAC system. Gas as a primary heat source must be provided for single family ADUs in developments where it is the

standard for all other units. Electric resistance is not allowed as a primary heat source. Minimum technical requirements are as follows:

All Units

<u>Condition</u>	<u>Reference</u>	<u>Minimum Requirements*</u>
A. Heat Pump	ARI	SEER 8.25** HSPF 6.25
B. Cooling - A/C	ARI	SEER 9.0 N/A
C. Heating - Gas or Oil	GAMA	AFUE 72% N/A

D. Water Heater - If electric, wire to Virginia Power's specifications in anticipation of its water heater control program.

E. An air handling system tied to a water heater is allowed as per code approval.

F. Water Heater Capacities:

<u>Unit Size (in bedrooms)</u>	<u>Minimum Capacity (in gallons)</u> <u>Gas or Electric</u>
0-1	30
2	30
3	40
4	50
5+	50+

**Detached units - SEER 8.7

* Abbreviations:

- AFUE - Annual Fuel Utilization Efficiency
- ARI - Air Refrigeration Institute
- EER - Energy Efficiency Ratio
- GAMA - Gas Appliance Manufacturers Association
- HSPF - Heating Seasonal Performance Factor
- SEER - Seasonal Energy Efficient Ratio

**Fairfax County
Affordable Dwelling Unit
Program**

INCOME ELIGIBILITY LIMITS



Approved by the
Fairfax County Redevelopment
and Housing Authority
on July 26, 1990

REVISED: April 27, 2001

Fairfax County

Affordable Dwelling Unit Income Eligibility Limits

Fairfax County Redevelopment and Housing Authority

SUMMARY: This regulation establishes the maximum income eligibility limits for persons desiring to purchase or rent Affordable Dwelling Units constructed and marketed under Park 8, Article 2, Chapter 112 of the Fairfax County Code.

Information and copies of this regulation are available from the Department of Housing and Community Development (HCD), Housing Development Division, 3700 Pender Drive, Fairfax, Virginia 22030.

BACKGROUND INFORMATION:

Sections 2-810(3), 2-811(2) and 2-813(1) and (2) of Part 8, Article 2, Chapter 112 of the Fairfax County Code, as amended, require the Fairfax County Redevelopment and Housing Authority to establish maximum permitted income levels for the purchase or rental of Affordable Dwelling Units (ADUs). This document sets forth the maximum income levels permitted for purchase of an ADU or rental of and ADU.

Section I

Maximum Income Limits

The maximum household income limits listed below will be used to determine eligibility of a household for the purchase of an Affordable Dwelling Unit (ADU) or for rental of an ADU (except for those ADUs which are to be rented to households with incomes up to 50% of the MSA median income).

Household Size	Maximum Permitted Income
1	\$41,950
2	47,900
3	53,900
4	59,900
5	64,700
6	69,500
7	74,300
8 or more	79,050

The maximum household income limits listed below will be used to determine eligibility of a household for rental of those ADUs to be leased to households whose income does not exceed 50% of the MSA median - \$42,800, per Section 2-811(2) of the ADU ordinance.

Household Size	Maximum Permitted Income
1	\$29,950
2	34,250
3	38,500
4	42,800
5	46,200
6	49,650
7	53,050
8 or more	56,500

Section II

Sources of Income

Maximum permitted income is defined as the gross income received annually from all sources by wage earners in a family or household unit. Sources of income include, but are not necessarily limited to the following:

- 1) Wages and Salary
- 2) Child Support
- 3) Alimony
- 4) Interest from savings/checking
- 5) Dividends from stock/bonds certificates
- 6) Social Security benefits
- 7) Veterans Administration benefits
- 8) Overtime
- 9) Unemployment insurance
- 10) Bonus payment
- 11) Commissions/tips
- 12) Pension/retirement payment
- 13) Disability benefits
- 14) Any other annuities or stipends received
- 15) Income from Real Estate Investments. Losses generated from investments in real estate will not be used to reduce gross annual income.
- 16) Income from a business or partnership owned, associated with or initiated by a member of the household.
- 17) Regular gifts or contributions from persons not residing in the dwelling as long as there is a documented two year history.
- 18) Net income from business operations, exclusive of amortization of capital indebtedness. Depreciation based on straight line method is an acceptable expense. Three years federal tax returns are required to document such income.

Section III

Other Housing Programs

When the requirement to provide Affordable Dwelling Units is met through the construction of federal Public Housing or housing constructed under other equivalent Federal, State, or local programs to assist low and moderate income families, the income limits of the appropriate program will prevail, except that the income limits for such programs must be no higher than those specified in Section I above in order for the program to be considered equivalent to the ADU program.

Section IV

Revision

These income limits will be revised periodically by the Fairfax County Redevelopment and Housing Authority when a new median income for the Washington, D.C. Metropolitan Statistical Area is published by the U.S. Department of Housing and Urban Development.

Effective Date

These provisions take effect on April 27, 2001.

By: _____
Mary E. Egan

Title Assistant Secretary
Fairfax County Redevelopment
and Housing Authority

Fairfax County

Affordable Dwelling Unit Program

Regulations Concerning the Sale and Rental of Affordable Dwelling Units



Adopted by the Fairfax County
Redevelopment and Housing Authority
on September 26, 1991

Amended: September 24, 1992
January 21, 1993
September 25, 1997
June 25, 1998

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FAIRFAX COUNTY

AFFORDABLE DWELLING UNIT PROGRAM

Fairfax County Redevelopment & Housing Authority (FCRHA) Regulations Concerning the Sale and Rental of Affordable Dwelling Units

Section 1

Applicability

Article 2, Part 8 of the Fairfax County Zoning Ordinance, the Affordable Dwelling Unit (ADU) Ordinance, became effective July 31, 1990 and was amended on March 30, 1998. It applies to sites which are the subject of a rezoning or special exception application or site plan or subdivision plat submission which yield 50 or more dwelling units at an equivalent density greater than one unit per acre, provided it is above the low end of the density range specified in the adopted Comprehensive Plan, and which are located in an approved sewer service area (with exemptions as provided in Section 2-803 of the ADU Ordinance). In return for an increase in density, such developments are required to provide a specified percentage of affordable units which is defined as units affordable to households whose income is 70% or less of the median income for the Washington, D.C. Metropolitan Statistical Area. (See separate regulations issued by the FCRHA concerning income limits of eligible households.) The required percentages of ADUs are set forth in Section 2-804 of the ADU Ordinance.

These regulations apply to the sale or rental of ADUs constructed in accord with the requirements of the ADU Ordinance.

Section 2

Development of ADUs and Notification Concerning Availability of ADUs for Sale or for Rent

A. Site Plans & Subdivision Plats for Developments Which Include ADUs

Part 2-806 and 2-807 of the ADU Ordinance require that certain information concerning ADUs be included on approved site plans and record subdivision plats for developments which include ADUs. In order to monitor the status of such developments and the number and types of ADUs to be provided, copies of each submission of site plans or plats to the Fairfax County Department of Environmental Management (DEM) should be submitted to the Fairfax County Department of Housing and Community Development (HCD). The plans or plats should contain the following information:

1. In the case of single family detached and attached units, or multiple family condominium units, the number of ADUs, the specific lots or units designated as ADUs, and the number of bedrooms in each of these units.
2. In the case of multiple family units which are under a single ownership and which constitute a rental project, ADU units need not be specifically identified. However, the number of ADUs by bedroom count to be provided and the number of market rate dwelling units by bedroom count shall be noted on the approved site plan.
3. For multiple family developments, either for sale or rent, the number of ADUs of each bedroom size shall be proportional to the bedroom mix of the market rate units except that the owner may elect to provide a higher proportion of ADUs of greater bedroom count.
4. For multiple section developments where all the required affordable dwelling units are not to be provided in the first section of the development, the site plan and/or record subdivision plat for the first section and all subsequent sections shall contain a notation identifying in which section(s) the affordable dwelling units will be or have been provided and a total of all affordable dwelling units for which such site plan(s) and/or subdivision plat(s) have been approved.

B. ADU Specifications and Sales Prices/Rents

Units constructed as ADUs must conform to the Specifications for Prototype ADUs developed by the FCRHA and approved by the Affordable Dwelling Unit Advisory Board. Developers should submit copies of building plans for the ADUs to the HCD Development and Real Estate Finance Division for its review and determination that the proposed ADUs conform to the specifications. Plans may be submitted in advance of or together with a request for approval of the proposed sales price or rent for the ADUs. The sales price or rent must be established before an Offering Agreement (Notification of Availability of ADUs) can be approved.

C. ADU Covenants

The developer of property which is subject to the provisions of the ADU Ordinance, either for-sale or for-rent, will be provided with copies of the Declaration of Affordable Dwelling Unit Covenants (Covenants) to be recorded in the County land records. The Covenants describe both the developer's obligations under the ADU Ordinance concerning the initial sale or rental of the ADUs and the longer term controls on the sale or rental of the ADUs which govern subsequent owners or tenants.

In a for-sale development there are two Covenants to be recorded. A general Covenant describes the property subject to the ADU Ordinance requirements as well as the property on which the ADUs will be located; the controls on the initial sale of the ADUs to qualified purchasers, the FCRHA and designated non-profit groups and the long term controls on the ADUs. This Covenant must be recorded before the first ADU in the development is offered for sale. An individual Covenant for each ADU sold must also be recorded with the deed as part of the settlement on the initial sale of each ADU, as well as on all subsequent sales during the applicable control periods.

In a rental development there is only one Covenant which describes the property subject to the ADU Ordinance requirements as well as the units subject to the ADU controls and the controls on the initial rental as well as subsequent rentals and occupancy of the ADUs. The ADU Ordinance requires that this Covenant be recorded prior to the issuance of the first Residential Use Permit (RUP) for any unit in the development. In practice, it must be recorded before the first ADU is offered for rent (which may occur earlier than the issuance of the first RUP). Since the control period under this Covenant does not begin until the first RUP for an ADU is issued, a rider to the Covenant, specifying the date the RUP is issued, must be filed when this occurs to establish the start of the control period.

D. Notification of Availability of ADUs

The ADU Ordinance provides that at any time after the issuance of a building permit for an ADU (or permits for a group of ADUs), the owner may send a notice to the FCRHA advising that this particular ADU (or group of ADUs) is now or will be completed and ready for sale or rental. In practice, in order to begin the process of offering ADUs for sale or for rent, other conditions must also be met. To offer ADUs for sale, the general Covenants must be recorded and the sales prices must be approved by the County Executive. To offer ADUs for rent, the Covenants must be recorded and the rents must be approved.

The Notice of Availability must identify each unit being offered and its number of bedrooms, floor area and amenities as well as the approved sales price or rent. In addition, the notice shall include marketing materials for the unit and the development. The Notice should be sent by registered or certified mail and should be directed to HCD on behalf of the FCRHA. HCD has developed a standard Notice of Availability and Offering Agreement for sales ADUs and one for rental ADUs, which will be provided to the owner for submission of such information. The Notice will not be considered complete and effective and the time periods concerning initial marketing in Sections 2-810 and 2-811 of the ADU Ordinance will not begin until all information required to determine compliance with the specifications for ADUs, approval of sales prices or rents, recordation of covenants and issuance of building permits has been received and the agreement has been executed by HCD on behalf of the FCRHA.

Section 3

Procedures for Sales of ADUs

A. Application and Certification of Eligible Purchasers

1. Application

Those seeking to purchase an ADU must apply to HCD using a standard application form for the ADU program for placement on the eligibility list maintained by HCD. In order to become eligible under this program and to purchase an ADU, an interested individual or household must have an income no greater than the maximum ADU income limits published periodically by the FCRHA as well as satisfy the other criteria described below. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the ADU Program. In order to verify that an individual or household satisfies these requirements, HCD may request information and documentation that is appropriate including but not limited to copies of Federal and State Income Tax Returns, W-2 forms and copies of pay checks.

An individual or household determined to be eligible is placed on the eligibility list and issued a non-transferrable Certificate of Qualification (Certificate) valid for one year. This Certificate is used to demonstrate eligibility for the purchase of available ADUs.

HCD will renew Certificates on an annual basis automatically to those persons who can demonstrate eligibility under the income limits in effect at the time of renewal.

2. Income Limits

Income limits for eligibility are defined as not exceeding 70% of the MSA median income adjusted for household size. A schedule of maximum income limits by household size has been issued by the FCRHA and will be updated when the MSA median income changes.

The maximum permitted income will be determined from the gross income received annually from all sources by all wage earners over 18 years of age (who are not full time students) in a family or household unit.

Sources of income include, but are not necessarily limited to the following:

1. wages and salary (full and part-time employment)
2. child support
3. alimony
4. interest on savings and checking accounts
5. dividends from stocks, bonds, and certificates of deposit
6. social security benefits
7. VA benefits

8. overtime, commissions/tips and bonus payments
9. unemployment insurance
10. pension/retirement payment
11. disability benefits
12. any other annuities or stipends received
13. income from real estate investments
14. income from a business or partnership owned, associated with or initiated by a member of the household.
15. regular gifts or contributions from persons not residing in the dwelling as long as there is a documented two year history.
16. net income from business operations, exclusive of amortization of capital indebtedness. Depreciation based on straight line method is an acceptable expense. Three years federal tax returns are required to document such income.

3. Other Criteria and Preferences

In order to be issued a Certificate to purchase an ADU, an applicant, in addition to meeting the income limits defined above, may not presently own residential property nor have owned such property within the last three years, except that (A) any individual who is a displaced homemaker may not be excluded on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse, and; (B) any individual who is a single parent may not be excluded on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

In addition, the following preference shall apply in establishing the order of priority for purchasers:

- applicants who live and/or work in Fairfax County.
- When an ADU is located in a Conservation or Redevelopment Area designated by the Fairfax County Board of Supervisors, eligible residents of that Conservation or Redevelopment Area shall have first preference to purchase the ADU.

B. Sales Price Limits for ADUs

The sales prices for housing constructed as a requirement of the ADU Ordinance must not exceed the applicable maximum limits established by the County Executive. Sales prices include all fixtures and equipment required by ADU specifications. Sales prices also include provisions for builder-paid permanent mortgage placement costs and buy-down fees, certain closing costs and a

marketing allowance. Any upgrades to the unit must be within the bounds of the established ADU specifications.

In addition to the maximum sales price calculated pursuant to the ADU Ordinance, the final contract price for an ADU may also include pre-paid expenses such as lenders title insurance, pre-paid interest, etc. provided that the developer certifies that such charges have been paid from the seller's proceeds at settlement and provides documentation for the charges incurred.

C. FCRHA Right to Purchase ADUs

Upon receipt of notification from the owner of the availability of units for sale under the ADU program, the FCRHA (which for purposes herein, pertaining to acquisitions of ADUs by the FCRHA, shall include a partnership in which the FCRHA is the managing general partner) shall have the right to buy 1/3 of the ADUs during the initial 90-day marketing period. Guidelines, approved by the FCRHA, will be used by HCD to determine which units to purchase and under what program the units will be placed. The same guidelines will be used to determine whether the FCRHA will purchase up to 1/2 of the balance of the ADUs (i.e., up to another 1/3 of the ADUs) available after the first 30 days of the 90 day initial marketing period.

HCD will notify the owner in writing within 30 days, if possible, but no later than 90 days, after the receipt of the notice whether the FCRHA elects to purchase any or all of the ADUs which it has the right to purchase in the development. Cash closing shall occur within 30 days from the end of the ninety (90) day period, provided a RUP has been issued for the unit(s) prior to closing.

D. Sale of ADUs to Eligible Purchasers with Certificates of Qualification

The other 2/3 of the sale ADUs within a development shall be offered for sale for a 90 day period following approval of a Notice of Availability to persons who meet the income criteria established by the FCRHA and who have been issued a Certificate, but not to the general public. In addition, any units made available to the FCRHA, which it elects not to purchase, shall be offered exclusively to persons, who have been issued a Certificate, for the period beginning when the FCRHA notifies the owner that it will not exercise its right to purchase until the date 90 days after approval of the Notice of Availability.

When HCD receives a Notice of Availability, all Certificate holders will be notified by HCD of the availability of units with sufficient bedrooms to satisfy their needs. The following guidelines will be used to determine whether a unit is appropriate for a household applying to purchase an ADU.

<u>Unit Size</u>	<u>Household Size</u>
One Bedroom	1 - 2 Persons
Two Bedroom	2 - 4 Persons
Three Bedroom	3 - 6 Persons

The opportunity to purchase an ADU during this initial 90 day marketing period is limited to Certificate holders, including new applicants to the First Time Homebuyer Program, who meet the income criteria. Those Certificate holders and new applicants interested in the unit(s) will complete and return a lottery application to HCD. The lottery applications will be divided into two priority categories. The first priority category is households who live and/or work in Fairfax County. The second priority category is households who do not live or work in Fairfax County. Within both priorities households who have at least one dependent child under age 18 (or a disabled dependent) will be served before couples and single households. Except, if the ADU identified in the Notice of Availability is located in a designated Conservation or Redevelopment Area, the first priority will be households living in that Conservation or Redevelopment Area whose household size is appropriate for the unit. In that case, households who live or work in Fairfax County will be second priority and those who do not live or work in Fairfax County will be third priority. HCD will hold a lottery from each of the categories, separately, and issue to the owner the list of Certificate holders by priority category. It will be the responsibility of the owner to contact the Certificate holders in order of which their names are drawn to schedule negotiations for the purchase of an ADU. Those Certificate holders selected by the lottery process have the exclusive right to enter into a contract for the purchase of an ADU until the date of public marketing (end of the 90-day period).

As soon as a Certificate holder has signed a contract to purchase a unit, the owner will submit a copy of the sales contract to HCD. Within 10 days after settlement, the settlement agent will submit a copy of the signed settlement sheet, the original Certificate and a copy of the deed and recorded Covenant for the individual ADU to HCD.

E. Purchase of ADUs by Eligible Non-Profits

After 60 days from the effective date of the Notification of Availability/Offering Agreement, ADUs which have not been placed under contract by the Certificate holders and ADUs made available to the FCRHA, which it elects not to purchase, will be offered for sale to non-profit housing groups, as designated by the County Executive. A list of eligible non-profit organizations has been established by the County Executive and is provided to owners. Purchases by non-profit housing groups are subject to the established ADU sales prices and the other requirements of the ADU Ordinance.

The owner shall give the designated non-profit groups written notice, sent by certified or registered mail, that a particular ADU is or will be ready to purchase. The owner shall send a copy of this notification to HCD concurrently with his/her notification to the non-profits. Notification to the non-profit groups should be sent immediately after the 60th day of the offering period referenced above.

The non-profit groups shall have 30 days within which to commit to purchase the units beginning on the date of receipt of the written Notice of Availability.

If a non-profit housing group elects to purchase a particular ADU, it shall notify the owner in writing. An all cash closing shall occur within 30 days from the end of the 30 day period allowed for commitment to purchase, provided a residential use permit has been issued for the unit prior to closing. The non-profit shall notify HCD when closing occurs for the unit.

F. Sale of ADUs to the General Public

After the expiration of the time periods established in the ADU Ordinance for purchase of ADUs by the FCRHA, by designated non-profit housing groups and by Certificate holders, ADUs which have not been sold to such purchasers may be offered for sale to the general public subject to the established sales prices for these ADUs as well as the income limits and all other requirements of the ADU ordinance. Alternately, the owner may offer such units for rent at the allowed rents for such units and subject to the income limits for eligible renters and other requirements of the ADU Ordinance.

The owner shall notify HCD whether the units have been sold or rented and shall provide appropriate documentation of compliance with the requirements of the ADU Ordinance. This documentation shall include income information as is required from Certificate holders eligible to purchase or eligible renters, evidence of the sales price (signed settlement sheet) or rent, if the ADU is rented, and a copy of the recorded covenant for the individual unit.

G. Sale Under Other Affordable Housing Programs

Pursuant to Section 2-816 of the ADU Ordinance, ADUs developed utilizing federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be sold at prices determined in accordance with the rules and regulations of such programs (provided these sales prices shall not exceed those set pursuant to the ADU Ordinance) and shall be marketed in accordance with the rules and regulations of such programs.

H. Occupancy Requirements

Purchasers must occupy the unit as their primary place of residence and must annually sign and have notarized an affidavit (in a form specified by HCD on behalf of the FCRHA) certifying to their occupancy of the unit. Affidavits must be submitted to the FCRHA, in care of HCD, by June 1 of each year. Failure to submit an executed affidavit or submission of a false affidavit will subject the purchaser to penalties as provided in Section 2-817 of the ADU Ordinance.

I. Control Period and Covenant

All controls and requirements pertaining to the original or subsequent sales of ADUs are effective for a period of fifteen (15) years from the date of the initial sales transaction for an ADU.

At the time of the initial sale of an individual ADU, the owner shall provide in the sales contract and shall record with the deed for each ADU a Covenant running with the land in favor of the FCRHA. The Covenant shall include the provisions specified in Section 2-812(2) of the ADU Ordinance including restrictions regarding resale of the unit during the 15 year control period.

The Covenant will be senior to all instruments securing permanent financing and shall be binding on all assignees, mortgagees, purchasers and other successors in interest. The Covenant shall state that any or all financing documents shall require the lender to provide the County Executive and the FCRHA written notice of any delinquency or event of default under a mortgage and grant the FCRHA the right for a sixty day period following such a notice to cure the default. However, in the event the ADU is sold to a bonafide purchaser at a foreclosure sale, the Covenant will be released. HCD will provide the owner with a standard form of Covenant to be recorded with the deed for each ADU.

J. Resales of ADUs

1. Request for Resale Price Determination

During the control period, an owner of an ADU must notify HCD in writing of the owner's intent to sell and request a resale price determination. The owner must provide HCD with receipts for any eligible items to be considered for credit in the price determination. If there are improvements to be included in the sales price, the owner must permit HCD to inspect the improvements.

2. Establishment of Maximum Resale Price

The resale price will be determined by the original selling price plus a percentage of the unit's original selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index or such other index selected by the County Executive (as designated in the regulations concerning sales prices for ADUs which have been issued by the County Executive) plus the current fair market value of structural improvements made to the unit between the date of original sale and the date of resale. An allowance for payment of closing costs on behalf of the subsequent purchaser, which shall be paid by the seller, will also be added. Pre-paid items are not considered closing costs. For those units where there was no marketing and commission allowance provided for in the initial sale, the sales price may also include an allowance of 1 1/2 percent of the original sales price for such purpose. The owner will be notified in writing of the approved resale price.

Fair market value of structural improvements is defined as the actual and reasonable costs of materials, professional fees, contractors fees and permit fees associated with furnishing and installing the improvements. The fair market value of improvements does not include reimbursement for labor performed by the owner nor reimbursement for the purchase of tools and equipment used to install the improvements. Upgrades of existing house components, normal owner maintenance, and general repair work will not be included in the resale price determination. Improvements must be permanent in nature and clearly add to the market value of the house or property.

3. Offering an ADU for Resale

For a 60 day period following written notification to the FCRHA (in care of HCD) from the owner of intent to sell an ADU at the established resale price, the unit shall be offered exclusively through the FCRHA to eligible purchasers who hold a Certificate of Qualification issued by the FCRHA. HCD will notify Certificate holders with appropriate household size on the eligibility list of the availability of the resale unit. The Certification holders will then return the lottery application showing interest in the property. A lottery will be conducted in the same manner specified for the initial sale of an ADU. HCD will issue a list of eligible purchasers by priority to the owner, and notify the Certificate holders of their positions on the list. It will be the responsibility of the owner to contact the Certificate holders on the list, in order, to obtain a purchaser.

After the initial 30 days of the 60 day period, the FCRHA may elect to acquire the unit if it is not already committed. The FCRHA shall give the owner written notice of its intent to purchase the ADU and an all cash

closing shall occur within 30 days after the end of the 60 day period. If the unit has not been sold to an eligible applicant or the FCRHA during the first 60 days the ADU is offered for resale, the ADU owner may offer the unit for sale to the general public, at the price previously determined by HCD, subject to the other requirements of the ADU Ordinance, including income requirements and verification of income eligibility.

The seller must notify HCD whenever a sales contract is executed and forward a copy to HCD. The seller must also furnish HCD with an executed copy of the settlement sheet.

4. Sale Following Expiration of Control Period

For the initial sale of an ADU after the expiration of the fifteen (15) year control period, the FCRHA shall be offered the exclusive right to purchase the unit for sixty (60) days. The current owner of each such unit must provide the FCRHA with written notification by registered or certified mail that the unit is for sale. If the FCRHA elects to purchase the unit, it shall notify the owner within 30 days of the receipt of the owner's written notice of its intent to purchase and an all cash closing shall occur within 60 days thereafter. If the FCRHA does not elect to purchase, the unit may be sold to any purchaser.

In all instances, one-half (1/2) of the difference between the net sales price paid by the purchaser at such sale and the owner's original purchase price plus a percentage of the unit's selling price equal to the increase in the U.S. Department of Labor's Consumer Price-Urban Area Index, or such other index selected by the County Executive following consideration of the recommendation by the Affordable Dwelling Unit Advisory Board, plus the current fair market value of structural improvements made to the unit between the date of purchase and the date of resale, shall be contributed to the Housing Trust Fund to promote housing affordability in Fairfax County. Net sales shall exclude closing costs such as title charges, transfer charges, recording charges, commission fees, points and similar charges related to the closing of the sale of the property paid by the seller, but shall be inclusive of any allowances for items related to the reconditioning and refurbishing of the dwelling unit, such as, but not limited to painting, carpet, appliances and similar allowances.

Section 4

Procedures for Rental of ADUs

A. Eligible Renters of ADUs

Those seeking to rent an ADU must have an income no greater than the maximum income limits for the appropriate household size which are published periodically by the FCRHA. There are two levels of income limits which apply to rental ADUs. The lower limits apply to one-third of the rental ADUs in a multiple dwelling unit rental development and the higher limits apply to the balance of the rental ADUs in a multiple dwelling unit rental development and to all other rental ADUs. It is the responsibility of the individual or household to demonstrate eligibility under the requirements of the ADU program. In order to verify that an individual or household satisfies these requirements, appropriate information and documentation may be requested including but not limited to copies of Federal and State income tax returns, W-2 forms, and copies of pay checks. Income shall be defined in the same manner as described in Section 3 of these regulations concerning the sale of ADUs.

In addition, priority in renting ADUs (whether through the FCRHA or directly from the owner) will be given to persons who live or work in Fairfax County.

The FCRHA will verify the eligibility of tenants in ADUs leased by the FCRHA and will verify only the income eligibility of potential tenants referred to multifamily rental ADUs. It is the landlord's responsibility to verify the eligibility of tenants in all other ADU rental units.

B. Allowed Rents for ADUs

The rents for housing constructed as a requirement of the ADU Ordinance must not exceed the applicable maximum limits established periodically by the County Executive. Rents will be established for single family detached, single family attached and multiple family dwelling units with various numbers of bedrooms. Rents for multiple family units are exclusive of tenant-paid utility costs which may include any combination of the following: water, sewer, heat, light and/or general electric usage.

C. Initial Offering of ADUs for Rental

1. Single Family Detached and Attached Rental ADUs - FCRHA Option

Upon receipt of notification from the owner that a particular single family detached or single family attached ADU is or will be available for rent, HCD will determine whether the FCRHA or its designee will lease up to 1/3 of such units in the development pursuant to its exclusive right to lease such units during the control period. Guidelines, approved by the FCRHA, will be used to determine which units to lease. HCD will notify the owner in writing within 30 days from receipt of the owners notice, if the FCRHA elects to lease any units.

2. Multiple Family Rental ADUs - FCRHA Option

Upon receipt of notification from the owner that a multiple family ADU is or will be available for rent, HCD (on behalf of the FCRHA) may refer to the owner potential tenants for the one-third of the ADUs to be rented at rents affordable to households with incomes up to 50% of the median income for the Washington, D.C., MSA, if there are applicants who could afford these units. These households will be certified as income eligible by HCD on behalf of the FCRHA. The owner will determine whether the household meets the owner's normal rental criteria other than income. Households may not be rejected for such units if they are receiving state or local rental subsidy assistance. If a qualifying tenant is not referred to the owner by the FCRHA, at the end of the 30 day period (or sooner if HCD indicates it has no potential tenants to refer) the owner may rent the unit to a household whose income does not exceed 50% of median income for the Washington, D.C., MSA at a rent affordable to such a household.

3. General Provisions for Rental ADUs

Units not leased pursuant to the provisions of Paragraph 1 or 2 above shall be offered by the owner to persons who meet the income and other criteria established by the FCRHA. Priority will be given to those who live or work in Fairfax County.

At the owner's option, the FCRHA may lease additional rental units at the ADU market rent as appropriate.

D. Occupancy of Rental ADUs

1. Tenants of rental ADUs must meet the eligibility criteria established by the FCRHA. In addition, the owner shall use the guidelines below to determine the household size appropriate for various size units:

<u>Unit Size</u>	<u>Minimum Number of Persons</u>	<u>Maximum Number of Persons</u>
Efficiency	1	1
One Bedroom	1	2
Two Bedroom	2	4
Three Bedroom	3	6

2. Renters of ADUs must occupy the unit as their domicile and must annually provide an executed affidavit (in a form specified by HCD on behalf of the FCRHA) Certifying their continuing occupancy of the unit. This affidavit shall be submitted by the renter by the date specified in their lease of the date specified by the landlord/owner.
3. If the renter of an ADU fails to provide an executed affidavit to their landlord/owner within thirty (30) days written request for such affidavit, then the lease shall automatically terminate, become null and void and the renter must vacate the unit within thirty (30) days of written notice from the landlord/owner.
4. In the event a renter of an ADU shall no longer meet the eligibility criteria as a result of increase income or other factor, then at the end of the lease term, they must vacate the unit.
5. In the event a renter fails to occupy a unit for a period in excess of 60 days, unless approval was granted in writing by HCD on behalf of the FCRHA, the lease shall automatically terminate and the tenant must vacate the unit within 30 days of written notice from the landlord/owner.
6. Notwithstanding the provisions of paragraphs 3, 4 and 5 above, if the

landlord/owner shall immediately designate an additional comparable unit as an ADU to be leased under the controlled rental price and the requirements of the ADU Ordinance, the renter of such unit referenced in paragraphs 3, 4 and 5 above may continue to lease such unit at the market value rent.

E. Control Period and Covenant

1. General

All controls and requirements pertaining to the original or subsequent rentals of ADUs are effective for a period of twenty (20) years from the date of issuance of the first RUP for the required ADUs in the rental project. Prior to offering ADUs for rent but no later than the issuance of the first RUP for a rental development which includes ADUs, the owner shall record a Covenant running with the land in favor of the FCRHA. The Covenant shall subsequently have specified in it the date of issuance of the first RUP for an ADU and shall include the provisions specified in Section 2-812(6) of the ADU Ordinance including restrictions on the rental of the ADUs during the 20 year control period. The Covenant shall be senior to all instruments securing permanent financing and shall be binding on assignees, mortgagees, purchasers and other successors in interest. In the event of a bonafide foreclosure, the Covenant shall be released; however the financing documents shall provide that the lender shall give the FCRHA at least 30 days prior written notice of the foreclosure sale.

HCD will provide the owner with a standard Covenant for rental ADUs to be recorded in the land records.

2. Multifamily Rental Developments

For multifamily rental developments, after the initial 10 years of the control period and after provision of 120 day written notice to the FCRHA and the tenants of the ADUs, the owner may elect to:

- a. file a rezoning application and comply with the requirements that result therefrom; or
- b. pay to the Fairfax County Housing Trust Fund an amount equivalent to the then fair market value of the land attributable to all bonus and affordable units and provide relocation assistance to the tenants of the ADUs in accordance with the requirements of Article

4 of Chapter 12 of the Code and, thereupon, the units previously controlled as ADUs shall be released fully from the controls.

F. Lease Restrictions

1. Any rental ADU that is not leased by the FCRHA shall be leased for a minimum six (6) month period with a maximum lease term of one (1) year to tenants who meet the eligibility criteria.
2. The lease agreement for any such unit shall include the following provisions:
 - a. Minimum lease term is six (6) months and the maximum lease term is one (1) year.
 - b. The tenant must occupy the unit as their domicile.
 - c. Subleasing of the unit is prohibited
 - d. The tenant must continue to comply with the eligibility criteria.
 - e. The tenant must annually verify under oath, on a form approved by the FCRHA, that the tenant continues to meet the income and other eligibility criteria established by the FCRHA.
 - f. The lease will be terminated if there is any false certification or failure to provide the executed affidavit of continued occupancy or failure to occupy the unit for a period greater than 60 days unless such failure is approved in writing by HCD on behalf on the FCRHA.

G. Landlord/Owner Responsibilities

1. The landlord/owner of a development containing rental ADUs shall be responsible for obtaining from renters of affordable dwelling units (other than the FCRHA) an annual income certification that certifies the income eligibility of that household and other facts in order in insure the tenant continues to meet the eligibility criteria established by the FCRHA.
2. The landlord/owner will also be responsible for obtaining third party verification of income.
3. By the end of each month, the landlord/owner shall provide HCD (on behalf of the FCRHA) with a statement verified under oath which certifies the following as of the first of such month:
 - a. The address and name of the development and the name of the

owner.

- b. The number of affordable dwelling units by bedroom count, other than those leased to the FCRHA, which are vacant.
- c. The number of affordable dwelling units by bedroom count which are leased to residents other than the FCRHA. For each unit the statement shall have the following information:
 - 1. The unit address and bedroom count.
 - 2. The tenant's name and household composition.
 - 3. The effective date of the lease.
 - 4. The tenant's households income as of the date of the lease.
 - 5. The current monthly rent.
- d. That to the best of the owner's information and belief, the tenants who lease ADUs meet the eligibility criteria established by the FCRHA.
- e. The owner shall provide the FCRHA with a copy of each new or revised annual tenant verification obtained from the renters of ADUs.

H. Rental Under Other Affordable Housing Programs

Pursuant to Section 2-816 of the ADU Ordinance, ADUs developed using federal, state or local programs which are subject to terms and restrictions equivalent to the ADU program shall be rented at rents determined in accordance with the rules and regulations of such programs (provided that the rents do not exceed those set pursuant to the ADU ordinance) and shall be marketed in accordance with the rules & regulations of such programs.

HOUSING OPPORTUNITY PROGRAM

Community Services Department
PO Box 909 Santa Fe, NM, 87504-0909
505-955-6967

The City of Santa Fe Housing Opportunity Program (HOP) was adopted unanimously by the City Council on January 14, 1998 and became effective April 15, 1998. HOP increases the supply of affordable housing in all areas of Santa Fe and strengthens the city's unique heterogeneous character by requiring developers of residential projects to provide affordable housing units (HOP units) on site.

Applicability

The Housing Opportunity Program applies to the following development requests in the city for residential projects for sale or for rent:

- annexations, rezonings, preliminary subdivision plats, and preliminary/final subdivision plats (except for lot splits and family transfers);
- final development plans for planned developments (PUD, PRC, PRRC);
- increases in density for approved master plans or development plans;
- development plans as required for multiple-family projects in R-1 through R-5 districts and RM districts with six units or more
- developments outside city limits receiving city sewer, water or refuse collection

Residential lots or tracts, which already have all development approvals in place, are exempt from HOP requirements. HOP does not apply to any development that, prior to adoption of the HOP ordinance, was subject to a binding pledge to the city to provide affordable housing.

	Type A Development	Type B Development	Type C Development	Type D Development
Development Unit Price	Below \$139,348	Below \$227,969	\$227,969– \$379,949	Over \$379,949
Required Affordable Housing	---	---	11%	16%
Density Bonus	16%*	---	11%*	16%*
Maximum Price of HOP Units	---	---	\$113,220	\$113,220

Household income based upon HUD area median income of \$60,700 as of 4/10/01 (4-person household). House price based upon 8.21% interest rate for 30 years with a 3% down payment for Type A and a 20% down payment for others.

Maximum Price of HOP Units based upon 3-bedroom, 1.5 bath home for a four-person household earning 65% of the area median income (adjusted annually).

Development Requirements

Development types "A" and "B" are not subject to a mandatory requirement for construction of on-site HOP units and are only subject to verification that the housing is sold in the price range as defined:

- Development type "A" – Development in which at least 75% of the dwelling units will be priced to be affordable to households with incomes under 80% of the area median income.
- Development type "B" – Development in which all of the dwelling units will be priced to be affordable to households with incomes under 120% of the area median income.

Development types "C" and "D" are subject to mandatory requirements for construction of on-site HOP units.

- Development type "C" – Development in which one or more of the dwelling units will be priced to be affordable to households with incomes over 120% of the area median income and the average price is affordable to a household with an income less than 200% of the area median income.
- Development type "D" – Development in which the average price will be affordable to a household with an income above 200% of the area median income.

Number of Required Affordable Housing Units

- Development Type "C" 11% (approximately one in nine units)
- Development Type "D" 16% (approximately one in six units)

In the case of extreme hardship, the city may allow a fee-in-lieu of on-site required affordable housing.

Formulas for Establishing Pricing

Housing prices are recalculated periodically in accordance with formulas described in the HOP administrative procedures based upon changes in the area median income, interest rates and utility allowances (for rental units).

Pricing of Required Affordable Housing Units

- Sale Prices – must be affordable, on average, to a household with an income equal to 65% of the area median income.
- Rent Prices – must be affordable, on average, to a household with an income equal to 60% of median income.
- Price Skewing – prices may be skewed below and above the required average rents or sale prices to reach a broad range of households.

Occupancy of Required Affordable Housing Units

- Incomes of buyers must be appropriate for the price of a HOP unit.
- Household sizes must be appropriate for the size of the HOP units.
- Occupants who live or work in Santa Fe County for at least one year are given a preference.

Long-term Affordability Requirements

- HOP rental units must be kept affordable for 20 years.
- HOP for-sale units are subject to liens that enable the city to recapture any windfall profits from a resale unless assumed by another qualified, low-income buyer.

Verification of Compliance

Sale and rentals of HOP units will be verified to determine compliance with the Housing Opportunity Program. If HOP is not complied with, the city may:

- withhold the recording of plats;
- withhold or revoke building permits;
- issue stop-work orders;
- withhold or revoke certificates of occupancy;
- pursue enforcement in the appropriate court of law. Non-compliance with HOP may be subject to fines.

Other Provisions for Required Affordable Housing

- A reasonable mix of unit sizes is required. Rentals must have between zero and four bedrooms. For-sale units must have a mix of three and four bedrooms.
- In predominantly for-sale housing developments, the required HOP units must also be for-sale, not rental, units.
- Minimum square footage and other physical standards for HOP units are set forth in the HOP administrative procedures.
- Variances and appeals to the HOP may be filed as set forth in the HOP procedures.

Development Incentives*

- Density Bonuses

<u>Type of Development</u>	<u>Density Bonus</u>
Development Type "A"	16%
Development Type "C"	11%
Development Type "D"	16%

- Waivers and Alternative Methods of Implementation

Developers of development types "A", "B", and "C" may request waivers from and alternative methods to implementation of city policies if certain criteria are met. Certain development and building permit submittal fees are waived.

HOP Agreements

An applicant with a development request subject to HOP is required to meet with the Community Services Department for a presubmission conference prior to submittal of a development proposal to the Planning and Land Use Department. Forms for various standard types of HOP proposals are available in the Community Services Department. After all development approvals (except for building permits) have been received, the HOP agreement is executed by the City Manager and the applicant, and is filed in the County Clerk's office.

*Does not apply to developments in the County

City of Santa Fe



New Mexico

INCLUSIONARY ZONING HOUSING OPPORTUNITY PROGRAM

CHAPTER 14, SECTION 96 & CHAPTER 26 OF THE SANTA FE CITY CODE 1987 AND ADMINISTRATIVE PROCEDURES

For information, please contact: Community Development Division at 505-955-6967

14-96 INCLUSIONARY ZONING.

14-96.1 Short Title. This section may be cited as the "Inclusionary Zoning Ordinance." (Ord. #1998-2, §20)

14-96.2 Authority. The Inclusionary Zoning Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (N.M. Stat. Ann. Section 3-17-6 A(8) (1978)), to enact ordinances pursuant to its police power (N.M. Stat. Ann. Section 3-17-1 B (1978)), to enact zoning ordinances in general (N.M. Stat. Ann. Section 3-21-1 A (1978)), to enact zoning ordinances regulating or restricting the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land (N.M. Stat. Ann. Section 3-21-1 B(2) (1978)), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa Fe's powers under its municipal charter which was adopted effective March 15, 1998 pursuant to the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of New Mexico. (Ord. #1998-2, §21; Ord. #1999-42, §2)

14-96.3 Purpose. The purpose of this section is to:

A. Increase the supply of affordable housing within the Santa Fe area for residents and businesses.

B. Encourage the construction of affordable housing in all areas of the city in accordance with the general plan.

C. Strengthen the unique heterogeneous character of the Santa Fe area by providing a full range of housing choices for all ages, incomes and family sizes.

D. Ensure that residents and future generations can afford to reside within the Santa Fe area.

E. Provide affordable housing whenever city utilities are extended beyond the city limits.

(Ord. #1998-2, §22; Ord. #1999-42, §3)

14-96.4 Responsibilities. The planning and land use department staff shall:

A. Administer and enforce all planning and land use ordinances that apply to development requests that are subject to the Inclusionary Zoning Ordinance.

B. Review submittals for compliance with the Inclusionary Zoning Ordinance.

C. Require, as part of the development review process and prior to submittal of required development applications, the applicant to prepare a preliminary housing opportunity program agreement with the community services department to assure compliance with the Housing Opportunity Program Ordinance set forth in Section 26-1 SFCC 1987.

D. Evaluate density bonuses, code variances or policy waivers, fee waivers, and other development incentives in the development review process as set forth in this section.

E. Where applicable, invoke sanctions for noncompliance with housing opportunity program agreements at the request of the city manager.

(Ord. #1998-2, §23)

14-96.5 Applicability.

A. The Inclusionary Zoning Ordinance shall not apply to any development or portion thereof which was subject to any formal, written and binding agreement with the city or county which if within said agreement the signatories agreed to provide affordable housing or payment in lieu thereof and the signatories, their successors or assigns have not and do not default upon their obligation therein.

B. The Inclusionary Zoning Ordinance shall apply to any residential development application submitted to the city after the effective date of the Inclusionary Zoning Ordinance for:

- (1) Annexation, initiated by parties other than the city shall be subject to limited application of HOP requirements as set forth in subsection 26-1.6 SFCC 1987, unless previously subdivided into residential lots.
- (2) Rezoning except those that only result in a family transfer or lot split as used in this chapter;
- (3) Preliminary subdivision plat, except a family transfer or lot split as used in this chapter;
- (4) Final subdivision plat, except a family transfer or lot split as used in this chapter;
- (5) Increase in density for approved master plan or development plan;
- (6) Development plan as per subsection 14-17.21F SFCC 1987 for multiple-family projects in R-1 through R-5 districts with six (6) units or more;
- (7) Development plan as per subsection 14-20.6C SFCC 1987 for multiple-family projects in RM districts with six (6) units or more; or
- (8) Final development plan as per subsection 14-30.10, subsection 14-31.7 or subsection 14-32.7 SFCC 1987 for PUD, PRC or PRRC districts, respectively.

C. Applications, requesting the extension of or connection to city utilities submitted to the city after August 23, 1999 for residential developments located outside the city limits, shall be subject to the Inclusionary Zoning Ordinance as may be limited by this Ordinance and the city's jurisdiction.

D. The applicant of a development request subject to HOP may be required to submit a revised HOP proposal to comply with HOP requirements due to changes in the development request as subsequent requests for the development are submitted for approval. (Ord. #1998-2, §24; Ord. #1999-42, §4)

14-96.6 Pre-submission Conference, Certification, and Housing Opportunity Program Agreements.

A. Prior to the submittal of any residential development request which is subject to the Inclusionary Zoning Ordinance or Housing Opportunity Program Ordinance, a pre-submission conference with the community services department is required.

B. The applicant shall submit to planning and land use staff, along with the application for residential development, a certification from the community services department stating the applicant has met with the community services department staff and agreed to a preliminary HOP (housing opportunity program) agreement as set forth in Section 26-1 SFCC 1987. If the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits, the certification shall be submitted to the public utilities department.

C. A development request subject to the housing opportunity program shall not be approved unless a HOP proposal has been approved by the community services department, as set forth in Section 26-1 SFCC 1987. After all development approvals have been received, the housing opportunity program agreement may be executed by the applicant and the city manager. The housing opportunity program agreement shall be referred to in any related annexation agreement or rezoning ordinance; and on any related annexation plat, final subdivision plat or final development plan as appropriate. The housing opportunity program agreement shall be recorded at the county clerk's office at the time of recording the annexation plat, rezoning ordinance, final subdivision plat, or final development plan, as appropriate, or prior to issuance of a building permit if the previous documents are not required. A copy of the housing opportunity program agreement shall be included with the submittal for a building permit.

(Ord. #1998-2, §25; Ord. #1999-42, §5)

14-96.7 Inclusionary Zoning Requirements.

A. The applicant, for developments for which the Inclusionary Zoning Ordinance applies, shall provide a written declaration regarding the price classification of the proposed development and whether the proposed development will be predominantly for-sale housing or for-rental housing as set forth in subsection 26-1.8 SFCC 1987. The declaration shall be reviewed by the community services department and submitted with the application. The applicant shall declare the development type as defined in this chapter. Development type "A" and development type "B" are subject to simplified requirements set forth in subsection 26-1.9 SFCC 1987.

B. In development type "C" and development type "D," the number of required affordable units to be constructed shall be calculated by multiplying the number of units to be

built in the development by the appropriate percentage as follows: (1) eleven percent (11%) for development type "C"; and (2) sixteen percent (16%) for development type "D." The whole number resulting from this calculation shall be the number of required affordable units. If the calculation described results in a fraction of a unit, this obligation shall be satisfied as set forth in subsection 26-1.18 SFCC 1987. Nothing herein shall prohibit a developer from building a greater number of affordable units than required herein.

C. The development shall be subject to HOP requirements for for-sale housing if fifty percent (50%) or more of the proposed dwelling units in the development (including the HOP required units) are to be sold in fee simple. The development shall be subject to HOP requirements for rental housing if fifty percent (50%) or more of the proposed dwelling units in the development (including the HOP required units) are to be rented.

D. If the proposed development is for rental, the number of units available to be leased to HOP renters at reduced rates shall be increased approximately twenty percent (20%) to accommodate contingencies to meet occupancy changes as set forth in subsection 26-1.23 SFCC 1987.

E. The required affordable units shall be built on site and comply with the housing opportunity program requirements, set forth in Section 26-1 SFCC 1987, unless an alternate means of compliance has been approved as set forth in subsection 26-1.30 SFCC 1987. In order to achieve spatial, architectural and landscaping integration with other units in the development, the proposed design and location of the affordable units shall be reviewed by the community services department. Appeals of decisions made by the community services department regarding the design and location of the affordable units shall be heard by the community development commission.

(Ord. #1998-2, §26)

14-96.8 Development Incentives. The purpose of this section is to increase affordability, encourage innovative design and allow for optimum flexibility without compromising health and safety. The following development incentives do not apply to applications for residential developments located outside the city limits, which are requesting the extension of or connection to city utilities.

A. *Density Bonuses.*

(1) Developers constructing required affordable for sales homes or constructing development type "A" shall be entitled to a density bonus as follows: (a) sixteen percent (16%) for development type "A"; (b) eleven percent (11%) for development type "C" to the extent all units are for sale; and (c) sixteen percent (16%) for development type "D" to the extent all units are for sale.

(2) The city may grant a density bonus not to exceed the amounts described above for rental units but such a density bonus shall be discretionary and shall only be granted pursuant to a certified HOP proposal duly approved and subsequently agreed to in a HOP agreement.

(3) A density bonus, as defined for HOP, is the right to build the described percentage of residential units, in addition to those that are otherwise allowed, in accordance with the following standards and procedures:

(a) Base units allowed shall mean the number of non-HOP units sought by the applicant in the most current certified HOP proposal so long as that number is not in excess of the maximum allowable units taking into account all other requirements that may limit the number of units that can be built on the site.

(b) In calculating any bonus unit(s), the base units allowed in the development shall be multiplied by the percentage described above. If the result is other than a whole number, the number shall be rounded down if less than five-tenths (0.5), and rounded up if five-tenths (0.5) or more.

(c) Any such bonus will not require a general plan amendment or approval by the governing body unless appealed pursuant to subsection 14-7.4 SFCC 1987.

(d) Except where the planning commission may be authorized to grant a variance or waiver as set forth in Chapter XIV, such a density increase shall not negate, supersede or limit other city code provisions that limit the number of units that can be built on the site.

(e) Development plans for multiple-family projects in RM districts with six (6) units or more which include a density bonus shall be reviewed and approved by the planning commission.

B. *Fee Waivers.* HOP developments and low-priced developments as defined may be entitled to waivers of certain fees normally due to the city as follows:

(1) Plan submittal fees for annexation, rezoning or subdivisions may be waived for low-priced developments as defined, for the first and any subsequent plan submittal.

(2) Building permit fees may be waived for the following:

(a) HOP units, and

(b) Any other low-priced units as defined in any development, whether or not subject to HOP.

C. *Variances to the City's Development Standards.*

(1) Any developer who is subject to and complying with HOP requirements by construction of required affordable units, or constructing a development type "A" as defined may request the following:

(a) Variances from zoning regulations set forth in Sections 14-17 through 14-21, Section 14-26, Sections 14-30 through 14-32, Section 14-49, and Section 14-69 SFCC 1987 (the request does not have to be within a PUD, PRC or PRRC districts); or

(b) Variances from and alternate methods to the street standards set forth in Section 14-93 exclusive of subsections 14-93.4 and 14-93.8 SFCC 1987.

(2) The variance shall be subject to the standards and procedures as set forth in this chapter.

(3) If a request for a variance is denied, the approving authority shall declare and demonstrate that the proposed variance does not meet the standards set forth in this chapter. Such a document denying the variance shall offer specific facts and citations of ordinances, regulations or studies as reasons for denial. The staff shall then forward a copy of said document to the community services department with instructions to negotiate a new HOP proposal to certify the new proposal. If the variance request is denied, the action may be appealed in accordance with the provisions of this chapter.

D. *Waivers and Alternative Methods of Implementation.*

(1) Any developer who is subject to and complying with HOP requirements by construction of required affordable units, or constructing a development type "A" as defined may request waivers from and alternate methods to implementation of planning and land use department staff interpretations or policies which are not set forth in the code.

(2) Requests for waivers shall be submitted in writing, reviewed and acted on by the city as follows:

(a) The applicant shall not be required to post or notify property owners.

(b) Staff shall respond to the request within thirty (30) calendar days of its receipt.

(c) If a request for a waiver is denied, or staff shall declare and demonstrate in written response that the proposed waiver does not meet one or more of the requirements as set forth below. Such a document denying the waiver shall offer specific facts and citations of ordinances, regulations or studies as reasons for denial. The staff shall then forward a copy of said document to the community services department with instructions to negotiate a new HOP proposal to certify the new proposal. If staff denies the request, the action may be appealed in accordance with the provisions of this chapter.

(3) A request for a waiver shall be approved if each of the following requirements is met:

(a) The proposed waiver will make the housing more affordable. The developer must show how real costs will be reduced and how the savings will be passed on to HOP home buyers or renters.

(b) The proposed waiver does not compromise health, safety or welfare as determined by the city.

(c) Vehicular and pedestrian circulation, storm drainage and utilities are provided for adequately.

(d) The proposed alternate method(s) meets the general intent of the written requirements to Chapter XIV.

(e) Such alternate method(s) does not conflict with the requirements of any law or regulation of the state of New Mexico or the federal government.

(f) Costs to the city for maintaining the alternate method are not disproportionately greater than those of any normally required methods. (Ord. #1998-2, §27; Ord. #1999-42, §6)

14-96.9 Enforcement.

A. *Applications Within the City Limits.* If after having been given notice as set forth in subsection 26-1.16 SFCC 1987, a property owner subject to a housing opportunity program agreement fails to comply with Section 14-96 or Section 26-1 SFCC 1987, the community services department shall notify the city manager and the planning and land use department of the noncompliance and request that sanctions be imposed. Upon direction by the city manager, the planning and land use department shall impose any of the following sanctions, depending upon which is deemed most effective and appropriate considering the nature of the noncompliance:

- (1) Withholding of the recording of plats or plans;
- (2) Withholding of building permits;
- (3) Issuing stop work orders;
- (4) Revoking building permits; or
- (5) Withholding or revoking certificates of occupancy.

B. *Applications Outside the City Limits.* If after having been given notice as set forth in subsection 26-1.16 SFCC 1987, a property owner subject to a housing opportunity program agreement fails to comply with Section 14-96 or Section 26-1 SFCC 1987, the community services department may request that the city manager direct the city attorney's office to pursue enforcement of specific performance requirements in accordance with the HOP agreement in an appropriate court of law.
(Ord. #1998-2, §28; Ord. #1999-42, §7)

14-96.10 Separability. The provisions of this section are separable and the invalidity of any part of this section shall not affect the validity of the rest of the section. (Ord. #1998-2, §29)

14-96.11 Effective Date. Provisions of this section shall become effective ninety (90) days from passage of this section. (Ord. #1998-2, §30)

14-97 -- 14-100 RESERVED.

DEFINITIONS TO USE WITH SECTION 14-96 SFCC 1987 INCLUSIONARY ZONING ORDINANCE

Alternate means of compliance means compliance with the HOP ordinance by payment of in-lieu contributions.

Area median income means the median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States department of housing and urban development. The Santa Fe metropolitan statistical area includes Santa Fe and Los Alamos counties.

Community services department means the community services department of the city, its agent or successor.

Development Types

A. *Development Type "A"* means a residential development in which at least 75% of all units for sale or for rent are affordable to households with incomes at or below 80% of the area median income, using a four person household for home buyers and a three person household for renters and as further described in Section 26-1 SFCC 1987.

B. *Development Type "B"* means a residential development in which all units for sale or for rent are affordable to a three person household with an income under 120% of the area median income, unless the development is defined as a development type "A" and as further described in Section 26-1 SFCC 1987.

C. *Development Type "C"* means a residential development in which (a) one or more units for sale or for rent are priced to be affordable to a three person household with an income above 120% of the area median income; and (b) the average price does not exceed a price affordable to a three person household with an income at 200% of the area median income and as further described in Section 26-1 SFCC 1987.

D. *Development Type "D"* means a residential development in which units for sale or rent are, on average, affordable to a three person household with an income over 200% of the area median income and as further described in Section 26-1 SFCC 1987.

Dwelling unit means one room, or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and bathroom facilities.

Housing Opportunity Program (HOP) means the Housing Opportunity Program set forth in Section 26-1 SFCC 1987.

Low priced dwelling unit means a dwelling unit which is affordable to a household with an income at or below 80% of the area median income, using a four person household for buyers and a three person household for renters and as further described in Section 26-1 SFCC 1987.

Median income means area median income as defined.

Required affordable housing means housing which is provided on site by a HOP developer or HOP property owner pursuant to a HOP agreement as set forth in Section 14-96 SFCC 1987 of this chapter, with specific requirements for marketing, pricing, certifying applicants and occupants, maintaining long-term affordability, reporting and monitoring.

Required affordable units mean the dwelling units which constitute the required affordable housing in a HOP development.

Residential development means development of land for dwelling unit purposes, excluding dwelling units proposed by a school, hospital or similar institution for the exclusive use of its employees or enrolled students.

Variance means a discretionary relaxation from the strict application of certain zoning requirements granted by the board of adjustment under subsection 14-5.4 SFCC 1987 to alleviate conditions peculiar to a particular property which places an undue burden upon the individual landowner or a discretionary relaxation from the strict application of certain requirements granted by the planning commission as set forth in subsection 14-2.6 SFCC 1987.

CHAPTER XXVI

HOUSING OPPORTUNITY PROGRAM

26-1 Housing Opportunity Program

26-1 HOUSING OPPORTUNITY PROGRAM.

26-1.1 Short Title. This section may be cited as the "Housing Opportunity Program Ordinance." (Ord. #1998-3, §3)

26-1.2 Authority. The Housing Opportunity Program Ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (N.M. Stat. Ann. Section 3-17-6 A(8) (1978)), to enact ordinances pursuant to its police power (N.M. Stat. Ann. Section 3-17-1 B (1978)), to enact zoning ordinances in general (N.M. Stat. Ann. Section 3-21-1 A (1978)), to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land (N.M. Stat. Ann. Section 3-21-1 B(2) (1978)), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens. This section is adopted pursuant to the city of Santa Fe's powers under its municipal charter which was adopted effective March 15, 1998 pursuant to the Municipal Charter Act Sections 3-15-1 to 3-15-16 NMSA 1978 and Article 10, Section 6 of the Constitution of New Mexico. (Ord. #1998-3, §4; Ord. #1999-42, §11)

26-1.3 Purpose. The Housing Opportunity Program Ordinance shall:

A. Increase the supply of affordable housing within the Santa Fe area for residents and businesses.

B. Strengthen the unique heterogeneous character of the Santa Fe area by providing a full range of housing choices for all ages, incomes and family sizes.

C. Ensure that residents and future generations can afford to reside within the Santa Fe area.

D. Encourage the maintenance of the long term affordability of housing units within the Santa Fe area.

E. Provide affordable housing wherever city utilities are extended beyond the city limits.

(Ord. #1998-3, §5; Ord. #1999-42, §12)

26-1.4 Definitions.

Administrative procedures means the procedures adopted by the governing body which set forth how the housing opportunity program shall be administered.

Affordable development means development type "A" or development type "B" as defined in this section and which is subject to simplified HOP compliance requirements.

Alternate means of compliance means compliance with the HOP ordinance by payment of in-lieu contributions as may be approved.

Area median income means the median income for the Santa Fe metropolitan statistical area as adjusted for various household sizes and published and revised periodically by the United States department of housing and urban development. The Santa Fe metropolitan statistical area includes Santa Fe and Los Alamos counties.

Applicant means a property owner or agent of a property owner who submits a development request to the city which is subject to any HOP requirements, or any successor in title that is subject to HOP requirements.

City means the city of Santa Fe or its agent.

Community services department means the community services department of the city of Santa Fe, its agent or its successor.

Development types (as used in Section 14-96 SFCC 1987, Inclusionary Zoning Ordinance).

A. *Development type "A"* means a residential development in which at least seventy-five percent (75%) of all units for sale or for rent are affordable to households with incomes at or below eighty percent (80%) of the area median income, using a four (4) person household for home buyers and a three (3) person household for renters.

B. *Development type "B"* means a residential development in which all units for sale or for rent are affordable to a three (3) person household with an income under one hundred twenty percent (120%) of the area median income, unless the development is defined as a development type "A."

C. *Development type "C"* means a residential development in which (a) one (1) or more units for sale or for rent are priced to be affordable to a three (3) person household with an income above one hundred twenty percent (120%) of the area median income; and (b) the

average price does not exceed a price affordable to a three (3) person household with an income at two hundred percent (200%) of the area median income.

D. *Development type "D"* means a residential development in which units for sale or rent are, on average, affordable to a three (3) person household with an income over two hundred percent (200%) of the area median income.

Dwelling unit means one (1) room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, or rental or lease, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and bathroom facilities.

Extreme hardship means a condition occurring as a direct consequence of the HOP ordinance which: (a) deprives a property owner of all economically viable use of the subject property taken as a whole; or (b) would require the property owner to lose money on the development taken as a whole and the property owner can demonstrate to the community services department's satisfaction that said loss would be an unavoidable consequence of the HOP requirement for construction of affordable housing.

HOP means housing opportunity program.

HOP agreement means an agreement between a property owner of record and the city whereby the city confers benefits in the form of development incentives to the property owner in exchange for compliance with HOP with regard to providing required affordable housing or alternate means of compliance.

HOP developer means an owner of a property subject to any HOP requirements, who is carrying out any phase of developing the subject tract, or as defined in this section, certain successors in title.

HOP development means a tract of land or any improvements thereon which are subject to a HOP agreement.

HOP home means a home marketed and sold to satisfy HOP requirements for providing required affordable housing.

HOP home buyer means a purchaser of a HOP home or the entire household occupying a HOP home.

HOP property owner means the owner of any property which is subject to HOP requirements, or as defined in this section, certain successors in title.

HOP rental unit means a rental unit marketed and leased specifically to satisfy HOP requirements for providing required affordable housing.

HOP tenant means a person who is a lessee of a HOP rental unit, or the entire household occupying a HOP rental unit.

Low priced unit means a dwelling unit which is affordable to a household with an income at or below eighty percent (80%) of the area median income, using a four (4) person household for home buyers and a three (3) person household for renters.

Median income means the area median income as defined.

Planning and land use department means the planning and land use department of the city, its agent or successor.

Required affordable housing means housing which is provided on site by a HOP developer or HOP property owner pursuant to a HOP agreement, with specific requirements for marketing, pricing, certifying applicants and occupants, and maintaining long-term affordability, reporting and monitoring.

Required affordable units mean the dwelling units which constitute the required affordable housing in a HOP development.

Unit means a dwelling unit.

(Ord. #1998-3, §6)

26-1.5 Administrative Procedures.

A. The HOP shall be administered by the city as set forth in the administrative procedures adopted by resolution of the governing body. The administrative procedures set forth responsibilities, procedures and standards for administrative actions necessary to implement the HOP, which include, without limitation, the following:

(1) Submitting and reviewing applicable residential development requests and determining conditions of approval related to the provision of required affordable housing or alternate means of compliance.

(2) Reviewing and certifying HOP proposals with property owners to ensure compliance with the HOP and the administrative procedures.

(3) Monitoring the performance of residential property owners subject to such agreements, and any successors in title that are still subject to such agreements or

other requirements of the HOP and the administrative procedures; and taking appropriate action in the event of noncompliance.

B. The community services department or its agents shall be responsible for the administration of the HOP as set forth in the administrative procedures. Administration of the HOP shall be delegated to one (1) staff member in the community services department. Community services department responsibilities do not include or supersede those responsibilities of the planning and land use department and planning commission as set forth in Section 14-96 SFCC 1987.

C. All changes to the administrative procedures other than changes to area median income and related numerical data shall be reviewed and approved by the governing body.
(Ord. #1998-3, §7)

26-1.6 Applicability.

A. The HOP is applicable to any residential development subject to the Inclusionary Zoning Ordinance set forth in subsection 14-96.5 SFCC 1987 and to the following:

- (1) Sale of lots within a residential development subject to HOP requirements.
- (2) Construction, sale, resale, lease and other transfers of dwelling units as described herein.
- (3) Contributions of cash, real estate or in-kind resources for the construction of affordable housing pursuant to HOP.

B. Annexations initiated by parties other than the city shall be subject to limited application of HOP requirements. Applicants for annexations and the community services department shall negotiate all terms of providing required affordable housing on site or alternate means of compliance. To the extent practicable, all other HOP requirements, including the requirement for a HOP agreement, shall apply to annexations. In no case shall the HOP agreement provide for less affordable housing or a lesser in-lieu contribution than required by HOP.

(Ord. #1998-3, §8)

26-1.7 Exception to HOP Requirements. HOP requirements do not apply to a development or portion thereof which was subject to any formal, written and

binding agreement with the city for providing affordable housing prior to the effective date of the HOP Ordinance which agreement has been performed or may be enforced. (Ord. #1998-3, §9)

26-1.8 Declaration Regarding Price Classification and Whether For-Sale or Rental Housing. In any development request subject to HOP the applicant shall provide a written declaration regarding the price classification of the development as set forth in the administrative procedures. The applicant shall also declare whether the development will be predominantly for-sale or rental as set forth in the administrative procedures. The development shall provide affordable for-sale housing if fifty percent (50%) or more of the dwelling units in the development (including the HOP required units) are proposed to be sold. The development shall provide affordable rental housing if fifty percent (50%) or more of the dwelling units in the development (including the HOP required units) are proposed to be rented. (Ord. #1998-3, §10)

26-1.9 Developments Subject to Simplified Compliance Requirements. Affordable developments, as defined, shall be subject to simplified requirements for pricing, marketing, certifying and monitoring as set forth in the administrative procedures. (Ord. #1998-3, §11)

26-1.10 Pre-submission Conference. Prior to the submittal of a residential development request to the planning and land use department or to the public utilities department, if the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits, to which the HOP applies as set forth in subsection 14-96.5 SFCC 1987, a pre-submission conference with the community services department is required with regard to the development proposal and HOP requirements. (Ord. #1998-3, §12; Ord. #1999-42, §13)

26-1.11 Requirement, Scope and Content for HOP Proposals. HOP proposals shall be required by the city for all residential developments as set forth in subsection 14-96.5 SFCC 1987. HOP proposals shall include the applicant's plan for providing required affordable housing or alternate means of compliance as required by the HOP Ordinance. Such compliance shall include a timetable for delivering required affordable units or completing alternate means of compliance. The HOP proposal shall also contain the provisions set forth in the administrative procedures. (Ord. #1998-3, §13)

26-1.12 Submission and Review of HOP Proposals.

A. A HOP proposal shall be submitted with any development request to which HOP applies. The community services department shall provide technical assistance in completing HOP proposals. Each HOP proposal shall be reviewed by the community services department. After review, the community services department shall either issue a certificate of

compliance with HOP or disapprove the HOP proposal and refer it back to the applicant with written comments regarding the proposal's deficiencies.

B. As set forth in the administrative procedures, a revised HOP proposal may be resubmitted in order to obtain a certificate of compliance with HOP. A revised HOP proposal shall be submitted if changes were made in the development request as it proceeds through the development review process. In the event the total number of units requested in a development are modified during the development review process, the HOP agreement shall be amended such that the ratio of affordable units to nonaffordable units complies with HOP. In this case the community services department shall certify a revised HOP proposal.
(Ord. #1998-3, §14)

26-1.13 Appeals.

A. An applicant may appeal actions of staff with regard to the HOP to the community development commission which may approve the appeal with or without conditions, or deny the appeal. All such appeals shall follow the procedures set forth in the administrative procedures. The grounds for such an appeal are limited to the following:

(1) The applicant believes that city staff misinterpreted the HOP requirements in disapproving the HOP proposal, and the proposal as written conforms to HOP requirements; or

(2) A request for alternate means of compliance has been denied by staff and the applicant has facts and reasonable arguments to rebut the reasons given by staff for the disapproval.

(3) The applicant is aggrieved by any other action of the city with regard to the HOP provisions.

B. If an appeal has been denied by the community development commission, or approved with conditions that are unacceptable, the applicant may either resubmit to staff a HOP proposal which is acceptable to staff, or appeal to the governing body. The applicant may proceed with other submissions related to the development request while any appeal is being considered.

(Ord. #1998-3, §15)

26-1.14 Processing and Approval of Development Requests Subject to HOP. The planning and land use department and the planning commission or the public utilities department and governing body, if the applicant is submitting a request for the extension of or connection to city utilities for a development located outside the city limits,

shall accept, review and decide on plan submissions on development requests subject to HOP requirements as follows:

A. No submission shall be accepted unless the applicant submits a HOP proposal, along with a certification from the community services department that:

(1) The community services department recommends approval of the HOP proposal; or

(2) A HOP proposal is subject to appeal in accordance with HOP requirements.

B. Development incentives may be included in HOP developments as set forth in subsection 14-96.8 SFCC 1987.

C. If a HOP proposal is subject to appeal, the outcome of the appeal process may determine whether the development incentives set forth in subsection 14-96.8 SFCC 1987 apply. In this case, the applicant may choose one (1) of the following options with regard to continued processing of the development proposals:

(1) Processing may be suspended until the appeal is heard and decided.

(2) Processing may be continued. In this case, the applicant may determine whether to incorporate in the development proposal any development incentives which are subject to the outcome of the appeal.

D. A development proposal subject to HOP requirements shall not be approved unless a HOP proposal has been certified for compliance with HOP by the community services department. Such proposal presented by the applicant shall correspond to the development proposal as approved by the city.

E. The staff shall be bound by the decisions of the community development commission.

(Ord. #1998-3, §16; Ord. #1999-42, §14)

26-1.15 Execution of HOP Agreements. The governing body delegates authority to enter into HOP agreements to the city manager. After all development approvals (except for building permits) have been received, the HOP agreement may be executed by the city manager and the applicant. The agreement shall be referred to and recorded as follows:

A. It shall be referred to in the annexation agreement or the rezoning ordinance and referred to on the annexation plat, final subdivision plat, or final development plan as appropriate.

B. The agreement shall be recorded at the county clerk's office at the time of recording of the annexation plat, rezoning ordinance, final subdivision plat, final development plan, as appropriate, or prior to submittal for a building permit if the previous documents are not required. A copy of the agreement shall be included with the submittal for a building permit.

(Ord. #1998-3, §17)

26-1.16 Notice and Sanctions for Noncompliance with HOP Agreements. If the community services department finds that a property owner subject to a HOP agreement has failed to comply with any terms of the HOP agreement, the community services department shall notify the property owner of the noncompliance in writing and order compliance by the most reasonable and expeditious means. This notification shall be as set forth in the administrative procedures. If on a date certain by which compliance has been requested by the city, and the HOP property owner is still not in compliance, the community services department shall notify the city manager and the planning and land use department or the public utilities department, if the property is located outside the city limits but receiving city utilities, of the noncompliance and request that sanctions be imposed as set forth in subsection 14-96.9 SFCC 1987. When requests for compliance or subsequent sanctions have not resulted in compliance with a HOP agreement, the community services department may request that the city manager direct the city attorney's office to pursue enforcement in the appropriate court of law. Noncompliance with HOP agreements may be subject to fines as set forth in Section 1-3 SFCC 1987. Nothing herein shall limit the city's ability to enforce the provisions of the HOP Ordinance by any other means. (Ord. #1998-3, §18; Ord. #1999-42, §15)

26-1.17 Requirements for Affordable For-Sale Housing. A HOP home offered for sale is considered affordable if the marketing, pricing, sale and occupancy conform to the criteria set forth in the administrative procedures. Pricing shall be in accordance with the formula set forth in the administrative procedures. HOP homes shall be built to comply with the minimum size, unit type(s) and other structural requirements set forth in the administrative procedures. The proposed design and location of the affordable units shall be reviewed by the community services department in order to achieve spatial, architectural and landscaping integration with other units in the development. (Ord. #1998-3, §19)

26-1.18 Required Number of HOP For-Sale Units in a Development. In any development which is fulfilling HOP requirements by directly providing affordable units for sale, the number of dwelling units to be built in the development shall be multiplied by the appropriate percentage as follows:

- A. Eleven percent (11%) for development type "C."
- B. Sixteen percent (16%) for development type "D."

The whole number resulting from this calculation shall be the number of required affordable units to be constructed. If the calculation described results in a fraction of a unit, this obligation shall be satisfied as set forth in the administrative procedures.
(Ord. #1998-3, §20)

26-1.19 Marketing To and Certifying Buyers.

A. HOP developers shall market HOP homes in accordance with the requirements set forth in the administrative procedures. There shall be an efficient matching of the incomes of prospective HOP buyers to specific HOP home prices. There shall be a reasonable matching of the household sizes of prospective HOP home buyers to the sizes and types of HOP homes. Any marketing materials shall clearly state the policies of the HOP program with regard to pricing of HOP homes and buyer eligibility.

B. In marketing HOP homes the city or seller shall give preference to individuals who are citizens of Santa Fe county or are presently employed or under contract with an employer within Santa Fe county.

C. The city or its agent shall maintain and make available lists of prospective HOP buyers who have passed preliminary prequalifications for financing. For HOP developments for which the city expects immediate effective demand to outstrip the supply, the city or its agent, at the city's sole discretion, may establish and maintain an equitable process for allocating rights to purchase the homes. For developments other than those described above, the developer shall establish and maintain an equitable process of marketing homes, including waiting lists where demand exceeds supply.

D. Prior to executing a purchase contract for any HOP home, the prospective HOP buyer shall be certified as meeting HOP requirements by the city or its agent. The certification shall be as set forth in the administrative procedures. HOP developers and HOP buyers may execute only purchase agreements that are approved as to form by the city and include language provided by the city which shall require that an appropriate disclosure form be provided to and explained to the HOP buyer prior to execution of the contract. The disclosure form shall explain any deed restrictions, restrictive covenants and/or liens that are placed on the HOP home to ensure long-term affordability.
(Ord. #1998-3, §21)

26-1.20 Affordability Controls on For-Sale Homes; Rental Prohibition.

A. A HOP developer selling a HOP home shall cause to be recorded, in the county clerk's office, simultaneous with the recording of the deed of sale, a form of deed restriction, restrictive covenant or other legal instrument that fulfills the requirements set forth in the administrative procedures with regard to controls placed on the occupancy and subsequent resales of HOP homes. In order to maintain affordability, the city requires that HOP developers impose resale controls consisting of mortgage liens or shared appreciation and right of first refusal requirements as set forth in the administrative procedures. The effect of the recordation of said document(s) shall be to create, in accordance with state law, an obligation that runs with the property. The city shall approve the form of such documents prior to recordation. Initial affordability shall be achieved by including in the HOP agreement terms of an escrow instruction requiring certification of HOP compliance by the escrow agent.

B. A HOP home buyer shall not rent the HOP unit to a second party.
(Ord. #1998-3, §22; Ord. #1999-42, §16)

26-1.21 Enforcement of HOP Agreement.

A. When a sale is found to be not in compliance or the information is insufficient to determine compliance, the owner shall be notified in writing and have the opportunity to rectify the noncompliance or information lacking with respect to that HOP home. However, in the event of such noncompliance, the city shall not certify any sale of a HOP home and reserves the right not to certify the sale of any further market-rate units, while recognizing that this shall create an encumbrance and title flaw if any sale is made.

B. Enforcement of HOP agreement terms regarding the sale price of affordable homes shall occur from the date on which an affordable home is made available for sale and for six (6) months thereafter. After expiration of the initial six (6) month period, the affordable unit may be sold to any purchaser who intends to occupy the affordable unit without regard to buyer qualification. If after six (6) months no qualified purchaser has placed the affordable unit under contract, the HOP developer may market the affordable home at a rate not to exceed the agreed to affordable price plus ten percent (10%) cumulative for each of two (2) six (6) month periods after the expiration of the initial six (6) month period. After eighteen (18) months, there shall be no restrictions on the price of the affordable unit. Sale of an affordable unit pursuant to this section shall qualify toward fulfillment of the terms of the HOP agreement regarding the sale of affordable homes.
(Ord. #1998-3, §23)

26-1.22 Requirements for Affordable Rental Housing. A HOP unit offered for rent is considered affordable if the marketing, rental rates, leasing and occupancy conform to the criteria set forth in the administrative procedures. Rental rates shall be in accordance with the formula set forth in the administrative procedures. HOP rental units shall be built to comply with the minimum size, unit type(s) and other structural requirements set forth in the administrative procedures. The proposed design and location of the affordable units shall be reviewed by the community services department in order to achieve spatial, architectural and landscaping integration with other units in the development. (Ord. #1998-3, §24)

26-1.23 Required Number of HOP Rental Units in a Development.

A. In any development which is fulfilling HOP requirements by directly providing affordable units for rent, the number of dwelling units to be built in the development shall be multiplied by the appropriate percentage as follows:

- (1) Eleven percent (11%) for development type "C."
- (2) Sixteen percent (16%) for development type "D."

The whole number resulting from this calculation shall be the number of required affordable units to be constructed. If the calculation described results in a fraction of a unit, this obligation shall be satisfied as set forth in the administrative procedures.

B. Units available for HOP rentals shall be described in the HOP proposal in sufficient detail so that such units can be identified after construction and occupancy. The total number of such units available for HOP renters shall be equal to approximately twenty percent (20%) more than the required number of HOP rental units as described in this subsection to accommodate possible changes in occupancy as set forth in the administrative procedures. Units available for HOP rental shall have approximately the same ratios of unit sizes as the required number of HOP rental units. Landlords shall be responsible for maintaining the required number of HOP units. If lessees of HOP units no longer qualify due to changes in income, the landlord may substitute other units for availability as HOP units in order to satisfy HOP agreement requirements. In the event the landlord is unable to provide the required number of HOP units due to changes in income of a qualified renter, landlord shall not be obligated to evict the tenant, but must satisfy the requirements of the HOP agreement within twelve (12) months by making other units available to qualified renters at the required affordable rates.

(Ord. #1998-3, §25)

26-1.24 Marketing To and Certifying Tenants for Rental Housing.

A. Owners of HOP rental properties shall market the HOP units in accordance with the administrative procedures. Marketing materials shall clearly state the policies of the HOP program with regard to pricing of HOP rental units and tenant eligibility. For HOP rental developments for which the city expects immediate effective demand to outstrip the supply, the city or its agents, at the city's sole discretion, may establish and maintain an equitable process for allocating rights to lease the HOP rental units. For developments besides those described above, the developer shall establish and maintain an equitable process of marketing rental units, including waiting lists where demand exceeds supply.

B. In renting HOP homes the landlord shall give preference to individuals who are citizens of Santa Fe county and or are presently employed or under contract with an employer within Santa Fe county.

C. The lease shall include policies and procedures for changes in income and household size after occupancy as set forth in the administrative procedures.

D. Prior to executing a lease for any HOP rental unit, the prospective HOP tenant shall be certified as meeting the HOP requirements by the city or its agent. The certification shall be as set forth in the administrative procedures. There shall be an efficient matching of the incomes of prospective HOP tenants to specific HOP rental rates. There shall be a reasonable matching of the household sizes of prospective HOP tenants to the sizes and types of HOP rental units. A HOP rental unit shall be marketed or rented to a household whose size is in compliance with the administrative procedures. Nothing, however, in this chapter or administrative procedures shall be construed so as to penalize qualifying renters for changes in family size due to changes in number of dependents.

E. Any owner or agent of a rental development subject to HOP shall not discriminate against a tenant for proposing to use federal or other rent subsidies, nor can such subsidies be used to achieve a required HOP contract rent.
(Ord. #1998-3, §26)

26-1.25 Allowed and Disallowed Uses of Subsidies. Contract rental rates charged for HOP units shall not be achieved by use of rent subsidies from any source other than the property owner. However, contrary to the requirements for HOP units being offered for sale, HOP developers of rental units may use any type of capital development subsidy to achieve the required rents. (Ord. #1998-3, §27)

26-1.26 Term of Compliance. Rental housing developments subject to HOP (or portions thereof completed and occupied at different times) shall maintain required occupancy and rental rates in HOP units for a period of twenty (20) years after the date of issuance of a certificate of occupancy for the entire development or portions thereof. This requirement shall be made applicable to successors in title, if any, by means of a deed restriction. (Ord. #1998-3, §28)

26-1.27 Monitoring by the City of HOP Leases and Enforcement of Agreements. HOP proposals involving rental housing shall provide for annual monitoring and certification of leased HOP units by the city or its agents, as set forth in the administrative procedures. The city shall have the right to inspect and photocopy all accounting and occupancy records with regard to any HOP unit. It shall further have the right to contact and interview any HOP tenant with regard to compliance issues. Owners of HOP rental properties shall keep adequate records of all payments of rent and data concerning tenants, in accordance with standard practices of the rental housing industry. If disputes arise over what constitutes adequate record keeping, the city under its HOP agreement shall have the right to require owners to adopt financial and information management practices that are recommended by a certified public accountant and/or property management manuals published by the Institute of Real Estate Management. The city shall have access to all relevant financial and tenant information records during normal business hours, upon providing verbal or written notice at least two (2) business days prior to a proposed monitoring visit. Upon completion of this

annual monitoring activity, the city shall certify that the property owner is in compliance with the HOP agreement, or shall issue findings of noncompliance. Upon findings of noncompliance with the HOP agreement, the city shall issue orders for bringing the HOP development into compliance. Such orders shall give the property owner twelve (12) months to reach compliance, but may also require actions to compensate for noncompliance. If a property owner willfully and continually refuses to comply with HOP agreements or related orders from the city, the city may invoke sanctions set forth in subsection 14-96.9 SFCC 1987. (Ord. #1998-3, §29)

26-1.28 Simplified Compliance and Low Income Housing Tax Credit Projects. Notwithstanding any other terms of HOP or a HOP agreement, if rental units in a HOP development have been awarded tax credits under the federal Low-Income Housing Tax Credit program, such units shall be deemed to comply with all tenant certification and rental requirements of the HOP program, so long as the project is in good standing with regard to the monitoring standards of that program. For such projects in good standing, the only monitoring required by the city shall be delivery to the community services department, within ten (10) days of receipt, all copies of the monitoring agency's reports and correspondence with regard to compliance monitoring. (Ord. #1998-3, §30)

26-1.29 Timing of Compliance; For Sale and For Rent Housing.

A. In a HOP development, completed HOP homes shall be made available for sale in proportion to the offering for sale of unimproved lots or non HOP units as set forth in the administrative procedures. In a HOP development, the required number of HOP rental units shall be leased as each building or phase of the project is offered for rent as set forth in the administrative procedures. A phase shall be defined as a group of units which is completed and ready for occupancy within a period of one (1) year. A developer may sell or lease affordable units earlier than required herein.

B. Fee in lieu of contributions approved as an alternate means of compliance shall be due and deliverable to an entity approved by the city after approval of the development request and before the recordation of the HOP agreement. An applicant may, at the applicant's option, propose an alternative to this requirement in which staged payments are made upon the predicted occurrence of certain events as set forth in the administrative procedures. The value of each contribution shall be determined as set forth in the administrative procedures. (Ord. #1998-3, §31)

26-1.30 Alternate Means of Compliance. HOP requires that applicants provide required affordable housing on the property proposed for development. However, it is recognized that at times this approach may not be feasible due to extreme hardship as defined. In this event, the applicant may seek permission to directly provide or provide through a nonprofit organization acceptable to the city, cash, land, labor, materials or another in-kind

contribution acceptable to the city. The fair market value of the contribution shall be equal to the in-lieu contribution value for each affordable unit which is not provided directly, as set forth in the administrative procedures. A two percent (2%) processing fee to the city shall be added to all fee in lieu contributions for administrative costs. (Ord. #1998-3, §32)

26-1.31 Incentives for HOP Developers. Development incentives shall apply to any development subject to and complying with the HOP requirements as set forth in subsection 14-96.8 SFCC 1987. (Ord. #1998-3, §33)

26-1.32 Separability. The provisions of this chapter are separable and the invalidity of any part of this chapter shall not affect the validity of the rest of the chapter. (Ord. #1998-3, §34)

26-1.33 Effective Date. Provisions of this chapter shall become effective ninety (90) days from the passage of this chapter. (Ord. #1998-3, §35)



ADMINISTRATIVE PROCEDURES

FOR THE CITY OF SANTA FE

HOUSING OPPORTUNITIES PROGRAM

(HOP)

Effective August 18, 1999

ADMINISTRATIVE PROCEDURES FOR THE CITY OF SANTA FE HOUSING OPPORTUNITIES PROGRAM (HOP)

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1. **PURPOSE**

The purpose of these administrative procedures is to establish procedures for City of Santa Fe (herein, "City") staff, boards, commissions or committees, the City Council, and any agent of the city to implement and administer the Housing Opportunities Program ("HOP").

2. **AUTHORITY**

The HOP ordinance is enacted pursuant to the express statutory authority conferred upon municipalities to enact a housing code (N.M. Stat. Ann. 3-17-6 A(8) (1978)), to enact ordinances pursuant to its police power (N.M. Stat. Ann. 3-17-1 B (1978)), to enact zoning ordinances in general (N.M. Stat. Ann. 3-21-1 A (1978)), to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land (N.M. Stat. Ann. 3-21-1 B(2) (1978)), and pursuant to any and all such other authority as may be applicable including but not limited to the city's recognized authority to protect the general welfare of its citizens.

This ordinance is adopted pursuant to the City of Santa Fe's powers under its municipal charter which was adopted effective March 15, 1998 pursuant to the Municipal Charter Act [§§ 3-15-1 to 3-15-16 NMSA 1978] and Article 10 Section 6 of the New Mexico State Constitution.

Chapter 14, Land Development, Article 9, Division 3, Inclusionary Zoning, 14-96; and Section 26-1, Housing Opportunity Program Ordinance (herein, collectively called the "HOP ordinance.") The administrative procedures were first adopted by Resolution No. 1998-6 and then revised and readopted by Resolution No. 1999-76. All changes to the administrative procedures other than changes to area median income and related numerical data shall be reviewed and approved by the governing body.

3. **SCOPE**

This document and its attachments (the "administrative procedures") set forth responsibilities, procedures and standards for administrative actions necessary to implement the HOP ordinance, which include but are not limited to the following:

- 3.1 Submitting and reviewing applicable residential development proposals and determining conditions of approval related to the provision of required affordable housing or alternate means of compliance.
- 3.2 Reviewing and executing agreements (herein, called "HOP agreements") with property owners to ensure compliance with the HOP ordinance and these administrative procedures.
- 3.3 Monitoring the performance of residential property owners subject to such agreements, and any successors in title that are still subject to such agreements or other requirements of the HOP ordinance and these administrative procedures

(herein, collectively called "the applicant" or "applicants") and taking appropriate action in the event of noncompliance.

4. **RESPONSIBILITY FOR ADMINISTRATION**

4.1 **Community Services Department** - This city department or its agent shall be responsible for the following functions with regard to administration of the HOP ordinance and these administrative procedures (herein, collectively called "HOP"):

- 4.1.1 Administering all functions of HOP except for those which are specifically described as the responsibilities of other city departments, and providing overall coordination among city departments.
- 4.1.2 Providing forms, information, technical assistance and certifications with regard to compliance with the HOP ordinance.
- 4.1.3 Certifying HOP proposals to the Planning and Land Use Department or the Public Utilities Department, if the request is for the extension of or connection to city utilities, upon receipt of a satisfactory proposal for complying with HOP from an applicant.
- 4.1.4 Recommending to the City Manager approval or denial of HOP proposals based on their conformance or nonconformance with HOP.
- 4.1.5 Ensuring that homebuyers and renters benefiting from HOP are certified as eligible under HOP.
- 4.1.6 Monitoring compliance with HOP agreements.
- 4.1.7 Determining when sanctions for noncompliance should be invoked, and requesting the city manager direct that appropriate city departments take appropriate action.
- 4.1.8 Performing other functions as required by HOP.
- 4.1.9 Performing other functions not specifically described in the HOP ordinance or these administrative procedures, but essential for successful administration of HOP and within the powers and abilities of the department.
- 4.1.10 Community Services Department responsibilities do not include or supersede those responsibilities of the Planning and Land Use Department as set forth in Section 14-96 SFCC 1987.

4.2 **Staff** - Administration of the HOP shall be delegated to one staff member in the Community Services Department. The staff shall be responsible for the day-to-

day administration of the department's responsibilities, and shall specifically be responsible for:

- 4.2.1 Recommending approval or disapproval of HOP proposals and making recommendations to the Community Development Commission or City Council on appeals of decisions regarding HOP requirements.
- 4.2.2 Assuring that monitoring of compliance with HOP agreements takes place, and in the event of noncompliance, requesting that the city manager request action by appropriate departments.
- 4.2.3 Coordinating, training and monitoring the department staff and any appropriate agent of the department with regard to the department's responsibilities for administering HOP.
- 4.2.4 Performing other duties as described in the HOP ordinance or these administrative procedures.

4.3 Planning and Land Use Department - This city department or its designees shall be responsible for the following functions with regard to administration of HOP:

- 4.3.1 Administering those parts of the ordinance that permit or require the City to approve density bonuses and certain other development incentives.
- 4.3.2 Requiring that, as part of the development review process and prior to submittal of required development applications and/or plans, that applicants prepare HOP proposals with the Community Services Department, and that the Community Services Department issue certificates of compliance as required.
- 4.3.3 Where applicable and upon the City Manager's instruction, invoking sanctions for noncompliance with agreements, upon the request of the Community Services Department.
- 4.3.4 Performing other functions described as the responsibility of the Planning and Land Use Department in the HOP ordinance or these administrative procedures.

4.4 Public Utilities Department - This city department or its designees shall require that as a condition of approval or availability, for the extension of or connection to city utilities to residential developments located outside the city limits, applicants prepare HOP agreements with the Community Services Department.

4.5 City Attorney's Office - This office or its agent shall be responsible for the following functions with regard to administration of HOP:

- 4.5.1 Providing legal assistance when requested by the Community Services Department, Planning and Land Use Department, Public Utilities Department or City Manager.
- 4.5.2 Assisting in preparation and execution of HOP agreements.
- 4.5.3 Pursuing such legal actions as may be necessary to enforce agreements, if such actions are permitted by common law, state statutes, any ordinance and/or any agreement.
- 4.6 **City Manager** - The City Manager shall have the sole authority to execute HOP agreements on behalf of the City, after reviewing the recommendations of the Community Services Department and the results of any successful appeals.
- 4.7 **Planning Commission** - This city commission shall be responsible for reviewing and approving development incentives described herein and for referring certified HOP proposals back to the Community Services Department along with a statement as to the nature, reason and need for any changes in the HOP proposal when such proposals are deemed inappropriate and whenever the development incentives therein are denied in whole or in part.
- 4.8 **Community Development Commission** - This city board shall be responsible for considering and acting upon appeals of decisions of the Community Services Department as described herein.
- 4.9 **City Council** - The City Council shall be responsible for reviewing, and approving or denying, appeals of decisions of city boards or commissions with respect to HOP requirements.

5. **APPLICABILITY**

HOP requirements shall apply to development requests and approved developments, as follows:

- 5.1 **Developments and Actions Subject to HOP** - HOP applies to the following development requests and subsequent actions regarding the construction and transfer of residential properties:
 - 5.1.1 Any application in which residential construction is proposed which is submitted to the City after the effective date of the HOP ordinance for the following reviews:
 - a. Annexations (which are subject to limited application of HOP requirements as set forth herein) initiated by persons other than the city and unless previously subdivided into residential lots.

- b. Rezoning except those that only result in a family transfer or lot split as used in Chapter 14 SFCC 1987.
- c. Preliminary subdivision plats except a family transfer or lot split as used in Chapter 14 SFCC 1987.
- d. Final subdivision plats except a family transfer or lot split as used in Chapter 14 SFCC 1987.
- e. Increases in density for approved master plan or development plan (which will result in the City requiring a new or revised HOP agreement).
- f. Development plans as per Section 14-17.21F of the Santa Fe City Code (herein, "City Code") for multiple-family projects in R-1 through R-5 districts with six units or more.
- g. Development plans as per Section 14-20.6C of the City Code for multiple-family projects in RM zoning districts with six units or more.
- h. Final development plans per Section 14-30.10, Section 14-31.7 or 14-32.7 of the City Code for PUD, PRC or PRRC planned developments.

5.1.2 Applications, requesting the extension of or connection to city utilities submitted to the city after August 23, 1999 for residential developments located outside the city limits, shall be subject to the HOP Ordinance as may be limited by the ordinance and the city's jurisdiction.

5.1.3 Sales of lots within a residential development subject to HOP requirements.

5.1.4 The construction, sale, resale, lease and other transfers of dwelling units as described herein.

5.1.5 Alternate means of compliance with HOP such as contributions of cash, real estate or in-kind resources for the construction of affordable housing pursuant to HOP.

5.2 Applicability of HOP to Developments Subject to Existing Affordable Housing Pledges - No provision of HOP applies to a development or portion thereof which, upon the effective date of the HOP ordinance was subject to any formal, written and binding agreement with the City or Santa Fe County for providing affordable housing which agreement has been performed or remains in effect and may be performed by and after the effective date of the HOP ordinance.

5.3 Applicability of Separate Requirements for For-Sale and Rental Housing - HOP developments will be subject to separate requirements for for-sale or rental housing, as follows:

5.3.1 For-sale housing - Developments will be subject to HOP requirements for for-sale housing (in Section 8) if 50 percent or more of the dwelling units in the development (including the HOP-required affordable units) are proposed to be sold. Nothing herein shall entitle the applicant to density bonuses or other development incentives except as specifically provided in the HOP ordinance.

5.3.2 Rental housing - Developments will be subject to HOP requirements for rental housing (in Section 9) if 50 percent or more of the dwelling units in the development (including the HOP-required affordable units) will be held by one ownership entity and are proposed to be rented. Nothing herein shall entitle the applicant to density bonuses or other development incentives except as specifically provided in the HOP ordinance.

5.3.3 Declaration of predominant tenure - In any development request subject to HOP, the applicant must declare in the HOP proposal and HOP agreement (subject to confirmation by the Community Services Department) whether the development will be predominantly for-sale or rental as defined in this section.

5.3.4 Changes in predominant tenure - An applicant may not change the predominant tenure type of a development without receiving written approval from the Community Services Department. Such a change will require re-submittal and approval of a revised HOP proposal.

5.4 Developments Subject to Simplified Compliance Requirements - The following types of developments (hereinafter "affordable developments") will be subject to simplified requirements for pricing, marketing, certifying and monitoring as described in Section 7.3:

a. Developments in which a minimum of 75 percent of the dwelling units will be affordable upon initial sales or leases to households with incomes at or below 80 percent of the area median income, as calculated using the criteria and methods described in Sections 8.2.3 and 9.3. In making this calculation, the following household sizes shall be used: three for renters and four for homebuyers. (These household sizes are derived from the experience of local affordable housing programs.) Such developments are called herein Development Type "A."

b. Developments in which 100 percent of the dwelling units will be affordable upon initial sales or leases to a three-person household with an income below 120 percent of the area median income, as calculated using the criteria and methods described in Sections 8.2.3 and 9.3 except that a

20 percent down payment (rather than three percent as described in Section 8.2.3) is considered affordable in this price range. (The three-person household size is derived from a market housing survey conducted for the city in 1995 to establish whether there was a need for this program.) Such developments are called herein, Development Type "B."

5.5 **Applicability to Annexations** - Because annexations typically present more complex approval issues than rezonings, subdivision approvals or multiple-family development plan approvals, they are subject to limited application of HOP requirements, as follows:

5.5.1 Applicants and the Community Services Department shall negotiate all terms of providing required affordable housing on site or alternate means of compliance and any pertinent development incentives for the purposes of certifying a HOP proposal to the Planning and Land Use Department or the Public Utilities Department (if development request for the extension of or connection to city utilities beyond the city limits).

5.5.2 To the extent practicable, all other HOP requirements, including the requirement for a HOP agreement, shall apply. In no case shall the HOP agreement provide for less affordable housing or a lesser in-lieu contribution than required by HOP.

5.6 **Applicability of HOP to Developments Proposed for Lot Sales** - Developments in which the developer does not intend to directly sell homes but rather lots to builders or individual owners are still subject to HOP requirements. Community Services staff will determine which development type applies based upon the developer's proposed lot sale prices according to the *Recommendations on Designing an Inclusionary Housing Program in Santa Fe, New Mexico* prepared by the Enterprise Foundation as amended.

6. **DEFINITIONS**

Affordable Development - A moderate-priced development or a low-priced development as defined in this Section 6 and Section 5.4, which is subject to simplified HOP compliance requirements.

Agent(s) - An agent or agents.

Area Median Income (AMI) - The median income for the Santa Fe Metropolitan Statistical Area as adjusted for various household sizes and published and revised periodically by the U.S. Department of Housing and Urban Development (HUD). The Santa Fe Metropolitan Statistical Area includes Santa Fe and Los Alamos counties.

Alternate Means of Compliance - Compliance with the HOP ordinance by payment of in-lieu contributions as approved.

Applicant(s) - A property owner or agent of a property owner who submits a development request to the City which is subject to any HOP requirements, or any successor in title that is still subject to HOP requirements.

City - The city of Santa Fe or its agent.

City Attorney's Office - The City Attorney's Office of the city of Santa Fe, its agent or successor.

City Code - Santa Fe City Code 1987 (SFCC 1987).

Community Services Department - The Community Services Department of the city of Santa Fe, its agent or its successor.

County - Santa Fe County.

Development Types:

- A. Development Type "A" means a residential development in which at least 75 percent of all units for sale or for rent are affordable to households with incomes at or below 80 percent of the area median income, using a four person household for home buyers and a three person household for renters.
- B. Development Type "B" means a residential development in which all units for sale or for rent are affordable to a three person household with an income under 120 percent of the area median income unless the development is defined as a development type "A."
- C. Development Type "C" means a residential development in which (a) one or more units for sale or for rent are provided to be affordable to a three person household with an income above 120 percent of the area median income; and (b) the average price does not exceed a price affordable to a three person household with an income at 200 percent of the area median income.
- D. Development Type "D" means a residential development in which units for sale or rent are, on average, affordable to a three person household with an income over 200 percent of the area median income.

Dwelling Unit - One room, or rooms connected together, constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease; and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking, sleeping and bathroom facilities.

Extreme Hardship - A condition occurring as a direct consequence of the HOP ordinance which a) deprives a property owner of all economically viable use of the subject property taken as a whole or b) would require the property owner to lose money on the development taken as a whole and the property owner can demonstrate to the

HOP coordinator's satisfaction that said loss will be an unavoidable consequence of the HOP requirement for construction of affordable housing.

HOP - Housing Opportunity Program.

HOP Agreement - An agreement between a property owner of record and the city whereby the city confers benefits in the form of development incentives to the property owner in exchange for compliance with HOP with regard to providing required affordable housing.

HOP Developer - An owner of a property subject to any HOP requirements, who is carrying out any phase of developing the subject tract, or as defined herein, certain successors in title.

HOP Development - A tract of land or improvements thereon subject to a HOP agreement.

HOP Home - A home marketed and sold to satisfy HOP requirements for providing required affordable housing.

HOP Homebuyer - A purchaser of a HOP home or the entire household occupying a HOP rental unit.

HOP Property Owner - The owner of any property which is subject to HOP requirements, or as defined herein, certain successors in title.

HOP Rental Unit - A rental unit marketed and leased specifically to satisfy HOP requirements for providing required affordable housing.

HOP Tenant - Persons who are lessees of a HOP rental unit, or the entire household occupying a HOP rental unit.

Low-Priced Unit - A dwelling unit which is affordable to a household with an income at or below 80 percent of the area median income, as calculated using the affordability formulas in Sections 8.2.3 and 9.3. In making this calculation, the following household sizes shall be used: three for renters and four for homebuyers.

Median Income - Area median income, as defined.

Planning and Land Use Department - The Planning and Land Use Department of the city of Santa Fe, its agent or successor.

Price Concessions - The difference between the reduced sale price or rental rate of required affordable housing, and the market value of the required affordable housing.

Public Utilities Department - The Public Utilities Department of the city of Santa Fe, its agent or successor.

Required Affordable Housing - Housing which is provided on site by a HOP developer or HOP property owner pursuant to a HOP agreement, with specific requirements for marketing, pricing, certifying applicants and occupants, maintaining long-term affordability, reporting and monitoring, as further defined herein.

Required Affordable Units - The dwelling units which constitute the required affordable housing for a HOP development.

Unit - A dwelling unit as defined.

PROGRAM STANDARDS AND PROCEDURES

7. **HOP PROPOSALS AND AGREEMENTS**

Following are standards and procedures for preparation, review and approval of HOP proposals and agreements:

7.1 **Requirement for HOP Proposals and Agreements** - HOP agreements shall be required by the City for all residential developments described in Section 5 of this document prior to recordation of any and all plats or other documents relating to the applicant's proposal for applicable development requests. Forms of HOP proposals appropriate for various development scenarios shall be made available by the Community Services Department. Certified HOP proposals shall be submitted prior to the Planning and Land Use Department's (or the Public Utilities Department's for requests for the extension of or connection to city utilities outside the city limits) consideration of an applicant's proposal for applicable development requests.

7.2 **Scope and Content of HOP Proposals and Agreements** - HOP proposals and agreements shall include the following:

7.2.1 The development request (subdivision plat, development plan, etc.)

7.2.2 The applicant's plan for providing required affordable housing or alternate means of compliance as required by HOP. This shall include a timetable for delivering required affordable units or alternate means of compliance.

7.2.3 The applicability of proposed elements of the agreement to successors in title, and the legal mechanisms by which obligations will be passed on to the successors.

7.2.4 The responsibility of the City or the HOP developer for performing income certifications in selling or renting HOP units, and the responsibility of the City or its agent for certifying home sales as complying with HOP.

- 7.2.5 The applicant's requirements for providing the City or its agent with reports on its compliance with the HOP agreement.
 - 7.2.6 Provisions granting access to the City or its agent to inspect records and development sites and the opportunity to interview homebuyers or renters.
 - 7.2.7 The City's obligation to give notice in writing and in a timely fashion of violations including what actions are needed to correct the violation and time frame for compliance.
 - 7.2.8 The City's right to impose sanctions or take other actions after notice of violation has been given and not complied with.
 - 7.2.9 The expiration date of the agreement and any conditions under which it may be terminated earlier or later than that date.
 - 7.2.10 The responsibility of the applicant, a successor or the City to record regulatory agreements or liens in the public records that will ensure long-term affordability of affordable dwellings provided pursuant to HOP.
 - 7.2.11 A declaration by the applicant regarding the price classification of the proposed project, as defined in Section 6 herein. Specifically, the applicant must declare whether the project is: a Development Type "A," "B," "C," or "D." The price of the unit shall include all add ons.
 - 7.2.12 Declarations by the applicant that the project will be predominantly for-sale or rental housing
 - 7.2.13 Development incentives to be granted by the city in consideration of the applicant's agreement to construct affordable housing. The applicant shall justify, in writing, how variances or waivers that are requested comply with Section 14-96.8 SFCC 1987.
 - 7.2.14 A declaration by the Community Services Department that upon an individualized assessment of the HOP proposal or HOP agreement the proposal or agreement will provide at a minimum the amount of affordable housing or alternate means of compliance necessary to offset impacts on the affordable housing market in the region created by the applicant's project.
 - 7.2.15 Other terms and conditions necessary to implement the requirements of HOP with regard to the subject development.
- 7.3 **Simplified Compliance Requirements** - Notwithstanding the foregoing, HOP proposals and HOP agreements for affordable developments (as defined in Section 5.4) shall vary from the requirements of Section 7.2 as follows:

- 7.3.1 Pricing requirements will be limited to a declaration by the applicant that initial rents or sale prices will be less than HOP home prices and HOP rental rates.
 - 7.3.2 No certifications will be required of tenants' and buyers' incomes, nor of sales or rentals of any dwelling units.
 - 7.3.3 No controls will be placed on resales or re-leasing of dwelling units through liens, regulatory agreements or other legal mechanisms.
 - 7.3.4 Reporting will be limited to a declaration by the HOP developer, after completion of the development or each phase of the development (if phased), that rents or sale prices were below the amounts specified in the HOP agreement.
 - 7.3.5 Monitoring by the City or its agent shall be limited to spot checks of actual rents or sale prices.
 - 7.3.6 The applicant will otherwise be subject to the standard terms of a HOP agreement, except that the reduced requirements described in Sections 7.3.1 through 7.3.5 shall be in force so long as the property owner complies with the pricing requirements described in Section 7.3.1.
 - 7.3.7 The Community Services Department shall certify that the benefits to the affordable housing market created by the applicant's construction of an affordable development provides a benefit to the community warranting application of the simplified compliance requirements in lieu of strict application of the HOP ordinance's general requirement for the construction of affordable housing.
 - 7.3.8 In the event that a HOP developer does not comply with the simplified pricing requirements described in Section 7.3.1, the developer shall be required to comply with the normal HOP requirements. If a development has been completed or partly completed and cannot be brought into compliance with the pricing requirements of 7.3.1, the HOP property owner may be required to submit a HOP proposal that provides for compliance with the HOP ordinance or an alternate means of compliance as defined herein.
- 7.4 **Pre-Submission Conference** - Prior to submitting any development request to which HOP applies the prospective applicant shall schedule and hold a pre-submission conference with the Community Services Department with regard to the development proposal and HOP requirements.
- 7.5 **Submission of HOP Proposals** - A HOP proposal shall be submitted with any development request to the City to which HOP applies.

- 7.6 Review of HOP Proposals** - After submittal, each HOP proposal shall be reviewed by the Community Services Department. After review, the Community Services Department shall take one of two actions with regard to a HOP proposal:
- 7.6.1 Issue a certificate of compliance with HOP, if the proposal meets HOP requirements.
 - 7.6.2 Disapprove the HOP proposal and refer it back to the applicant, if it does not meet HOP requirements. In this case, the Community Services Department shall make written comments regarding the proposal's deficiencies.
- 7.7 Re-submittal of HOP Proposals After Disapproval** - If a HOP proposal has been disapproved, an applicant may resubmit revised proposals as many times as desired in order to obtain a certificate of compliance with HOP, so long as changes in the HOP proposals are substantive.
- 7.8 Re-submittal of Revised Proposals After Issuance of Certificate of Compliance** - If the applicant wishes to resubmit or amend a HOP proposal due to changes in the development request as it proceeds through the development review process or due to the final determination by the Planning Commission or City Council (as applicable) that any or all development incentives included in the HOP proposal will not be granted or for other reasons, the previous certificate of compliance shall be null and void, and the developer may submit a new or amended HOP proposal for certification by the Community Services Department.
- 7.9 Appeals** - An applicant may appeal actions of the City with regard to HOP, as follows:
- 7.9.1 An applicant may appeal if:
 - a. The applicant believes that city staff misinterpreted the HOP requirements in disapproving the HOP proposal, and the proposal as written conforms to HOP requirements,
 - b. A request for alternate means of compliance has been denied by staff and the applicant has facts and reasonable arguments to rebut the reasons given by staff for the disapproval, or
 - c. The applicant is aggrieved by any other action of the City with regard to HOP.
 - 7.9.2 All such appeals shall be made on forms provided by the Community Services Department, and must be accompanied by a description of the action of the City which is being appealed and the grounds for appeal. If the applicant is appealing staff disapproval of a HOP proposal, the appeal must be accompanied by:

- a. A proposed HOP proposal that has been disapproved by staff.
- b. Staff comments on the HOP proposal, including the reasons for disapproval of the proposal.

7.9.3 Such appeals shall be heard first by the Community Development Commission, which may approve the appeal with or without conditions, or deny the appeal.

7.9.4 If an appeal with regard to staff approval of a HOP proposal has been denied by the Community Development Commission, or approved with conditions that are unacceptable, the applicant has two alternatives for gaining approval of a HOP proposal:

- a. To resubmit to staff a HOP proposal which is acceptable to staff, or
- b. To appeal to City Council, which may approve or deny the appeal, or approve it with conditions. Such an appeal shall be final, and shall be made in accordance with the provisions of Sections 7.10.2.

7.9.5 The applicant may proceed with other submissions related to the development request while any appeal is being considered.

7.10 Processing of Development Requests Subject to HOP - With regard to development requests subject to HOP, the Planning and Land Use Department and the Planning Commission (or the Public Utilities Department for the extension of or connection to city utilities outside the city limits) shall accept, review and decide on plan submissions only as follows:

7.10.1 No submission shall be accepted unless the applicant submits a HOP proposal, along with a certification from the Community Services Department that:

- a. The Community Services Department recommends approval of the HOP proposal, or
- b. A HOP proposal is subject to appeal in accordance with HOP requirements.

7.10.2 As provided in Section 15, applicants may be entitled to certain development incentives which apply only to certain HOP developments.

7.10.3 If a HOP proposal is subject to appeal, the outcome of the appeal process may determine whether the applicant is entitled to certain development

incentives. In this case, the applicant may choose one of the following options with regard to continued processing of the development proposal:

- a. Processing may be suspended until the appeal is heard and decided.
- b. Processing may be continued. In this case, the applicant may determine whether to incorporate in his or her development proposal any development incentives, which are subject to the outcome of the appeal.

7.11 Approval of Development Proposals Subject to HOP - No development proposal subject to HOP requirements may be approved unless a HOP proposal has been certified for compliance with HOP by the Community Services Department. Such HOP proposal presented by the applicant shall correspond to the development proposal as approved by the City (for example, the number of dwelling units and HOP units is still correct after changes in the development request).

7.12 Execution of HOP Agreements - After all development approvals (except for building permits) have been received, the HOP Agreement may be executed by the City Manager and the applicant. The HOP agreement shall be filed in the Santa Fe County Clerk's office prior to any permits being issued or the start of any work. The agreement shall be referred to and recorded as follows:

- a. It shall be referred to in the annexation agreement or the rezoning ordinance and referred to on the annexation plat, final subdivision plat, or final development plan as appropriate. It shall be included as a condition of approval for the extension of or connection to city utilities beyond the city limits.
- b. The agreement shall be recorded at the County Clerk's office at the time of recording the annexation plat, rezoning ordinance, final subdivision plat, final development plan, as appropriate, or prior to issuance of a building permit if the previous documents are not required. A copy of the agreement shall be included with the submittal for a building permit.

7.13 Noncompliance with Agreements - If the Community Services Department discovers that a property owner subject to a HOP agreement has failed to comply with any terms of that agreement, the Department shall notify the property owner of the noncompliance in writing and order compliance by the most reasonable and expeditious means. This notification shall describe a date certain by which the property owner shall be in full compliance (which may not be less than one week or more than one year from the date of the notice), and shall describe: (i) the exact nature of the noncompliance, and (ii) the possible sanctions for noncompliance with this notification.

7.14 Initial Sanctions for Noncompliance -If on a date certain by which compliance has been requested by the City, the HOP property owner is still considered in noncompliance, the Community Services Department will notify the City Manager and the Planning and Land Use Department of the noncompliance and request that sanctions be imposed. The Planning and Land Use Department upon instruction from the City Manager to enforce the HOP ordinance pursuant to his powers granted in Section 2-4.6 (D) SFCC 1987 will then impose one or more of the following sanctions which it (acting in consultation with the Community Services Department) deems most effective and appropriate considering the nature of the noncompliance:

7.14.1 Withholding the recording of plats.

7.14.2 Withholding or revoking building permits.

7.14.3 Issuing stop-work orders.

7.14.4 Withholding or revoking certificates of occupancy.

7.15 Legal Action and Potential Fines - When requests for compliance or subsequent sanctions have not resulted in compliance with a HOP agreement, the Community Services Department may request that the City Manager instruct the City Attorney's office to pursue enforcement in the appropriate court of law. In this case, noncompliance with HOP agreements could be, among other things, subject to fines as set forth in Section 1-3 of the City Code. Nothing herein shall limit the city's ability to enforce the provisions of the HOP ordinance by any other means.

7.16 Enforcement Outside the City Limits. If after having been given notice as set forth in subsection 26-1.1.16 SFCC 1987, a property owner subject to a housing opportunity program agreement, as a condition of the extension of or connection to city utilities beyond the city limits, fails to comply with Section 14-96 or Section 26-1 SFCC 1987, the Community Services Department may request that the City Manager direct the City Attorney's office to pursue enforcement of specific performance requirements in accordance with the HOP agreement in an appropriate court of law.

8. REQUIREMENTS FOR AFFORDABLE FOR-SALE HOUSING

A HOP home offered for sale is considered affordable if the marketing, sale and occupancy conform to these criteria:

8.1 Eligible Homebuyers - Following are general eligibility criteria for purchasing HOP homes:

8.1.1 Affordable homes will be initially occupied by an "eligible owner-occupant household." An eligible owner-occupant household shall have

an income not exceeding 80 percent of area median income (the HUD definition of "low-income").

8.1.2 The general intent of HOP is that the average buyer of a HOP home will have an income of approximately 65 percent of median income (for a four-person household), and the incomes of all buyers will range from approximately 50 percent to no more than 80 percent of median income. This policy is reflected in the requirements for HOP home prices and marketing, described elsewhere in this section.

8.1.3 An eligible household's income shall have been certified by the City or its agent no more than 90 days prior to a purchase contract being executed for a HOP home (see Section 8.10).

8.2 **HOP Home Prices, in General** - Sale prices of HOP homes shall be determined as follows:

8.2.1 Schedule of HOP home prices - The sales price of an affordable dwelling unit (exclusive of closing costs) being sold to an eligible owner-occupant pursuant to a HOP Agreement shall be at or below an amount described in Appendix A, "HOP Home Prices." For purposes described elsewhere in this Section, HOP home prices are described for:

- a. Two-, three- and four-bedroom homes, and
- b. For the following percentages of area median income: 50, 55, 60, 65, 70 and 75.

8.2.2 General pricing policy - The HOP home prices are based on the general policy that the average owner-occupant household to be served by the program will have an income equal to approximately 65 percent of the current area median income.

8.2.3 Establishing HOP home prices - HOP home prices shall be revised each time that HUD publishes a new schedule of area median incomes adjusted by family size (www.huduser.org). Such revised HOP home prices will be based on the following assumptions:

- a. The affordable price equals the assumed affordable down payment amount plus an affordable mortgage amount.
- b. The buyer will make a 3 percent down payment.
- c. The buyer will pay 28 percent of income for mortgage principal, interest, taxes and insurance. (Although some local affordable housing programs allow a percentage as high as 33 percent, the average is approximately 28 percent.)

- d. Taxes and insurance are assumed to amount to approximately 3 percent of the buyer's annual income, leaving 25 percent of income available for principal and interest payments.
- e. A current average market interest rate for 30-year fixed-rate mortgage loans shall be determined by the Community Services Department. This interest rate shall be the average of the monthly rates as published by HSH Associates (www.hsh.com) for the 12 months prior to the effective date of new median income figures (described above).
- f. Based on the assumptions in subsection 8.2.3, the affordable home price will equal the affordable mortgage amount divided by 0.97. This takes into account the 3 percent down payment. This 0.97 factor is derived as follows:

X = affordable loan
 .03 = down payment (3%)
 Y = purchase price

Formula:

$$X + .03Y = Y$$

$$X = Y - .03Y$$

$$X = .97Y$$

$$Y = X \text{ divided by } .97$$

- g. Schedules of HOP home prices by type of home shall be based on the following assumptions regarding typical sizes of households that will occupy each type of home:

<u>Type of Home</u>	<u>Assumed typical Household Size</u>
2-Bedroom	3 persons
3-Bedroom	4 persons
4-Bedroom	5 persons

(Note: These assumed typical household sizes are for pricing purposes only. See Section 8.9.2 for minimum sizes of households that can occupy a HOP home.)

8.3 Sample Determination of a HOP Home Price for a 3-Bedroom Home -
 Following are steps in calculating the sale price of a 3-bedroom home that is affordable to a prototypical 4-person household with an income at 65 percent of the area median. These calculations are based on the assumptions in Section 8.2,

the current area median income for a 4-person household, and an assumed market interest rate of 8.09 percent:

- a. Determine household size being calculated: 4 persons
- b. Determine median income for 4 persons (from 1996 HUD calculations): \$53,300
- c. Determine income level to be served: 65% of area median
- d. Determine income per year: $.65 \times \$53,300 = \$34,645$
- e. Determine income per month: $\$34,645 \div 12 = \$2,887$
- f. Determine percent of income affordable for loan payment (principal and interest only, excluding taxes & insurance): 25%
- g. Determine monthly loan payment: $.25 \times \$2,887 = \722
- h. Determine affordable rate and term: 8.09%, 30 years
- i. Determine affordable loan amount (from tables or mortgage payment calculator): \$97,561
- j. Determine the total home price including down payment. $\$97,561 \div .97 = \$100,579$

8.4 Pricing of HOP Homes in a Development - In a HOP proposal and HOP agreement, an applicant shall propose HOP home prices as follows:

8.4.1 The allowed maximum sale price of individual HOP homes shall be determined from the HOP Home Prices (Appendix A) which are current as of the date on which the purchase contract is fully executed.

8.4.2 The actual sale price of a HOP home (as defined for purposes of HOP compliance) shall include all of the following costs to the buyer as described on the settlement sheet for the sale:

- a. The full sale price of the home.
- b. Any sales commission which is payable by the buyer.
- c. Any other settlement costs charged to the buyer which in Santa Fe are normally charged to a seller.

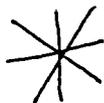
- 8.4.3 There shall be no side agreements obligating buyers to pay developers for any add-on features or services. Any amounts paid out of closing on HOP homes shall be included in the calculation of the home price.
- 8.4.4 The actual sale price of a HOP home may not be achieved by use of subsidies from any source other than the developer, so that, given the scarcity of subsidy funds, all HOP applicants will be treated equally and fairly. However, the City encourages the use of such subsidies to reduce prices of HOP homes from the maximum amounts allowed by HOP or a lesser amount downward, or to fund or partially fund down payments and closing costs of qualified buyers.
- 8.4.5 Applicants that are required to provide more than one HOP home shall skew their HOP home prices, as follows:
- a. The Community Services Department may, at his or her discretion, require that prices in a specific development be skewed above and below the 65 percent standard.
 - b. The applicant's total price concessions resulting from this skewing shall be no more or no less than they would have been if each home had been priced for the average household (at 65 percent of median income).
 - c. All such skewing shall be done in increments of five percent of median income, except where calculations according to 8.4.5(b) require that one home be priced otherwise.
 - d. In no case may a HOP home price exceed the level which is affordable to a household with an income at 75 percent of the area median income. This requirement is intended to increase the likelihood of qualifying households with incomes between 75 and 80 percent of area median income.
- 8.4.6 The HOP home prices are effective for a specific HOP home only if the HOP homebuyer will not be required to pay a monthly fee to a homeowner or condominium association. If an affordable home is proposed with such fees, the price of the home must be commensurately lower, so that the total monthly payments on the home (calculated in accordance with Section 8.2), along with such fees, would be the same as a home sold at the HOP home price, but without such fees.

8.5 Required Number of HOP Homes in a Development - In any development which is fulfilling HOP requirements by directly providing affordable homes for sale, the number of dwelling units to be built in the development shall be multiplied by the appropriate percentage, as follows:

Development Type "C": 11 percent

Development Type "D": 16 percent

The whole number resulting from this calculation shall be the number of homes required (see Section 8.6 if fractions result from this calculation). Development Types "C" and "D" are defined in Section 6.



8.6 Providing "Fractions" of Homes - If the calculation described in Section 8.5 results in a fraction of a home, this obligation may be satisfied as follows:

8.6.1 Adding a bedroom or bedrooms to the required affordable home(s), so that the price concession by the applicant is equivalent to the fraction. In this case, the developer shall provide information sufficient for the City to determine the added cost of the bedroom or bedrooms.

8.6.2 Making an in-kind or cash contribution in support of affordable housing which is equivalent in value to the fraction required. This contribution is not and shall not be used as an alternate means of compliance. The contribution shall be made prior to recording the HOP agreement. The value shall be based upon the current HOP In-Lieu Contribution Value corresponding to the type of development proposed. The administrative fee is not applicable.

8.6.3 If approved by the Community Services Department, producing a required affordable home in collaboration with another applicant or other applicants who are subject to HOP and have fractional requirements.

8.7 Required Numbers of Bedrooms and Bathrooms in HOP Homes - In creating a HOP proposal, an applicant shall propose unit configurations as follows:

8.7.1 Unit types and occupancy - Based on studies of need and market data, the City has determined that the bedroom/bathroom configurations of HOP homes will consist of the following types:

HOP Unit Types

- 2 bedroom, 1 bath
- 3 bedroom, 1.5 bath
- 4 bedroom, 2 bath

8.7.2 Mix of unit types - So that HOP homes will serve a wide range of household sizes, the mix of unit types in for-sale HOP developments shall be determined in accordance with the following table and formula:

Number of Required Affordable Homes:

1 2 3 4 5 6 7 8 9+

<u>Unit type</u>									
2 BR				1	1	1	1	2	*
3 BR	1	2	2	2	3	4	4	4	*
4 BR				1	1	1	1	2	2

* Use the following formula--if fractions result, round up from .5 or more and round down if under .5:

- 2 BR - 25 percent of total HOP units required
- 3 BR - 50 percent of total HOP units required
- 4 BR - 25 percent of total HOP units required

If rounding results in a total that is more than the total number of HOP units required, the smallest required unit(s) will be eliminated so that the total equals the required number.

8.7.3 Allowed variations - Notwithstanding these requirements, a developer may provide any HOP home with more bedrooms and bathrooms than required.

8.8 Other Minimum Structural Requirements for HOP Homes - HOP rental units shall be built to conform to local, state and federal laws, and these additional criteria concerning design, equipment and physical features:

8.8.1 Square footage - HOP homes shall have these minimum square footage of gross heated living area (inclusive of partitions, closets, heated utility rooms, halls and stairways, but exclusive of attics, porches, unfinished basements, garages and unheated storage space).

<u>Unit Type</u>	<u>Minimum Square Footage</u>
2 BR	900
3 BR	1,100
4 BR	1,250

Notwithstanding the foregoing standards, HOP developers are advised to use their own judgment about possible additions of square footage and amenities over these minimums described herein for the purposes of marketing the HOP homes and other homes in the development.

8.8.2 Equipment and equipment hookups - Each home shall include: (a) a new kitchen range and refrigerator, (b) hookups for a clothes washer, dryer and built-in dishwasher, (c) central heating systems. Resistance electric heating is not permitted unless the applicable homes have exceptionally low heat loads and the City approves this alternate in the HOP Agreement or otherwise in writing.

8.8.3 Design and location - The proposed design and location of the affordable units shall be reviewed and approved by the Community Services Department in order to achieve spatial, architectural and landscaping integration with other units in the development.

8.9 Marketing To and Certifying Buyers - HOP developers shall market HOP homes in accordance with the following requirements:

8.9.1 Matching household incomes to HOP home prices - There should be an efficient matching of the incomes of prospective HOP buyers to specific HOP home prices, as follows:

- a. Household incomes of a buyer should not exceed the HOP price level of a home by more than five percent. For example, only households with incomes at or below 65 percent of median income should be allowed to buy a home made affordable to households at 60 percent of median income. Thus, lower-priced homes will be reserved for lower-income households.
- b. A HOP home may not be marketed and sold to a household which has an income higher than required in Section 8.9.1(a), unless the City alters this requirement in writing. Alteration of this requirement may be based only on the unavailability of a qualified buyer with the required level of household income for a period of 30 days or more after the home was legally ready for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer). However, in no case may a home be sold to a buyer with an income exceeding 80 percent of median income as adjusted for the buyer's household size.

8.9.2 Matching household sizes to unit types/sizes - There should be reasonable matching of the household sizes of prospective HOP homebuyers to the sizes/types of HOP homes, as follows:

<u>Unit Types</u>	<u>Minimum Household Size</u>	
3 BR, 1.5 BA	4	(fewer only if approved by the Community Services Department)
4 BR, 2 BA	5	(4 only if approved by the Community Services Department)

A HOP home may not be marketed or sold to a household which is smaller than the household sizes indicated, unless the City approves in writing fewer persons based only on:

- a. The unavailability of a qualified buyer of the proper household size for a period of 30 days or more after the home was legally ready

for occupancy (assuming good-faith marketing efforts by the developer to find a qualified buyer), or

- b. The demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section. In this case, the City shall use HUD regulations regarding occupancy of Section 8-assisted dwelling units as a guideline.
- 8.9.3 Preferences - In marketing HOP homes the city or seller shall give preference to individuals who are citizens of Santa Fe county or are presently employed or under contract with an employer within Santa Fe county.
 - 8.9.4 Marketing materials - Brochures, advertisements and other marketing materials shall clearly state the policies of the HOP program with regard to pricing of HOP homes and buyer eligibility (both for the program in general and eligibility to buy specific homes).
 - 8.9.5 Interested buyer lists - The City or its agent may maintain lists of prospective HOP buyers who have passed preliminary pre-qualifications for financing. Such lists will be made available to HOP developers for marketing purposes.
 - 8.9.6 City waiting lists - For HOP developments for which the City expects immediate effective demand to outstrip the supply, the HOP Agreement may require that the City or its agent, at the City's sole discretion, establish and maintain an equitable process for allocating rights to purchase the homes. For example, the City could require a lottery or use of a ranked waiting list.
 - 8.9.7 Developer waiting lists - For developments other than those described in Section 8.10.6 above, the developer shall establish and maintain an equitable process of marketing homes, including waiting lists where demand exceeds supply.
 - 8.9.8 Buyer certification - Prior to executing a purchase contract for any HOP home, the prospective HOP buyer must be certified by the City or its agent as meeting HOP requirements. The certification must have been made within the 90 calendar days immediately prior to the full execution of the purchase contract. HOP developers may sign purchase contracts with non-certified prospective buyers, conditional upon certification within 10 working days, if the developer is reasonably certain that the prospective buyer can be certified. However, in this case, HOP developers must be willing to accept the inherent risks involved in executing conditional contracts.

8.9.9 Purchase contracts - HOP developers and HOP buyers may execute only purchase contracts that are approved for form by the City and include language provided by the City, which will require that an appropriate disclosure form be provided to and explained to the HOP buyer prior to execution of the contract. The disclosure form will explain any deed restrictions, restrictive covenants and/or liens that are placed on the HOP home to insure long-term affordability.

8.10 Filing of Deed Restrictions and Liens - A HOP developer selling a HOP home shall cause to be recorded in the County land records, simultaneous with the recording of the deed of sale, a form of deed restriction, or restrictive covenant, or other legal instrument that fulfills the requirements of Section 14 with regard to controls placed on the occupancy and resale of HOP homes. The effect of the recordation of said deed restriction should be to create, in accordance with state law, an obligation that runs with the property. The City must approve the form of such deed restrictions prior to recordation. Initial affordability shall be achieved by including in the HOP agreement terms of an escrow instruction requiring certification of HOP compliance by the escrow agent.

8.11 Verification and Certification by the City of Completed Sales in a HOP Development - City staff must determine that each completed home sale in a HOP development complies with the ordinance, or if not, that appropriate action is taken. The procedures are as follows:

8.11.1 Notice to the City of a sale - Prior to any home sale in a HOP development (unless all HOP home sale requirements have been satisfied), the City must receive notice of that sale in writing that includes: (a) legal description, (b) full buyer name and address of HOP home, (c) buyer phone number if available, and (d) a declaration of whether this is a HOP home or market-rate home.

If the home is a HOP home, the City must also be given: (a) a copy of the settlement sheet for the sale of the property, (b) copies of any legal instruments related to the City's long-term affordability requirements in the exact form that they will be executed and filed to meet requirements of the HOP agreement, and (c) bills, statements or other documents indicating any other costs associated with the sale of the HOP home. The City must approve the form and content of any legal instruments related to long-term affordability prior to recordation.

8.11.2 Sales in compliance - Sales in compliance will be certified as such and shall count toward fulfillment of the developer's HOP Agreement. Written notice of compliance will be mailed to the developer and, upon request, transmitted verbally or by facsimile transmission to the escrow agent for the settlement.

8.11.3 Sales not in compliance - When a sale is found to be not in compliance with the HOP ordinance or a HOP agreement or the information is insufficient to determine compliance, the owner will be notified in writing and have the opportunity to rectify the noncompliance or information lacking with respect to that HOP home. However, in the event of such noncompliance, the City may not certify any sale of a HOP home, and reserves the right not to certify the sale of any further market-rate units, while recognizing that this will create an encumbrance and title flaw if any sale is made without such certification.

8.11.4 Enforcement of HOP agreement terms regarding the sale price of affordable homes shall occur from the date on which an affordable home is made available for sale and for six months thereafter. After expiration of the initial six-month period, the affordable unit may be sold to any purchaser who intends to occupy the affordable unit without regard to buyer qualification. If after six months no qualified purchaser has placed the affordable unit under contract, the HOP developer may market the affordable home at a rate not to exceed the agreed to affordable price plus 10 percent cumulative for each of two six month periods after the expiration of the initial six month period. After 18 months, there shall be no restrictions on the price of the affordable unit. Sale of an affordable unit pursuant to this section shall qualify toward fulfillment of the terms of the HOP agreement regarding the sale of affordable homes. For the purpose of determining when the time period starts, marketing shall only commence after the issuance of the certificate of occupancy.

8.12 Rental Prohibition A HOP homebuyer shall not rent the HOP unit to a second party.

9. REQUIREMENTS FOR AFFORDABLE RENTAL HOUSING

A HOP rental unit offered for rent is considered affordable if it is marketed, leased and occupied according to these criteria:

9.1 Eligible Renters - Following are general eligibility criteria for leasing HOP rental units:

9.1.1 Eligible households - HOP rental units will be initially occupied by an eligible renter household, hereinafter called a "HOP tenant," in accordance with the following policies:

- a. A HOP tenant shall have an income not exceeding 70 percent of area median income (except as provided in Section 9.4, which allows a maximum of 80 percent of area median income under some circumstances).

- b. The general intent of HOP is that the average lessee of a HOP rental unit will have an income of approximately 60 percent of median income (for a three-person household).

9.1.2 Income certifications - An eligible household's income shall be certified as follows:

- a. By the City or its agent no more than 90 days prior to a lease being fully executed for the HOP rental unit.
- b. Thereafter, by the property owner or agent upon expiration of any lease of a HOP tenant, subject to an audit by the City or its agent.

9.1.3 Use of rent subsidies by tenants - No owner or agent of a rental development subject to HOP may discriminate against a tenant for proposing to use federal or other rent subsidies, nor can such subsidies be used to achieve a required HOP contract rent (see Section 9.4).

9.2 **HOP Rental Rates, in General** - HOP rental rates will be based on these general policies and the affordability formula in Section 9.3:

9.2.1 The average renter household to be served by the program, upon initial occupancy of a HOP rental unit, will have an income equal to approximately 60 percent of the current area median income.

9.2.2 The contract monthly rent of an affordable dwelling unit (exclusive of utility costs to be paid by the tenant) being rented pursuant to a HOP Agreement shall be at or below an amount described in Appendix B, "HOP Gross Rental Rates," as adjusted by "Utility Allowances" for a prototypical unit that has the same number of bedrooms and the same tenant-paid utilities and services (see Appendix C.)

9.2.3 The utility allowances for various unit types and configurations of utilities and services shall be identical to current allowances used by the Santa Fe Civic Housing Authority in its rent subsidy programs.

9.2.4 There shall be no side agreements obligating HOP tenants to pay the property owner for any add-on features or services.

9.2.5 Security deposits may not exceed the sum of two months' rent at the HOP rental rate for a unit.

9.3 **Method for Establishing HOP Gross Rental Rates** - HOP Gross Rental Rates shall be established and revised periodically by the Community Services Department without further approval of City Council based on this methodology:

- a. A gross rental rate for a HOP unit of a certain size (1-bedroom, 2-bedroom, etc.) will be equal to 30 percent of a prototypical household income at 60 percent of the area median income adjusted for a household size that would typically occupy that unit.
- b. Schedules of HOP rental rates shall be based on the following assumptions regarding typical sizes of households that will occupy each type of rental unit:

<u>Type of Unit</u>	<u>Assumed Typical Household Size</u>
Efficiency	1 person
1-Bedroom	2 persons
2-Bedroom	3 persons
3-Bedroom	4 persons
4-Bedroom	5 persons

(Note: these assumed typical household sizes are given here only for the purposes of determining HOP rental rates. See Section 9.7 for minimum sizes of households that can occupy a HOP rental unit.)

- c. HOP gross rental rates will be revised each time that HUD publishes a new schedule of area median incomes adjusted by family size. Such revised rental rates will be effective 15 calendar days after the publication of new area median income figures in the Federal Register.
- d. HOP utility allowances will be revised each time that the Santa Fe Civic Housing Authority publishes a new schedule of utility allowances for its rent subsidy programs, and shall be effective for purposes of HOP 15 calendar days after the date of such publication.

9.4 Determining Contract Rent for a HOP Tenant - The actual rental rate for a HOP tenant ("contract rent") shall be determined from the schedule of HOP gross rental rates and utility allowances that are in effect as of the date that a lease or lease renewal is fully executed, as follows:

- 9.4.1 The contract rent shall be derived from the current HOP rental rate shown in Appendix B for a rental unit with the same size and tenant-paid utilities as the unit to be occupied by the HOP tenant.
- 9.4.2 The contract rent shall be derived from the HOP rent amount corresponding to the HOP tenant's household income, as follows ("AMI" means area median income):

<u>If household income is at this level:</u>	<u>Rent must be the amount affordable at:</u>
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50% of AMI or less	40 percent of AMI
50 to 60% of AMI	50 percent of AMI
60 to 70% of AMI	60 percent of AMI
70 to 80% of AMI	70 percent of AMI

9.5 Sample Determination of a HOP Gross Rental Rate for a 2-Bedroom Rental Unit - Following are steps in calculating the HOP gross rental rate of a 2-bedroom rental unit:

- a. Determine number of bedrooms of unit type being calculated: 2
- b. Determine corresponding typical household size: 3 persons
- c. Determine median household income for 3-person household (from 1996 HUD calculations): \$48,000
- d. Determine income level to be served: 60% of area median
- e. Determine income per year: $.60 \times \$48,000 = \$28,800$
- f. Determine income per month: $\$28,800 \div 12 = \$2,400$
- g. Determine percent of income affordable for gross rent (exclusive of tenant-paid utilities and services): 30%
- h. Determine HOP gross rental rate for a 2-bedroom unit: $.30 \times \$2,400 = \720
- i. Determine utilities and services to be provided at the expense of the property owner: water, sewer and trash removal.
- j. Determine utilities and services to be provided at the expense of the tenant: natural gas and electricity.
- k. Determine monthly utility allowance for natural gas and electricity for a 2-bedroom unit: \$75.10
- l. Determine HOP rental rate for this 2-bedroom unit: $\$720 - \$105.51 = \$614.49$.

9.6 Skewing of HOP Rents and HOP Tenant Incomes - In order to serve HOP tenants with a broad range of incomes (that is, above and below 60 percent of median income), the City encourages applicants to propose schedules of HOP rental rates which skew rents and incomes of HOP tenants as follows:

- 9.6.1 Rent skewing shall mean that different levels of rental rates would be created, e.g. rents affordable at 50 percent of median income, 70 percent of median income, etc.
- 9.6.2 Rents may be skewed, so long as the total rents collectable from HOP rental units are the same or less than if all gross rents were set in accordance with the HOP gross rental rates.
- 9.6.3 Skewing of tenant incomes shall mean that only tenants at a certain income level are eligible to rent HOP rental units at a certain level of rental rates, as described in Section 9.6.2.
- 9.6.4 If rents are skewed, the incomes of some HOP tenants may be as high as 80 percent of median income upon initial leasing or re-leasing, but no higher.
- 9.6.5 There should be an efficient matching of the incomes of prospective HOP tenants to any skewed HOP rental rates, as follows:

When HOP rental rates are affordable to an income <u>at this percent of median:</u>	HOP tenant income may not be higher <u>than this ceiling:</u>
40 percent of median	50 percent of median
50 percent of median	60 percent of median
60 percent of median	70 percent of median
70 percent of median	80 percent of median

- 9.6.6 The HOP agreement shall include all such terms of any skewing arrangement, as well as policies and procedures for maintaining the required number of affordable rental units at each rental level, in the event that tenants' income levels change upon recertification.

- 9.7 Matching Household Sizes to Unit Types/Sizes - There should be a reasonable matching of the household sizes of prospective HOP tenants to the sizes/types of HOP rental units, as follows:

<u>Unit Types</u>	<u>Minimum Household Size</u>
Efficiency	1
1 BR	1
2 BR	2
<u>Unit Types</u>	<u>Minimum Household Size</u>
3 BR	4 (3 only if approved by the Community Services Department)
4 BR	5 (4 only if approved by Community Services Department)

A HOP rental unit may not be leased to a household which is smaller than the household sizes indicated, unless the City approves in writing fewer persons based only on:

- a. The unavailability of a qualified renter of the proper household size for a period of two weeks or more after the rental unit was legally ready for occupancy by the first tenant or a new tenant (assuming good-faith marketing efforts by the developer to find a qualified renter), or
- b. The demonstrated need of a household for a dwelling unit with more bedrooms than allowed in this section. In this case, the City shall use HUD regulations regarding occupancy of Section 8-assisted dwelling units as a guideline.

9.8 Allowed and Disallowed Uses of Subsidies - Contract rental rates charged for HOP units may not be achieved by use of rent subsidies from any source other than the property owner, so that, given the scarcity of rent subsidy funds for affordable housing, all HOP applicants and HOP developers will be treated equally and fairly. However, contrary to the requirements for HOP units being offered for sale, HOP developers may use any type of capital development subsidy (grants, low-interest loans, tax credits, etc.) to achieve the required rents. In part because of this differential treatment, the qualifying incomes for occupants of HOP rental units have been set lower than for units being offered for sale.

9.9 Changes in Income and Household Size after Occupancy - The following policies and procedures shall be included in the lease provisions for HOP tenants and will become effective only upon expiration of a lease and recertification of a HOP tenant:

9.9.1 If the income of a household has increased to a level at which the household is no longer qualified as a HOP tenant, the tenant may continue to rent its unit or another comparable unit on the property but will pay the then-prevailing rent for that type and quality of unit on the property.

9.9.2 If the income of a HOP tenant has increased so that its household income falls within another income category (as described in Section 9.6), the rental rate will be adjusted accordingly.

9.9.3 If the household size of a HOP tenant increases, the following provisions will apply:

- a. If the HOP tenant is eligible for a larger unit, the HOP tenant may elect to move into the next available unit of appropriate size.
- b. The tenants' rental rate will be adjusted in accordance with the size of the unit being occupied.

9.9.4 Nothing in these procedures shall be construed so as to penalize qualifying renters for changes in family size due to changes in number of dependents.

9.9.5 Term of compliance - Rental housing developments subject to HOP (or portions thereof completed and occupied at different times) shall maintain required occupancy and rental rates in HOP units for a period of 20 years after the date of issuance of a certificate of occupancy for the entire development or portions thereof. This requirement shall be made applicable to successors in title, if any, by means of a deed restriction.

9.10 Required Numbers of HOP Rental Units in HOP Developments - In any development which is fulfilling HOP requirements by directly providing affordable rental units, the required number of HOP rental units and the number of dwelling units available for HOP rentals will be determined as follows:

9.10.1 To determine the required number of HOP rental units, the total number of dwelling units to be built in the development shall be multiplied by the appropriate percentage:

Development Type "C":	11 percent
Development Type "D":	16 percent

The whole number resulting from this calculation shall be the number of rental units required to be leased to HOP renters at reduced rates. Development Types "C" and "D" are defined in Section 6.

9.10.2 The total number of such units available for HOP rentals must be equal to at least the following percentages, to accommodate contingencies such as described in Section 9.10.1 and 9.10.3:

Development Type "C":	13 percent
Development Type "D":	19 percent

The purpose of this requirement is to permit HOP developers, if they so desire, to provide more modestly appointed units as HOP rental units.

Otherwise, a developer could be required to offer a luxury unit at the reduced HOP rental rates.

As nearly as possible, units available for HOP rentals shall have the same ratios of unit sizes as the required number of HOP rental units. If not required to be occupied by a HOP renter, such units will have rental rates established at the sole discretion of the property owner.

9.10.3 The specific units available for HOP rentals must be described in the HOP agreement in sufficient detail so that they can be identified by the City after construction and occupancy.

9.10.4 In the event the landlord is unable to provide the required number of HOP units due to changes in income of a qualified renter, landlord shall not be obligated to evict the tenant, but must satisfy the requirements of the HOP agreement within 12 months by making other units available to qualified renters at the required affordable rates.

9.11 Providing "Fractions" of Rental Units - If the calculation described in Section 9.11 results in a fraction of a rental unit, this obligation may be satisfied as follows:

9.11.1 Adding a bedroom or bedrooms to the required affordable rental unit(s), so that the price concession by the applicant is equivalent to the fraction. In this case, the developer shall provide information sufficient for the City to determine the added cost of the bedroom or bedrooms.

9.11.2 Making an in-kind or cash contribution in support of affordable housing, which is equivalent in value to the fraction, required.

9.11.3 If approved by the Community Services Department, producing a required affordable rental unit in collaboration with another applicant or other applicants who are subject to HOP and have fractional requirements.

9.12 Minimum Structural Requirements for HOP Rental Units - HOP rental units shall be built to conform to local, state and federal laws, and these additional criteria concerning design, equipment and physical features:

9.12.1 Square footage - Homes shall have these minimum square footage of gross, heated living area (inclusive of partitions, closets, heated utility rooms, halls and stairways):

<u>Unit Type</u>	<u>Minimum Square Footage</u>
Efficiency	500
1 BR	650
2 BR	800
3 BR	950
4 BR	1,100

However, applicants and HOP developers are advised to use their own judgment about possible additions of square footage and amenities over and above these minimums for the purposes of marketing the HOP rental units in the development.

9.12.2 Equipment and equipment hookups - Each HOP rental unit shall include: (a) a kitchen range and refrigerator, (b) hookups for clothes washers and dryers or a laundry on site which charges no more than prevailing market

prices for use of washers and dryers, (c) central heating systems. Resistance electric heating is not permitted unless the applicable homes have exceptionally low heat loads and the City approves this alternate in the HOP Agreement or otherwise in writing.

9.12.3 Bathrooms - All HOP rental units shall have a minimum of one complete bathroom. Four-bedroom HOP units shall also have a half-bath containing a sink and toilet.

9.12.4 Design and location - The proposed design and location of the affordable units shall be reviewed and approved by the Community Services Department in order to achieve spatial integration with, dispersion throughout and similar exterior architectural and landscaping appearance with other units in the development. The proposed design and location of the affordable units shall be reviewed by the Community Services Department in order to achieve spatial, architectural and landscaping integration with other units in the development.

9.13 Mix of Unit Types - So that HOP rental units will serve a wide range of household sizes, the mix of unit types in rental HOP developments shall be determined in accordance with the following procedures:

9.13.1 Table and formula for determining required number of HOP rental units of different unit types:

Number of Required Affordable Units:

<u>Unit type</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>	<u>7</u>	<u>8</u>	<u>9+</u>
Efficiency					1	1	1	1	*
1 BR			1	1	1	1	1	1	*
2 BR		1	1	1	1	1	2	2	*
3 BR	1	1	1	1	1	2	2	3	*
4 BR				1	1	1	1	1	*

* Use the following formula--if fractions result, round up from .5 or more and round down if under .5:

Efficiency - 15% of total HOP units required

1 BR - 20% of total HOP units required

2 BR - 25% of total HOP units required

3 BR - 30% of total HOP units required

4 BR - 10% of total HOP units required

If rounding results in a total that is more than the total number of HOP units required, the smallest required unit(s) will be eliminated so that the total equals the required number.

9.13.2 Variations from requirements - Notwithstanding the foregoing provisions, if an applicant plans no efficiency units or four-bedroom units in a HOP development, neither of those unit types may be required by the City. In that event, the distribution of unit types will approximate the formula above as nearly as possible. In any case, three-bedroom units must be provided as required. And in any case, a developer may provide any HOP rental unit with more bedrooms and bathrooms than required.

9.14 Marketing To and Certifying Renters - Owners of HOP rental properties shall market the HOP units in accordance with these minimum standards:

9.14.1 Marketing materials - Brochures, advertisements and other marketing materials shall clearly state the policies of the HOP program with regard to pricing of HOP rental units and renter eligibility.

9.14.2 City waiting lists - For HOP rental developments for which the City expects immediate effective demand to outstrip the supply, the Draft HOP Agreement may require that the City or its agent, at the City's sole discretion, establish and maintain an equitable process (possibly including lotteries) for allocating rights to lease the HOP rental units.

9.14.3 Developer waiting lists - For developments besides those described in Section 9.15.2, the developer shall establish and maintain an equitable process of marketing rental units, including waiting lists where demand exceeds supply.

9.14.4 Preferences - In renting HOP units the city or landlord shall give preference to individuals who are citizens of Santa Fe County and or are presently employed or under contract with an employer within Santa Fe County.

9.14.5 Renter certification - Prior to executing a lease for any HOP home, the prospective HOP tenant must be certified by the City or its agent as meeting HOP requirements. The certification must have been made within the 90 calendar days immediately prior to the full execution of the lease. Property owners may sign leases with non-certified prospective renters, conditional upon certification within 10 working days, if the property owner is reasonably certain that the prospective HOP tenant can be certified. However, property owners must be willing to accept the inherent risks involved in executing conditional leases.

9.14.6 Sizes of units marketed and rented to qualified households - A HOP rental unit may not be marketed or rented to a household which is larger than indicated in Section 9.7 for corresponding number of bedrooms in the rental unit.

9.14.7 Leases - Rental property owners and HOP renters may execute only leases which are approved for form by the City and which must be provided to and explained to the renter prior to execution of the contract. The disclosure form and lease language must prevent any household that leases a HOP rental unit from subleasing the unit without the written approval of the City, and describe other terms of occupancy as regulated herein.

9.15 Monitoring by the City of HOP Leases and Enforcement of Agreements - HOP agreements involving rental housing shall provide for annual monitoring and certification of leased HOP units by the City or its agent, as follows:

9.15.1 Monitoring - The City shall have the right to inspect and photocopy all accounting and occupancy records with regard to any HOP unit. It shall further have the right to contact and interview any HOP tenant with regard to compliance issues.

9.15.2 Recordkeeping - Owners of HOP rental properties shall keep adequate records of all payments of rent and data concerning tenants, in accordance with standard practices of the rental housing industry. If disputes arise over what constitutes adequate recordkeeping, the City under its HOP agreement shall have the right to require owners to adopt financial and information management practices that are recommended by a certified public accountant and/or property management manuals published by the Institute of Real Estate Management.

9.15.3 Access to records - The City shall have access to all relevant financial and tenant information records during normal business hours, upon providing verbal or written notice at least two business days prior to a proposed monitoring visit.

9.15.4 Certification - Upon completion of this annual monitoring activity, the City shall certify that the property owner is in compliance with the HOP agreement, or shall issue findings of non-compliance.

9.15.5 Noncompliance - Upon findings of noncompliance with the HOP agreement, the City shall issue orders for bringing the HOP development into compliance. Such orders shall give the property owner a reasonable period of time to reach compliance, but may also require actions to compensate for noncompliance. For example, if 10 apartments were designated as HOP units and one was not rented to a qualified household for 12 months, the City might require that 11 rental units be rented to qualified households during the next year.

9.15.6 Enforcement - If a property owner willfully and continually refuses to comply with HOP agreements or related orders from the City, the City may:

- a. Withhold or revoke the certificate(s) of occupancy for one or more vacant units in the property, until the City is satisfied that the property owner has brought the property into compliance with the HOP agreement, or has taken all possible steps to do so.
- b. Prevent the issuance of any further building permits for the property, if the project is not completed.
- c. Issue stop-work orders, if construction is still in progress on any phase of the project, or revoke building permits.
- d. Take any available legal action.

9.16 Simplified Compliance - Low-Income Housing Tax Credit Projects - Notwithstanding any other terms of HOP or a HOP agreement, if rental units in a HOP development have been awarded tax credits under the federal Low-Income Housing Tax Credit program, such units shall be deemed to comply with all tenant certification and rental requirements of the HOP program, so long as the project is in good standing with regard to the monitoring standards of that program. For such projects in good standing, the only monitoring required by the City shall be delivery to the Community Services Department (within 10 days of their receipt) of all copies of the monitoring agency's reports and correspondence with regard to compliance monitoring.

10. TIMING OF COMPLIANCE

Required affordable housing units or alternate means of compliance shall be provided in a timely fashion, as follows:

10.1 Timing of Providing Units for Sale - In a HOP development, completed HOP homes shall be sold in proportion to the sale of unimproved lots or non-HOP units. This principle shall be reflected in each HOP agreement providing for-sale housing, and shall be administered as in the following examples:

10.1.1 Example of proportional delivery - In a 20-unit development in which 20 percent (or four) of the units are required to be HOP homes, one HOP home must be sold in the first group of five lots or condominium units which are sold. Figures used herein are for demonstration purposes only and not to reflect actual HOP requirements.

10.1.2 Example of enforcement - If four lots or condominium units have been sold, the HOP agreement shall not permit a fifth lot or unit to be sold unless it is sold with an affordable home which was built, marketed and sold in accordance with HOP. Figures used herein are for demonstration purposes only and not to reflect actual HOP requirements.

10.2 Timing of Providing Rental Units - In a HOP development, the required number of HOP rental units shall be leased as each building or phase of the project is offered for rent. A phase shall be defined as a group of units which are completed and ready for occupancy within a period of one year. This principle shall be reflected in each HOP agreement providing for on-site rental housing, and shall be administered as in the following examples:

10.2.1 Example of Proportional Delivery - In a 100-unit development in which 20 percent (or 20) of the units are required to be HOP rental units, 40 units are completed in Year One and the remaining 60 units are completed in Year Two. These are considered two phases of the same project. Eight HOP units must be leased in the first phase and 12 in the second phase. Figures used herein are for demonstration purposes only and not to reflect actual HOP requirements.

10.2.2 Example of Enforcement - If 32 units have been leased to non-HOP tenants in the first phase of a project as described in Section 10.2.1, the HOP agreement shall prevent further leasing of rental units in the project until eight HOP rental units have been leased. Figures used herein are for demonstration purposes only and not to reflect actual HOP requirements.

10.3 Earlier Delivery - A developer may sell or lease affordable units earlier than required herein.

10.4 Timing of Providing In-Lieu Contributions - In-lieu contributions when permitted shall be timed as follows: they shall be due and deliverable to an entity approved by the City after approval of the development request and before the recordation of the HOP agreement. An applicant may, at his or her option, propose an alternative to this requirement in which staged contributions are made upon the predicted occurrence of certain events, such as the sale of lots.

10.5 Staged Delivery of In-Lieu Contributions - In the case of staged delivery of in-kind contributions when permitted, the value of each contribution shall be determined in accordance with Section 12.

11. ALTERNATE MEANS OF COMPLIANCE

11.1 Criteria for Allowing Alternate Approaches

HOP requires that applicants provide affordable housing ("required affordable housing") on the property proposed for development. However, it is recognized that at times this approach may be infeasible due to extreme hardship as defined. In this event, the applicant may seek permission to use an alternate means of compliance.

11.2 Allowable Alternate Means of Compliance

Contributions of cash or in-kind resources for affordable housing may be considered acceptable by the City as an alternate means of compliance. The Developer may provide cash, land, labor, materials or another in-kind contribution(s) acceptable to the City. The fair market value of the contribution(s) shall be equal to the In-Lieu Contribution Value for each affordable unit, which is not provided directly, as described in Section 12.

12. DETERMINATION OF IN-LIEU CONTRIBUTION VALUES

The In-Lieu Contribution Value for each affordable unit which is not provided directly shall be determined as follows:

- 12.1 Contribution values for a particular development shall be the values in Appendix D, "HOP In-Lieu Contribution Values," which correspond to the type of development proposed.
- 12.2 The methodology for initially determining contribution values is contained in a 1995 report by The Enterprise Foundation, *Findings and Recommendations Regarding Housing Affordability Issues in the Proposed Housing Opportunities Program*. The recommended contribution values in that report were adopted as the initial values for calendar year 1995.
- 12.3 The initial 1995 values shall be adjusted annually at the beginning of each calendar year by a factor equal to the Consumer Price Index, or at the discretion of the Community Services Director, the values may be recalculated using another method, so long as the methodology is sound and described in detail in a written report available to the public.
- 12.4 The required In-Lieu Contribution Value for any contribution (including a staged contribution) shall be the amount in effect at the time that each contribution is due.
- 12.5 A 2% processing fee to the city shall be added to all fees in lieu of contributions for administrative costs.

13. QUALIFYING AND CERTIFYING HOMEBUYERS AND RENTERS

13.1 Methods of Certification - In certifying homebuyers and renters as eligible to buy or rent affordable units, the City will, at its sole discretion, use one of the following methods:

- 13.1.1 HOME Program method - The method used to determine and certify qualifying incomes for HOP shall be the same as that currently in use for the federal HOME program. This method defines inclusions and exclusions from household income, and contains a formula for counting or otherwise imputing income from assets. However, HOME regulations shall be used for no purpose other than as a guideline for these income

certifications; for example, they may not be used to determine eligible income levels. As HOME regulations change or are eliminated, City staff may continue to use this method or may adopt a similar method.

13.1.2 Low-Income Housing Tax Credit method - In the event that the households to be certified will occupy rental units that have benefited from the federal Low-Income Housing Tax Credit, the City may accept an assurance from the developer that income certification requirements for that program will be followed. If this is allowed, the City will require evidence of compliance with the tax credit program. If the regulations for this program change or are eliminated, City staff may continue to use this method or may adopt a similar method.

14. RESTRICTIONS ON REALES OF AFFORDABLE FOR-SALE HOMES

The following terms and conditions of resales shall be incorporated in the documentation of each sale of an affordable home:

14.1 Purposes of Resale Controls - In recognition of the consideration granted by the City to HOP developers homes, the City requires that HOP developers impose resale controls which are designed to achieve the following purposes:

14.1.1 Reducing the potential for windfall profits by an owner-occupant.

14.1.2 Recapturing any such windfall profits for use in an approved housing trust fund that finances affordable housing programs in Santa Fe.

14.1.3 Providing incentives for owner-occupants to resell to lower-income households, which are most in need of affordable housing.

14.1.4 Maintaining the affordability of HOP homes to subsequent buyers to a reasonable extent, while considering the sellers' rights to reasonable returns on equity.

14.1.5 Preventing speculative profits on HOP homes by renting them to another household. (Any rental of HOP homes intended for owner occupancy must be approved by the City in writing.)

14.2 Required Resale Control Mechanisms - The City will require that one or more of the following mechanisms be used to control the resale of a HOP home:

14.2.1 Mortgage liens - Each home which is sold at an effective price below market value shall have a second mortgage lien which is payable to the City or its agent. The amount of the lien shall be equal to the difference between:

a. The appraised value at time of sale, and

- b. The effective cash cost of the home exclusive of closing costs, that is: (i) the buyer's down payment plus (ii) the combined amounts of any mortgage loans used for cash financing of the purchase.

Such a lien will be subordinate to any lien for purchase financing or home equity financing, whether a first, second, third or other subordinate loan. It will be non-amortizing, carry a rate of 0% interest and be due only upon resale or conversion of the property to a unit which at the time of resale would not qualify as a low-priced unit. If a home is sold at a loss, the loan may, at the City's sole discretion, be forgiven to the extent that sale proceeds are insufficient to pay all superior liens and then the City lien. The lien will be assumable by a buyer certified pursuant to 8.10.8. Such a lien will also be expressly and automatically subordinate to any lien for home equity financing, so long as the lender certifies to the city in writing within 30 days after making the loan that the total of all recorded debt on the property (including the home equity loan and the city loan) does not exceed 95% of the appraised value of the property.

14.2.2 Shared appreciation and right of first refusal requirements - If the amount of the lien described in Section 14.2.1 exceeds 20 percent of the appraised value of a HOP home, an interest payment will be added to the lien which will entitle the City to: (i) a share of the appreciation realized in any resale and (ii) a right of first refusal to repurchase the home for a formula price.

14.2.3 Any other appropriate legal or financial mechanism, which may be required to carry out, the intent of the HOP program to maintain long-term affordability.

14-2.4 The HOP developer shall pay the city's agent for an appraisal to determine the value of the lien.

15. INCENTIVES FOR HOP DEVELOPERS

In an effort to assist in making residential construction less costly and therefore more affordable, the City may offer incentives to HOP developers in consideration of the creation and maintenance of affordable housing. The development incentives do not apply to applications for residential developments located outside the city limits, which are requesting the extension of or connection to city utilities.

15.1 Density Bonuses - Developers constructing required affordable for sale homes or constructing low priced developments shall be entitled to a density bonus as set forth below:

<u>Type of Development</u>	<u>Density Bonus</u>
----------------------------	----------------------

Development Type "A"	16%
Development Type "C" (to the extent all units are for sale)	11%
Development Type "D" (to the extent all units are for sale)	16%

The city may grant a density bonus not to exceed the amounts described above for rental units but such a density bonus shall be discretionary and shall only be granted pursuant to a certified HOP proposal duly approved and subsequently agreed to in a HOP agreement.

A density bonus, as defined for HOP, is the right to build the described percentage of residential units, in addition to those that are otherwise allowed, in accordance with these standards and procedures:

15.1.1 "Base units allowed" shall mean the number of non-HOP units sought by the applicant in the most current certified HOP proposal so long as that number is not in excess of the maximum allowable units taking into account all other requirements that may limit the number of units that can be built on the site.

15.1.2 In calculating any bonus unit(s), the base units allowed in the development shall be multiplied by the percentage described above. If the result is other than a whole number, the number shall be rounded down if less than 0.5, and rounded up if 0.5 or more.

15.1.3 Any such bonus will not require a general plan amendment or approval by the governing body unless appealed pursuant to subsection 14-7.4 SFCC 1987.

15.1.4 Except where the Planning Commission may be authorized to grant a variance or waiver as set forth in Chapter 14, such a density increase shall not negate, supersede or limit other City Code provisions that limit the number of units that can be built on the site.

15.1.5 Development plans for multiple-family projects in RM districts with six units or more which include a density bonus shall be reviewed and approved by the planning commission.

15.2 Fee Waivers - HOP developments and Development Type "A" as defined in Section 6 herein may be entitled to waivers of certain fees normally due to the City, as follows:

15.2.1 Plan submittal fees for annexation, rezoning or subdivisions may be waived for low-priced developments as defined herein, for the first and any subsequent plan submittal.

15.2.2 Building permit may be waived for: (a) HOP units and (b) any other low-priced units as defined in Section 6 herein in any development, whether subject to HOP.

15.3 Variances to the City's Development Standards

15.3.1 Any developer who is subject to and complying with HOP requirements by construction of required affordable units, or constructing a Development Type "A" as defined may request the following:

- a. variances from zoning regulations set forth in Sections 14-17 through 14-21, Section 14-26, Section 14-30 through 14-32, Section 14-49 and Section 14-69 SFCC 1987 (the request does not have to be within a PUD, PRC or PRRC district); and
- b. variances from and alternate methods to the street standards set forth in section 14-93 exclusive of 14-93.4 and 14-93.8 SFCC 1987.

15.3.2 The variances shall be subject to the standards and procedures as set forth in Chapter 14 SFCC 1987.

15.3.3 If a request for a variance is denied the approving authority shall declare and demonstrate that the proposed variance does not meet the standards as set forth in Chapter 14 SFCC 1987. Such a document denying the variance shall offer specific facts and citations of ordinances, regulations or studies as reasons for denial. The staff shall then forward a copy of said document to the Community Services Department with instructions to negotiate a new HOP proposal to certify the new proposal. If the variance request is denied, the action may be appealed in accordance with the provisions of Chapter 14 SFCC 1987.

15.4 Waivers and Alternative Methods of Implementation

15.4.1 Any developer who is subject to and complying with HOP requirements by construction of required affordable units, or constructing a Development Type "A" as defined may request waivers from and alternate methods to implementation of Planning and Land Use Department staff interpretations or policies which are not set forth in SFCC 1987.

15.4.2 Requests for waivers shall be submitted in writing, reviewed and acted on by the city as follows:

- a. The applicant shall not be required to post or notify property owners.

- b. Staff shall respond to the request within 30 calendar days of its receipt.
- c. If a request for a waiver is denied, or staff shall declare and demonstrate in written response that the proposed waiver does not meet one more of the requirements as set forth below. Such a document denying the waiver shall offer specific facts and citations of ordinances, regulations or studies as reasons for denial. The staff shall then forward a copy of said document to the Community Services Department with instructions to negotiate a new HOP proposal to certify the new proposal. If staff denies the request, the action may be appealed in accordance with the provisions of Chapter 14 SFCC 1987.

15.3.4 A request for a waiver shall be approved if each of the following requirements is met:

- a. The proposed waiver will make the housing more affordable. The developer must show how real costs will be reduced and how the savings will be passed on to HOP homebuyers or renters.
- b. The proposed waiver does not compromise health, safety or welfare as determined by the City.
- c. Vehicular and pedestrian circulation, storm drainage and utilities are provided for adequately.
- d. The proposed alternate method(s) meets the general intent of the written requirements of Chapter 14 SFCC 1987.
- e. Such alternate method(s) does not conflict with the requirements of any law or regulation of the state of New Mexico or the federal government.
- f. Costs to the City for maintaining the alternate method are not disproportionately greater than those of any normally required methods.

16. SEPARABILITY.

The provisions of these administrative provisions are separable and the invalidity of any part of these provisions shall not affect the validity of the rest of these provisions.

HOUSING OPPORTUNITY PROGRAM
ADMINISTRATIVE PROCEDURES
APPENDICES A – D AND RELATED FORMS
EFFECTIVE APRIL 11, 2001

APPENDIX A: HOP HOME PRICES
(Page 1 of 3)
Effective April 11, 2001

A-1: HOP HOME PRICES AFFORDABLE AT 65% OF MEDIAN INCOME

**Note: Unless a project is "skewing" HOP home prices, these are the required prices.
 See APPENDIX A: (Page 2 of 3) for allowed prices for skewing.**

FOR-SALE UNIT TYPES ALLOWED BY HOP	PRESUMED TYPICAL NUMBER OF OCCUPANTS	CORRESPONDING INCOME: THIS SIZE HOUSEHOLD AT 65% OF AREA MEDIAN INCOME	MAXIMUM PRICE FOR A HOP HOME OF THIS UNIT TYPE*
2 Bedrooms, 1 Bath	3	\$35,490	\$101,842
3 Bedrooms, 1.5 Baths	4	\$39,455	\$113,220
4 Bedrooms, 2 Baths	5	\$42,640	\$122,360

*This price has been determined by using the formula described in Section 8.2.3 of the administrative procedures (8.21% interest rate and median income data as of 4/10/01). The incomes given above do not correspond to the maximum incomes of qualified HOP homebuyers. See Section 8 for those income levels.

APPENDIX A: HOP HOME PRICES

(Page 2 of 3)

Effective April 11, 2001

FOR-SALE UNIT TYPES ALLOWED BY HOP	INCOME AT 50% OF MEDIAN	INCOME AT 55% OF MEDIAN	INCOME AT 60% OF MEDIAN	INCOME AT 70% OF MEDIAN	INCOME AT 75% OF MEDIAN
2 Bedrooms, 1 bath	\$27,300	\$30,030	\$32,760	\$38,220	\$40,950
3 Bedrooms, 1.5 Baths	\$30,350	\$33,385	\$36,420	\$42,490	\$45,525
4 Bedrooms, 2 Baths	\$32,800	\$36,080	\$39,360	\$45,920	\$49,200

Note: The incomes given above do not correspond to the maximum incomes of qualified HOP homebuyers. See Section 8 for those income levels.

APPENDIX A: HOP HOME PRICES

(Page 3 of 3)

Effective April 11, 2001

**A-3: HOP HOME PRICES
IN "SKEWED-PRICE" DEVELOPMENTS**

Note: These prices along with prices in A-1 are to be used in "skewed-price" HOP developments. See Section 8 of the administrative procedures.

FOR-SALE UNIT TYPES ALLOWED BY HOP	MAXIMUM HOP HOME PRICE: 50% OF MEDIAN*	MAXIMUM HOP HOME PRICE: 55% OF MEDIAN*	MAXIMUM HOP HOME PRICE: 60% OF MEDIAN*	MAXIMUM HOP HOME PRICE: 65% OF MEDIAN*	MAXIMUM HOP HOME PRICE: 70% OF MEDIAN*	MAXIMUM HOP HOME PRICE: 75% OF MEDIAN*
2 Bedrooms, 1 Bath	\$78,339.93	\$86,173.92	\$94,007.91	\$101,841.90	\$109,675.90	\$117,509.89
3 Bedrooms, 1.5 Baths	\$87,092.19	\$95,801.41	\$104,510.63	\$113,219.85	\$121,929.06	\$130,638.28
4 Bedrooms, 2 Baths	\$94,122.70	\$103,534.96	\$112,947.23	\$122,359.50	\$131,771.77	\$141,184.04

*These prices have been determined by using the formula described in Section 8.2.3 of the administrative procedures (8.21% interest rate and median income data as of 4/10/01). The incomes given above do not correspond to the maximum incomes of qualified HOP homebuyers. See Section 8 for those income levels.

APPENDIX B: HOP RENTAL RATES

(Page 1 of 2)

Effective Date April 11, 2001

**B-1: HOP RENTAL RATES AFFORDABLE AT 60% OF
MEDIAN INCOME**

Note: Unless a project is "skewing" HOP rental rates, these are the required rates. See B-3 for rental rates allowed for skewing.

FOR-RENT UNIT TYPES ALLOWED BY HOP	PRESUMED TYPICAL NUMBER OF OCCUPANTS	CORRESPONDING INCOME: THIS SIZE HOUSEHOLD AT 60% OF AREA MEDIAN INCOME	MAXIMUM GROSS MONTHLY RENT FOR A HOP UNIT OF THIS TYPE*
Efficiency	1	\$25,500	\$638
1 Bedroom	2	\$29,160	\$729
2 Bedrooms	3	\$32,760	\$819
3 Bedrooms	4	\$36,420	\$911
4 Bedrooms	5	\$39,360	\$984

* The rent has been determined by using the formula described in Section 9.3 of these administrative procedures. Maximum gross monthly rent includes all utilities. If not, rents to be reduced based upon utility allowances. (see administrative procedures) The incomes given above are the maximum incomes of qualified HOP renters. See Section 9.4 for minimum incomes.

APPENDIX B: HOP RENTAL RATES

(Page 2 of 2)

Effective April 11, 2001

**B-2: INCOME LEVELS USED TO DETERMINE HOP RENTAL RATES
IN "SKEWED-PRICE" DEVELOPMENTS**

Note: These income levels are used only to determine the pricing in chart B-3.

RENTAL UNIT TYPES ALLOWED BY HOP	INCOME AT 40% OF MEDIAN	INCOME AT 50% OF MEDIAN	INCOME AT 70% OF MEDIAN
Efficiency	\$17,000	\$21,250	\$29,750
1 Bedroom	\$19,440	\$24,300	\$34,020
2 Bedrooms	\$21,840	\$27,300	\$38,220
3 Bedrooms	\$24,280	\$30,350	\$42,490
4 Bedrooms	\$26,240	\$32,800	\$45,920

**B-3: HOP RENTAL RATES
IN "SKEWED-PRICE" DEVELOPMENTS**

Note: these rental rates along with rates in B-1 are to be used in
"skewed-price" HOP developments. See Section 9 of the administrative procedures.

RENTAL UNIT TYPES ALLOWED BY HOP	RENTAL RATE AT 40% OF MEDIAN*	RENTAL RATE AT 50% OF MEDIAN*	RENTAL RATE AT 70% OF MEDIAN*
Efficiency	\$425	\$531	\$744
1 Bedroom	\$486	\$608	\$851
2 Bedrooms	\$546	\$683	\$956
3 Bedrooms	\$607	\$759	\$1,062
4 Bedrooms	\$656	\$820	\$1,148

*The price has been determined by using the formula described in Section 9.3 of these administrative procedures. Rental rates include all utilities. If not, rents to be reduced based upon utility allowances. (see administrative procedures) The incomes given above are the maximum incomes of qualified HOP renters. See Section 9.4 for minimum incomes.

APPENDIX C: HOP UTILITY ALLOWANCES

Effective April 11, 2001

(Page 1 of 2)

MONTHLY DOLLAR ALLOWANCES BY UNIT TYPE

UTILITY OR SERVICE	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR
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HEATING

Natural Gas	19.57	27.39	35.22	43.05	54.80	62.62
Electric	49.54	62.42	89.17	108.99	138.71	158.53

COOKING

Natural Gas	0.86	1.20	1.54	1.88	2.39	2.74
Electric	4.05	5.67	7.29	8.91	11.34	12.96

LIGHTS ETC.	11.62	16.27	20.91	25.56	32.54	37.18
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WATER HEATING

Natural Gas	6.49	9.09	11.68	14.28	18.17	20.77
Electric	20.00	28.00	36.00	44.00	56.00	64.00

WATER	17.05	23.86	30.68	37.50	47.73	54.54
SEWER	6.10	8.53	10.97	13.41	17.07	19.50

See next page for a form for calculating a total utility allowance for a unit type or an individual rental unit.

APPENDIX C: HOP UTILITY ALLOWANCES
(Page 2 of 2)

UTILITY ALLOWANCE CALCULATION WORKSHEET

Unit Type (check one): ___ 0BR ___ 1BR ___ 2BR ___ 3BR ___ 4BR ___ 5BR

Unit number (if applicable): _____

Tenant name (if applicable): _____

UTILITY/SERVICE
PAID BY TENANT:
PER MONTH ALLOWANCE

HEATING _____

AIR CONDITIONING _____

COOKING _____

OTHER ELECTRIC _____

WATER HEATING _____

WATER _____

SEWER _____

TRASH COLLECTION _____

OTHER (Specify) _____

TOTAL ALLOWANCE: _____

APPENDIX D: HOP IN-LIEU CONTRIBUTION VALUES
Effective Date April 11, 2001

The following In-Lieu Contribution Values are the required value of cash or in-kind contributions for HOP developments that are not providing required affordable housing.

“Price class,” “corresponding price range,” and “corresponding range of monthly rents” refer to the proposed pricing of residential dwelling units to be built in the development. Please note that qualified HOP developments in Development Types “A” and “B” (defined in Section 6 herein) are subject to simplified compliance requirements and not required to make in-lieu contributions.

“Corresponding income range” is provided only for illustrative purposes, and formed the basis for some of the calculations used to derive the contribution values.

REQUIRED CONTRIBUTION VALUES FOR FOR-SALE HOUSING

Development Type	Corresponding Income Range*	Corresponding Price Range	Contribution Value/Unit**
“A” and “B”	Below 120% of AMI	Below \$227,969	N/A
“C”	120%-200% of AMI	\$227,969-\$379,949	\$33,304
“D”	Over 200% of AMI	Over \$379,949	\$51,586

REQUIRED CONTRIBUTION VALUES FOR RENTAL HOUSING

Development Type	Corresponding Income Range*	Corresponding Range of Monthly Rents	Contribution Value/Unit
“C”	120%-200% of AMI	\$1,638 - \$2,730	For specific fee contact Community Services Department (505-986-6967)
“D”	Over 200% of AMI	Over \$2,730	For specific fee contact Community Services Department (505-986-6967)

* “AMI” means area median income. Based on market data, typical household size is assumed to be three persons above 80 percent of median income.

** Plus 2% administrative fee

HOUSING OPPORTUNITY PROGRAM

PRICING SCHEDULE

Effective April 11, 2001*

Refer to Section 14-96 SFCC 1987, Chapter 26 SFCC 1987 and the HOP Administrative Procedures (adopted as Ordinance No. 1998-2, Ordinance No. 1998-3 and Resolution No. 1998-6).

	Type A Development	Type B Development	Type C Development	Type D Development
% Median Income Served	Below 80%	Below 120%	121-200%	Over 200%
Typical Household Size	4	3	3	3
Household Income	Below \$48,560	Below \$65,520	\$65,520– \$109,200	Over \$109,200
House Price	Below \$139,348	Below \$227,969	\$227,969– \$379,949	Over \$379,949
HOP Process	Simplified	Simplified	Comprehensive	Comprehensive
Required Affordable Housing	---	---	11%	16%
Density Bonus	16%	---	11%	16%
Fee in Lieu per Required Affordable Unit	---	---	\$33,304 (plus 2% administrative fee)	\$51,586 (plus 2% administrative fee)

*Prices are revised according to the most recent area median income published by HUD. Household income based upon HUD area median income of \$60,700 as of 4/10/01 (4-person household). House price based upon 8.21% interest rate for 30 years with a 3% down payment for Type A and a 20% down payment for others.

REQUIRED AFFORDABLE HOUSE EXAMPLE

For specific requirements contact the Community Services Department (505-955-6967)

Household Size	% Median Income to Serve	Income per year	Total Price
3	65%	\$35,490	\$101,842
4	65%	\$39,455	\$113,220
5	65%	\$42,640	\$122,360

HOUSING OPPORTUNITY PROGRAM

RENTAL SCHEDULE

EFFECTIVE April 11, 2001*

Refer to Section 14-96 SFCC 1987, Chapter 26 SFCC 1987 and the HOP Administrative Procedures (adopted as Ordinance No. 1998-2, Ordinance No. 1998-3 and Resolution No. 1998-6).

	Type A Development	Type B Development	Type C Development	Type D Development
% Median Income Served	Below 80%	Below 120%	121-200%	Over 200%
Typical Household Size	3	3	3	3
Household Income	Below \$48,560	Below \$65,520	\$65,520– \$109,200	Over \$109,200
Monthly Rental rate**	Below \$1,092	Below \$1,638	\$1,638 - \$2,730	Over \$2,730
HOP Process	Simplified	Simplified	Comprehensive	Comprehensive
Required Affordable Housing	---	---	11%	16%
Density Bonus	16%	---	11%	16%
Fee in Lieu per Required Affordable Unit	---	---	For specific fee contact Community Services Department (505-955-6967)	For specific fee contact Community Services Department (505-955-6967)

*Rents are revised according to the most recent area median income published by HUD.

Household income based upon HUD area median income of \$54,600 as of 4/01 (3-person household).

**Rental rate assumes all utilities provided. If not, rents to be reduced based upon utility allowances. (see administrative procedures)

REQUIRED AFFORDABLE RENTS EXAMPLE

For specific requirements contact the Community Services Department (505-955-6967)

Household Size	% Median Income to Serve	Income per year	Rental Rate**
1	60%	\$25,500	\$638
2	60%	\$29,160	\$729
3	60%	\$32,760	\$819
4	60%	\$36,420	\$911
5	60%	\$39,360	\$984

CITY OF SANTA FE HOUSING OPPORTUNITY PROGRAM

Land Values to Home Sales Prices

As of 4/11/01

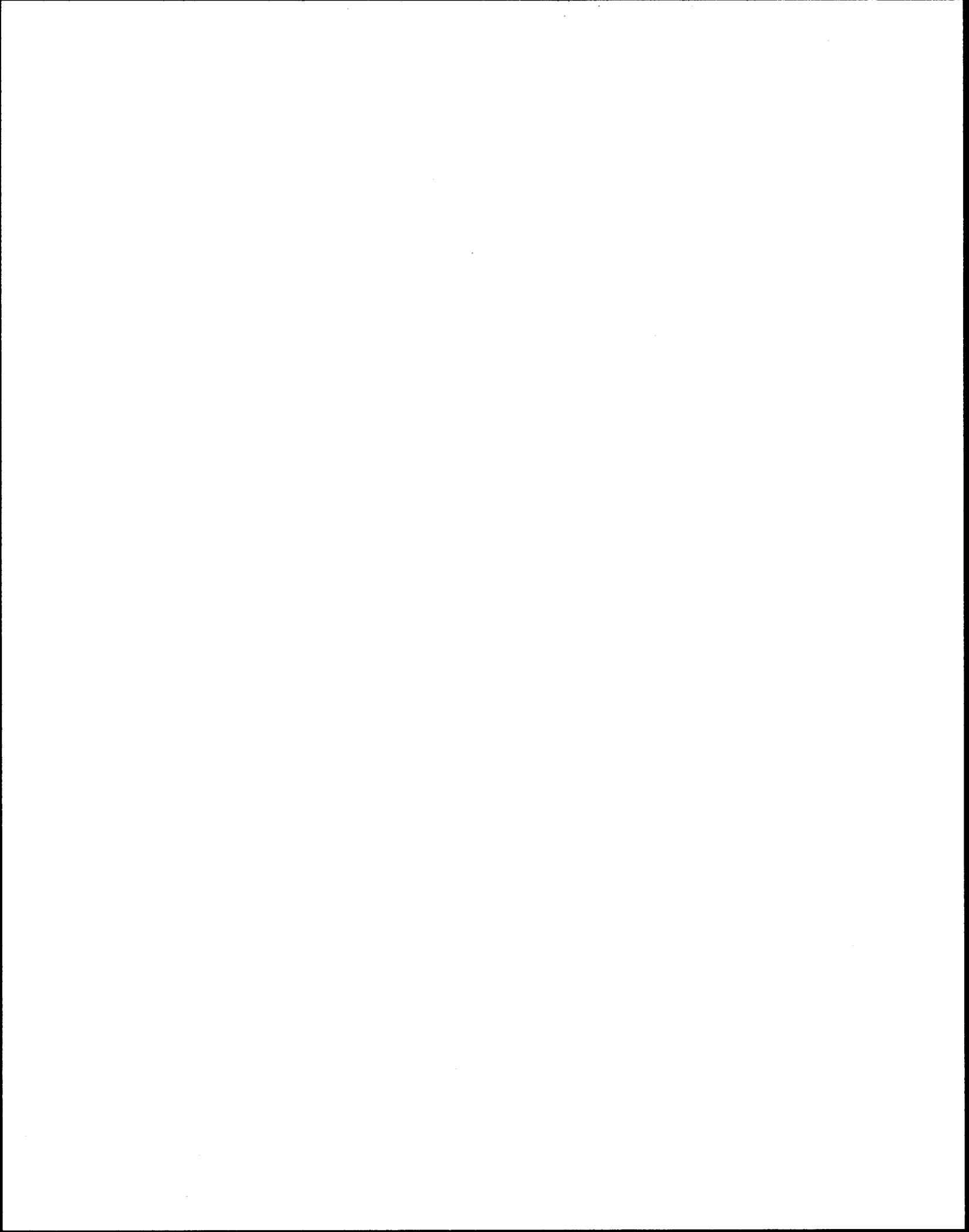
Average: land value as a percentage of home sale price 30%

Average: land multiplier to derive sales price 3.32

Type of Development	Lot Price (market)	Required Affordable Housing (HOP Homes)
Type A	< \$41,804	--
Type B	< \$68,391	--
Type C	\$68,391- \$113,985	11%
Type D	>\$113,985	16%

The Inclusionary Zoning/Housing Opportunity Program applies to all residential developments as set forth in Section 14-96.5 SFCC 1987. The above table "translates" the development types for those developments selling lots rather than finished houses. If the developer intends to sell lots only and a HOP Home is required by the above table, the developer is still responsible for complying with the regulations by delivering a HOP Home that meets the HOP requirements and is sold to a certified HOP Homebuyer. In other words, the developer would contract with a for-profit builder to build the home and the developer would sell it at the allowed price to an income-qualified buyer.

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