

# SUSTAINABLE LAND USE CODE PROJECT

## Capitol Region Council of Governments



## MODEL REGULATIONS: INCLUSIONARY WORKFORCE HOUSING REGULATIONS

December 2013



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# INCLUSIONARY WORKFORCE HOUSING REGULATIONS

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## Introduction

Like many areas across the country, the Capitol Region's population is changing—but unlike some areas, the change is more in character than size. Although the region's population growth has been slow in the last 20 years (8 percent), its growth rate is projected to slow even more, to only 4 percent, over the next 20 years. However, the number of households in the region is expected to increase by 6.5 percent over that time period, indicating that household sizes will be getting smaller.

In *Together We Can Grow Better: Smart Growth Guidelines for Sustainable Design and Development*, three major demographic issues related to housing are identified:

- There is an oncoming wave of active, aging baby boomers.
- There has been a continuous outmigration of 24- to 35-year olds since the early 1990s (30 percent between 1990 and 2006 for the state, the highest percentage of any state).
- There is great potential and need to retain the large cohort of millennials (people born between the early 1980s and early 2000s) who will be entering the job and housing market as baby boomers are retiring.

A primary factor in the local outmigration of 24- to 35-year olds is a critical lack of affordable housing choices. The “affordability gap” between the cost of housing affordable to most households and the cost of housing available on the market continues to widen—especially for younger, entry-level workers. While personal income in Connecticut rose 19 percent between 2000 and 2005, median housing prices rose 64 percent. According to the partnership for Strong Communities, 36 percent of all households in the state were spending more than 30 percent of their income on housing in 2010 (30 percent being a commonly accepted threshold for identifying whether housing is affordable). If the region is to retain its young single, married, and unmarried households, it will be important to allow for smaller units and multifamily housing to meet their needs for affordable housing. If the outmigration of younger workers does not slow, the region will likely experience a significant reduction in its workforce and a negative impact on the regional economy. Recent national surveys show that given the choice, younger homebuyers prefer smaller homes in compact, walkable communities over large-lot suburban homes, which make up most of the region's current housing stock.

The Partnership for Strong Communities reported that in 2010, a median-income family with a 10 percent down payment could afford to buy a house at the median sales price in only 16 of the Capitol Region's 29 towns. CRCOG's analysis of median home values in FY 2010 indicated that only 51 percent of owner-occupied homes were affordable to moderate-income families, and only seven percent were affordable to low-income households. The overall median home value in the Capitol Region for FY 2010 was \$276,300, and ranged from a high of \$421,100 (Avon) to a low of \$188,000 (Hartford).

Many communities across the country are experiencing similar housing affordability issues as those in the Capitol Region and Connecticut and are adapting their land use policies and regulations to address changing housing needs. Furthermore, federal funding for land use and transportation projects has recently been driven by the application of sustainable development practices and Smart Growth principles, which clearly support the creation of a range of quality and housing affordability opportunities and choices for people of all income levels, and compact building design.

Connecticut's Department of Economic and Community Development (DECD) and the Connecticut Housing Finance Authority (CHFA) administer a number of programs to promote affordable housing.<sup>1</sup>

CRCOG has adopted a Regional Housing Policy that addresses the need for affordable housing, the use and improvement of existing housing, the selective use and demolition of deteriorated housing, and other related issues. Adopted implementation strategies include one to support land use policies that allow for a diversity of housing types and costs in all communities.

To address housing affordability, the Connecticut legislature adopted the Affordable Housing Land Use Appeals Act of 1990 (the "Act"), which expressly reverses the burden of proof when a municipality denies a developer's application to construct affordable housing. In such a case, the Act requires the municipality to prove that the need for affordable housing is clearly outweighed by the need to protect the health or safety of the community. Since few municipalities have sufficient affordable housing to be exempt from this requirement (i.e., where at least ten percent of the existing housing stock qualifies as affordable), the Act has affected most municipalities in the state. It has been controversial, and in the 20 years since enactment has been much debated.

One impact of the Act is that it has placed many Connecticut municipalities in the position of reacting to a developer's sense of where and how affordable housing projects should be built to meet the community's affordable housing needs. Connecticut municipalities increasingly recognize they can take positive action to accommodate and encourage affordable housing developments that meet not only the needs of the developer and the occupants, but also the needs of the community. One way to do so is to increase the range of options available to developers and property owners to provide affordable housing. Such options include, in addition to the higher-density multifamily development most commonly associated with affordable housing, live/work units, accessory dwelling units, residential over commercial, duplexes, triplexes, quadruplexes, townhouses, small-lot subdivisions, and conversions of

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<sup>1</sup> They include the following:

- The Affordable Housing Program (AHP) provides financial assistance for a large variety of housing development activities that include construction, rehabilitation, repair, and maintenance of housing, as well as financing ancillary facilities related to affordable housing, such as a community room, laundry, day care space, playground, and other residential amenities.
- The HOME Investment Partnership Program (HOME), a U.S. HUD program administered by DECD that provides financial assistance to create affordable housing for low- and very low-income households. (HUD income limits for HOME are based on HUD estimates of median family income adjusted for family size. HOME assistance includes the American Dream Down-payment Initiative (ADDI) to target federal funds Congressional appropriations.)
- The Housing Trust Fund (HTF) that is designed to create affordable housing for low- and moderate-income households and is funded from the proceeds of the sale of the state's general obligation bonds. Fund monies may be awarded as loans or grants to eligible sponsors of affordable housing.
- The Neighborhood Stabilization Program 1 (NSP1), established as part of the federal Housing and Economic Recovery Act (HERA) of 2008, that provides communities hit hardest by the foreclosure crisis funds for acquisition and rehabilitation, financing, land banking, demolition of blighted structures, and redevelopment—with 30 percent of the acquisition and rehabilitation to be used for housing persons making less than 50 percent of the area median income.
- The Neighborhood Stabilization Program 3 (NSP3) that uses federal funds to provide emergency assistance for the redevelopment of abandoned and foreclosed homes and residential properties in municipalities qualifying under the Community Development Block Grant Program (CDBG), including Hartford in 2011.
- The Pre-Development Loan Program that provides interest-free loans to eligible nonprofit sponsors for predevelopment costs associated with constructing, rehabilitating, or renovating housing for low- and moderate-income households at prices they can afford. (Pre-development loans may also be made available to for-profit developers in communities where the supply of affordable housing is less than 10%.)
- The State-Assisted Housing Sustainability Fund that provides grants, loans, deferred loans, no interest and low interest loans, loan guarantees, and interest subsidies for repairs to eligible housing pursuant to CGS sec. 8-37uu.

nonresidential buildings. CROG has commissioned the drafting of model ordinances to permit and encourage live-work units and accessory dwelling units as part of this project.

Workforce housing is housing that is provided for a community's workers. Some communities more narrowly define workforce housing for the purposes of affordable workforce housing regulations to housing for the "essential workers" (e.g., teachers, police officers, firemen, EMS personnel, nurses, other health care and hospital workers) and low-wage service workers (e.g., medical and laboratory technicians, clerical workers).

Affordable workforce housing regulations commonly target households with incomes less than 80 percent (sometimes up to 120 percent) of the area median income (AMI). Some programs have multi-tiered targets, for households of different income levels. A dwelling unit is commonly deemed "affordable" to a household if annual housing costs (e.g., rent or mortgage payments, sometimes utility costs) do not exceed 30 percent of the annual income of the target household.

Some affordable workforce housing regulations apply to residential development, including subdivisions for residential development (single-family and other), multifamily developments (including duplexes, triplexes, quadruplexes, townhouse, and general multifamily development), and the residential component of mixed-use developments. They are characterized as "inclusionary" workforce housing regulations. In other communities, usually those with severe housing affordability issues, affordable workforce housing regulations are more comprehensive in nature, and apply to both residential and nonresidential development.

Connecticut General Statutes Section 8-2i, Inclusionary zoning, authorizes inclusionary zoning.<sup>2</sup> The model inclusionary workforce housing standards presented here apply only to residential development. They require that a certain percentage of new residential units built in the community be set-aside to be affordable to the workforce and their families. The scale-up options add flexibility to the regulations—by providing alternatives for developers as to how they may provide affordable workforce housing.

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<sup>2</sup> Connecticut General Statutes Section 8-2i, Inclusionary zoning, states:

- (a) As used in this section, "inclusionary zoning" means any zoning regulation, requirement or condition of development imposed by ordinance, regulation or pursuant to any special permit, special exception or subdivision plan which promotes the development of housing affordable to persons and families of low and moderate income, including, but not limited to, (1) the setting aside of a reasonable number of housing units for long-term retention as affordable housing through deed restrictions or other means; (2) the use of density bonuses; or (3) in lieu of or in addition to such other requirements or conditions, the making of payments into a housing trust fund to be used for constructing, rehabilitating or repairing housing affordable to persons and families of low and moderate income.

## Model Code Provisions for Inclusionary Workforce Housing

### 1.1 GENERAL<sup>3</sup>

#### 1.1.1. FINDINGS

- A. An important goal of (insert name of local government) and the plan of conservation and development is to maintain a balanced and sustainable local economy. Maintenance of a balanced and sustainable local economy requires the availability of a stable and qualified workforce.
- B. A second important goal of (insert name of local government) and the plan of conservation and development is to maintain and enhance the community's character. A key element of (insert name of local government)'s character is its social, economic, and political fabric, and the general sense of community that occurs because the workforce and their families live in the community, attend schools in the community, participate in civic organizations in the community, worship in the community, and express their opinions at the ballot box.
- C. An important building block for this key element of (insert name of local government)'s character is the availability of housing that is reasonably affordable to the workforce.
- D. The (insert name of local government)'s Workforce Housing Support Study (hereinafter Workforce Housing Study), dated \_\_\_\_, demonstrates that today there is a shortage of affordable housing in (insert name of local government).<sup>4</sup>

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<sup>3</sup> Over the past 20 years the United States Supreme Court has established that when local land use regulations impose "conditions of approval" on development, they must demonstrate a reasonable relationship or a "rough proportionality" exists between the legitimate governmental interest being addressed in the regulation and the "conditions of approval" being imposed as part of the development approval. See *Nollan v. California Coastal Comm'n*, 483 U. S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lingle v Chevron*, 125 S. Ct. 2074 (2005); *Koontz v. St. Johns River Water Management District*, 568 U.S. \_\_ (2013). Inclusionary affordable workforce housing standards like these model regulations impose "conditions of approval" on development because they require a portion of residential development be affordable to the workforce. The legitimate governmental interest they address is ensuring housing in the community is affordable to the workforce and their families. In order to demonstrate a reasonable relationship between the legitimate governmental interest of addressing affordable housing and the "conditions of approval" (the requirement that a portion of residential development be affordable) it is important that a technical or nexus study be prepared that demonstrates this reasonable relationship before adoption of the regulation. It is assumed in this model regulation this is done. The nexus study in the model regulation is titled *Workforce Housing Support Study*.

We recommend that initially, the nexus study (Workforce Housing Support Study) identify the workforce housing problem in the community. It should then provide the technical documentation and analysis needed to establish whether and the extent to which new residential development creates a need for affordable workforce housing. This is done by first evaluating the linkage between (1) employment (workforce) needed to construct and maintain/operate (post-construction) new residential units, and in some communities, (2) critical service providers that provide public safety, law enforcement, education, and health care services to residential developments. Once this is done, the housing needs for these employees and their families/households is determined, along with whether housing is affordable for them, based on their incomes and local housing costs. Based on this part of the analysis, the need for affordable workforce housing (the portion of new residential development that needs to be affordable for the workforce) can be determined, as well as any housing assistance (a subsidy) that would be needed if an in-lieu fee option is provided. (See discussion in scale-up option.)

Most nexus studies are based on the assumption that an affordable home for households in the local workforce is defined as costing no more than 30% of annual household income, regardless of whether a home is rented or owner-occupied. This model regulation assumes that is the standard used for determining housing affordability in the model regulations (even though there is some discretion to vary this standard from community to community).

<sup>4</sup> This is the nexus study referenced in footnote 3.

- E. It has occurred due to a dramatic increase in land and construction costs, and a rise in the price of housing.
- F. Review of state and national census and other wage and labor data, in conjunction with real estate sales data, demonstrates the amount of housing within the price ranges that are affordable to the workforce has declined to a point where only a limited number of market-rate residential dwelling units are available today at prices the workforce can reasonably afford.
- G. This has resulted in some residents moving elsewhere, and other workforce members never locating in (insert name of local government).
- H. The Workforce Housing Study also demonstrates the jobs expected to be created in (insert name of local government) by new development is expected to pay wages that make market-rate housing unaffordable, creating an additional need for affordable workforce housing.
- I. This out-migration of (insert name of local government)'s workforce and their families has placed increasing stress on the capacity of the local community to maintain a viable workforce. Estimates indicate this problem will continue to worsen in the future, potentially affecting the long-term sustainability of the local economy, unless additional housing is provided within price ranges that are affordable to the workforce.
- J. In addition, if these trends continue, an essential component of (insert name of local government)'s character will be damaged since most of the workforce and their families will no longer reside in the community, attend schools in the community, participate in local civic organizations, worship in the community, or express their ideas at the ballot box.
- K. In part to address this community challenge, the plan of conservation and development includes a goal that \_\_ percent of residential development in (insert name of local government) be affordable to the workforce.
- L. To implement this plan of conservation and development goal, (insert name of local government) adopts these inclusionary workforce housing standards that require new residential development provide affordable workforce housing.

**1.1.2. PURPOSE**

The purpose of this section is to implement the plan of conservation and development goal that \_\_ percent of new residential development in (insert name of local government) be affordable to the workforce. This is accomplished through the establishment of these affordable workforce housing standards.

**1.1.3. TECHNICAL SUPPORT**

The technical support and analysis upon which these inclusionary workforce housing standards are established are based upon insert name of local government)'s Workforce Housing Support Study (hereinafter Workforce Housing Study), dated \_\_\_\_, attached as "Exhibit A" and incorporated herein by reference.

**1.1.4. APPLICABILITY**

- A. The standards of this section apply to all new residential development in (insert name of local government), unless exempted in subsection B below.
- B. The following is exempted from the standards of this section.
  - 1. Remodeling or redevelopment, if it does not result in the creation of a new residential dwelling unit.
  - 2. Development of a mobile home or mobile home park.
  - 3. Development of an accessory dwelling unit.
  - 4. Development of an affordable workforce housing unit, as defined by this section.

**1.1.5. DEFINITIONS**

- A. **Administrator:** Means the official, agency, or organization to whom the (insert name of local government) has delegated the responsibility of administering these inclusionary workforce housing standards.
- B. **Maximum extent practicable:** Means no feasible or prudent alternative exists, as determined by (Add name of appropriate zoning official), and all possible efforts to comply with the standards or regulation or minimize potential harmful or adverse impacts have been undertaken by an applicant. Economic considerations may be taken into account, but shall not be the overriding factor determining “maximum extent practicable.”
- C. **Workforce housing study:** Means the document providing the technical support and analysis upon which these inclusionary workforce housing standards are established. It is titled (insert name of local government)’s Workforce Housing Study, dated \_\_\_\_.

**1.2 PROCEDURES**

**1.2.1. SUBMISSION OF MITIGATION PLAN**

An applicant for a site plan or subdivision plan, as appropriate, for residential development not exempted in accordance with Section 1.1.4 B, shall submit an affordable workforce housing mitigation plan (hereinafter “mitigation plan”) to the Administrator concurrent with the development application for the site plan or subdivision plan.

**1.2.2. CONTENTS OF MITIGATION PLAN**

**A. General**

The contents of the mitigation plan shall include the following:

- 1. Calculation of the need for affordable workforce housing created by the residential development based on the requirements of Section 1.4, Affordable Workforce Housing Standards.
- 2. The method by which the affordable workforce housing is to be provided to comply with the requirements of Section 1.3, Affordable Workforce Housing Standards, either by on-site or off-site construction of affordable workforce

housing units, or a combination of the above. Appropriate justification for the proposed mitigation method must also be included.

3. A conceptual site plan and building floor plan illustrating the number of proposed affordable units, their location in relation to the other development on the site and surrounding land uses, and the number of bedrooms and size of each affordable unit;
4. A tabular summary of the number of affordable units, the number of bedrooms and size of each affordable unit, the proposed sale/rental mix, and the proposed sales price or rent for each affordable unit; and
5. The proposed deed restrictions/restrictive covenants to be placed on the affordable units to ensure they will be maintained as affordable.
6. An affordable housing agreement (hereinafter "agreement") in which the applicant agrees to implement the mitigation plan. The agreement shall be in a form approved by the (insert title of local government's attorney).

**1.2.3. REVIEW OF MITIGATION PLAN**

- A. The mitigation plan shall be reviewed and approved, approved with conditions, or disapproved by the (insert Zoning Commission for a site plan or Planning Commission for a subdivision plan), based on the standards set forth in Section 1.4, Affordable Workforce Housing Standards, prior to approval of the site plan or subdivision plan for the residential development, as appropriate.
- B. An approved mitigation plan may be amended or modified only in accordance with the procedures and standards established for its original approval.

**1.3 AFFORDABLE WORKFORCE HOUSING STANDARDS**

**1.3.1. GENERAL REQUIREMENTS FOR PROVISION OF AFFORDABLE WORKFORCE HOUSING**

- A. Unless exempted in accordance with Section 1.1.4. B, all new residential development constructed in (insert name of local government) shall provide affordable workforce housing units sufficient to house \_\_ percent of the total number of occupants of all residential units proposed in the development.
- B. The total number of occupants of the proposed residential units shall be calculated based on the type and number of bedrooms of the proposed residential units, as determined in Table 1.3.1.B, Calculating the Affordable Workforce Housing Units. In instances where a subdivision plan is proposed without specific dwelling units, the applicant shall estimate the characteristics of the residential units based on the average sizes and numbers of bedrooms of residential units in existing subdivisions of comparably sized and valued lots within (insert name of local government).

<b>TABLE 1.3.1.B: CALCULATING THE AFFORDABLE WORKFORCE HOUSING UNITS</b>	
<b>Number of Bedrooms in Units</b>	<b>Maximum Number of Occupants</b>
Studio	1
One Bedroom	1.5
Two Bedroom	3
Three Bedroom	3.5
Four Bedroom	4
Five Bedroom	4.5

## Scale-Up Options—Inclusionary Workforce Housing

The landowner/developer’s construction of affordable workforce housing units is a priority in all inclusionary affordable workforce housing regulations. However, to provide more flexibility, provisions can be added to allow landowners/developers to provide affordable workforce housing in the following additional ways, if it is determined impracticable to build affordable workforce housing units:

- Convert market-rate dwelling units to affordable workforce housing units;
- Convey land for affordable workforce housing units; or
- Pay in-lieu fees for the construction of affordable workforce housing units.

Below are additional provisions that could be added to the base provisions above to allow these alternative ways of meeting the affordable workforce housing requirement. These provisions are typical, but may vary from community to community.

### 1.2.2 CONTENTS OF MITIGATION PLAN

#### A. Where Conversion of Market-Rate Housing Units to Affordable Workforce Housing Units is Proposed

If existing market-rate residential units are proposed to be converted to affordable workforce housing units in accordance with Section 1.3.2, Alternative Means of Meeting Affordable Workforce Housing Requirement, the mitigation plan shall include:

1. A conceptual site plan illustrating the location and construction quality of the market-rate residential units that are proposed to be converted to affordable units;
2. A tabular summary of the number of market-rate residential units that will be converted, the number of bedrooms and size of each residential unit, the proposed sale/rental mix, and the proposed sales price or rent for each affordable unit; and
3. The proposed deed restrictions/restrictive covenants to be placed on the affordable units to ensure they will be maintained as affordable.

**B. Where Conveyance of Land as a Site for Affordable Workforce Housing Units is Proposed**

If existing market-rate residential units are proposed to be converted to affordable workforce housing units in accordance with Section 1.3.2, Alternative Means of Meeting Affordable Workforce Housing Requirement, the mitigation plan shall include:

1. A survey depicting the location, size, and topography of the land proposed for conveyance;
2. A title report demonstrating clear title, physical and legal access, liens, easements, and other information necessary to fully describe the legal status of the property to be conveyed;
3. Verification that the conditions of the land and any restrictions on the title to the land (such as covenants and easements) allow for the development of affordable residential dwelling units on the land;
4. An appraisal of the fair market value of the land; and
5. Any additional information or studies determined by the (insert appropriate official) to be necessary to verify the suitability of the land for affordable units.

**C. Where Payment of a Fee In Lieu of Constructing Affordable Workforce Housing Units is Proposed**

If payment of a fee in-lieu of constructing affordable workforce housing units is proposed in accordance with Section 1.3.2, Alternative Means of Meeting Affordable Workforce Housing Requirement, the mitigation plan shall include the amount of the fees to be paid and supporting calculations.

**1.3.2 ALTERNATIVE MEANS OF MEETING AFFORDABLE WORKFORCE HOUSING REQUIREMENT**

**A. General**

1. To the extent it is impracticable to construct the minimum number of affordable workforce housing units required in Section 1.3.1, General Requirements for Provision of Affordable Workforce Housing, for a new residential development, the developer may meet the affordable workforce housing requirement by one or more of the following:
  - a. Converting existing market-rate housing units to affordable workforce housing units;
  - b. Conveying land for use as a site for development of affordable workforce housing units; or
  - c. Paying a fee in-lieu of constructing the required affordable workforce housing units.
2. Provision of required affordable workforce housing shall be considered impracticable if:
  - a. The number of affordable residential dwelling units required is less than one;

- b. The applicant has attempted, to the maximum extent practicable, to design the affordable housing on-site or off-site, but cannot comply with the zoning ordinance;
- c. The affordable units located on-site would be incompatible with surrounding land uses;
- d. The proposed affordable units are not proximate to existing or planned employment, schools, or commercial services; or
- e. The affordable units cannot be designed and located in compliance with federal or state law.

**B. Conversion of Market-Rate Housing Units to Affordable Workforce Housing Units**

If the affordable workforce housing requirement is to be met by converting market-rate housing units to affordable housing units, the converted units shall:

- 1. Be located in (insert name of local government);
- 2. Be proximate to existing or planned employment, schools, or commercial services;
- 3. Be in compliance with the zoning ordinance;
- 4. Be in compliance with federal and state law;
- 5. Be designed and built in a way that is compatible with surrounding land uses; and
- 6. Be restricted as affordable units in perpetuity.

**C. Conveyance of Land as Site for Affordable Workforce Housing**

If the affordable workforce housing requirement is to be met by conveying land for use as a site for affordable workforce housing units, the land that is conveyed shall:

- 1. Be located in (insert name of local government);
- 2. Reasonably support the construction of an appropriate number of affordable units at densities that make the development economically efficient under the zoning ordinance;
- 3. Have all appropriate federal or state permits needed for development, or assurances such permits will be approved;
- 4. Be ready for development and include appropriate soils and topographic conditions, the necessary roads, water supply, sewage disposal, telephone, electricity and gas (if available) and other basic services, which are in place to the property line of each lot, as applicable;
- 5. Be proximate to existing or planned employment, schools, or commercial services;
- 6. Be free of any liens or other encumbrances;
- 7. Be dedicated for affordable residential units;

8. Have an established fair market value that is sufficient to mitigate the need for affordable housing created by the residential development for which it is provided, in accordance with the standards in the regulation; and
9. Be conveyed prior to or concurrent with approval of the first development permit for the residential development.

**D. Payment of In-Lieu Fees**

If the affordable workforce housing requirement is to be met by paying a fee in-lieu of constructing the required affordable workforce housing units, the following standards shall apply:

1. The in-lieu fee shall be based on the inclusionary goal, and calculated based on the housing assistance (subsidy) that will make the residential units needed affordable to the workforce.

*Comment. This analysis would occur in the Workforce Housing Support Study.*

2. The in-lieu fee shall be paid at time of subdivision plan approval or building permit issuance, as appropriate.
3. The in-lieu fee shall be deposited into an interest-bearing affordable workforce housing trust account established by (insert name of local government), and may be spent only for the purposes of planning, subsidizing, or developing affordable workforce housing within (insert name of local government).
4. Any part of the fee that is not spent for the purposes set forth in paragraph 3 above within \_\_ years after deposit into the affordable workforce housing trust account shall be returned to the fee payer at the fee payer's request.
5. If approval of the residential development for which the fee was paid expires without construction of any housing units, the fee shall be returned to fee payer, at the fee payer's request.

## 1.4 REQUIREMENTS FOR CONSTRUCTION OF AFFORDABLE HOUSING UNITS

### 1.4.1. GENERAL

Affordable workforce housing units constructed in accordance with this section shall:

- A. Restrict and maintain the units as affordable, in perpetuity.
- B. Comply with the minimum size requirements established in (insert local government)'s Affordable Housing Guidelines, attached as Exhibit \_\_, and incorporated herein by reference.<sup>5</sup>

<sup>5</sup> In addition to the occupancy standards, local governments that establish inclusionary housing standards also establish guidelines that control the minimum size of the different types of affordable units built, as well as controls on the sale and rental of such units. The size requirements are established to ensure the affordable units are of a reasonable minimum size for the occupants. The sale and rental controls are established to ensure the units are sold or rented to members of the workforce that need affordable units (their income is such that they can only reasonably afford affordable units).

- C. Restrict the sales and rental terms, and occupancy limitations to comply with (insert local government)'s Affordable Housing Guidelines.<sup>6</sup>
- D. Use building materials that have a compatible exterior style to other units in the development.
- E. Provide each unit, at a minimum, with a fully equipped kitchen and bathroom, areas for living and sleeping, and designated areas for storage.
- F. Provide design features that are comparable to other market units in the development, including but not limited to: decks, patios, parking, fencing, and landscaping.
- G. Comply with all applicable minimum zoning ordinance requirements, and the building code requirements.
- H. Be ready for occupancy no later than the date of the initial occupancy of the free market portion of the residential development of which it is being provided (If the free market portion is developed in phases, the affordable residential units shall be developed in proportion to the phases.)

## **1.5 INDEPENDENT CALCULATION FOR ALTERNATIVE MITIGATION<sup>7</sup>**

### **1.5.1. GENERAL**

An applicant may elect to prepare an independent calculation for alternative mitigation if the applicant believes the nature, timing, or location of the proposed residential development is likely to result in less need for affordable workforce housing than otherwise required in this section. The independent calculation shall be prepared by the applicant and submitted to the Administrator with the mitigation plan. (See Section 1.2, Procedures.)

### **1.5.2. REQUIRED PRINCIPLES AND METHODS FOR INDEPENDENT CALCULATION**

The independent calculation for alternative mitigation may provide alternative data in one or both of two areas: the need for affordable workforce housing or the occupancy rate of the affordable housing units. The applicant shall use generally accepted principles and methods and verifiable local information and data, and other appropriate materials to support the independent calculation for alternative mitigation.

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<sup>6</sup> See footnote 5.

<sup>7</sup> In order to allow for a safety valve for unusual conditions, some inclusionary housing regulations include provisions (as do other exaction regulations) that allows the developer, through an independent analysis of the particular development, to demonstrate that the need for affordable workforce housing units created by the particular development is not as great as the community-wide nexus study (Workforce Housing Support Study) shows. This section allows for that type of independent analysis.

For example, an age-restricted (over 55) development run and operated by a religious institution for former ministers and church employees, subsidizes construction of the units so they can offer reduced rental rates to persons who qualify to live in the complex. The price reductions make the units much more affordable. Two other buildings with 50 one bedroom units were built and have been in operation for five years. Data shows that the rental rates for these units with this subsidy, make them much more affordable than the average one bedroom unit in the community. The development applicant could submit an independent calculation for alternative mitigation identifying these facts, and demonstrate how the developer will assure that the rental rates of these new units would remain at a level below what is generally expected in the community. Based on these circumstances, the affordable workforce housing mitigation requirements might be reduced.

**1.5.3. REVIEW STANDARDS**

If, on the basis of generally recognized principles of impact analysis, the Administrator determines the data, information, and assumptions used by the applicant to calculate the independent calculation satisfies the requirements of this section, the amount of affordable workforce housing needed for the proposed residential development will be adjusted, consistent with the findings in the independent calculation for alternative mitigation.

**1.6 AFFORDABLE HOUSING AGREEMENT**

Any adjustment made to the affordable housing needs required for proposed residential development in Section 1.3, Affordable Workforce Housing Standards, shall be set forth in an affordable housing agreement, which shall be made a part of the housing mitigation plan approval.