



## **Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing**

### **Applicability/Conditional Use Requirement**

Division 30, Section 14-487 of the City's Zoning Ordinance requires that development projects creating ten (10) or more new dwelling units for rent or for sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements set aside a portion of the project as Workforce Housing. This provision does not apply to projects that have submitted complete Master Development Plan, Level III Site Plan, or comparable applications to move forward prior to November 18, 2015.

All developments of ten (10) units or more are conditional uses subject to Planning Board review on the condition that they comply with the requirements set forth in Division 30, Section 14-487.

### **Workforce Housing Minimum**

At least ten percent (10%) of the units in the development shall meet the definition of Workforce Housing Unit for rent. The number of units required is rounded down to a whole number whether the Workforce Units are provided on- or off-site. A fractional fee-in-lieu would result when the calculation of a project's inclusionary obligation results in a fractional unit. The fractional unit obligation would be provided in the form of a proportional fee-in-lieu. For example, a 19 unit project that provides one Workforce Unit would also pay 90% of the fee-in-lieu. If a Developer prefers to pay a fee-in lieu of each Workforce Unit, than the Workforce obligation will be calculated on a fractional value to one tenth. For example, a project creating 26 units of housing would be required to provide two (2) Workforce Units and a fractional obligation of 60% as a fee-in-lieu. If the Developer instead prefers to pay the fee-in lieu of providing Workforce Units the Developer would be required to pay 2.6 times the current rate as established by the City.

### **Household Income Limits**

In accordance with Division 30 of the City's Zoning Ordinance, the rental of Workforce Units will be restricted to households at or below 100% of the area median income (AMI). The City will reference Area Median Income figures published annually by HUD for the Portland Metropolitan Statistical Area (MSA) or other income limits as deemed reasonable by the City. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

### **Eligibility of Households for Workforce Rental Units**

At the time the lease is finalized, a tenant must be a member(s) of an Eligible Household as defined within the Background & Definition section of the City's Inclusionary Zoning Guidelines. The Household must occupy the Workforce Rental Unit (Workforce Unit) as its primary residence.



Household size/composition upon the unit’s rental should be appropriate to the size of the unit as outlined in the charts below. For the qualification of households by unit size, the head of the household and spouse/partner are assumed to share a bedroom. Two children, whose ages are not excessively disparate, may share a bedroom. Legal custody is required for households including one or more minor children. A household that consists of a pregnant woman will be treated as a two people for income and household size determinations. On average, there will be no fewer than one, nor more than two persons per bedroom.

The City will consider households eligible based on their gross income. The City will use a process similar to what HUD recommends for the HOME program to determine gross income or another method as deemed reasonable by the City. The Owner or their representative will collect and compile all of the relevant paperwork needed to assess a household’s eligibility. Verification will require sufficient proof of household size and income in the form of official tax statements, W-2 forms, pay stubs, credit reports, bank statements, birth certificates, and any other reasonable documents requested by the City or Owner to aid in their efforts to verify whether or not a household is eligible. The City may request additional information as needed. The City shall have the final approval of whether or not a household meets the income or size requirements of each Workforce Unit prior to the signing of the lease.

The chart below indicates the minimum household size for each unit type based on bedroom count.

	<b>Studio/One-Bed</b>	<b>Two-Bed</b>	<b>Three-Bed</b>	<b>Four-Bed</b>
<b>Minimum Household Size By Bedroom</b>	1	2	3	4

Workforce Units will also be subject to maximum household sizes based on bedroom counts. The following chart outlines the maximum persons allowable per bedroom assuming the occupants meet all other requirements related to qualifications for determining a household such as age of children sharing bedrooms.

	<b>Studio/One-Bed</b>	<b>Two-Bed</b>	<b>Three-Bed</b>	<b>Four-Bed</b>
<b>Maximum Household Size By Bedroom</b>	2	4	6	8

Eligible Households may not qualify if at the time of application any member of the household owns residential real estate.

The City reserves the right to perform an asset test to help determine a household’s income. This may include making certain assumptions about the average returns that would be reasonable to expect from certain investments including stocks, bonds, annuities, mutual funds, dividends, trusts,



money market accounts, certificates of deposit (CD's) or other financial instruments. The City may request documentation for the three most recent years to help determine a household's income.

The City reserves the right to place an asset limitation test for eligibility.

If Owners find it difficult to rent a Workforce Unit to an Eligible Household who meets the established minimum size requirements they may ask for approval in writing from the City to rent the unit in this singular instance to an Eligible Household smaller than the minimum household size described herein. Reasonable marketing efforts to find Eligible Households of a qualified size should be taken for at least 30 days prior to the City granting a household minimum size waiver. The waiver is only for a single applicant and that household's recertification. Rent shall be calculated based on this smaller household size. Once the Workforce Unit is vacant, minimum household sizes shall apply to future tenants. The City shall determine if the efforts of the owner to rent the unit to an appropriately sized household have been reasonable. Under no circumstances will households be allowed to exceed the maximum household size.

### **Primary Residence**

At the time of occupancy, the Workforce Unit must be the Eligible Household's primary residence. The Unit may not be rented out for short or long term periods to other households.

A household must notify the City if it is absent from the Workforce Unit for 30 days in any 45-day period. If the Household is absent from the Unit for a period exceeding 60 days in one consecutive 365 day period for reasons other than work obligations, health, or emergency reasons than the Household's eligibility will be terminated and their lease shall not be renewed.

Where absences in excess of the above limitation are caused by work obligations, or health reasons or other emergency, the City may require verification of the reasons for the tenants' absence. Households must comply with such requests for verification work, health, or emergency reasons or their lease will not be renewed. For the purposes of this section, incarceration does not constitute a health or other emergency justifying prolonged absence from the home.

### **Determination of Affordable Monthly Rent**

In accordance with Division 30, rental of Workforce Units will be restricted to households with income at or below 100% of the Area Median Income (AMI). When determining income eligibility, the City will reference income limits and/or in the AMI figures published annually by HUD for the Portland Metropolitan Statistical Area. The City will make available on its website a list of income limits by household size. If at a time in the future HUD no longer provides these annual figures, the City will identify another similar method of determining income guidelines for affordability.

To maintain consistency of Workforce Units within the City, rents will be based on the minimum household size per bedroom rather than the income level of a particular applicant. For example, the minimum household size for a two-bedroom Workforce Unit is two (2) persons. The income of a two



(2) person household will be used to calculate the maximum allowable monthly rent but a family of four (4) would still be eligible to live in the unit assuming they meet the income restrictions for a four (4) person household. To calculate the maximum allowable rent of a Workforce Unit the City will take 30% gross income per month of the minimum household size allowed per bedroom less utilities. By factoring utilities, the formula accounts the maximum amount an Eligible Household could afford to devote to housing related expenses. The formula to calculate maximum allowable Workforce Rents is as follows:

*0.30 X (annual income based on minimum household size / 12) less utilities = Workforce Rent*

To determine the maximum allowable rent for studio Workforce Units the City will calculate 85% of the allowable housing related expenses for an Eligible Household using the following formula:

*0.30 X ((annual income based on minimum household size / 12) X 0.85) less utilities = Workforce Studio Rent*

Owners may choose to include some or all utilities within the total rent. Utilities that effect rent calculations include electricity, heat, hot water, cooking energy, sewer, water, and trash collection. For all utilities listed that are not included by the Owner in the rent the City shall make reasonable assumptions based on a Unit's bedroom count as to the monthly cost of each utility. To determine what is reasonable the City may utilize the figures estimated by HUD and distributed through the Portland Housing Authority annually for similar utility allowances based on a unit's bedroom count. The City shall reserve the right to determine a different metric should these figures from HUD at any point be unavailable or a better metric be determined.

The Owner may request first, last, and security deposit from applicants. These three expenses shall not exceed the value of one month of rent and together shall not exceed three months of rent.

Households may choose to pay for on-site parking but shall not be required to pay separately for this amenity. If the Owner requires a parking spot(s) be leased with the Workforce Unit and charges a separate fee than parking may be counted similarly to the utilities above and shall be subtracted from housing related expenses for calculating the maximum allowable rent.

Owners may not rent to household's utilizing other rental subsidies such as vouchers without the City's approval and never shall the total rent paid be in excess of the allowable Workforce Unit rent for a determined bedroom size.

### **Phasing**

Projects shall not be segmented or phased to avoid compliance with these provisions. In cases where projects are completed in phases, Workforce Units shall be provided in proportion to the development of market rate units unless otherwise permitted through regulations.



### **Integration of Units**

Workforce Units are encouraged to be integrated with the rest of the development, should use a common entrance, and should provide no indications from common areas that these units are Workforce Housing Units.

### **Size and Bedroom Count**

Workforce Units need not be the same size as other units in the development but the number of bedrooms in such units, either on- or off-site, shall be ten percent (10%) of the total number of bedrooms in the development. For the purposes of this section, every 400 square feet in a market rate unit will count as a bedroom if the actual number of bedrooms in the unit is lower.

### **Interior Standards**

The design, quality, and materials of Workforce Units interiors need not be the same as market rate units. However, the Workforce Units may not be strategically designed to avoid offering basic amenities similar to what are included in the market rate units such as the following:

#### Kitchen

- Refrigerator
- Stove or separate cook top and oven
- Sink Disposal
- Cabinets
- Range Hood
- Microwave (if provided in market rate units)
- Washer Dryer (if provided in market rate units)
- Countertop: Minimum Counter Space not including sink and stove
  - Studio – 4 linear feet
  - 1BR – 6 linear feet
  - 2BR – 8 linear feet
  - 3BR – 10 linear feet

#### Bathroom

- Sink
- Shower
- Toilet
- Shower Curtain Rod or Shower Door
- Medicine Cabinet with Mirror or other storage space with a separate mirror

#### Flooring

All living space and storage areas shall have a finished floor. The Workforce Units should have the same or comparable floor finishes to the market rate units. However, in order to promote respiratory health, living and dining areas and at least one bedroom should have a surface other than carpet.



**Closets**

All units shall have adequate storage (including common space storage if provided to the market rate units)

All bedrooms shall have at least one closet including at least one closet for a studio

All closets shall have a shelf and pole

**Public Funding Sources**

Projects that propose greater levels of affordability than what is required in Division 30 in terms of income levels, term of affordability, or number of units may be eligible for some financial resources through the City at the City's discretion.

**Tax Increment Financing Eligibility**

If at least thirty-three percent (33%) of the units in a development are Workforce Units, the development is eligible to request subsidy funding through an Affordable Housing Tax Increment Financing (TIF) deal, subject to City Council approval.

**Affordable Housing Agreement**

The Owner will be required to sign and record in the Cumberland County Registry of Deeds an Affordable Housing Agreement (AHA) with the City and to include the affordability restrictions as a covenant in the project's deed(s). The Affordable Housing Agreement shall be referenced directly in the property's deed unless prohibited by federal, state, or local law. In order to guarantee affordability, this recorded covenant will limit increases in rent according to the calculation defined by the City and the Eligible Household requirements as they relate to increases in median income. It will limit the incomes of subsequent tenants to the same income limits initially applied.

**Minimum Term of Affordability**

The term of affordability for the required 10% Workforce Units provided shall be defined as follows:

Percentage of Workforce Units Provided	Minimum Term of Affordability
10%	Longest term permitted under federal, state, and local laws and ordinances.
25%	30 Years
50%	20 Years
100%	10 Years

For Workforce Rental Units the reduced terms of affordability will apply to all proposed Workforce Units including those in excess of the required minimum 10% of units. For example, if a rental project proposed to develop 40 units of housing of which 10 units, or 25%, would be reserved as Workforce Units, than all 10 Workforce Units would have a 30 year term of affordability.



Dwelling units created or redeveloped by non-profit educational institutions for use as housing exclusively for enrolled students of educational institutions shall not be subject to the set aside requirement of Division 30. If the units are no longer used exclusively by enrolled students the building will be required to meet the workforce housing standards set forth in Division 30.

**Reduction of Fees & Priority Review**

Notwithstanding any other provision of Chapter 14 or Chapter 6 of the City's Zoning Ordinance to the contrary, development fees shall be reduced by the City for an eligible project in the manner described in the chart below:

Percentage of new units that are low-income or Workforce Units	Percentage discount of development fees
5% up to but not including 10%	5% reduction
10% up to but not including 15%	10% reduction
15% up to but not including 20%	15% reduction
20% up to but not including 25%	20% reduction
25% or more	25% reduction

**Household Preference**

Household preference for Workforce Units shall be given, to the extent permitted under law to Eligible Households, in the following order:

- 1) Current residents of the City who have lived in Portland as their primary residence for the past two years
- 2) Previous residents of the City who were displaced within the last 12 months prior to the Workforce Unit becoming available
- 3) Persons employed full time by the City
- 4) All others

The applicant for housing will be responsible for documenting their preferred status under any of the above noted categories. Documentation may include confirmed leases, bank statements, utility bills, voter registration, tax returns, insurance statements, and other reasonable documents as requested by the City or Owner to demonstrate preferred status. The City or Owner may request more than one form of documentation.

Household preference does not preclude Owners from renting to non-preferred applicants assuming applicants meet the necessary eligibility requirements and there are more Workforce Units available than eligible preferred applicants. Other preference categories may be added to specific projects or to the City's standards at a later date as appropriate.



### **Marketing / Selection Process**

In each instance that an Owner intends to rent a Workforce Unit, prior to listing the property for rent or renewing a lease, an owner shall first give the City written notice of such intent (the "Notice of Intent") addressed to the City's Housing and Community Development Office. The City shall make the final determination whether or not a potential household is qualified as well as the maximum allowable rental price as determined in accordance with the calculation parameters determined by the City.

Unless otherwise agreed to with the City, the following system will be followed. The Owner will place an advertisement, approved by the City, in one or more newspapers designated by the City. Interested parties will be given sufficient time to request and return a preliminary application. The City shall have the opportunity to list the property on its website for a minimum of 60 days for initial occupancy and 30 days for subsequent rentals during the marketing process to solicit interest from potential Eligible Households. The City will forward any inquiries to the Owner or their designated representative.

The Owner shall collect all necessary supporting documents for the City's final approval. The City will, at a minimum, monitor the process and review buyer qualifications, but may work collaboratively with Owners on marketing, selection, qualification, and orientation. All determinations regarding eligibility and rental amount are subject to review and final approval by the City.

### **Maintenance of a Waiting List**

The Owner is encouraged to maintain a waiting list of Eligible Households by preferred status who have filed an application or a letter and who meet the qualifications defined herein. Such applications should include the following in order to classify the applicant: the ages, genders, and relationships of household members, gross household income, and information related to preferred status and household eligibility. It is understood that it is the responsibility of the applicant to update information, which will affect their income, household eligibility, or preferred status, and that it is not the responsibility of the Owner to verify actual status until a unit becomes available. Final approval of Eligible Households, Workforce Units, and maximum allowable rent will be decided by the City.

### **Leases**

All leases will be a year in length with the rent consistent throughout the term of the lease. The maximum rent allowable will be determined at initial application and during any recertification process prior to the renewal of a lease. Tenant leases for Workforce Units shall include the method for updating rents set forth in these guidelines and as a condition of continued eligibility, obligate the household to report all information required by these guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies and the City. The lease shall also include the method and implications of the recertification process for Workforce Units as outlined in these guidelines. Eligible Households renting workforce units will be recertified annually with final approval from the City before renewing a lease.





Tenant leases shall include the method for updating of rents set forth in these guidelines and, as a condition to continued eligibility, obligate the household to report all information required by the guidelines, including providing copies of applications, recertifications, and supporting documentation used by administrators of rental subsidies. The Owner shall enforce the lease, if necessary to the point of terminating Eligible Household status, requiring market rents, and initiating and prosecuting eviction proceedings against renters of workforce units who do not report as required or whose eligibility lapses.

### **“Floating” Workforce Units**

Prior to the Project’s approval, the Owner and City shall agree to the distribution, size, and bedroom type of the Workforce Units in order to include these details in the Affordable Housing Agreement (AHA). Owners are encouraged to distribute workforce units equally throughout the project. Designated Workforce Units within any development may be “floating” i.e. changed by substitution, that is, the designation of a unit as affordable does not necessarily stay with the same unit over the life of the development. The Project shall maintain the required number of bedrooms and Workforce Units as outlined in the AHA and may only switch which unit is reserved as a Workforce Unit with City approval following certain recertification situations as described in greater detail below.

### **Recertification of Workforce Units**

Prior to the renewal of a Workforce Unit’s lease, the tenant shall recertify that their household meets the eligibility and household size requirements for the unit. The same process and documentation will occur as with the initial lease up of the Unit. Unless the Owner can substantiate claims that the tenant has violated terms of the lease or is refusing to adequately comply with the recertification process no other households may be considered to lease the Workforce Unit unless the current tenant chooses not to renew their lease. The Owner or their representative shall collect and compile the necessary recertification documentation. The City shall have the right of final approval. The Owner or their representative shall maintain records of the recertification process as described in greater detail in the Administration & Record Keeping section below.

### **Loss of Household Eligibility**

A unit shall lose its designation as a Workforce Unit when it no longer houses an Eligible Household. This will occur upon two consecutive recertifications wherein a once Eligible Household’s income is greater than the allowed AMI and is no longer considered eligible. The recertification of all applicants may be subject to final approval from the City. In this scenario, an Owner may, with 90 days’ notice, charge Market Rent. The tenant is then eligible for continued occupancy in the particular unit for one additional year following the date of the most recent recertification. After any adjustment in accordance with the above, the next available appropriate unit should be rented to an Eligible Household, so as to restore and maintain the unit size, type, and mix originally intended. The City shall have final approval that any substitute unit is appropriate for satisfying the requirements intended for Workforce Units within the Project as defined within the AHA.



If no suitable alternative unit becomes available to rent as a Workforce Unit within a year of the former Eligible Household now paying Market Rent than the Owner shall not renew the former Eligible Household's lease and shall return the unit to its use as a Workforce Unit for Eligible Households. The Owner shall cooperate with the City and with any documentation that it deems necessary to approve the substitute Workforce Unit or Eligible Household.

In the case where the tenant has been accepted as a market rate tenant, the Owner shall pay to the City's Housing Trust the cash value of the difference between the maximum allowable Workforce rent and the market rent until such time as another unit has been approved by the City as an acceptable substitute Workforce Unit and occupied by an Eligible Household. Occupancy during this transition period by an over-income household will not constitute default under the conditions set forth in the AHA.

### **Household Failure to Participate in Recertification**

A household is considered to have failed to participate in the recertification process after not sufficiently responding to three written requests by the Owner or City within a 60 day period. Tenants may not be asked to participate in a recertification process more than one time per 365 day period. The City shall have final approval in regards to whether sufficient evidence has been provided to substantiate a household's failure to participate in the recertification process.

### **Eviction**

Assuming the lease meets all federal, state, and local requirements, nothing in these guidelines are meant to restrict the right of the Owner to evict any tenant who fails to participate in the recertification process or breaches the lease with the Owner in any way. In no case shall the Owner be required to support an overall higher level of subsidy than intended by the initial distribution as outlined in the AHA. Any and all costs associated with said enforcement or eviction shall be born by the Owner.

### **Enforcement**

The Owner will be required to record the AHA and conditions contained therein and shall file a copy of the recorded Agreement which copy shows the usual recording date, with the Cumberland County Registry of Deeds. In the case of off-site Workforce housing, the Owner shall record the AHA in the chain of title for both properties. No occupancy permit shall be issued until complete certified copies of the AHA with any attachment thereto and with the recording date(s) noted thereon, are filed with the County and suitable evidence provided to the City.

Without limitation on any other rights of the City, in the event there is a violation of any conditions contained within the AHA, the City may take any one or combination of the following steps to ensure compliance and these enforcement provisions shall be expressly authorized by and contained within the AHA:



- Revocation or the Project's approval, Building Permit, or Certificate of Occupancy;
- Modification of the AHA;
- Injunctive relief to enforce the terms of the AHA;
- Payment of money damages to the City in an amount at least equal to and as much as double the required rent and the rent being charged for the period of non-compliance;
- Any and all legal expenses incurred by the City or aggrieved tenant(s); and
- A cash payment, as provided for in Division 30 related to fee-in lieu payments, pro-rated to the number of required affordable units, made to the City if the Owner is unable to provide Workforce Units for occupancy as described in the AHA.

The Owner may request a certificate from the City stating that the Owner is in compliance with the terms and conditions of the AHA, or stating non-compliance and the actions necessary to come into compliance. The City will execute and deliver such certificate within thirty (30) business days or receipt of a written request for such a certificate. Certificates of compliance shall not be required for the leasing of any Workforce Units.

#### **Administration & Record Keeping**

The Eligible Household's application, recertification forms and documentation, and any third party verifications must be maintained by the Owner throughout the Eligible Household's occupancy and for a period of at least seven (7) years thereafter. These records must be available to the City within ten (10) business days if requested. Applications and waiting lists shall also be kept on file for a period of at least seven (7) years or some other period of time if deemed reasonable by the City.

The Owner will file an annual report to the City within 60 days of the end of each calendar year providing information related to Workforce Unit vacancies, waitlists, household turnover, household size, household income, market rate rents, recertifications, and any other relevant information.

#### **Cash Payment In Lieu of Affordable Units**

All projects including ten (10) or more residential units created through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of a non-residential use to residential use, or any combination of these elements must comply with Section 14-487 of the Code. The projects will be required to provide 10% of the total number of units as Workforce housing as defined in Section 14-485 of the Code. Developers of such units are encouraged to provide Workforce Units on-site. However, in accordance with subsection 14-487(e) 4, developers may choose to make a cash contribution to Portland's Housing Trust Fund.

The payment is the same for rental and homeownership projects. The fee for Workforce Units not provided shall be \$100,000 per unit, adjusted annually in the same manner as the fee under Division 29 for Housing Replacement. For projects that are building more than one building in phases, the fee-in lieu payment shall be paid proportionally to the project's phasing. The fee is calculated up to one



tenth of a fractional unit. For example, if a project is proposing 25 units and prefers to pay the fee for all units the Developer would be required to pay 2.5 times the current rate as established by the City.

All money shall be due prior to the issuance of a Certificate of Occupancy or another payment method approved by the City.

### **Off-Site Units**

A Developer may choose to satisfy the Workforce Unit requirements by providing these units off-site through the construction of new units, the restriction of existing market rate units, or the conversion of non-residential uses. In addition to the foregoing, all off-site units shall be consistent with the following provisions:

1. Be located within the same Census Block Group as the parcel from which the Project triggering the creation of Workforce Units is located or within 1,500 feet of the Project;
2. Be comparable or larger in size and bedroom count to the average units being created within the associated Project.
3. Be similar in quality to the units being created within the project and if needed, as determined by the City, shall be rehabbed to be similar in quality to a newly constructed unit.

The Developer shall determine the intent for full or partial off-site placement of Workforce Units prior to a project's approval by the City. The City shall not accept off-site units that are run down or show signs of substantial wear and deterioration. This includes heating systems, appliances, plumbing, roofing, siding, flooring, common areas, windows, landscaping/hardscape, electrical wiring, and fixtures, kitchen/bath countertops, fixtures, cabinets, bath/shower, or other typical elements of a unit or building that are nearing the end of their expected life cycle and may soon need replacement or maintenance. If other amenities, such as air conditioning, dishwasher or washer and dryer are provided for the new market rate units than comparable amenities shall be provided for the off-site Workforce Units.

Off-site units shall be delivered safe in accordance with all federal, state and local environmental regulations pertaining to lead paint, asbestos, mold, radon, and any other hazardous conditions common to residential structures. All reasonable tests, including but not limited to lead paint tests and radon tests shall be completed prior to the sale or lease of a unit.



## **Appeals**

A Developer or Owner or Tenant may appeal to the City Manager if they believe that City misinterpreted Division 30 or any subsequent agreements restricting the Workforce Units. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.

## **Non-Eligibility/Disqualification**

No employee, agent, stockholder, officer, director, servant, or family member of the Owner or its Management Company, or its employees, agents, or servants thereof, related either by blood, marriage, or operation of law may qualify for a Workforce Unit or receive any benefit related in any way to the administration or compliance with the AHA conditions contained therein.

Employees of the Planning Authority will not be eligible for a Workforce Unit in the City.

## **Waiver**

The City reserves the right to waive or amend portions of these regulations on a case by case basis where an Owner is able to sufficiently demonstrate that the need for a waiver is due to the unique circumstances of the property (e.g. in order to make Workforce Units similar in design or size to market rate units) or due to unique physical constraints of the property. The applicant shall bear the burden of presenting substantial evidence to support the grant of a waiver from any portion of these regulations.

Waivers shall not be granted that will have the effect of removing or reducing the minimum of 10% of the total units proposed as Workforce Units available, altering the income limits on eligible households, increasing the maximum allowable sale price or rental rate, or decreasing any fee owed outside of what is stipulated in the above regulations.

Waivers shall be determined by the City's Planning Authority. Owners may appeal the Planning Authority's decision regarding waivers to the City Manager. All such appeals shall be made in writing and include a description of the City action which is being appealed and the grounds for the appeal.