

**INCLUSIONARY HOUSING ORDINANCE**  
**ADMINISTRATIVE RULES AND REGULATIONS**

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Adopted pursuant to Article IV, Chapter 27 (Housing) of the Denver Revised Municipal Code (D.R.M.C).

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## **SECTION 1: PURPOSE, DEFINITIONS AND RESPONSIBILITY**

### **I. PURPOSE**

The purpose of these rules and regulations is to set forth the procedures for administration and implementation of the Inclusionary Housing Ordinance or IHO codified at Article IV, Chapter 27 (Housing) of the Denver Revised Municipal Code (D.R.M.C.) The rules are to be used for any new residential development or existing residential development proposing to undergo substantial rehabilitation as defined below. The rules also establish the responsibility for implementation of the Inclusionary Housing Ordinance between the benefited Applicant / developer and the City and County of Denver. It should be recognized that no set of regulations can anticipate every conceivable situation in which an ordinance may apply, and it is anticipated that these may be amended or supplemented from time to time. Further, these regulations are not intended to limit the administrative discretion of those persons implementing the IHO on subjects not covered herein. In some instances these rules and regulations attempt to summarize portions of the IHO. In the event of a disagreement between these rules and regulations and the IHO, the IHO always controls.

### **II. DEFINITIONS**

Any terms or phrases stated but not defined herein are implied from or deferred to the IHO. Terms or phrases specific to or introduced in this document are defined below and/or referenced to equivalent terms in the IHO.

**“Affordable Housing Plan (AHP)”** carries the same meaning as the MPDU Plan defined in the Ordinance.

**"Director"** has the same meaning as in the ordinance.

**“Housing Incentive Program Fund”** referred to in the Ordinance as the Special Revenue Fund, is a special purpose fund (16808-0145000) established and operated by Denver’s Department of Housing Stability (HOST) for the purpose of furthering affordable housing goals in Denver.

**“High Cost Structure”** has the same meaning as in the IHO.

**“MPDU”** for the purposes of these rules mean an affordably priced unit:

1. Constructed under the terms of the ordinance; or
2. Constructed as an MPDU as part of a master plan creating at least two hundred (200) MPDUs pursuant to a contractual commitment requesting incentives and entered into before December 1, 2014 which;
  - a) Will not meet the requirements of this article but which has been determined under section 27-119 to be eligible for the incentives set forth in sections 27-107 and 27-108 and which contain, by virtue of the contractual commitment described in article 27-119 (d), the following characteristics with respect to the affordable dwelling units:

- (1) Price limitations on sales such that the units are affordable to those averaging no more than eighty percent (80%) of AMI (but in any event, no more than one hundred percent (100%) of the AMI), or for high cost structures no more than ninety-five percent (95%) of AMI (but in any event, no more than one hundred ten percent (110%) of the AMI).
- (2) Rent limitations such that the rent shall not exceed thirty percent (30%) of an average of sixty-five percent (65%) of AMI, less a utility allowance as calculated by HUD, provided that for high cost structures, the rent shall not exceed thirty percent (30%) of an average of eighty percent (80%) of AMI, less a utility allowance as calculated by HUD;
- (3) Eligibility restrictions to provide that eligible purchasers or renters shall be limited to households earning no more than one hundred percent (100%) of AMI, or for high cost structures no more than one hundred ten (110%) percent of AMI;
- (4) A control period beyond the initial sale for a defined term of not less than fifteen (15) years; and
- (5) An enforcement mechanism during the control period to ensure long term affordability to eligible households;
- (6) After December 1, 2014, is covenanted under the IHO pursuant to a customized alternative.

**“Special Needs Populations”** means elderly persons, persons with disabilities, persons with HIV/AIDS, or other special needs populations as may be defined by HUD.

**“Substantial Rehabilitation”** means more than 50% of the floor area of an existing building is being rehabilitated such that the estimated cost of the rehabilitation should not be less than 25% of the value of the property (including land) after rehabilitation. The rehabilitation should be of such scope that, when completed, all the components in the house are operable and should not be anticipated to require any work or major expense over and above normal maintenance for the first one-fourth of the mortgage term.

### **III. ASSIGNMENT OF AUTHORITY**

Under authority of the Ordinance, HOST bears responsibility for the administration and implementation of the IHO. HOST facilitates the development of viable urban neighborhoods by providing quality affordable housing, a suitable and enhanced living environment, and expanded economic opportunities for persons of low and moderate income.

Development Review Committee (DRC or the Committee) conducts the review of site development plans and general development plans. By Ordinance, the Committee

consists of the Manager of Community Planning and Development (CPD), the Manager of Public Works, the Zoning Administrator, the Chief of the Fire Department, and the Manager of Parks and Recreation, or their designated representatives. A CPD representative or CPD project coordinator functions as the coordinator of the Committee.

**A. Responsibility of Applicant/Developer**

The Applicant of any project determined to be subject to the provisions of the IHO shall be responsible for providing current, complete, accurate and valid information regarding the development, and for responding to additional inquiries determined by the Director to be necessary for making a determination of compliance and for implementing applicable provisions of the IHO. In addition to the application documents required by CPD and other City departments and agencies for site plan or building permit approval, the Applicant shall work with CPD which will submit to HOST a completed Preliminary Project / Plan Initiation form, which shall include the names of the owners of each parcel of the sites or portions thereof, which are contiguous to the proposed project site.

Contiguous properties which are developed for residential use as part of an overall plan of development, however purchased, will be considered as one project for the purposes of determining compliance with the IHO. An overall plan of development means that property within one half (.5) mile is being developed whether the development occurs all at once or in phases.

**B. Development Review Committee (DRC)**

The CPD project coordination group or DRC are the points of initial contact for any developer seeking a site development plan review. CPD staff will provide initial information about the IHO, refer the Applicant to HOST for further information and processing, and coordinate with HOST to implement any approved expedited review of projects eligible for supplemental incentives. In cases where a rezoning or residential development permit is required, or where DRC is not normally the initial contact, the authority or agency contacted shall inform and refer the Applicant to HOST for further information and processing.

Generally, plans referred to the DRC for review must be approved by each agency constituting the DRC as a condition for approval of the plan. Plans are not approved on the basis of consensus or on the basis of a vote. Each reviewing agency must approve the plan on the basis of specific ordinances and regulations which that agency is responsible for administering. The Committee may not waive the requirements of any individual reviewing agency. HOST is a reviewing agency of the DRC when there are residential units involved in a project, regardless of number and shall provide a response to CPD when informed during the concept review for a site development plan within ten (10) business days of receipt indicating whether or not an AHP is required.

**C. Department of Housing Stability**

HOST shall implement, enforce, and evaluate the IHO. All instruments for

implementation of the ordinance will be developed and maintained by HOST in collaboration with other agencies. HOST is responsible for:

1. Taking applications from households and individuals to determine their eligibility for MPDUs;
2. Notifying eligible households of the availability of MPDUs, issuing compliance letters or affidavits periodically to households occupying MPDUs, and to rental property managers or owners to ensure compliance with IHO rules and regulations;
3. Maintaining a list of all MPDUs built and tracking program inventory, including the dates ending the control period;
4. Maintaining a list of approved home ownership counseling agencies in the Denver Metro area;
5. Designating nonprofit organizations which may act as owners of MPDUs;
6. Reporting to the City Council on income and expenditures of the Special Revenue Fund and other information as required by the IHO to evaluate the success of the program or as may be requested by the City Council.

## **SECTION 2: PROGRAM ADMINISTRATION**

### **I. PRE-DEVELOPMENT INFORMATION**

HOST staff shall provide the developer with information pertaining to mandatory and voluntary compliance with IHO requirements and will make a preliminary determination as to the applicability of the IHO to the proposed project. A preliminary determination is not binding and is contingent upon a final finding to be made by the Director after submission and acceptance of a complete Affordable Housing Plan. The information provided in the developer's preliminary project / plan initiation form shall be used to make a preliminary determination for mandatory or voluntary compliance. The following information is required in order to make a preliminary determination for mandatory or voluntary compliance:

- Project Name
- Address/Location
- Project Type—rental or for-sale
- Number of Units
- Type of Financing—LIHTC, Bond, Conventional, or other

### **II. DETERMINATION OF MANDATORY COMPLIANCE WITH IHO**

Applicants for any one or more residential development approval, general development plan approval, rezoning, site development plan review, or residential building permit which provides for the construction or substantial rehabilitation of a total of thirty (30) or more for-sale dwelling units at one location as defined by the ordinance must demonstrate compliance with the IHO requirements of Chapter 27-105 through providing required on site units, or alternative replacement units or cash in lieu methods described



therein, before any such approval, permit, or certificate of occupancy is issued. The Director of HOST shall have the sole discretion to determine whether a project consists of 30 or more for-sale dwelling units. The Director may consider factors such as timing and phasing of the building project. A for-sale project requiring mandatory compliance will be determined to exist if more than fifty percent (50%) of the dwelling units in the project of thirty (30) or more total units shall be offered as for-sale dwelling units within two years of the issuance of the final certificate of occupancy.

The IHO contains an exemption from compliance for projects using LIHTC and for projects operated by governmental or quasi governmental entities operating pursuant to a governmental program, however, such projects may determine to voluntarily provide MPDUs under the IHO, so long as they comply with all of the terms of the IHO in the same manner as provided under D.R.M.C. Section 27- 113, if the number of MPDUs or number of bedrooms voluntarily provided exceed those which would otherwise be required by the LIHTC or governmental program. The Director, in the Director's sole discretion may agree to accept the proposal for voluntary compliance.

The IHO contains an exemption from compliance for Planned Unit Developments (PUD) which were approved before the passage of the IHO. When a PUD is amended, regardless of the reasons or source of the amendment, it is a new PUD and no longer subject to the exemption and must comply with the IHO. However, to the extent residential units have been built and sold, at the time of the PUD amendment, the requirement to produce affordable units may be deemed fulfilled as determined by the Director of HOST and remaining compliance may be fulfilled by cash in lieu or by production of units offsite.

In addition to other HOST requirements, an Applicant must receive an approved determination of inclusionary housing compliance in order to be eligible to receive a permit or development approval. In order to apply for a determination of compliance, the Applicant shall submit a written Affordable Housing Plan (AHP), containing all elements required by the Ordinance, including the following:

1. A specific percentage of affordable units to be constructed;
2. A construction schedule showing the MPDU construction. MPDU construction shall occur at approximately the same rate or phasing as market rate units unless otherwise provided by an approved alternative AHP;
3. Identification of the number of single family units and the number of multi-family units to be built by the Applicant under the AHP. Multi-family MPDUs shall be provided in the same ratio to market rate multi-family units as single family MPDUs bear to the total number of single family market-rate units; however, Applicants may, at the sole discretion of the Director, be permitted to provide one or more MPDUs in the multi-family portion of the development to offset MPDUs which would

otherwise be required to be provided in the single family portion of the development. This permission shall be considered on a case by case basis and shall include in the consideration of all relevant factors that the intent of the rule is to allow creation of a diverse mix of incomes in every type of structure and neighborhood and to increase the housing choices available to eligible households;

4. Identification of the number of single family units and the number of multi-family market rate units to be built. The number of MPDUs shall meet the ratios required in item (C) of this subsection;
5. A number of bedrooms, which, in single-family dwelling unit developments, shall have a mix of two, three or four bedrooms in each MPDU in a ratio which mirrors the ratio of bedrooms of the market rate units (unless otherwise provided by an approved alternative AHP) and, in multi-family dwelling unit developments, the mix of number of bedroom types shall be at the same ratio for MPDUs as market-rate units in the development. However, for High Cost Structures, Applicants may at the discretion of the Director, be permitted to provide MPDUs which are of the same type as at least ninety percent (90%) of the market-rate units in that development. This permission shall be considered on a case by case basis and shall include in the consideration of all relevant factors that the intent of the rule is to allow developers to build between one and four luxury penthouses, without requiring developers to make such penthouse units available as MPDUs;
6. An exterior design of MPDUs which shall be indistinguishable from other units in the development in terms of quality of finishes and general appearance and an interior design of MPDUs which is the functional equivalent of other units in the development;
7. A dispersed location of MPDUs. Depending on the size of the development, the MPDUs should be dispersed in two or more locations throughout the development or building;
8. A list of all other real property owned by the Applicant within one half (.5) mile of the development;
9. The number, type, location, and plan for staging construction of all dwelling units. The MPDU staging plan shall be consistent with any applicable land use plan, subdivision plan, or site plan. The staging plan included in the MPDU plan for all dwelling units shall be sequenced so that construction of MPDUs precedes or reasonably coincides with the construction of market rate units unless otherwise provided by an approved alternative AHP;

10. The specific incentives requested by the Applicant as set forth in sections 27-107 and 27-108;
11. The system which Applicant will use for initial selection of eligible households to occupy the MPDUs. The system shall be fair and equitable, such as a lottery or first come, first served;
12. A legal description of the real property which will be used for MPDUs;
13. The maximum pricing of the MPDUs, which shall be provided in writing to HOST at the time a final and complete AHP is signed by HOST and recorded;
14. A copy of the city's form for covenants to encumber the MPDUs;
15. A statement that the terms of the AHP will bind the Applicant and will run with the land upon approval of HOST and recording with the Clerk and Recorder of the City and County of Denver;
16. A parking plan which designates what parking will be available for the MPDUs. Parking must be provided for the MPDUs in the same ratio as for the market rate units. Purchasers of MPDUS shall be offered parking under the terms offered to the purchasers of market rate units, except, if parking is being sold separately, the price for the parking must be included in the calculation for the maximum sale price; and
17. A market study showing availability of the market to absorb the units and cap rate if required by HOST for a proposed alternative AHP; and
18. Such other information as HOST requires to determine the Applicant's compliance with the Ordinance.

Once an AHP has been approved by HOST, the assigned CPD Project Coordinator and/or CPD Director will receive the IHO determination.

### **III. DETERMINATION OF VOLUNTARY COMPLIANCE WITH IHO**

Based on information provided in the preliminary project / plan initiation form, Applicants whose projects do not meet the mandatory compliance criteria, but who wish to avail themselves of the IHO incentives may submit an AHP seeking voluntary compliance with IHO requirements. The contents and format of the AHP shall be the same as required for mandatory compliance and must result in additional MPDUs over and above those which are required by the terms of the Applicant's funding. Given that the City provides incentives in return for affordable housing, it is in the sole discretion of the Director as to whether the proposed voluntary units will be accepted into the program. The Director shall consider all relevant factors including a review of the difference in proposed pricing between the market rate units and the MPDUs.

#### **IV. TIERED NEIGHBORHOODS**

The Director shall determine criteria for establishing high need, average need or low need neighborhoods. Further, the Director shall identify high need downtown areas for purposes of cash in lieu segregation. The 2014 consultant study conducted by Economic & Planning Systems, Inc. identified the Central Business District, Civic Center and Union Station as potential high need downtown areas. HOST shall maintain a map for use of the applicant in determining whether the proposed development will occur in an area of high, average, or low need. Need shall be determined based on a current study of housing availability by pricing of units in a statistical neighborhood and by proximity to transit.

#### **V. AFFORDABLE HOUSING PLAN (AHP) REQUIREMENTS AND PROCEDURES**

An affordable housing plan (AHP) must be submitted to HOST following a site development plan concept review meeting with CPD for those projects that require a site development plan. An AHP must be submitted to HOST prior to building permit application submittal for all projects subject to the IHO that do not require a site development plan. Prior to the approval of a formal site development plan or residential single family or duplex building permit application, all Applicants who are required or who have elected to provide MPDUs must have an approved AHP. HOST shall submit a copy of the approved AHP to CPD and HOST will add a GIS layer that an AHP is recorded on the property.

The AHP will require that the Applicant provide a statement in the sales contract or lease that the Applicant has or will record a covenant, running with the land for each MPDU sold or rented, which states that the dwelling unit will not be resold or re-rented for an amount that exceeds the price limits determined by HOST throughout the control period.

The AHP form may be obtained from HOST. After completing the form, the Applicant must submit a signed AHP to the Director for approval. The Director will ascertain that the AHP satisfies the terms of the IHO, and these rules and regulations. Upon review of the AHP, the Director shall provide written notice of approval or denial of the plan within ten (10) business days.

The approved AHP shall be recorded by HOST with the Clerk and Recorder of the City and County of Denver at the Applicant's expense. The Applicant must submit the approved, signed and recorded AHP to CPD along with the formal site development plan submittal request for plan review. HOST shall provide notice to the CPD project coordinator and, if applicable, project coordinator supervisor upon receipt of an approved AHP, only after which, the Applicant may proceed with the first formal site development plan submittal to CPD.

Applicants subject to the site development plan process will not be able to log in for building permits until both the AHP is approved and the CPD project coordinator releases the project to submit for building permits.

For all projects subject to the IHO regulations that do not require a site development plan, documentation of the approved AHP shall be provided at time of building permit application submittal.

**No building permit for residential building shall be issued until an approved AHP has been recorded by HOST at the Applicant's expense and then only after all other requirements necessary for the issuance of the permit are satisfied. Any building permit issued in error may be suspended or revoked upon request by HOST.**

**A. Review of Affordable Housing Plan (AHP)**

HOST staff shall review the developer's AHP for compliance with all the applicable provisions of the IHO. Such review shall include, but is not limited to, verification of the following elements:

1. Number of Affordable Units

All Applicants must demonstrate in the AHP that at least ten percent (10%) of the units in a proposed development are designated as affordable units under Section 27-105 of the IHO, unless otherwise provided by an approved alternative AHP. In calculating the number of MPDUs to be created, rounding shall be used such that five-tenths (.5) or greater shall result in requiring that a whole unit shall be produced.

The following table shows examples for calculating the number of MPDUs required based on the number of proposed units in a development.

<b>Sample Calculations for Number of MPDUs Required</b>		
<i><b>Total Units Proposed</b></i>	<i><b>10% MPDU Requirement</b></i>	<i><b>Total MPDUs Required</b></i>
30 Units	$30 \times 0.1 = 3.0$	3 Units
33 Units	$33 \times 0.1 = 3.3$	3 Units
40 Units	$40 \times 0.1 = 4.0$	4 Units
55 Units	$55 \times 0.1 = 5.5$	6 Units
110 Units	$110 \times 0.1 = 11.0$	11 Units

2. Pricing Limits

a) For projects under mandatory compliance, the following pricing limits apply:

- (1) The MPDUs must be priced so that they will be affordable to households earning at or below 80% of AMI published by HUD and adjusted for household size.
- (2) For High Cost Structures, MPDUs must be priced so that they will be affordable to households earning

no more than ninety-five percent (95%) of AMI, adjusted for household size.

- b) For projects that elect to voluntarily comply with the IHO through contractual commitments described in article 27-119(d) of the IHO, the following pricing limits shall apply:
  - (1) Units must be affordable to households earning no more than one hundred percent (100%) of the AMI; however, the average pricing for all MPDU units in the development shall be affordable to households earning no more than 80% AMI.
  - (2) For High Cost Structures, MPDUs must be priced so that they will be affordable to households earning no more than one hundred ten percent (110%) of the AMI; however, the average pricing for all MPDU units in the development shall be affordable to households earning no more than 95% AMI.
  - (3) For rental projects, the rent (net of a utility allowance determined by HUD or the Denver Housing Authority (DHA)) shall not exceed thirty percent (30%) of the income of a tenant earning at or below sixty-five percent (65%) of AMI. For High Cost Structures, the rent shall not exceed thirty percent (30%) of the income of a tenant earning at or below eighty percent 80% of AMI.

## **VI. UNIT MIX**

In single-family dwelling unit developments, the development shall have a mix of two, three or four bedrooms in each MPDU type in a ratio which mirrors the ratio of bedrooms of the market rate units and, in multi-family dwelling unit developments, the mix of number of bedroom types shall be at the same ratio for MPDUs as market-rate units in the development, unless otherwise provided by an approved alternative AHP.

However, for High Cost Structures, Applicants may at the discretion of the Director, be permitted to provide MPDUs which are of the same type as at least ninety percent (90%) of the market-rate units in that development. This permission shall be considered on a case by case basis and shall include in the consideration of all relevant factors that the intent of the rule is to allow developers to build between one and four luxury penthouses, without requiring developers to make such penthouse units available as MPDUs.

In developments which contain a mix of single family detached and multi-family housing, MPDUs shall be provided in the same ratio to market rate units as between the single family and the multi-family units; however, Applicants may, at the sole discretion

of the Director, be permitted to provide more total bedrooms or one or more MPDUs in the multi-family portion of the development to offset MPDUs which would otherwise be required to be provided in the single family portion of the development. This permission shall be considered on a case by case basis and shall include in the consideration of all relevant factors that the intent of the rule is to allow creation of a diverse mix of incomes in every type of structure and neighborhood and to increase the housing choices available to eligible households

## **VII. ALLOWABLE SALES PRICE OR MONTHLY RENT**

The allowable sales price or monthly rent of affordable units shall be within the limits determined and published by HOST as the maximum sales price or rent for affordable units based on number of bedrooms. Formulae for calculating maximum sales price and rent are described herein.

## **VIII. SIZE REQUIREMENTS**

The size of affordable units shall be regulated in accordance with relevant provisions of the City and County of Denver's building code as may be amended from time to time.

## **IX. USE OF INCENTIVES**

### **A. Types of Incentives**

The IHO provides three types of incentives for Applicants developing MPDUs. The total amount of rebate shall not exceed \$250,000 per year; provided, however, MPDUs built in high cost structures shall have no limit on the amount of incentive they may recover. The available incentives are described below:

#### **1. Cash Incentives**

Each MPDU provided is eligible to receive a cash incentive based on the location where the MPDUs are produced in the form of a rebate for each for-sale or rental MPDU actually built. Any project in a Low Need area, but located within 0.5 miles radius around light rail or commuter rail stations shall be labeled as Average Need for the purposes of the Cash Incentives. The rate for payment shall be as follows:

<b>Neighborhood Type</b>	<b>Low Need</b>	<b>Average Need</b>	<b>High Need</b>
<i>Incentive per Unit</i>	\$2,500.00	\$6,500.00	\$25,000.00

This incentive must have a claim made in the calendar year when the sale of the MPDU occurs. Incentives shall not be paid until the sale has closed, or all required leases have been executed and all required documentation has been produced to HOST.

#### **2. Enhanced Cash Incentives**

Applicants who provide MPDUs are eligible to receive an additional \$5,000 rebate for each for-sale unit that is affordable to households earning no more than 60% of AMI, or for each rental unit that is affordable to households earning no more than 50% of AMI. This

incentive must have a claim made in the calendar year when the sale of the MPDU occurs. Incentives shall not be paid until the sale has closed, or all required leases have been executed and all required documentation has been submitted to HOST. Applicants who have this affordability level as a result of an alternative being granted as explained below will not receive the Enhanced Cash Incentive.

**3. Supplemental Density, Parking and Expeditious Review Bonus Incentives**

Supplemental density and parking bonuses only apply to properties in certain zone districts and the Applicant may not be eligible for density and parking bonuses outside of said zone districts. HOST shall consult with CPD about supplemental incentives prior to approving supplemental incentives in an AHP. Upon request, and in addition to the standard and enhanced incentives referred to above, Applicants that provide MPDUs will be eligible for one or more supplemental incentives, which include a density bonus or floor area premium, 20% parking reduction, and expedited review process, provided that provisions set forth in the zoning code and application requirements for expedited review are met.

In order to receive any supplemental incentive, the Applicant must demonstrate in the AHP how any additional MPDU requirements for supplemental incentives are met.

**X. APPLICATION REQUIREMENT FOR DENSITY BONUS OR FLOOR AREA PREMIUM**

Developers of MPDUs may request a density bonus or floor area premium as a supplemental incentive for complying with IHO requirements. Such requests may be granted only if the provisions set forth in the zoning code and the following conditions are met:

- The development is not in a zone district which includes regulations for floor area ratio.
- Any additional units due to the density bonus shall have the same MPDU requirement ratio as is applicable to the entire development.
- The rounding rule described in above shall apply to the bonus units.

**XI. APPLICATION REQUIREMENT FOR 20% PARKING REDUCTION**

In order for a request for a 20% parking reduction to be granted as supplemental incentive for fulfilling IHO requirements, Applicants must comply with the provisions of the zoning code. The rounding rule described in Paragraph 6A above shall apply to any additional units.

**XII. APPLICATION REQUIREMENT FOR EXPEDITED REVIEW**

Applicants that comply with all items on the development plan checklist (i.e. Planned Building Group, Planned Unit Development, Planned Development, Development Plan, Gateway Site Plan, Residential Development Plan) shall receive an expedited review of



the formal phase of the site development plan by CPD provided that:

- The Applicant files a written request for expedited processing along with the completed concept submittal package. The written request shall also outline a plan for when the AHP will be submitted to HOST; The Applicant must pay all applicable fees at the time of the first formal site development plan submittal;
- The first formal submittal of the site development plan shall not occur until a draft AHP has been submitted to HOST for review and HOST has confirmed receipt of the AHP; and
- The site development plan application includes a copy of the AHP submitted to the Director for review.

The expedited review shall commence after verification by a CPD project coordinator to determine completeness of the formal submittal package and a draft AHP has been submitted to HOST. The expedited review of the formal site development plan shall consist of the following:

- A comment review meeting with members of the DRC to discuss comments to the first formal submittal following closure of the review period.
- Formal site development plan submittals typically have a three week timeframe for DRC review. Starting with the 3rd formal site development plan resubmittal, review time frames will be shortened to two weeks, which shall be shortened to one week for the 4th formal site development plan resubmittal and any thereafter.

CPD cannot guarantee review and response time for non-CPD agencies in the DRC. Please note that complex projects may require additional time and requests for expedited review may not be achievable in all cases. For detailed submittal requirements and process see PBG/PUD Site Plan Rules and Regulations.

### **XIII. ALTERNATIVE METHODS OF COMPLIANCE WITH IHO**

The City may refer Applicants who submit an alternative proposal or a request for assistance with an alternative proposal to a housing ombudsman. The ombudsman may be an outside consultant who will assist in crafting an affordable housing alternate proposal for submission to the Director. Applicants who wish to avail themselves of the alternative methods of complying with the IHO requirements shall submit an alternative AHP to:

- Build replacement MPDUs as approved by the Director;
- OR**
- Contribute to the Housing Incentive Program Fund an amount equal to the applicable percentage of the price per MPDU not provided but

required under Section 27-105. The contribution amount shall be calculated based on the pricing set forth on the then current pricing table provided by HOST under the IHO for the maximum sale prices, as calculated by HOST. HOST may include median HOA fees in the calculations.

#### **XIV. REQUIREMENTS FOR ALTERNATIVE OF ON SITE REPLACEMENT CONSTRUCTION**

Applicants of affordable units may request that the Director allow them to provide alternative MPDUs on-site. The request must be made using an Affordable Housing Plan containing all elements required by Section 27-106 of the Ordinance. Such an alternative may be granted only upon a finding by the Director upon consideration of all relevant factors that the alternatives provide one or more of the following:

- Fewer units are offered; however, MPDU's will be provided at a lower AMI;
- Fewer units are offered; however, MPDU's will provide more net bedrooms;
- Fewer units are offered; however, MPDU's will be provided to Special Needs Populations;
- Fewer units are offered; however, MPDU's will be provided for an increased covenant control period; **or**
- The same number or more units are offered as rental units to households earning no more than 65% AMI.
- A specific statement as to why the alternative meets IHO goals or priorities.

#### **XV. REQUIREMENTS FOR ALTERNATIVE OF OFF SITE REPLACEMENT CONSTRUCTION**

Applicants of affordable units may request that the Director allow them to provide MPDUs off site in the same or a proximate statistical neighborhood, or within .5 miles of a light rail or a commuter rail station. A proximate neighborhood shall mean a neighborhood within two adjacencies (a neighborhood which borders on a neighborhood which shares a boundary line with the Applicant's subject neighborhood.) The request must be made using an Affordable Housing Plan containing all elements required by Section 27-106 of the Ordinance,. Such an alternative may be granted upon a finding by the Director upon consideration of all relevant factors including but not limited to:

- Providing all or some of the replacement MPDUs off site will provide housing benefits to the City in addition to those that would be provided by constructing the required MPDUs on site, including increased number of units, more total bedrooms, increased affordability, increased opportunity for family oriented development, or more units offered as rental units to households earning no more than 65% AMI, depending on household size; **or**
- A transit oriented development (within 0.5 miles of a light rail or commuter rail station); **or**
- Zoning, environmental, legal, or other restrictions make it unfeasible to provide the required number of on site units.

In order to consider a request for such an alternative, the developer or property owner must provide a written statement as well as documentation necessary to clearly demonstrate that the developer's proposed alternative provides additional affordable housing benefits to the City or is necessary given zoning, environmental or legal constraints on the property that are beyond the control of the developer or property owner.

Considerations prior to granting an alternative should include, but are not limited, to:

- Income levels of the housing in the proposed neighborhood.
- Proximity to transit in proposed neighborhood.
- Existing housing type in proposed neighborhood.
- Character and quality of proposed replacement housing.
- Need for special need population housing or other high priority need determined by the Director in the proposed neighborhood.
- Proposed per unit subsidy.
- Secured financing.
- Market study demonstrating need for housing in proposed neighborhood, upon request by HOST.
- Demonstrated development experience of builder of replacement units.
- Replacement units must be constructed within twenty four (24) months of AHP recordation.
- Ownership of and site control of alternative replacement property.
- A specific statement as to why the alternative meets IHO goals or priorities.
- Other relevant considerations.

#### **XVI. REQUIREMENTS FOR APPROVING REPLACEMENT UNITS AS MPDUS**

In determining whether proposed replacement units are of an equivalent value, quality, and size to those which would otherwise have been constructed on-site, HOST will rely on the justification provided on the Applicant's AHP, and a review of the replacement unit plans submitted to the DRC. In making its determination, HOST will consider that materials and appliances used in the interior of MPDUs can be of a grade or quality lesser than market-rate units in the same development. Off site units may be for sale or for rental, regardless of the Applicant's on-site unit type, if the Director, in the Director's sole discretion, determines that such unit type is necessary to meet the goals of the inclusionary housing program when applied to current housing market conditions. If the Applicant is not building the off-site MPDUs, the Applicant may partner with a third party developer as the off-site replacement developer. The City shall require a three-party escrow account agreement for deposit by the Applicant of the donation to the third party. As part of the escrow agreement, the Director shall sign for the release of draws by the third party based on agreed upon construction milestones. The costs of these individual escrow agreements shall be paid through the donation amount, not by the City. The off site project escrow agreements shall be entered into for each project and shall follow all City standard contracting processes.

No interest shall be paid to the Applicant. If replacement units are not constructed within twenty-four (24) months from date of cash in lieu payment, all funds may be released to the City, upon the City's request.

**Temporary Certificates of Occupancy or Certificates of Occupancy will not be issued, under any circumstance, unless the developer has fulfilled their obligations under an approved alternative AHP, including making all escrow deposits required under an approved alternative.**

The Director may reject for any reason a proposal for replacement units, including, but not limited to, if the location of the for-sale units would cause any replacement development in which the off-site MPDUs are located to contain fifty percent (50%) or more MPDUs of the total units in a development or otherwise negatively impact the ability to finance the purchase of an MPDU.

If the proposed replacement unit(s) is acceptable to the City, the Applicant or property owner shall sign and record an AHP (or restrictive covenant) in substantially the same form as provided by HOST. The AHP (or if applicable, restrictive covenant) must be in a form acceptable to the Director and the City Attorney.

#### **XVII. REQUIREMENTS FOR ALTERNATIVE TO REQUIRED CONSTRUCTION TIMING**

In order to consider a request for alternative to the requirement that MPDUs be constructed so as to ensure that they are marketed concurrently with or prior to the market rate units, the Applicant must provide a written statement as well as documentation necessary to clearly demonstrate that the Applicant's proposed alternative scheduling provides affordable housing benefits to the City in addition to those benefits otherwise allowed by the IHO.

In the event the replacement units are being created by a third party developer and are not marketed concurrently with or prior to the market rate units, no later than the Applicant's request for subject project Temporary Certificates of Occupancy or Certificates of Occupancy the Applicant may verify deposit has been made of all amounts required for approved replacement units into an escrow account for a third party off site development partner as set forth above. The City may release Temporary Certificates of Occupancy or Certificates of Occupancy upon HOST confirmation that such approved alternative amounts have been deposited in full.

#### **XVIII. REQUIREMENTS FOR ALTERNATIVE OF CASH-IN-LIEU CONTRIBUTION**

An Applicant whose development falls under the requirements of the AHP may request from the Director the alternative of cash-in-lieu contribution instead of building MPDUs. In order to consider a request for cash-in-lieu contribution, the Applicant must submit an AHP indicating the type of development, number and types of units to be built, and the number of MPDUs required for the development.

**A. Determination of Cash In Lieu Contribution**

An approved AHP is required to verify an Applicant's eligible cash in lieu contribution to the Housing Incentive Program Fund. The acceptance of such an offer is entirely in the discretion of the Director. If the Director refuses the offer, the Applicant must comply with the requirements of the IHO. If the offer is accepted, the payment of the cash-in-lieu contribution by certified check or by money order to the Housing Incentive Program Fund must occur and be documented to HOST before a building permit may be issued. Such contribution shall be of an amount applicable to the neighborhood need as expressed in the following table:

<b>Neighborhood Type</b>	<b>Low Need</b>	<b>Average Need</b>	<b>High Need</b>
<i>Percentage per Unit</i>	25%	50%	70%

The percentage per unit shall be multiplied by the price per MPDU not provided but required under the IHO. The cash-in-lieu contribution shall be set forth on the then current table provided by HOST under the IHO for the maximum sale prices calculated by HOST.

The Applicant shall submit to the Director a copy of any instrument transacting payment to the Housing Incentive Program Fund and other documentation to attest that payment has been made. No building permit shall be issued by CPD until the Director has verified to CPD that an AHP has been submitted and approved by HOST and the approved cash-in-lieu payment has been made, and confirmation of such verification sent to staff responsible for further processing of permit requests. No certificate of occupancy for any unit in a development shall issue until full payment has been made and the Director has signed a release of any security interest.

In the event that a cash-in-lieu contribution is permitted by the Director for a high need downtown area HOST shall segregate a portion not less than fifty percent (50%) of the contributed funds into a separate account (as defined by the City's Budget Management Office) for affordable housing use in a neighborhood which is the same or proximate to the contributing Applicant's project neighborhood.

The segregation shall occur on a case by case basis with a separate account for each project which shall be maintained no longer than 24 months. At the end of 24 months any remaining funds in the segregated accounts shall be returned to the non-segregated Special Revenue Fund and may be used for any affordable housing purpose as allowed by the fund ordinance.

**XIX. REIMBURSEMENT OF INCENTIVES FOR PRODUCING MPDUS**

Following the closing of a sale of an MPDU, any provider of MPDUs who has fully complied with the requirements of the IHO is eligible to receive the corresponding monetary incentive and/or enhanced monetary incentives approved in the AHP. Any provider of rental MPDUs must also provide a signed rental lease, and all other

documentation required by HOST, for each MPDU before reimbursements can be processed. In order to receive the incentive for each MPDU built, the MPDU provider shall submit to the Director a rebate request form. Only one rebate per unit shall be paid by the City. Prior to submitting the rebate request form, the MPDU provider must have received a Certificate of Occupancy (CO) or Temporary Certificate of Occupancy (TCO) for the MPDUs and must schedule an inspection for the MPDUs through HOST. The rebate request must be accompanied by all of the following documents in original or certified copy before reimbursements can be processed:

- Approved AHP units provided must comply with the requirements of the approved AHP.
- Recorded covenant and Memorandum of Acceptance
- Copy of warranty deed and settlement sheet/or lease
- Copy of income eligibility verification
- HOST Inspection report
- Compliance Report and corresponding leases if requested by HOST
- Purchase contract

Within 30 days of the receipt and approval of a rebate request, the Director shall cause payment to be made to the Applicant an amount equal to the incentive stated on the Applicant's approved AHP, or a portion thereof for MPDUs for which a rebate request is approved.

### **SECTION 3: ELIGIBILITY VERIFICATION**

#### **I. ELIGIBLE HOUSEHOLD**

##### **A. Eligibility Components**

A household entering into a purchase contract for an MPDU must hold a valid verification of eligibility from HOST before closing on the purchase. A verification of eligibility consists of 3 components: (i) income verification; (ii) affordable purchase verification; and (iii) course completion verification. Any household or individual whose annual income meets the minimum income limits and is no more than the maximum income limits published periodically by HOST as adjusted for household size, may be deemed eligible to purchase an MPDU. Applications and requested documentation must be provided in order to obtain a verification of eligibility. It is the responsibility of the Applicant for the verification of eligibility to demonstrate that a household or individual is eligible under the requirements of the IHO before closing on a purchase. Closings cannot be scheduled until buyers have received a verification of eligibility from HOST.

NOTE: Potential buyers may voluntarily submit an income verification at any time; however, the buyer must hold a valid verification of eligibility before closing on the purchase of an MPDU and updated income verification information may be required.

Households entering into a contract to purchase an MPDU must be income eligible based on their income at the time the purchase contract is signed. The foregoing does not indicate income verification has been completed by HOST prior to contracting. Additionally, to be eligible to purchase the unit, the buyer must, prior to or simultaneously with obtaining verification of eligibility, provide evidence of course completion from an HOST approved home ownership counseling agency and complete a brief orientation on the IHO conducted by HOST staff. HOST staff may conduct the orientation in person, by phone, or electronically.

**B. HOST Approved Organizations**

HOST may approve governmental entities, quasi-governmental entities, or nonprofit organizations (“HOST Approved Organizations”) to purchase and sell or rent MPDUs as affordable housing, unless prohibited by specific covenant. As such, these organizations may be designated by the Director as “eligible households” for the purpose of purchasing MPDUs. The units purchased will be considered MPDUs. These organizations may preserve existing affordable properties at risk of conversion to market rate housing to ensure long term affordability.

**1. Designation of nonprofit organization**

HOST may approve designated nonprofit organizations for a pool of entities to own and operate MPDUs as affordable housing. The nonprofit organizations must meet the following minimum criteria:

- be a verified 501(c) organization;
- have a mission which expressly includes as a primary objective affordable housing, fair housing, affordable preservation, human services, or similar mission objective;
- have a multi-year history of successful affordable housing management; and

HOST Approved Organizations are eligible households for the purposes of buying for-sale MPDUs, which may be sold or rented to low- or moderate-income households who are eligible for assistance under any federal, state, or local program. HOST Approved Organizations are eligible households for the purposes of leasing rental MPDUs, which may be rented to low- or moderate-income households who are eligible for assistance under state, federal, or local programs. HOST will not independently determine eligibility of households which occupy MPDUs owned by HOST Approved Organizations but may require reporting from those entities. Units which are purchased by HOST Approved Organizations designated by the Director and used as low- or moderate-income households will be considered MPDUs.

A household or individual is deemed eligible if it purchases or rents an MPDU from a HOST Approved Organizations who purchase MPDUs for

the purpose of sale or rental under any City approved program designed to assist the construction or occupancy of housing for families of low or moderate income. The HOST Approved Organizations will furnish individual household data as required by HOST for tracking, compliance and reporting purposes, but the City will not income verify for households taking occupancy pursuant to one of these institutional owners' programs.

**2. Purchase/Lease Parameters**

HOST Approved Organizations:

- a) May purchase for-sale MPDU units; however, are not required to purchase the unit. Affordable homeowners are not required to sell their units to a HOST approved entity instead of selling to an eligible household.
- b) Lease already established rental MPDUs to income eligible households.
  - (1) Rents will be set at a maximum allowable rent that is affordable to households earning no more than 65% AMI, calculated according to the number of bedrooms and associated household size.
  - (2) Income eligibility will be set for households that do not exceed a total household income of 65% AMI (or below).
- (c) Must preserve the affordable units for the remainder of the term of the existing covenant, or as required by financing or separate agreement, whichever is longer.
- d) Must provide household data as requested by HOST for tracking, compliance and reporting purposes.

A household or individual who purchases or rents an MPDU from an entity described above will be deemed “eligible” to purchase or rent the unit.

**II. ELIGIBILITY REQUIREMENTS**

**A. Income Verification**

HOST will use 24 CFR 5.609 to calculate income. In order to implement income calculation. HOST will utilize the most current HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs - Chapter 5. Additionally, college funds and IRS recognized institutional retirement funds will be excluded from the calculation.



College funds includes any income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, “baby bond” accounts created, authorized, or funded by Federal, State, or local government – such as a 529 college savings plan.

To be qualified to participate in the MPDU program, the household must be able to demonstrate that its total household income will allow it to pay the mortgage or rent on the unit by meeting income requirements.

To be income eligible to purchase at initial sale, the household must demonstrate that the total household income is at or above fifty (50%) of the AMI, for household size, and is at or below eighty percent (80%) of AMI, for household size, or no more than ninety-five percent (95%) of AMI, for household size, if the MPDU is in a High Cost Structure.

To be income eligible to purchase upon resale, the schedule for households where the initial eligibility was set at eighty percent (80%) of AMI the following schedule of maximum household income eligibility will apply:

<b>Years of Ownership (at time of resale)</b>	<b>Eligible Household AMI @ Resale</b>
0-3 years	80% AMI
3-6 years	90% AMI
6-15 years	100% AMI
15+ years	No Restriction

To be income eligible to purchase upon resale, the schedule for households where the initial eligibility was set at ninety five percent (95%) of AMI the following schedule of maximum household income eligibility will apply:

<b>Years of Ownership (at time of resale)</b>	<b>Eligible Household AMI @ Resale</b>
0-6 years	95% AMI
6-15 years	100% AMI
15+ years	No Restriction

## **B. Income Eligibility Documents**

Individuals or households seeking to purchase an MPDU must complete an income verification application and provide associated household and income information. Such income information may include paychecks, verification of employment, bank statements, federal income taxes, and other information required by HOST. Household income will be calculated at the highest anticipated income over the next twelve (12) months.

**C. Asset Income**

Asset income will be included in the calculation of household income. Assets are items of value that may be turned into cash. Assets on a whole are not counted as income; however, any income that an asset produces is included in the determination of income eligibility of a household. The income from the asset is included in the income calculation, even if the household elects not to receive it.

As with other types of income, the income included in annual income calculation is the income that is anticipated to be received from the asset during the following twelve (12) months. Several methods may be used to approximate the anticipated income from the asset. For example, to obtain the anticipated interest on a savings account, the current account balance can be multiplied by the current interest rate applicable to the account. Alternatively, if the value of the account is not anticipated to change in the near future and the interest rate has been stable, a copy of the IRS 1099 form showing past interest earned can be used.

An income eligible household may not have income generated from assets in excess of the currently published 100% AMI allowable income, depending on household size. This total will not include the total amounts retained in retirement accounts (401K, 403B, Keogh, IRAs, pensions, etc.) and college 529 accounts.

MPDUs may not be purchased entirely with cash from liquidated assets.

**D. Gift Funds**

Gift funds provided to prospective buyers of MPDUs are restricted to 20% of the purchase price of the MPDU. Gift funds must be used solely for the down payment of the purchase of an MPDU. Sources of the gift funds must be documented via a gift letter, submitted with the Affordable Purchase Verification and containing the following information:

- Name of the recipient of the gift funds;
- Name of the person giving the gift funds and a description of their relationship to the recipient;
- The exact dollar amount of the gift funds;
- A statement that no repayment is required and that the gift funds will be used solely for the purchase of the MPDU; and
- Any additional supporting documentation that may be available to confirm the source(s) and use of the gift funds or that may be requested by HOST in order to determine the eligibility of the source(s) or use of the gift funds.

Gift funds must be received by the prospective MPDU buyer prior to the closing on the MPDU and evidenced by the following:

- A copy of the prospective buyer's bank statement showing a deposit equal to the gift funds amount;
- A copy of the deposited certified check, cashier's check, money order, or other type of bank check; or
- Wire transfer receipt and corresponding bank statement.

**D. Confidentiality of Application of Eligible Households**

HOST will treat the financial information contained in the income verification application as confidential commercial and financial data under the Colorado Open Records Act and shall not release such information except as required by law.

**E. Determination of Eligibility**

HOST must have made its determination before a closing can occur. HOST shall provide a written confirmation to the potential buyer evidencing that HOST has received a fully complete application. HOST will make its determination within ten (10) business days after receipt of the fully completed application. The determination shall be evidenced either by (A) the issuance of a written approval, signed by HOST, stating that the purchaser is a verified eligible household, the amount of the purchase price and that the purchase price does not exceed the maximum sales price (the approval); or (B) delivering a notice to selling owner and purchaser that an approval cannot be issued and stating the reason(s) therefor.

Failure by HOST to make its determination and deliver the approval or the notice by the end of ten (10) business days after receipt of a completed application will be deemed an approval of the purchaser and the purchase price.

**F. Income Verification Validity**

Income verifications shall be valid for six (6) months from the date of issuance, as long as there is not a material change to the household criteria that formed the basis for the income verification approval.

HOST shall place verified households on a list of eligibility if requested by the household applying for verification.

**SECTION 4: AFFORDABLE PURCHASE VERIFICATION**

Once a prospective buyer holds a valid income verification letter from HOST and has found an available MPDU to purchase, they must then submit an affordable purchase verification application. An affordable purchase verification verifies buyers are still income eligible to purchase, no material changes have occurred, the loan is appropriate for buyers, the home being purchased is an affordable home and is priced appropriately for purchase. An affordable purchase verification may be submitted at any time after the commencement of the opening marketing period for an MPDU and must be complete and accurate at the time it is submitted.

**I. PURCHASE VERIFICATION**

The Affordable Purchase Verification will determine the affordability of the MPDU relevant to the income-verified prospective buyer's household income. To make the determination of affordability, HOST must receive a copy of the following:

- Statement of Material Change
- Purchase Contract
- Loan Application

**A. Statement of Material Change**

Upon submittal for affordable purchase verification, prospective buyers must provide an affidavit attesting to any material changes that have occurred since income verification. Material changes include:

1. A change in household size;
2. A change in income;
3. A change in assets (up to 10% increase); or
4. A change in employment status.

If any material changes have occurred, the previous income verification is null and void and a new income verification must be submitted to HOST. Material changes could invalidate the previously issued income verification and disqualify the buyer from purchasing an affordable home due to no longer meeting program requirements.

**II. MAXIMUM RESALE PRICE VERIFICATION**

**A. Purchase Contract**

Prospective buyers must provide a copy of the executed purchase contract to HOST for review. HOST will review the contract to assure terms and the price comply with the IHO. Buyers are prohibited from paying closing costs or other concessions to incentivize selection of the buyers' offer over others.

**B. Loan Application**

Prospective buyers must provide a copy of the current loan application (form 1003 or other applicable form) to HOST for review. HOST will review the loan terms, verify the buyer's income and purchase price are accurate and conform with the income verification, and review all income sources and amounts of down payment funds.

**C. Loan Products**

Income eligible households cannot purchase an affordable home for cash; they must secure financing through:

- a legally recognized financial lending institution authorized to conduct business in Colorado;
- a governmental agency; or
- a combination thereof.

If the purchase is not facilitated through the above, HOST will not issue a purchase verification.

Additionally, prospective buyers may only purchase an affordable home utilizing the following loan products which **must contain fixed terms and fixed interest rates**:

- FHA
- Conventional
- VA

Upon approval of the Director, alternative loan products may be considered if they have amortized payments of principal and interest over fixed terms and with fixed interest rates that are comparable to current market rates for the homebuyer's credit profile. All loan products must ensure that mortgages are affordable to the homebuyers and meet standard loan industry standards. No negative amortizing loans are allowed.

## **SECTION 5: CLOSINGS**

Closings cannot be scheduled until buyers have a verification of eligibility from HOST. HOST must be immediately notified of the closing date as soon as closing is scheduled. Failure to provide adequate notice to HOST of the scheduled closing date may result in the closing date being re-scheduled.

### **I. CLOSING INFORMATION**

Buyer must provide HOST with all title company contact information including:

- Name of the person closing the loan
- E-mail address of person closing the loan
- Name of title company
- Address of title company
- Scheduled closing date

### **II. TITLE COMPANY**

HOST will provide the title company with closing instructions to aide in facilitating the closing of an MPDU. These instructions will require the title company to provide the title commitment to HOST prior to closing and the recommendation that the title company list the Covenant in "Schedule B - Section 1, Requirements" (or other applicable section) of the title commitment, with a requirement that the buyer provide a copy of the income verification issued by HOST (as the seller is required to have buyer seek under the terms of the Covenant) that will provide sufficient evidence that affordability restrictions in the Covenant have been met.

Additionally, HOST will request the following documents from the title company prior to closing:

- Draft copies of the draft Seller's and Buyer's HUD-1 Settlement Statements (or alternative documentation in a form acceptable to the Director which conveys similar, verifiable information, or other applicable documents);
- A current, market rate appraisal of the MPDU (with no affordable comparables), if necessary, as provided by the buyer or buyer's lender;
- Title commitment

After closing, the title company will be requested to provide HOST copies of the following:

- Recorded warranty deed;
- Final, signed HUD-1 Settlement Statements (or alternative documentation in a form acceptable to the Director which conveys similar, verifiable information, or other applicable documents);

- If not previously recorded, recorded Covenant; and
- Recorded Memorandum of Acceptance.

## **SECTION 6: PRICING, TRANSFER AND OCCUPANCY**

### **I. MAXIMUM INITIAL SALES PRICE**

HOST will provide tables which show maximum purchase price every six months. To determine the maximum allowable sales price that may be charged for a MPDU, including parking cost if any, HOST will use normal underwriting standards. Maximum affordable price will be based on 30% of an eligible household's gross household income. Except in agreements or covenants approved prior to July 31, 2007, transfer fees shall never be charged for transfer of an MPDU and shall not be permitted to be included in any MPDU pricing calculation. The following assumptions regarding number of bedrooms, household size and AMI shall be used:

- A maximum down payment of 5.0%
- Current Year AMI thresholds adjusted for household size published by HUD
- Prior six-month average rate of interest based on the Fannie Mae Yield on 30- year mortgage commitments (price at par) plus one-half point (0.5%) spread.
- 30-year mortgage term
- Maximum sales price shall include any homeowner fees as calculated by HOST.
- The current sales prices are available from HOST.

### **II. MAXIMUM ALLOWABLE RENTS**

HOST will also provide tables showing maximum allowable unit rents every year. The maximum allowable rents are calculated based upon a presumed household applying no more than thirty percent (30%) of its monthly gross income from all sources to a rental payment. To determine the maximum allowable rental payment that may be charged for MPDUs, the Low Income Housing Tax Credit (LIHTC) rent by AMI threshold published by HUD or Colorado Housing and Finance Authority (CHFA) and adjusted for household size, will be used. Furthermore, the maximum rent shall deduct utility allowance costs which are published periodically by HUD or the Denver Housing Authority. The current rental rates are available from HOST.

### **III. REQUIREMENTS FOR INITIAL OFFERING OF MPDUS FOR SALE OR RENT**

Applicants of MPDUs designated for sale or rent to eligible households shall provide written notice to HOST thirty (30) days prior to the proposed offering and must have received approval of the written notice from HOST before entering into any MPDU contract for sale or lease. The Director shall notify the Applicant within ten (10) business days of the receipt of the notice, indicating whether the notice is adequate or whether it is materially deficient. If the notice is deemed to be deficient, the initial offering cannot proceed until the deficiency has been cured and approved by the Director. The Applicant may proceed with the initial offering if the Director has not made a determination within ten (10) business days of receipt of such notice. Offerings must be made in accordance with the following standards.

The notice shall contain the following:

- Date on which marketing to eligible households is to commence
- Number and pricing of MPDUs offered
- Floor plans, including bedroom mix and unit size of each MPDU type, and layout showing dispersal of the units within the building
- Description of amenities offered
- Anticipated date of availability of each MPDU
- Vicinity map of the development
- Copy of the approved development, subdivision or site plan, as appropriate
- Other information or documents required by the Director

In addition to the above, the notice for MPDUs that are for sale shall contain the following items:

- Availability of mortgage financing to eligible households, if known
- A market appraisal of each for-sale MPDU performed by a certified general residential appraiser. The appraisal should be conducted without consideration of the restrictive covenant.
- A copy of the proposed sales contract, including a list and the price of any personal property included in the sale.
- A signed copy of the proposed settlement cost document.
- An affidavit signed by the seller and buyer attesting to the accuracy of all documents and conditions of the sale.
- A signed memorandum of acceptance of the covenants, which contains an agreement to be bound thereby in return for the benefit of affordability.

#### **IV. APPROVED RENTER OF MPDUS**

Rental projects subject to the IHO are subject to certain restrictions, such as:

- Memorandum of acceptance (signed by property owner)
- The qualifying household income necessary to rent the MPDU unit;
- The method by which the maximum allowable rent is calculated;
- The amount by which the rent may increase each year; and
- Enforcement mechanisms.

#### **V. OCCUPANCY REQUIREMENT**

Purchasers of MPDUs are required to occupy the purchased MPDU within thirty (30) days of closing on the unit and may not own any other residential property during their ownership of the MPDU. Owners of MPDUs are required to occupy those units as their primary residence.

Renters in MPDU apartment buildings shall occupy their units within thirty (30) days of executing a rental contract. Renters in MPDU apartment buildings are required to occupy those units as their primary residence and shall not be permitted to sublease.

A primary residence shall mean the home or place in which one's habitation is fixed and to which one, whenever he or she is absent, has a present intention of returning after a departure or absence therefrom, regardless of the duration of the absence. In

determining what is a primary residence, the following circumstances relating to the owner shall be taken into account: business pursuits, employment, income sources, residence for income or other tax purposes, age, marital status, residence of parents, spouse and children, if any, location of personal or real property, billing addresses, and motor vehicle registration.

## **VI. OCCUPANCY EXCEPTION**

At the sole discretion of the Director, a temporary occupancy exception for owners of for-sale MPDUs may be allowed. The occupancy exception would allow such owner(s) of an MPDU unit to lease the MPDU for no more than six months in duration for a total of no more than a two year period. The exception may be granted upon adequate evidence demonstrating the necessity to allow limited, temporary rental of the MPDU including, but not limited to, the following:

1. Job or military transfer more than sixty (60) miles from Denver City and County limits
2. Divorce resulting in an inability to pay the mortgage
3. Change in household size
4. Job loss as a result of firing or layoff
5. Major illness within the household resulting in financial hardship
6. Foreclosure prevention
7. Relocation to obtain medical care outside the Denver metropolitan area

In order to obtain an occupancy exception, the owner obtaining the exception must execute appropriate documentation limiting rents such that the owner will not profit from an occupancy exception and prohibiting all subleasing. Documentation in support of the request is required in addition to the initial request of occupancy exception; however, the Director in his discretion may require additional documentation or information. The HOST director will determine a level of maximum rent that does not exceed the total of principal and interest payments on the owner's current mortgage, plus real estate taxes, homeowner insurance premiums if separate from mortgage, condominium fees, and reasonable expenses for management and reasonable maintenance of the unit but excluding any profit on the part of the owner beyond the demonstrated costs of maintaining the home. The owner shall provide income tax returns to HOST for income earned during any rental period as verification of meeting this obligation.

## **VII. NOTIFICATION REQUIREMENTS FOR RESALE OF MPDU**

Owners of MPDUs designated for resale to eligible households shall submit to HOST a completed request for "maximum resale price". Depending on the applicable covenant, owners may need to submit an appraisal performed by a certified appraiser, without consideration of the resale price restriction, of the for-sale MPDU and any other information requested.

## **VIII. MAXIMUM ALLOWABLE RESALE PRICES**

### **A. For MPDUs created before May 31, 2010**



The maximum allowable resale price shall be calculated using an appreciation formula. Each selling owner shall pay for a current, market rate appraisal of the MPDU at the time it is to be marketed. Such appraisal may be done without consideration of the restrictive covenant. The initial or original homeowner's appraised value shall be the base price from which calculation is made. Except in agreements or covenants approved prior to July 31, 2007, transfer fees shall never be charged for transfer of an MPDU and shall not be permitted to be included in any MPDU pricing calculation.

The maximum sales price is calculated using the following formula: Maximum Sales Price = (Prior Purchase Price + Owner's Share of Appreciation in Market Value).

The shared appreciation factor is pre-determined based on the length of ownership up to a maximum of 40% of the appreciation in market value. The following table shows the applicable shared application factor based on time of ownership of the MPDU.

<b>Time of Ownership (Years)</b>	<b>Shared Appreciation Factor</b>
Less than One Year	0%
One Year to Less than Two Years	10%
Two Years to Less than Three Years	15%
Three Years to Less than Four Years	20%
Four Years to Less than Five Years	25%
Five Years to Less than Ten Years	35%
More than Ten Years	40%

The maximum sales price is calculated as follows:

1. Calculation of appreciation in market value.

Each Applicant at the initial sale and Owner at the resale shall pay for a current, market rate appraisal of the MPDU at the time the MPDU is to be marketed. For the purpose of determining the maximum sales price, appreciation in market value shall be determined by subtracting from the current appraised value, as defined in this section, the prior appraised value calculated at the time of the last sale.

The following is a table for calculating appreciation in market value:

<i>Current appraised value</i>		\$ _____
<i>Minus prior appraised value</i>	-	\$ _____
<i>Equals appreciation in market value</i>	=	\$ _____

2. Calculation of Owner's share of appreciation in market value.

For the purpose of determining the maximum sales price, the Owner's share of appreciation in market value shall be determined by multiplying the appreciation in market value by the allowable percentage set forth in the shared appreciation factor. The following is an example for calculating Owner's share of appreciation in market value of the improvements:

<i>Appreciation in market value</i>	\$
<i>Multiplied by shared appreciation factor</i>	x %
<i>Equals the Owner's share of appreciation in market value</i>	\$

3. Calculation of maximum sales price.

The maximum sales price shall be determined by adding Owner's share of appreciation in market value to the prior purchase price. The following is a table for calculating the maximum sales price:

<i>Prior purchase price</i>	\$
<i>Plus Owner's share of appreciation in market value</i>	x
<i>Equals maximum sales price</i>	\$

Under no circumstances shall the cost of the appraisal be passed on to eligible households who are purchasing the MPDU.

It is anticipated that market conditions may, from time to time, cause a MPDU to be sold for less than the maximum allowable resale price. Under no circumstances shall the sales price exceed being affordable, as calculated in the then current chart published by HOST, to households earning no more than 80% of AMI or no more than ninety-five percent (95%) of the AMI for developments in which buildings are greater than three (3) stories, and elevators are provided, and over sixty percent (60%) of the parking is structured.

4. Alternative Resale Price

During some market conditions, the market value appreciation will result in a maximum allowable resale price that is below the original purchase price paid by the current owner and seller of the MPDU. If the calculation of appreciation results in a negative amount, HOST shall assume that the appreciation is equal to zero for those selling MPDU owners who are in compliance with the terms and conditions of their affordable housing covenant and the maximum allowable sale price will equal the contract

sales price on the HUD 1 Settlement Statement for the prior purchase paid by the selling MPDU owner.

**B. For MPDUs created after June 1, 2010**

The maximum allowable resale price shall be calculated as follows:

1. Start with the Prior Purchase Price paid for the MPDU;
2. For each year from the date that the selling Owner acquired the MPDU multiply the selling Owner's Prior Purchase Price by the percentage change over the prior year in the Standard and Poor's Case/Shiller Index up to a maximum increase for any given year of three and a half percent (3.5%). Each year's percent increase is added to the Prior Purchase Price and is not compounded from year to year. In years where the Standard and Poor's Case/Shiller Index decreases, there shall be no adjustment to decrease the Prior Purchase Price of the MPDU;
3. For each year add the product of the multiplication described in (b) above to the selling Owner's purchase price;
4. Add the costs of Eligible Capital Improvements that have been approved by HOST up to the time of Transfer;
  - a. Capital Improvements  
Certain home repair and/or improvements incurred by an owner of an MPDU may be reimbursed at the time of resale. These capital improvement allowances and exclusions are contained in HOST's "Affordable Housing Policy and Procedures".
5. Add the amount of the sale commission paid by the Owner; provided that such amount does not exceed the maximum allowable sales commission published by HOST on an annual basis;
6. Add any accrued negative amortization if the MPDU was financed with a graduated payment mortgage by:
  - a) the Federal Housing Administration of HUD, including such department or agency of the United States government which shall succeed to the Federal Housing Administration in insuring notes secured by mortgages and deeds of trust on residential real estate (FHA),
  - b) the Federal Home Loan Mortgage Corporation or The Mortgage Corporation created by Title III of the Emergency Home Finance Act of 1970, including any successors thereto,

- c) the Federal National Mortgage Association administered by Housing and Urban Development Act of 1968, including any successor thereto,
- d) the Government National Mortgage Association administered by HUD, including any successor thereto,
- e) the Veterans Administration of the United States of America, including such department or agency of the United States Government which shall succeed to the Veterans Administration of the United States of America in its present function of issues guarantees with respect to notes secured by mortgages on Affordable Units (VA), and
- f) any similar governmental agency to guarantee, insure, make or purchase mortgage loans.

**Maximum Price Is Not Guaranteed For MPDUs.** It is anticipated that market conditions may, from time to time, cause a MPDU to be sold for less than the maximum allowable resale price.

**C. Amendment of Covenant**

Upon the request of the current homeowner, the existing covenant may be replaced by an amended and restated covenant that has been updated or revised since the date of the existing covenant. The request must be made in writing to HOST and is subject to the approval of HOST, in its sole discretion. The amended and restated covenant must be signed by the current homeowner and by the Director.

**D. Refinance**

Owners of MPDUs may not refinance an MPDU for more than the Maximum Allowable Resale Price. A refinance price must be obtained from HOST via the Maximum Resale Price process cited previously. HOST shall not include the broker commission in the calculation of the refinance price.

**E. Final MPDU Sale/Payment**

Any Applicant or owner planning the first sale of an MPDU within ten (10) years after the end of the control period shall provide 30 days notice to HOST of the proposed offering and the date on which the owner is ready to offer the property for sale. The notice shall contain statements asserting that the property is offered at fair market value with no extraordinary terms of sale, and that it is offered as a single property for sale. In addition, the notice shall set forth the following:

- Pricing of MPDU offered
- Numbers of bedrooms and unit size by square feet of MPDU
- Description of amenities offered

Within 30 days of the receipt of such notice, HOST shall provide written notice to the owner of the City's intent to purchase and maintain the property as affordable housing, and shall close within 60 days of the notice of intent to purchase. If there is no intent to purchase, the owner may proceed to sell the MPDU. For the first sale after the end of the control period, however, the owner shall make a "final payment" to the City's Housing Incentive Program Fund an amount equal to one half of the "final gain," which is calculated as follows:

$$\text{Final Gain} = (\text{Current Sale Price} - (\text{Prior Purchase Price} + \text{Cost of Living Factor} + \text{Sales Commission} + \text{All Reasonable Costs of Sale} + \text{Fair Market Value of documented and approved capital improvements}))$$

The reasonable costs of sale only include closing costs as documented by the HUD-1 Settlement Statement (or other applicable document). Closing costs shall be those costs related only to the transfer of the property – i.e. title charges to the buyer (excluding title insurance and lenders/owner's coverage) and recording fees associated with the first money lender loan. Closing costs shall not include fees associated with the actual loan or any other fees other than described above, unless specifically stated in the applicable Covenant.

Example: Closing costs included under Title Charges (excluding title insurance and lenders/owner's coverage) and Government Recording and Transfer Charges as reflected on the HUD-1 Settlement Statement (usually located on lines 1100 and 1200).

In the event that the final gain is less than \$20,000, the final payment amount to the revenue fund shall be adjusted so that the owner/seller will retain \$10,000 or the entire amount of the final gain, whichever is less.

The Final MPDU Payment requirement does not apply to any designated HOST Approved Organization, or any governmental entity, or any quasi-governmental entity which owns an MPDU.

**F. Sale and Rental to a Designated HOST Approved Organization, Governmental, or Quasi-governmental Entity**

**1. For-Sale Units**

The selected and designated HOST Approved Organizations, governmental or quasi-governmental entities will be given the opportunity to purchase for-sale MPDU unit. HOST will maintain a list of designated organizations and will provide the list to Owners who are selling their properties with the maximum resale price letter. The designated HOST Approved Organizations, governmental or quasi-governmental entities are not required to purchase the unit, nor are owners required to sell their units to a designated HOST Approved Organization, governmental or quasi-governmental entity instead of selling to an eligible household. The

unit must be preserved as affordable for the remainder of the term of the existing covenant, or as required by financing, whichever is longer. The designated HOST Approved Organizations, governmental or quasi-governmental entities will be allowed to charge a property management fee to homeowners, as approved by the City. In the event there is competition for the MPDU, preference may be given to the entity that has the longer history of management of dispersed units.

2. Occupancy Exception Units

Upon the granting of an occupancy exception, the HOST designated HOST Approved Organizations, governmental or quasi-governmental entities will be given the opportunity to provide property management services to affordable homeowner; however, the designated HOST Approved Organizations, governmental or quasi-governmental entities are not required to manage the unit. The designated HOST Approved Organizations, governmental or quasi-governmental entities will be allowed to charge a property management fee to homeowners, as approved by the City.

Maximum allowable rent will be affordable to households earning no more than 65% AMI, depending on number of bedrooms. Units must be rented to 65% AMI (or below) income eligible households. In the event there is competition for the MPDU, preference may be given to the entity that has the longer history of management of dispersed units.

## **SECTION 7: AGREEMENTS AND MARKETING**

### **I. REQUIRED AGREEMENTS**

Restrictive covenants intended to secure the affordability of designated units must be in a form acceptable to the Director and the City Attorney and shall include, without limitation, the following:

- Memorandum of acceptance
- The qualifying household income necessary to purchase or rent the dwelling unit;
- The method by which the maximum allowable purchase price or rent shall be calculated;
- The amount by which the resale price or rent may increase each year; and
- Enforcement mechanisms.

### **II. GOOD FAITH MARKETING AND SELECTION OF ELIGIBLE HOUSEHOLDS**

During initial offering or resale of MPDU's, sellers must make a good faith effort to market to eligible households including those on HOST's list. Elements of a good faith marketing effort shall include the following:

- Entering into a contractual agreement with a real estate agent;
- Listing all properties in the MLS and coloradohousingsearch.com, if maximum resale price does not exceed website allowable limits;
- Showing the MPDU to potential buyers at times other than the open house

- Placement of at least two advertisements during separate weeks in a local newspaper of general circulation, listing on agent's website and/or accessible internet video tour of unit;
- MPDU is advertised as affordable or income restricted in public marketing of the MPDU and in any optional fields available for such information in the MLS and including price and income requirements;
- Provision of information about each property, including, square foot, number of bedrooms, price and amenities, to HOST so that such information may be disseminated by the Director;
- Using a real estate agent;
- Displaying a for sale sign prominently at the MPDU;
- Timely response to all inquiries about the MPDU; and
- Fair consideration of all purchase offers from income eligible buyers

The seller shall maintain a marketing log that shows the advertisements and other information that is disseminated about the project and keep a list of prospective buyers who have expressed interest in an advertised MPDU, including any information provided by such prospective buyers concerning their income, place of work, current residence and household size. The Director, in the Director's sole discretion, may require equivalent or additional marketing efforts. The City of Denver, upon request, shall have a right to review such log and written materials to ensure that a fair marketing effort was implemented.

Upon the expiration of the marketing period, if only one contract is received, the Applicant or seller may accept that offer. If more than one contract has been received, the developer/seller shall utilize a fair selection process to select among the prospective purchasers. Consideration of the following factors is consistent with a fair selection process:

- Preference may be given to a household that has been income certified and placed on the City of Denver's referral list, if any, for at least one year; and
- Preference may be given to households that can document that at least one member of the household currently works or resides in Denver;
- Preference may be given to households who are first-time homebuyers;
- Preference may be given to households that can document that they have lived or worked in the City of Denver for a minimum of five years; and/or
- Preference may be given to household who have been on the Denver list the longest.

A developer or seller may choose to follow the City's selection process model in lieu of developing his or her own fair selection process.

### **III. COVENANTS**

HOST shall provide a form of covenant. Covenants must be completed by Applicants and recorded by HOST at the time condominium declarations are recorded for multifamily units and no later than 60 days prior to closing on an MPDU. In developments containing for sale MPDUs, final, complete, and signed covenants shall be delivered to HOST and

one original will be recorded by HOST no later than the recordation of the final subdivision plat or, in the case of a condominium development, recorded no later than with the condominium declaration. Terms of the covenant may vary from the form with the approval of the City Attorney's Office and HOST; however, all MPDU covenants shall expressly comply with all of the requirements of the Ordinance and these Rules and Regulations. Recording fees are to be paid by the Applicant, but recording shall be performed by HOST. No final certificate for occupancy for any unit in the development shall be issued until an approved covenant signed by the Director has been recorded by HOST at the Applicant's expense and then only after all other requirements necessary for the issuance of the certificate for occupancy are satisfied.

A. MPDU covenants on for-sale properties shall include the following:

1. A statement that the provisions of the Ordinance, shall apply to the property and run with the land for the entire control period;
2. A statement that the covenants shall bind the owners of the MPDU property, and all other parties with an interest in title to the MPDU property during the control period and run with the land for the entire control period;
3. A statement that these covenants shall be senior to all instruments securing permanent financing, except as provided in the IHO;
4. Provisions which govern the first resale within ten (10) years after the end of the control period (Final MPDU Sale) as set forth in the Ordinance;
5. A statement defining eligibility such that to be eligible to purchase an MPDU, households must be earning no more than the eligible level of AMI as defined by these rules;
6. A statement regarding use as primary residence and the penalties for violation including provisions that:
  - a) During the control period, every buyer of an MPDU shall occupy the MPDU as the buyer's primary residence during the buyer's ownership, unless an occupancy exception has been granted by HOST. During the control period, each buyer shall verify before taking occupancy that the buyer will occupy the MPDU as the buyer's primary residence during the buyer's ownership. The Director shall require an unapproved owner who does not occupy the MPDU as the buyer's primary residence to offer the MPDU for resale to an eligible household under the resale provisions of the IHO. The Director may also require that all rents gained in violation of the occupancy requirement be paid over to the City. The occupancy requirement does not apply to designated nonprofit organizations, governmental entities, quasi-governmental entities,



or nonprofit organizations designated by the Director, which entities shall use MPDUs for affordable housing purposes.

- b) A non-governmental owner of an MPDU, except a designated HOST Approved Organization or person obtaining a written occupancy exception from the Director, shall not rent the MPDU to another person. Any rent obtained for an MPDU that is leased in violation of this rule shall be paid into the special revenue fund by the owner within ninety (90) days after the Director notifies the owner or lessee of the rental violation.
  - c) If an MPDU owner dies, at least one person taking title by will or by operation of law, whether eligible or not, either shall occupy the MPDU as his, her, or their primary residence during the control period, or shall sell the MPDU as provided in the ordinance. In no event shall the death of an MPDU owner affect the operation of the covenant or this article;
- 7. A statement concerning notice of resale during the control period, which requires that ten (10) days before an offering for resale of any MPDU, the owner shall notify HOST in writing of the proposed offering and the date on which the owner will be ready to begin the marketing to eligible households. HOST shall notify the selling owner as to the maximum resale price and eligibility limitations;
  - 8. A statement which includes the formula for resale price calculation and terms including the following:
    - a) Resale price and terms. Except for foreclosure proceedings against the eligible household, any MPDU constructed or offered for sale under the terms of this article may be resold only as provided herein during the control period, with the applicable formula stated either:
  - 9. For MPDUs with Covenants created before June 1, 2010
    - a) Calculation of appreciation in market value.

Each Applicant at the initial sale and owner at the resale shall pay for a current market rate appraisal of the MPDU at the time the MPDU is to be marketed. For the purpose of determining the maximum sales price, appreciation in market value shall be determined by subtracting from the current appraised value, as defined in this section, the prior appraised value calculated at the time of the last sale. The following is a table for calculating appreciation in market value:

<i>Current appraised value</i>		\$
<i>Minus prior appraised value</i>	-	\$
<i>Equals appreciation in market value</i>	=	\$

- b) Calculation of owner's share of appreciation in market value.

For the purpose of determining the maximum sales price, the owner's share of appreciation in market value shall be determined by multiplying the appreciation in market value by the allowable percentage set forth under 27-111(b)(8)(A)(i)(e) (the shared appreciation factor). The following is an example for calculating owner's share of appreciation in market value of the improvements:

<i>Appreciation in market value</i>	\$
<i>Multiplied by shared appreciation factor</i>	x %
<i>Equals the Owner's share of appreciation in market value</i>	\$

- c) Calculation of maximum sales price.

The maximum sales price shall be determined by adding owner's share of appreciation in market value to the prior purchase price. The following is a table for calculating the maximum sales price:

<i>Prior purchase price</i>	\$
<i>Plus Owner's share of appreciation in market value</i>	x
<i>Equals maximum sales price</i>	\$

- d) Under no circumstances shall the cost of the appraisal be passed on to eligible households who are purchasing the MPDU.
- e) The shared appreciation factor will increase over the time of ownership of the MPDU up to a maximum of forty percent (40%).

The shared appreciation factor will be as follows:

<b>Time of Ownership (Years)</b>	<b>Shared Appreciation Factor</b>
Less than One Year	0%
One Year to Less than Two Years	10%
Two Years to Less than Three Years	15%
Three Years to Less than Four Years	20%
Four Years to Less than Five Years	25%
Five Years to Less than Ten Years	35%
More than Ten Years	40%

- f) Under no circumstances shall the maximum sales price exceed being affordable to households earning no more than eighty percent (80%) of AMI or no more than ninety-five percent (95%) of AMI for developments in which buildings are greater than three (3) stories, and elevators are provided, and over sixty percent (60%) of the parking is structured.

**OR**

10. For MPDUs with Covenants created or amended after June 1, 2010

- a) Start with the Prior Purchase Price paid for the MPDU;
- b) For each year from the date that the selling Owner acquired the MPDU multiply the selling Owner's Prior Purchase Price by the percentage change over the prior year in the Standard and Poor's Case/Shiller Index up to a maximum increase for any given year of three and a half percent (3.5%). Each year's percent increase is added to the Prior Purchase Price and is not compounded from year to year. In years where the Standard and Poor's Case/Shiller Index decreases, there shall be no adjustment to decrease the Prior Purchase Price of the MPDU;
- c) For each year add the product of the multiplication described in (B) above to the selling Owner's purchase price;
- d) Add the costs of Eligible Capital Improvements that have been approved by HOST up to the time of Transfer;
- e) Add the amount of the sale commission paid by the Owner; provided that such amount does not exceed the maximum allowable sales commission published by HOST on an annual basis; and
- f) Add any accrued negative amortization if the MPDU was financed with a graduated payment mortgage under a federal government program.
- g) The maximum sales price is only an upper limit on price appreciation for each MPDU, and nothing herein shall be construed to constitute a representation, warranty or guarantee that upon transfer the owner shall obtain the maximum sales price.

11. A statement of the resale requirements during the control period as follows:

- a) A resale MPDU may be offered for sale to eligible households only after HOST has provided the maximum resale price, and HOST has been notified by the owner as required in the IHO and the ten (10) day period thereafter has expired.
  - b) When the resale MPDU is offered for sale to eligible households, the following conditions apply and must be reflected in all marketing materials reflect:
    - (1) The purchase price shall not exceed the maximum sales price;
    - (2) The purchaser must be verified by HOST as an eligible household as defined by the IHO;
    - (3) The selling owner's obligations under the contract are expressly contingent upon the verification that the purchaser is an eligible household that the purchase price does not exceed the maximum sales price as evidenced by issuance of the verification; and
    - (4) All earnest money must be returned in the event that the contingencies above are not met.
  - c) Within five (5) days after contract acceptance (defined as the date of last execution of the contract by the purchaser or the selling owner), the purchaser shall complete and submit an application form to HOST requesting a determination that the purchaser is an eligible household and that the purchase price does not exceed the maximum sales price.
  - d) Upon the transfer of the MPDU, a memorandum of acceptance shall be recorded in the Clerk and Recorder of the City and County of Denver, along with the deed for the MPDU.
  - e) The Director may waive the restrictions on the resale prices for MPDUs if the Director finds that the restrictions conflict with regulations of federal or state housing programs and thus prevent eligible households from buying dwelling units under the City and County of Denver's affordable housing program. Any waiver shall be in writing, shall reference the recorded covenant, and shall be recorded in the records of the Clerk and Recorder for the City and County of Denver, Colorado;
12. A statement setting forth the requirement that in the event of notice of default or notice of foreclosure by the first lien holder (including assigns

of the first lien holder), the owner shall send a copy of said notice to HOST within seven (7) days of receipt;

13. A statement that the Director shall be authorized to accept and exercise enforcement powers on behalf of the city; and
  14. A covenant title of: "Notice of Voidable Title Transfer and Master Covenant for the Occupancy and Resale of For-Sale Units" or "Notice of Voidable Title Transfer and Covenant for the Occupancy and Resale of For-Sale Unit \_\_\_\_\_"
- B. Upon the request of the current homeowner, the existing covenant may be replaced by an amended and restated covenant that has been updated or revised since the date of the existing covenant. The request must be made in writing to HOST and is subject to the approval of HOST, in its sole discretion. The amended and restated covenant must be signed by the current homeowner and by the Director.
- C. In the case of a rental development, prior to the issuance of the first Residential Use Permit for the development and the offering for rent of any MPDU, the owner shall record a covenant running with the land in favor of HOST. The covenant shall provide all of the requirements of the ordinance and these Rules and Regulations, including that for fifteen (15) years from the date of issuance of the first Residential Use Permit for the MPDUs, no such unit may be rented for an amount which exceeds the limits set by HOST. HOST shall provide a form of covenant. Terms of the covenant may vary from the form with the approval of the City Attorney's office and HOST. The covenant shall contain a form of the owner's compliance report. MPDU covenants on rental properties shall include the following:
1. A statement that the provisions of this article shall run with the land for the entire control period;
  2. A statement that the covenants shall bind the owners of the MPDU property, and all other parties with an interest in title to the MPDU property during the control period. These covenants shall be senior to all instruments securing permanent financing, except as provided at section 27-115, Foreclosure;
  3. A statement defining eligibility such that to be eligible to lease an MPDU, as set forth in an AHP but at a minimum, households must be earning no more than sixty-five percent (65%) of AMI, or no more than eighty percent (80%) of AMI for developments in which buildings are greater than three (3) stories, and elevators are provided, and over sixty percent (60%) of the parking is structured;

4. A statement regarding use as primary residence and the penalties for violation including provisions that:
  - a) During the control period, every renter of an MPDU shall occupy the MPDU as the renter's primary residence during the renter's tenancy. During the control period, the landlord shall require each renter to verify before taking occupancy that the renter will occupy the MPDU as the renter's primary residence during the renter's tenancy.
  - b) The Director shall require landlords to evict renters who do not occupy the MPDU as their primary residence and to lease to an eligible household. The occupancy requirement does not apply to governmental entities or nonprofit organizations designated by the Director which rent MPDUs, although such entities shall use MPDUs for affordable housing purposes.
  - c) A non-governmental lessee of an MPDU, except a designated HOST Approved Organization, shall not sublease the MPDU to another person. Any rent obtained for an MPDU that is so subleased shall be paid into the special revenue fund by the sublessor within ninety (90) days after the Director notifies the sublessor of the rental violation;
5. A statement which sets forth the limitations as to rental rates including language which specifies that during the control period, no rental MPDU may be leased for more than the maximum rental rate as calculated by this section. Any tenant association fees shall be included in the determination of affordability. Maximum rental rates for MPDUs shall be determined by the Director, including factors such as the number of bedrooms and AMI. HOST shall make available tables which show maximum rental rates;
6. A statement that the Director shall be authorized to accept enforcement powers on behalf of the city;
7. A copy of each verification of eligibility shall be promptly furnished to HOST and maintained on file by HOST;
8. A statement that compliance report shall be provided to HOST by the landlord during the initial leasing on a quarterly basis. Upon full leasing of the units, the landlord shall provide compliance reports on an annual basis. Compliance reports shall, at a minimum verify the percentage of total units which are being leased at MPDU rates to eligible households;
9. A covenant title of: "Notice of Voidable Title Transfer and Master Covenant for the Occupancy and Resale of Building with Affordable Rental Units";

10. A statement of restrictions that rental shall be to eligible households, every rental MPDU provided under this section shall be offered solely to eligible households for rental to be used for the renter's own primary residence, the rental MPDUs shall be offered to the eligible households by the landlord through a fair and equitable system the landlord shall use reasonable, good-faith efforts to enter into leases with eligible households and in marketing to eligible households, and landlord shall not lease any unit without first verifying eligibility of the renter; and
11. A statement that transfers of the apartment buildings shall require a Memorandum of Acceptance of the Covenant in order to transfer the building to a new owner.

## **SECTION 8: COMPLIANCE, ENFORCEMENT AND PENALTIES**

### **I. COMPLIANCE**

Purchasers or renters of MPDUs shall occupy the units as their principal place of residence, except in the event the Director has provided an effective occupancy exception. The occupancy exception policy is set forth in Section 6 of these Rules.

In all cases, the compliance of an Applicant, seller, owner, or renter of an MPDU will be determined in accordance with its obligations under the terms of the Inclusionary Housing Ordinance, covenants, and any deed restrictions. In order to ensure compliance with the letter and spirit of the IHO, HOST shall:

- Maintain a list of all MPDUs constructed, sold or built as an affordable rental project during the period the IHO is in effect.
- Periodically confirm occupancy and ownership for MPDUs.
- Seek permission to enter an MPDU, if necessary to determine compliance.

### **II. VIOLATIONS AND PENALTIES**

If an Applicant, seller, owner, or renter is found to be in violation of its obligations under the IHO, HOST staff will issue a notice of violation to the party demanding corrective action. Upon issuance of Notice of Violation by HOST, the Owner has thirty (30) days to cure the violation. Failure to take corrective action within thirty (30) days will subject the party in violation of these terms to penalties described in the IHO, including a lawsuit to obtain all excessive amounts paid for MPDUs and all rents obtained in violation of the IHO. In the event the City resorts to litigation with respect to any or all provisions of the Covenant and the City prevails, the City shall be entitled to recover damages and costs, including reasonable attorneys' fees. Pursuant to D.R.M.C. § 1-13(c), the city may impose a civil fine on any Applicant in an amount up to one hundred fifty percent (150%) of the value of the housing required but not provided. Covenant violations shall be enforceable through the district court.

In addition to the provisions set forth in Section 27-116 of the Ordinance, whenever any person or entity violates any provision of the Ordinance, or permits any such violation, or fails to comply with any of the requirements hereof that person or entity shall be given

written notice of the violation and a reasonable time to comply. A person who or entity which fails to comply with the written request thirty (30) days after it was issued shall be subject to penalties under the covenant, the IHO, or as otherwise provided by law.

1. It shall be a violation of the IHO for an Applicant or owner to sell or rent an MPDU to an individual or household who has not been income-verified by HOST.
2. In the event a renter of an MPDU shall no longer meet the eligibility criteria established by the IHO, as result of increased income or other factor, then at the end of the lease term, the unit will cease to be counted as an MPDU.
3. In the event a renter fails to occupy a unit for a period in excess of sixty (60) days, the unit will cease to be counted as an MPDU, unless HOST determines that a good faith marketing effort is occurring.
4. Notwithstanding the provisions of the preceding paragraph, the landlord/owner shall immediately designate the next available unit as an MPDU to be leased under the controlled rental price and requirements, and the landlord shall be deemed in compliance.
5. During the term of the covenant of for-sale MPDUs, no second mortgage, re-finance mortgage, or equity mortgage greater than the then current restricted Maximum Resale Price shall be legal. Failure to abide by that restriction may subject owner to criminal and civil fraud penalties. The provisions of the IHO and the Rules hereunder do not in any way limit the types of claims or damages which may be sought against the owner by any injured mortgage, banking, or financial institution. Remedies sought by the City and County of Denver against the owner are not limited by the actions which may be taken by any injured mortgage, banking, or financial institution.
6. Owners or renters of MPDUs who fail to submit requested documentation, executed affidavits or certifications as required shall be subject to penalties under the covenant or otherwise provided by law.
7. Owners and renters of MPDUs who execute a required affidavit or certification knowing the statements contained therein to be false shall be subject to penalties under the covenant or otherwise provided by law.
8. Renters of MPDUs who execute an affidavit or certification knowing the statements contained therein to be false may be subject to lease termination and eviction procedures.



9. Owners of individual MPDUs who do not continue to occupy their respective unit as their domicile without receiving an occupancy grant of exception from HOST may be subject to legal action or proceeding under the covenant, including HOST may require such owner to turn over rents received in violation of this provision and to either sell the unit to someone who meets the eligibility requirements established by the Ordinance or to occupy such affordable dwelling unit as a domicile.

### **III. RECAPTURE**

For MPDUs determined to be out of compliance and which meet the requirements of this section, the Director may authorize recapture of the affordable term for the noncompliant period.

The recapture procedure will be available only for households that can demonstrate that they purchased the MPDU without being income qualified because they had a good faith belief that the MPDU was a market rate unit, were not income verified at the time of purchase, and are currently unable to become income verified. Evidence to be provided will include title insurance and other title records possessed by the homeowner.

1. To participate in the recapture procedure, the owner of the MPDU must comply with all of the following:
  - a) Continue to occupy the MPDU as its primary residence;
  - b) When the homeowner sells the MPDU, the homeowner must resell the MPDU at an affordable housing price to an eligible household as determined by the covenant that is applicable or, in the case of an expired covenant, was applicable to the MPDU. The affordable price will be calculated by HOST at the time the owner determines to sell the MPDU and shall not be subject to negotiation or appeal.
  - c) Execute a performance deed of trust in favor of the City and County of Denver which performance will require the homeowner to enter into a new affordable housing covenant at resale that allows for the recapture of the non-compliant period ("Recapture Covenant").
  - d) Meet other standard property maintenance obligations.
  - e) Be subject to damages to the City for lost affordability in the event the homeowner fails to perform the obligations specified in the performance deed of trust. In order to compensate the City for its lost affordability, the liquidated damages are the difference between the market rate price of the MPDU (as determined by MLS comparative market analysis or other HOST approved

methodology) at the time the City discovers a violation of the performance deed of trust and the applicable maximum allowable resale price at the time of violation of the performance deed of trust.

2. The Recapture Covenant shall contain the terms found in the covenant in effect at the time the MPDU became non-compliant.
  - a) The Recapture Covenant shall be recorded against the property prior to the closing of the MPDU for resale to an income verified household.
  - b) The terms of and requirement to record the Recapture Covenant shall be disclosed to real estate agents, banks, title companies and all potential buyers involved with the sale of the MPDU.
  - c) The recapture term shall be equal to the length of time the MPDU has been non-compliant and will be in addition to the term of affordability remaining on the MPDU.
3. The recapture formula to determine the term of affordability that has been lost to the City shall be calculated by HOST. The recapture period is not subject to negotiation or appeal. HOST shall determine the recapture period as follows:
  - a) The current closing date of the scheduled sale of the MPDU to an income qualified buyer, at or below the HOST calculated maximum allowable resale price .
  - b) Subtract the prior sale/transfer date that the MPDU first became out of compliance with the original covenant, as reflected on the applicable transferring deed (warranty, bargain and sale, quit claim, etc.) recorded against the MPDU. That equals the recapture term.
  - c) Add the recapture term to either the expiry date of the MPDU covenant in effect at the time of the non-compliant sale or the date of the current compliant sale, whichever results in the later date. That later date shall be the expiration date for the Recapture Covenant.

The following is an example of the recapture process and is purely for illustrative purposes:

Date existing MPDU Covenant Expires	1/1/2023
Future MPDU Compliant Sale Date	8/11/2020
(minus) Previous, Non-Compliance MPDU Transfer/Sale Date	8/11/2007
(equals) Lost Period of Affordability (years)	13
Date existing MPDU Covenant Expires	1/1/2023
(plus) Lost Period of Affordability (years)	13
equals Recapture Covenant Expiry Date	1/2/2036

#### IV. ENFORCEMENT AND APPEAL

HOST shall have all the enforcement authority provided under the D.R.M.C. , including CPD’s zoning and subdivision ordinances, to enforce the provisions of the IHO. Appeals shall be conducted in accordance with the Denver Revised Municipal Code, Section 56-106 - Administrative Review and Court Proceedings and Rules and Regulations promulgated by the City’s Department of Public Works.

In order to enforce the IHO and investigate alleged violations, HOST may:

- Maintain a list of all MPDUs constructed, sold or rented during the period the IHO is in effect.
- At its discretion, request periodic readings of utility meters installed in MPDUs.
- Periodically request copies of any documentation relevant to residency for households owning MPDUs.
- Seek permission to enter an MPDU.

Any person aggrieved by any decision made by the HOST staff in the administration or enforcement of the IHO, may appeal such decision to the Deputy Director of Housing Opportunity (“Deputy Director”) within thirty (30) days of receipt of notice. The Deputy Director will schedule an appeal hearing at the earliest possible date upon receipt of the appeal request (Housing Opportunity Appeal). The Deputy Director shall issue a determination within fifteen (15) business days of the conclusion of the Housing Opportunity Appeal.

If the owner wishes to appeal the Housing Opportunity determination, the owner must file a petition of appeal to the HOST Director which specifies the grounds upon which aggrieved and must be filed within thirty (30) days from the date of the Housing Opportunity decision. The HOST Director will schedule an appeal hearing (HOST Appeal) at the earliest possible date upon receipt of the request. The HOST Director may preside over the HOST Appeal or may select a Hearing Officer to commence the hearing in the Director’s stead. The HOST Director or Hearing Officer shall issue a determination within a reasonable time following the conclusion of the HOST Appeal. This final determination of the Director, based on the record of such hearing shall be considered a final order of the Director and may be reviewed under Rule 106 of the Colorado Rules of Civil Procedure.

If a hearing officer has conducted the HOST Appeal, a request for reconsideration of the determination may be made if filed with the Director of HOST within fifteen (15) days of the date of the final determination of the HOST Appeal. The Director of HOST shall review the record and the determination shall be considered a final order of reconsideration of the Director of HOST on the date the Director of HOST rules on the request for reconsideration.