

# **City of Minneapolis Inclusionary Zoning Compliance Manual**

**City of Minneapolis  
Department of Community  
Planning and Economic  
Development  
Phone: (612) 673-5175**

**Email: [InclusionaryZoning@minneapolismn.gov](mailto:InclusionaryZoning@minneapolismn.gov)**

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**Appendix A: Definitions**

# 1. Overview of Requirements

In accordance with Title 20, Chapter 535, Article XIV of the Minneapolis Code of Ordinances (the “[IZ Ordinance](#)”), developers proposing development projects with 20 or more residential Units must comply with the Inclusionary Zoning requirements laid out in the Minneapolis [Unified Housing Policy](#). The City Council has authorized the City’s CPED Director to develop an administrative compliance manual(s) to implement the IZ Ordinance and Unified Housing Policy. Please refer to Appendix A for the definitions of capitalized terms referred to in this manual.

## 2. Development Approval Procedures and Compliance Options

### 2.1 Land Use Approvals and Building Permits

At the onset of the development review process, the applicant will have a pre-application meeting with a Land Use, Design and Preservation Planner. During the pre-application meeting, the assigned planner will determine whether a proposed project will meet the threshold established in the IZ Ordinance (20 or more new Units). If Inclusionary Zoning is required, the site plan review approvals will be contingent upon the project complying with the City’s Unified Housing Policy.

#### A. Compliance Plan

The City’s goal is to ensure that developers are aware of the Inclusionary Zoning requirements and that they are considered early in the planning process. Developer will receive an information packet during its initial meeting that includes the Inclusionary Zoning Acknowledgement and Affordable Housing Compliance Plan (a “Compliance Plan”) that will need to be completed by the developer and approved by the City. Any project with 20 or more residential Units must have an approved Compliance Plan before any building permits are issued for the project. Interested parties may also access the Compliance Plan form from the City’s website. Further questions about compliance can be directed to [inclusionaryzoning@minneapolismn.gov](mailto:inclusionaryzoning@minneapolismn.gov).

#### B. Timing of Submittal of the Compliance Plan

A completed and signed Compliance Plan is not required for conditional land use approval. However, Development Services may ask the developer to informally articulate how they expect to comply with the Unified Housing Policy for internal tracking purposes. Developers are asked to start thinking about how they intend to comply with the Inclusionary Zoning requirements as early in the process as possible.

The developer is required to submit a completed Compliance Plan to Development Services with the application for building permit, which will be forwarded to the

City's Residential Finance staff for review. The City's Residential Finance staff will review the Compliance Plan and determine if it is complete and conforms to the provisions of the Unified Housing Policy. The plan will be approved by the appropriate staff in Residential Finance if no modifications are needed. Residential Finance staff will return the approved Compliance Plan to Development Services. The Compliance Plan shall be signed by the Manager of Residential Finance, and the developer shall pay in full any fees associated with the Compliance Plan, prior to receiving a building permit for the project.

If a developer is applying for Revenue Loss Offset Assistance for the project, developer should submit an application to determine how much Revenue Loss Offset Assistance may be awarded to the project. Developer should refer to the City's Inclusionary Zoning Revenue Loss Offset Policy for more details on how requests are evaluated and allow approximately six (6) months from the point of application before a City Council action can be requested. City Council action on any Revenue Loss Offset Assistance will be necessary prior to issuance of any building permit for the project.

No application for a building permit for a project subject to the IZ Ordinance will be deemed complete unless it includes a completed Compliance Plan. No building permit will be granted for a project until the Compliance Plan has been signed by the Manager of Residential Finance. City review of the Compliance Plan requires at least 5 business days or more depending upon the complexity of the project and the Compliance Plan.

### **C. Modifications to the Compliance Plan**

Any alterations to an approved Compliance Plan must be consistent with the IZ Ordinance and Unified Housing Policy and changes must be submitted for approval to the Manager of Residential Finance. Amending a Compliance Plan may be subject to a fee, according to the City's fee schedule available on the City website. Post-permit issuance revisions to the construction plans that involve a modification of the number of dwelling Units to be constructed, the project's net residential area, or that materially affect the design/unit comparability standards in the Unified Housing Policy will require the submission of an updated Compliance Plan.

### **D. Compliance Plan Verification**

All information in the Compliance Plan is subject to verification at any time after a building permit for the project is issued. Prior to issuing a building permit, Development Services will confirm whether the project is subject to the Inclusionary Zoning requirements, confirm that the key project details in the Compliance Plan (number of rental Units, number of for-sale Units, and net residential square feet) match those on the building permit plans, and Residential Finance will confirm that the project is in compliance with the Design/Unit Comparability Standards established in the Unified Housing Policy, based on project documentation submitted

at election. Verification of compliance with Design/Unit Comparability Standards may include an assessment of the Unit mix and average square feet of the market rate Units.

## **2.2 Certificate of Occupancy**

Developer must demonstrate that the requirements of the Compliance Plan are met prior to receipt of a certificate of occupancy. Evidence of compliance will depend on which compliance path is selected.

### **A. On-Site Units**

#### **(i) Rental Units.**

The City enforces the requirements of the Unified Housing Policy for a rental housing project complying with the IZ Ordinance by providing on-site affordable Units through a Declaration of Affordable Housing Covenants (“Declaration of Covenants”). The Declaration of Covenants is a document signed by the developer for the benefit of the City of Minneapolis that is approved as to form by the Manager of Residential Finance and recorded against the project. It identifies the specific IZ Units and describes the obligations that the project has with respect to the IZ Units and the affordability period that applies.

Prior to the issuance of any Certificate of Occupancy, the project must have a Declaration of Covenants properly recorded in the Hennepin County property records. The developer is required to provide Development Services with evidence of recording as a condition to receiving a Certificate of Occupancy for the project. IZ Units shall have standard basic finishes consistent with the building as a whole.

For rental projects selecting the on-site compliance option, the Declaration of Covenants will run with the property for the affordability period required by the Unified Housing Policy and will be removed after the expiration of the affordability period. Upon request after the expiration of the affordability period, the City will execute a termination and provide it to the property owner for the owner to record.

#### **(ii) For-Sale Units**

For ownership projects no certificate of occupancy will be issued for the project until the developer records a Declaration of Inclusionary Housing Covenants against the property where the IZ Units will be located insuring that the IZ Units cannot be sold unless they are sold consistent with the City’s Perpetually Affordable Housing Land Trust Program (“PAH”) requirements and a Limited Equity Home Ownership Declaration and

Option to Purchase Agreement is recorded against the IZ Unit at the time of sale.

## **B. Fractional Units and Mixed Compliance**

If the calculation of required onsite IZ Units results in a number that includes a fraction of a Unit, the developer may elect to pay an in-lieu fee for the fraction of the Unit, or round up (not down) to the next whole Unit. A developer may also elect to comply with the Inclusionary Zoning requirements by providing a combination of on-site Units and paying an in-lieu fee for the balance of the requirement. In-Lieu fees for a partial Unit or mixed compliance are due in full prior to issuance of the building permit.

To calculate the in-lieu fee for a Unit or a fraction of a Unit:

- Calculate the total in-lieu fee for the project (net residential square feet \* fee per square foot)
- Calculate the number of required on-site affordable Units (ie., 8% of total Units)
- Calculate the fee per affordable Unit (total in-lieu fee for the project / number of required on-site affordable Units)
- Calculate the in-lieu fee for the required fraction of a Unit (fee per affordable Unit \* the required fraction of a Unit) (where applicable)

Example: 105-Unit project, 85,050 square feet, 6 stories

- Total in-lieu fee:  $85,050 \text{ sq ft} * \$15 / \text{sq ft} = \$1,275,750$
- Number of required on-site affordable Units:  $8\% \text{ of } 105 \text{ Units} = 8.4 \text{ affordable Units}$
- Fee per affordable Unit:  $\$1,275,750 / 8.4 = \$151,875$
- Fee for required fraction of a Unit:  $\$151,875 * 0.4 = \$60,750$

## **C. Cash In-lieu Payment**

The In-lieu fee is payable for each square foot of Net Residential Area in the project as certified by the project architect. The in-lieu fee amount will be specified in the approved Compliance Plan and due at the submission of the building permit application. All fees related to Inclusionary Zoning are published in a fee schedule on the City's website. No developer electing to comply with the Inclusionary Zoning requirements by paying the in-lieu fee may receive a building permit before the fee is paid in full.

## **D. Off-site Units**

The City Council may approve or reject an off-site plan as meeting the requirements for an off-site plan as described in the Unified Housing Policy.

If the developer chooses to comply with the Inclusionary Zoning requirements with the provision of off-site Units, they must provide the City with a cash deposit or letter of credit in a form acceptable to the City in the amount the project would be required to contribute through a cash in-lieu contribution (“Security Deposit”). The Security Deposit is due prior to issuance of the building permit. No developer electing to comply with the Inclusionary Zoning requirements with the provision of off-site Units may receive a building permit before the Security Deposit is provided in full.

The Security Deposit will be forfeited to the City and the developer will have no further obligation with respect to the off-site plan on the “Deposit Forfeit Date,” which is the date that is 48 months from the date the Compliance Plan is acknowledged as approved by Minneapolis’ Residential Finance division, (or such later date as is approved by the CPED Director) unless, prior to the Deposit Forfeit Date:

1. The City Council has approved the off-site plan;
2. All of the required criteria in the Unified Housing Policy for off-site compliance have been met;
3. Proper evidence of site control has been provided;
4. Closing has occurred on all construction financing for the off-site Units; and
5. A Declaration of Covenants has been approved as to form by the Manager of Residential Finance and properly recorded against the off-site project.

The Security Deposit will be refunded to the developer upon completion of those four conditions.

### **(i) Off-site Rental Preservation Projects**

Subject to approval by the CPED Director and City Council, project developers may propose in the compliance plan off-site projects that dedicate existing housing Units as affordable rather than construct new IZ Units. This provision is available to projects with completed land-use applications submitted June 1, 2020 or later.

Preserving the affordability of one Unit of affordable housing provides less public benefit than building a new Unit of affordable housing because new Units add to the overall housing stock but preserved Units do not. To meet the policy requirement of providing “at least the equivalent public benefit,” developers will be expected to go beyond simply preserving the



same number of affordable Units as would have been built on-site at the same affordability levels for the same term of affordability.

While the Council will ultimately determine whether a project is “at least the equivalent public benefit,” when staff make recommendations to the Council, they will use the following as points of reference:

- Rental housing projects should preserve Units with rents and occupancy requirements at or below 50% of AMI and should preserve approximately twice as many IZ Units as what the project would have built through the required on-site production option; or the developer should demonstrate that the project provides demonstrated equivalent or greater public benefit through another means.

All IZ Units in off-site preservation projects must be restricted for at least 20 years through a Declaration of Covenants in form approved by the City placed on the property; The City will maintain a public record of approved off-site preservation projects to ensure some degree of consistency over time for different projects.

Additional guidelines for off-site preservation projects include:

1. A Physical Needs Assessment to the satisfaction of the City shall be performed on each Preservation Unit to be acquired and/or rehabilitated, the property upon which it is located, and any associated common area identifying all items which will likely require repair or replacement within the required affordability period.
  - Developers must either perform such repairs up-front or demonstrate their ability to meet capital needs over the affordability period (e.g. through capitalizing a reserve).
  - The developer must have a plan for immediate repairs and/or rehabilitation if the physical needs assessment identifies health and safety deficiencies or serious deferred maintenance; or if the property has City housing code violations, or a Tier 2 or 3 license status.
2. An energy assessment shall be performed on the property in coordination with the City of Minneapolis and/or the Center for Energy and Environment (CEE) with the expectation that and developers will incorporate recommended sustainability features and/or make recommended energy efficiency upgrades.
3. The City’s goal is to prevent displacement of residents from affordable Units. Developers must submit a displacement mitigation strategy showing how they are addressing any relocation needs caused by the planned rehabilitation of the Units. If households must be relocated to a different property, the plan should

include relocation assistance for those households, in an amount equal to three (3) months of the current monthly contract rent.

4. If the Units to be preserved are currently renting for less than the affordable rent limit for households at 50% of AMI, rent increases shall be limited to a maximum of 3% annually until rent levels reach the affordable rent limit for 50% of AMI. If rents in the proposed IZ Units currently exceed 50% AMI levels, the developer must immediately adjust rents downward to 50% AMI rent levels to meet the required number of IZ Units.
5. Additional Household protections:
  - No lease compliant resident will be involuntarily displaced from the project, meaning that there shall be no lease terminations without cause. Owner must provide all households in the project with not less than 30 days prior written notice of increases in rents.
  - To avoid displacement, existing households as of the date of the acquisition will be grandfathered in and will not be required to be income certified, even if the composition of the household changes. All new households must be income qualified.
  - The Owner certifies that no existing households in the Property have been or will be evicted because of the filing of the Declaration of Covenants.
  - The limitations on maximum rents and rent increases include rent, services and utility payments or monthly allowances for services and other non-optional changes.
6. The proposed site for the rehabilitated Units, or of the existing rental property, must be reviewed by CPED to determine if the existing and/or proposed residential density is allowed.
7. All rehabilitated Units shall comply with current applicable Building and Housing Codes.
8. An environmental hazard (including lead-based paint) review must have been completed to the satisfaction of the City indicating the site is free of all such hazards.
9. The bedroom mix of the rehabilitated Units must be substantially the same as the bedroom mix of the market rate Units in the project triggering Inclusionary Zoning requirements, provided however that the developer is encouraged to provide more family/large household (3 and 4 bedroom) Units which may favorably factor into the total off-site IZ Unit requirement.

**E. Donation of Land to the City:**

If the developer chooses to comply with the Inclusionary Zoning requirements through donation of land to the City, the City must have accepted conveyance of the land donation prior to issuance of the building permit or else developer must provide

the City with a Security Deposit equal to the amount the project would be required to contribute through a cash in-lieu contribution prior to issuance of the building permit. If the City has not accepted the land donation prior to issuance of a building permit for the project and has instead accepted a Security Deposit, the Security Deposit will forfeit to the City and the developer shall have no further obligation with respect to the land donation unless the City has accepted the land donation and value on or prior to issuance of any certificate of occupancy for the project.

The CPED Director may accept or reject a land donation after considering the criteria below. The CPED Director may also choose to bring proposals for land dedication to the City Council for approval. If a site is determined to meet the criteria below, the developer and the City will enter into an agreement to transfer the site to the City in form drafted by the City Attorney and the site will be transferred prior to the issuance of any certificates of occupancy for the project.

Criteria for donated land:

1. The developer has marketable fee title on the site proposed to be transferred.
2. The site is zoned for residential development at a density to accommodate at least the number of otherwise required IZ Units for the project.
3. The site is located in an area where the CPED Director has determined that there is a high need for sites for affordable housing.
4. The site is suitable for development of affordable housing Units in terms of configuration, physical characteristics, location, access, adjacent uses, and other relevant planning and development criteria including, but not limited to, factors such as the cost of construction or development arising from the nature, condition, or location of the site, including:
  - The site is not located in a special hazard flood area
  - The historic nature of the building and any associated costs to rehabilitate-
5. Infrastructure to serve the site, including but not limited to streets and public utilities, must be available at the property line and have adequate capacity to serve the maximum allowable residential development pursuant to zoning regulations.
6. Environmental review of the site has been completed for the presence of hazardous materials and geological review for the presence of hazards and soil conditions and all such conditions are within reasonable risks to the satisfaction of the City prior to acceptance of the site by the City.
7. The value of the site prior to acquisition (as determined by a Licensed Residential Appraiser, with the appraisal ordered by the City and paid for by the developer, using the Comparable Approach Method less any City pass through cleanup grant funding) upon the date of dedication agreement is equal to or greater than the amount the project would have paid for the in-lieu fee in

effect at the date of dedication agreement. If the appraised value is less than the in-lieu fee, developers may contribute the remaining requirement in a cash fee.

If the CPED Director determines that the site is acceptable in accordance with this compliance manual and that the transfer is in the best interest of the City, the CPED Director will execute a Land Dedication Agreement in a form agreeable between the developer and the City. If the City's acceptance of the site is dependent on certain conditions being satisfied prior to the conveyance of the site, the CPED Director shall identify such conditions of approval in the Land Dedication Agreement. At a minimum, the City's acceptance of the site shall be conditioned on the following conditions:

1. If the proposed land dedication site is found to have any hazardous materials or other environmental damage that requires remediation prior to development of Housing Units, the City's acceptance of the site shall also be conditioned on the developer clearing the site of such hazardous materials to the satisfaction of the City in its sole discretion prior to conveyance to City.
2. Removal of exceptions to title deemed unacceptable to the City and issuance of a title insurance policy for the benefit of the City at developer's expense.

### **3. For Sale Inclusionary Units**

#### **3.1 Perpetual Affordable Housing Land Trust Program**

For-Sale IZ Units will become part of the City's Perpetually Affordable Housing Land Trust Program. Developers should refer to the City's PAH Manual for the requirements on marketing and sale of for-sale IZ Units.

### **4. Rental IZ Units**

#### **4.1 Determining Rents**

For rental properties, there are multiple potential income tiers permitted by the Unified Housing Policy that may apply to the project depending on the selected compliance path. Each rental IZ Unit must be occupied by a household earning no more than the applicable income limit adjusted for household size. Units must be leased at a rent that the City has determined to be affordable to households earning the target income inclusive of services, utility payments or monthly allowances for services and other non-optional charges. The City will establish maximum monthly allowances for utilities and services (excluding telephone and cable). Owners must update allowances annually. The affordable rent limit includes all charges related to occupancy of the IZ Unit including required parking fees for use of common facilities, and other fees and charges. Households in IZ Units must not be charged fees that are not customarily charged in rental housing such as laundry room access fees and may not be charged more than market rate households are being charged for amenities in the building. Applicable rent limits and utility

allowances for IZ Units of different sizes at different income levels are available on the City's [Inclusionary Zoning website](#).

For Units being counted and leased on a per bedroom basis in student-eligible housing projects, the rent limit will be set to 60% of the maximum rent for an efficiency Unit at the 60% AMI limit. The utility allowance for IZ Units being counted and leased on a per bedroom basis in student-eligible housing projects shall be calculated at 60% of the utility allowance for an efficiency Unit.

On-site IZ Units must be developed and made available for occupancy either prior to or concurrently with market rate Units. Projects that are constructed in multiple phases must demonstrate compliance with the Inclusionary Zoning requirements for each construction phase.

Owners must provide all households in Rental IZ Units with not less than 30 days prior written notice of increases in rent and shall not increase rent on IZ Units more frequently than once per year. The previous sentence applies to the rent charged for the IZ Unit and not the portion of tenant paid rent for residents associated with Section 8 or other rental assistance. Over time, as the median income changes, an owner may be required to reduce the rent charged (if median incomes decrease) but will not be required to lower rents below those in effect at the time of project construction.

In the case of renters using a Section 8 voucher or other rental assistance, project Owners may collect the fully allowed rental reimbursement amount from the Housing Authority even if the total rent for the unit exceeds the maximum monthly rent established by CPED so long as the household using the rental assistance is not paying more than 30 percent of the household's monthly adjusted income.

## **4.2 Income Requirements**

Income limits for rental IZ Units are described in the Unified Housing Policy and will be reflected in the Declaration of Covenants for the project.

# **5. Renting IZ Units**

## **5.1 Marketing of IZ Units**

### **A. Affirmative Marketing and Non-discrimination**

Owners must adhere to Equal Opportunity, Affirmative Marketing, and Fair Housing practices in all marketing efforts, eligibility determinations, and other transactions. The Equal Housing Opportunity logo or statement *{We do business in accordance with the Federal Fair Housing Law. It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status or national origin.}* must be used in all advertising of vacant Units. Rental IZ Unit availability opportunities are required to be advertised on [HousingLink](#) concurrent with other public or private advertising for a minimum of 10 consecutive days.

In addition to the federal protections mentioned above, Owners must not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, disability, status with regard to public assistance, sexual orientation, or familial status in the rental or sale of the IZ Units and shall comply with the requirements of state and local laws with respect thereto, including Minnesota Statutes §363A.09.

A file must be maintained with all marketing efforts related to the property. Records may be reviewed by CPED to ensure that all efforts are in compliance with Inclusionary Zoning requirements.

### **B. Notice to Applicants**

All applicants for IZ Units shall be advised early in their initial visit to the property that there are maximum income limits that apply to such Units. They shall also be made aware that the anticipated income of all persons expecting to occupy the IZ Unit must be verified prior to occupancy, that household income will be reviewed annually, and that tenants of rental IZ Units whose incomes rise beyond the program limits will be required to relocate.

### **C. City Email Interest List**

Owners must submit information through a City form about the IZ Units. Information required may include, but is not limited to the IZ Unit sizes (number of bedrooms and square feet), location, amenities, income requirements, anticipated availability date and a photo. Individuals who are interested in receiving notices about available IZ Units may sign up for the City's email IZ Interest List. CPED staff will send an email to the IZ Interest List informing them of the availability of new IZ Units.

## **5.2 Selecting Residents**

### **A. Collecting Applicant Information**

An owner must collect the following information on applications for IZ Units after providing an appropriate Government Data Practices Act Disclosure Statement form approved by the City:

1. Household size
2. Total household Annual Income
3. Email address and phone number

The owner must also provide a space on the application for IZ Units for "Race/Ethnicity of head of household," with the disclaimer that providing that information is voluntary and will only be used for statistical analysis. Sample form is available on the City website.

## **B. Application Fees**

The owner may charge applicants for rental IZ Units an application fee as permitted by the City's [Renter Protections Ordinance](#), and must return application fees as specified in the Renter Protections Ordinance. The fee charged to applicants for rental IZ Units may not be greater than the fee charged to applicants for market-rate Units.

## **C. Spreadsheet of Applicants**

For initial lease-up of newly-designated IZ Units, the owner must send the City a spreadsheet of all the IZ Unit applicants when the minimum 10 day application period closes. The spreadsheet must include information about household size and total household Annual Income for each applicant.

## **D. Ranking Applicants**

### **(i) Newly-designated IZ Units**

For initial lease-up of newly-designated IZ Units, the City will conduct a blind randomized selection for each IZ Unit using the spreadsheet of applicants provided by the project owner and any potential applicants that have contacted the City directly off of the City's IZ Interest List or otherwise provided preliminary eligibility information. The City will remove applicants who are not income-eligible based on their self-reported income and rank the remaining list of applicants with a randomizer applying any City approved preferences as applicable.

### **(ii) Filling Vacancies in IZ Rental Units**

When an existing rental IZ Unit becomes vacant, the Owner may select an eligible applicant using a process of their choice (e.g. first-come, first-served or a randomized selection) provided the selection is consistent with the City's affirmative marketing requirements described in Section 4.3 above.

## **5.3 Eligibility for IZ Units**

### **A. Income Eligibility**

Income limits for IZ Units are described in the City's Unified Housing Policy and will be reflected in a project's Compliance Plan as well as its Declaration of Covenants. The City's IZ Program uses HUD'S definition of "Annual Income" as contained in the U.S. Housing Act of 1937 as amended. HUD's definition is very specific and is not simply the amount contained in tax records. Income eligibility shall be done in compliance with the Minneapolis St. Paul Housing Finance Board Section 42 Housing Tax Credit Program Compliance Manual. Therefore, before

initial occupancy Annual Income must be verified by the City's Certifying Entity and reviewed annually.

Through an RFP process, the City will select one Certifying Entity to provide eligibility verification services for rental IZ Units. The City shall establish a price schedule that the Certifying Entity must use for those services. For rental IZ Units, project owners must contract directly with the Certifying Entity for eligibility verification services, unless they can demonstrate a history of tax credit income certifications elsewhere within the owner's portfolio.

The project owner directs the Certifying Entity as to which applicants to verify. The cost of verification may not be passed on to the applicant; applicants for IZ Units may not be charged any fee over and above the standard application fee charged to all applicants.

Verifications are valid only if they are no older than 120 days from the date issued by the Certifying Entity.

#### **B. Household Size**

The City's goal is that the size of the household renting an IZ Unit is compatible with the size of the IZ Unit so affordable Units are not under-utilized. Applicants for IZ Units whose household size is equal to or greater than the number of bedrooms in the IZ Unit will have preference for the IZ Unit. Project owners may only select applicants whose household size is less than the number of bedrooms in the IZ Unit if there are no qualified applicants of a compatible size.

#### **C. Applicant Screening**

Before any IZ Unit is rented, the applicant's eligibility, including income eligibility, must be verified. The project owner must screen applicants in ranked order as provided by the City (or, for vacancies, in the order of application submission) and select the first applicant that meets both the IZ eligibility criteria (detailed below) and project owner's screening criteria. The project owner may choose whether to vet applicants one by one or vet multiple applicants simultaneously.

During the eligibility verification time period, the project owner can also screen selected households according to other criteria that they use for all market-rate applicants, consistent with the City's [Renter Protections Ordinance](#), including the screening criteria and processes outlined in the Minneapolis Ordinances Chapter 244, and fair housing law.

#### **D. Student Eligibility**

For projects that are not Student Eligible Housing, as defined in the [Unified Housing Policy](#), the student eligibility requirements from the [Minneapolis-St. Paul Housing](#)



[Finance Board Section 42 Housing Tax Credit Program Compliance Manual](#) apply. Under these requirements, most full-time students are not eligible, with a few limited exceptions. Eligibility determination will be made by the Certifying Entity.

Students who are eligible for the Federal Pell Grant shall be eligible for IZ Units or bedrooms in Student Eligible Housing, as defined in the Unified Housing Policy. Applicants for IZ Units or bedrooms in Student-Eligible projects who use the Pell Grant eligibility criteria will have their eligibility verified by CPED staff by reviewing documentation of Pell eligibility from FAFSA or the educational institution where a student is enrolled. All other applicants must use the standard verification process.

For the purposes of assessing Design/Unit Comparability Standards for Student Eligible Housing projects in which leases for Units with multiple bedrooms are signed for individual bedrooms rather than on a per Unit basis, IZ Unit types (size and number of bedrooms) should be proportional to market rate Unit types in the project.

#### **E. Conflict of Interest**

The project owner may not rent an IZ Unit in the project to any persons related to developer or to a principal of the project owner, architect, attorney, prime contractor, or to any one of its or their employees, directors, officers or agents, or to any of their family members, as determined by CPED.

#### **F. Inability to Find a Renter for a Rental IZ Unit**

If, after the marketing period no applications are received or one or more IZ Units remain unfilled after all applicants have been considered, a project owner may market available IZ Units and evaluate applications on a first-come-first-served basis provided that all applications are time-stamped as they are received and complete applications are considered strictly in the order that they are received. All eligibility requirements must still be met for all rental IZ Units.

## **6. Post Occupancy Requirements for Rental Units**

### **6.1 Permissible Rent Increases**

As long as rents for IZ Units remain below the maximum allowable limit, an owner may impose a rent increase on an IZ Unit no earlier than one year from the date the project was completed, and no more frequently than annually thereafter.

Owners must provide residents of IZ Units with not less than 30 days prior written notice of increases in rents.

## **6.2 Changes in Eligibility**

### **A. Over-Income Households**

Following initial certification, an eligible household's income can increase to 140% of the maximum income level. A household whose income exceeds the maximum income level by more than 140% upon annual recertification must vacate the IZ Unit upon ninety (90) days written notice so that an income eligible household can lease the IZ Unit.

### **B. Change in household composition**

Changes in household composition are governed by the rules of the [Minneapolis-St. Paul Housing Finance Board Section 42 Housing Tax Credit Program Compliance Manual](#). If there are no remaining members for an original qualified household, the transfer must be treated as a new move-in and the new household must qualified under the income limits as a new move-in at the time of transfer.

## **6.3 Leases**

All households in an IZ Unit must be certified and have a valid lease on file. All household members age 18 and over must sign. Each IZ Unit lease must include the legal name(s) of the parties to the agreement and all other occupants, a description of the Unit to be rented (address), the term of the lease, the rental amount, the use of the premises, and the rights and obligations of each party. The lease shall also inform the resident household that fraudulent statements and information are grounds for eviction and that the resident household could become subject to penalties.

Initial leases for a new household in an IZ Unit must be for 12 months, unless another term is mutually agreed to by owner/management and resident household. If a resident household has agreed to a shorter term, that agreement should be in writing and kept in the household's file. At no time can a lease term be for less than 30 days.

All leases of rental IZ Units shall contain clauses, among others, wherein each individual resident: (i) certifies the accuracy of the statements made in its application and Eligibility Certification; and (ii) agrees that the family income at the time the lease is executed shall be deemed a substantial and material obligation of the resident's lease, that the resident household will comply promptly with all requests from owner or the City for income and information relevant to determining eligibility status, and that the resident household's failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the household's leases;

The lease must require that the household must occupy the IZ Unit as its principal residence for at least ten months per year, and prohibit Short-Term Rental of the IZ Unit. The lease must also state that residents in IZ Units may sublet their Units for up to 12 months if unexpected circumstances require a temporary relocation out of the area with pre-approval in writing by the

City. In such cases, the aggregate payments made by any sublessee in any calendar month shall not exceed the monthly rent that could be charged to the sublessor in accordance with the lease.

## **7. Government Data Practices and Disclosure Statement Form**

In working with applicants and residents, the owner warrants compliance with applicable data privacy laws and regulations, including the Minnesota Government Data Practices Act, which sets policies on the information that can be obtained, stored and/or released in connection with public programs and the disclosures that must be made to the individuals providing data. In order to comply with this law, a Government Data Practices Act Statement form must be kept in each IZ Unit a household's permanent file. Note that this is not a release authorization for verification of income and assets and must not be used as such. Each adult household member's name must be printed clearly at the top in the box provided. An unsigned and/or undated form is not valid and will be noted at time of file inspection.

1. The form is to be signed one time and is valid as long as the resident lives at the property and participates in the program(s) identified on the form. If a resident moves from one Unit to another, the original signed and dated form should be moved to the file for the new Unit. A copy should be kept in the move-out file for the former Unit.
2. Only one form is needed per IZ Unit as long as the head of household, spouse, co-head, and all household members over the age of 18 have signed and dated the form.
3. If an adult is added to the household or a minor reaches age 18, they must be added to, sign, and date the original form. It is not necessary to complete a new form.
4. A copy of the form should be made available to the applicant/resident. It is acceptable to give them an unsigned copy.
5. For new residents, the form should be completed at the time of initial application.

A Government Data Practices Act Disclosure form that can be used for all IZ Units monitored by CPED is available on CPED's website.

Owners must maintain applicant and resident household information in a way to ensure confidentiality. Any applicant or resident household affected by negligent disclosure or improper use of information may bring a civil action for damages against the owner and/or manager and seek other relief as appropriate. Owners must dispose of records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.

## **8. Monitoring**

### **8.1 Annual Compliance Report**

Rental property owners will prepare and submit to the City, on or before March 31 of each year, an Annual Compliance Report evidencing that the project is in compliance with the Declaration of Covenants and this Compliance Manual.

The Annual Compliance Report shall be in the form available on the City's website, as updated from time to time.

The Annual Compliance Report requires the owner to certify that the project meets the following for the preceding 12-month period; if not, an explanation of the circumstances and of owner's planned return to compliance is required:

1. At initial occupancy and at annual recertification, the owner has received a household Income Certification with supporting documentation and an Annual Student Certification from the Certifying Entity for each low-income household.
2. Each IZ Unit in the project has been rent restricted as required by the Declaration of Covenants.
3. No finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, has occurred for this project. A finding of discrimination includes an adverse final decision by the Secretary of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.
4. If an IZ Unit in the project has been vacant during the year, reasonable attempts were or are being made to rent that IZ Unit.
5. If the Annual Income of a household in an IZ Unit in the project increased above the limit allowed in this Compliance Manual, that Unit was or will be rented to residents having a qualifying income.
6. Owner has not refused to lease a Unit to an applicant based solely on their status as a holder of a section 8 voucher.

### **8.2 Annual Eligibility Certification**

Owners of IZ Rental projects must contract with the Certifying Entity to conduct annual recertification of all IZ Unit households in accordance with the verification requirements for initial certification. This includes certifying both income eligibility and student eligibility.

The recertification process must begin no more than 120 days prior to the anniversary date of the previous certification. Recertifications that are completed after the anniversary date cause a non-compliance event.

If an owner sends timely notice informing a resident household that annual recertification is due, but the household vacates the IZ Unit, the IZ Unit will not be considered out of compliance. Owners must document the attempts to timely obtain the recertification and the date the resident household actually moves out of the IZ Unit. This must also be disclosed on the annual report.

If the owner initiates an eviction proceeding and the household vacates the IZ Unit, no recertification is necessary. If, for any reason, it is determined that the household will not vacate the IZ Unit as anticipated (i.e., court does not grant the UD), a recertification will be necessary within 120 days of the determination. This must also be disclosed on the annual report and documented in the file.

### **8.3 On-Site Compliance Monitoring**

Owners must retain project records for a minimum of six (6) years beyond the property's required period of affordability as specified in the Declaration of Covenants. Applicant and resident household records, including income verifications and project rents, must be retained for the most recent six-year period, until six years after the period of affordability.

The City or its agent has the right, but not the obligation, to physically inspect each IZ project at least once every three years and review all rent records for the project and all IZ Unit applicant and resident records.

### **8.4 Monitoring Fee**

Owner shall, upon annual invoicing, pay third-party expenses related to monitoring of project compliance (including initial income eligibility and annual re-certifications) with this Agreement. See the City's Fee Schedule on the City's website for current fee amounts.

### **8.5 Non-Compliance and Correction**

#### **A. Notice of Non-Compliance**

If the City does not receive the required certifications and/or compliance reports when due, or discovers by audit, inspection, or review or in some other manner that the property is not in compliance with the requirements of the Declaration of Covenants and this Manual, the City will notify the owner as soon as possible.

A correction period will be established by the City and set forth in the Notice of Non-Compliance to the owner. The City may extend the correction period, but only if the City determines there is good cause for granting such extension. Requests for an extension must be in writing from the owner, must be received by the City no later than the last day of the correction period identified on the Notice of Non-Compliance, and must include an explanation of the efforts to correct the non-compliance and the reason the extension is needed.

## **B. Owners Response**

The City will review the owner's response and supporting documentation, if any, to determine whether the non-compliance has been clarified, corrected or remains out of compliance.

Failure to timely correct or clarify (as appropriate) all non-compliance could result in extension of the end of the period of affordability, repayment of tax increment previously disbursed, or termination of future tax increment payments, or other legal remedies, and may also affect the owner's eligibility for financing from the City under any or all of its programs.

## APPENDIX A

### DEFINITIONS

**“AMI (Area Median Income)”** – means the "Median Family Income" as most recently established by HUD for the Minneapolis/St. Paul standard metropolitan statistical area, adjusted for family size.

**“Annual Compliance Plan”** – means the report an Owner of a project with rental IZ Units must file with the City annually evidencing that the project is in compliance with the Declaration of Covenants and the IZ Compliance Manual.

**“Annual Income”** – means “Annual Income” as defined at 24 CFR 5.609, which is the definition used for the “Section 8” program.

**“Compliance Plan”** – means an Inclusionary Zoning Acknowledgement and Affordable Housing Compliance Plan form provided by the City that is completed by the developer and approved by the City.

**“Certifying Entity”** – means the City or its designated agent that is under contract with the City to provide income verification and compliance monitoring for rental IZ Units for a specified fee schedule to be charged directly to an Owner of rental IZ Units.

**“CPED Director”** – means the director of the City’s Department of Community Planning and Economic Development.

**“Declaration of Covenants”** – means a Declaration of Affordable Housing Covenants form provided by the City and properly recorded against a property where there will be rental IZ Units.

**“Declaration of Inclusionary Housing Covenants”** – means a document in form provided by the City properly recorded against a for-sale development that is intended to provide for-sale IZ Units that ensures such IZ Units will not be sold unless they are sold consistent with the City’s Perpetual Affordable Housing requirements.

**“Deposit Forfeit Date”** – means the date that is the 36 month anniversary of the date the City approves Developer’s Compliance Plan for a development that triggers inclusionary zoning requirements.

**“Developer”** – means the legal entity that is applying for land use approvals and permits for a development that triggers inclusionary zoning requirements.

**“HUD”** – means the United States Department of Housing and Urban Development.

**“Inclusionary Zoning Ordinance”** – means Title 20, Chapter 535, Article XIV of the Minneapolis Code of Ordinances, as amended from time to time.

**“IZ”** – means “Inclusionary Zoning”

**“IZ Unit”** – means a Unit that has income and affordability restrictions pursuant to the City’s Inclusionary Zoning Ordinance and Unified Housing Policy.

**“Land Dedication Agreement”** – means a land conveyance agreement in form approved by the City.

**“Limited Equity Home Ownership Declaration and Option to Purchase Agreement”** – means a document in form provided by the City that is recorded against a for-sale IZ Unit when sold to an income qualified owner that places the IZ Unit in the City’s land trust.

**“Net Residential Area”** – means the interior space of rental or for sale units in a development triggering IZ requirements. Measurement shall be from the interior faces of the interior walls of the space occupied by dwellings and will include all finished living space.

The in-lieu fee will not be assessed on the following (exclusions):

1. Vehicular (automobile, motorcycle, bicycle) parking areas, whether assigned to specific units or not, that are separate areas from the residential unit
2. Common hallways that access the front doors of two or more units
3. Common rooms/lounges together with supporting facilities such as kitchens and restrooms
4. Building lobbies
5. Balconies, whether private or open to all residents
6. Common stairwells that serve two or more units
7. Elevator shafts
8. Utility shafts
9. Custodial or janitorial closets
10. Common recreation areas – such as fitness centers, community rooms, and roof spaces
11. Storage lockers not located within residential units
12. On-site management office
13. Commercial space (e.g. retail, hotel, office) in a mixed-use building

**“Owner”** – means the legal entity that owns a project that has IZ Units in it.

**“PAH”** – means the City’s Perpetually Affordable Housing Land Trust Program.

**“Security Deposit”** – means payment of cash or letter of credit in a form acceptable to the City in the amount the development would be required to contribute through a cash-in-lieu payment that secures developer’s performance under the Compliance Plan.

**“Short-Term Rental”** – means rental periods of less than one month.



**“Student Eligible Housing”** – means projects triggering the Inclusionary Zoning Ordinance requirements located in the University Overlay District on the Minneapolis zoning map that are providing on-site affordable units pursuant to Section III(A)(1)(i) of the Unified Housing Policy.

**“Revenue Loss Offset Assistance”** – means financial assistance to a rental housing developer pursuant to the City’s Inclusionary Zoning Revenue Loss Offset Assistance Policy.

**“Unified Housing Policy”** – means the City’s Unified Housing Policy adopted by the Minneapolis City Council as amended from time to time.

**“Unit”** – means either a for-sale dwelling or a rental dwelling for which a lease is signed prior to occupancy, provided that for Student Eligible Housing, a unit can be a bedroom in a larger unit if all leases in the project for units with multiple bedrooms are signed for individual bedrooms rather than on a unit basis.