

ORDINANCE NO. O-2008-34

AN ORDINANCE ADOPTING A NEW ARTICLE 17 OF CHAPTER 27 (LAND USE AND DEVELOPMENT CODE) OF THE CODE OF ORDINANCES OF THE CITY OF DURANGO PERTAINING TO THE PROVISION OF AFFORDABLE AND ATTAINABLE HOUSING WITHIN THE CITY OF DURANGO PURSUANT TO THE FAIR SHARE HOUSING REQUIREMENTS, AND DECLARING AND EFFECTIVE DATE.

WHEREAS, the diversity of the Durango community is one of its greatest assets, which contributes significantly to the strength of the community; and

WHEREAS, the need to provide an inventory of residential properties that are available to those individuals and families with moderate and low incomes is essential to the preservation of the community's diversity; and

WHEREAS, the City Council has previously assigned the task of developing an inclusionary zoning or fair share housing policy and ordinance to the Department of Planning and Community Development and the Regional Housing Alliance ("RHA") of La Plata County; and

WHEREAS, the Department of Planning and Community Development and RHA, with the assistance of Enterprise Community Partners, have developed a Fair Share Ordinance, together with an Administrative Procedures Manual to implement the fair share requirements; and

WHEREAS, the proposed ordinance and Administrative Procedures Manual were reviewed by the City of Durango Planning Commission and the Planning Commission has recommended the adoption of the proposed ordinance and Administrative Procedures Manual; and

WHEREAS, public hearing has heretofore been held, pursuant to notice, before the City Council of the City of Durango, and the Council has determined, subsequent to said public hearing, that the adoption of the proposed Article 17 of Chapter 27 of the Code of Ordinances of the City of Durango implementing a fair share housing policy would be in the best interests of the citizens of the City of Durango;

NOW, THEREFORE, THE CITY OF DURANGO HEREBY ORDAINS:

Section 1: That Chapter 27 of the Code of Ordinances of the City of Durango (Land Use and Development Code) should be and the same is hereby amended through the adoption of a new Article 17 pertaining to Fair Share Housing, which reads in its entirety as follows:

ARTICLE 17. FAIR SHARE HOUSING

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Sec. 17-1. General – Purpose, Authority, Scope, Responsibility for Administration.

17-1-1 Purpose. The purpose of this Article is to establish policies requiring that certain types of new residential developments include a share of affordable and attainable housing or provide alternative means of compliance, as described herein. Recent studies of the local housing market have indicated a severe and increasing shortage of affordable and attainable housing, as well as the need for an increased supply of affordable-attainable housing to maintain quality of life and economic potential for citizens and businesses in Durango. “Affordable” housing is defined as housing affordable to households with incomes at or below 80 percent of area median income (adjusted for household sizes). “Attainable” housing is defined as housing affordable to households with incomes above 80 percent of area median income but not exceeding 125 percent of area median income (adjusted for household sizes).

17-1-2 Authority. The City hereby enacts the provisions within this Article requiring the provision of affordable or attainable housing pursuant to the express statutory authority conferred upon Colorado municipalities to enact ordinances pursuant to its police power [C.R.S., §§31-15-401, *et seq.*], to enact zoning ordinances in general [C.R.S., §31-15-103], to enact zoning ordinances regulating the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land [C.R.S., §31-23-301], and pursuant to any and all such other authority as may be applicable including but not limited to the City’s home rule authority pursuant to Article XX of the Colorado Constitution, as well as the recognized authority of the City to protect the general welfare of its citizens. The provisions of this Article are adopted pursuant to the City’s home-rule power and authority under its municipal charter which was adopted effective November, 1978 and thereafter amended April, 1987, April, 1993 and April, 1997.

17-1-3 Scope. This Article sets forth policies governing the following actions by applicants, developers, possible successors in title, city staff and boards, and program administrators related to development, marketing, sales and operation of certain real estate developments that are residential in whole or in part, including:

- (a) Submission and review of applicable residential development proposals and determining conditions of approval related to the provision of Fair Share Homes or alternate means of compliance;
- (b) Preparation, review, approval and execution of Fair Share Agreements between property owners and the city to ensure compliance with this Article; and
- (c) Monitoring the performance of property owners subject to such agreements, and any successors in title that are subject to such

agreements or other requirements of this Article and taking appropriate action in the event of noncompliance.

17-1-4 Administrative Procedures Manual. Simultaneous with the effective date of this Article, an Administrative Procedures Manual approved by resolution of the City Council will also become effective. The purpose of the Manual is to provide detailed guidance on the administration, implementation and enforcement of Fair Share Requirements. It is anticipated that this Manual may be amended from time to time by resolution of the City Council in response to changed housing market conditions and opportunities to increase the efficiency and effectiveness of administering the provisions of this Article.

17-1-5 Responsibility for administration. Responsibilities for administration are as follows:

(a) The Regional Housing Alliance of La Plata County (“RHA”) shall be responsible for fulfilling all administrative functions of the requirements of this Article except for those which are specifically described as the responsibilities of the City Council, the City Manager, City departments, or boards. RHA’s responsibilities shall be defined in detail in the Administrative Procedures Manual.

(b) The Planning and Community Development Department shall be responsible for reviewing applicants’ proposals for compliance with this Article, administering those provisions that permit or require the city to approve waivers or refunds of certain fees, and other administrative functions described in the Administrative Procedures Manual.

(c) The City Attorney’s Office shall be responsible for providing legal assistance to city departments and boards with regard to this Article.

(d) The Planning Commission shall be responsible for reviewing and making recommendations to the City Council with regard to Fair Share Proposals, as part of the Commission’s normal process of reviewing development proposals.

(e) The City Council shall be responsible for reviewing, and approving or denying, Fair Share Agreements as part of its normal process for considering applications for land use approvals. In so doing, the City Council shall take into account the recommendations of the RHA and Planning and Community Development Department and shall not withhold approval of a proposal for the provision of affordable or attainable housing that complies with the requirements in this Article and the companion Administrative Procedures Manual. Notwithstanding any other provisions of this Article, the City Council has the discretion to approve special compliance provisions for development projects with regard to unique circumstances that were not contemplated in this Article or the Administrative Procedures Manual, so long as such special provisions are reasonable and based upon the intent of this Article.

(f) The City Manager shall have the sole authority to execute Fair Share Agreements on behalf of the City, after approvals by the City Council.

(g) The Director of Planning and Community Development has responsibility for hearing certain appeals as described elsewhere in this Article.

Sec. 17-2. Applicability.

17-2-1 Developments not subject to Fair Share requirements. The provisions of this Article shall not apply to:

(a) *Developments subject to existing affordable-attainable housing agreements with the city:* No provision of this Article applies to a development or portion thereof which, upon the effective date of this Article, is subject to any formal, written and binding agreement with the City or La Plata County for providing affordable housing, which agreement has been performed or remains in effect and may be performed by and after the effective date of this Article.

(b) *Developments with three or fewer dwelling units:* Compliance with this Article shall not be required for developments involving three or fewer dwelling units, unless the development is modified within 5 years of the initial application to increase the total number of dwelling units on the subject property to a number greater than three, in which event the provisions of this Article shall apply.

(c) *Rental housing developments:* The requirements of this Article shall not apply to residential developments or portions thereof that are intended to be rented and are not separately platted as either single family residences, condominiums or townhomes. However, proposals for developments of three or more dwelling units which are separately platted and intended for rental will be subject to such requirements if and when the owner begins to market one or more individual dwelling units for sale.

17-2-2 Developments subject to Fair Share requirements. Subject to limitations described elsewhere in this Article, the requirements of this Article shall apply to the following activities related to the development, marketing, sales and operation of properties that are residential in whole or in part, except those described in §17-2-1 of this Article:

(a) Any application which is submitted to the City after the effective date of this Article in which residential development or subdivision is proposed as follows:

(1) Applications for annexation initiated by persons other than the city unless previously subdivided into residential lots and not being re-platted.

(2) Applications for rezoning.

(3) Applications for a subdivision plat, including a plat for residential condominiums consisting of existing or new dwelling units.

(4) Applications for an increase in density for a property subject to an approved master plan or development plan.

(5) All site-specific development plans including, but not limited to, special use permit, and conditional use permit applications.

(6) Applications requesting the extension of or connection to city utilities submitted to the city after the effective date of this Article for residential developments located outside the city limits, shall be subject to the requirements of this Article, as may be limited by the city's jurisdiction.

(b) Sales of lots within a residential development subject to the requirements of this Article 17.

(c) The construction, marketing, sale, resale, and other transfers of Fair Share Homes, as defined herein.

(d) Alternate means of compliance with this Article such as contributions of cash, real estate or in-kind resources for the construction of affordable or attainable housing pursuant to Fair Share.

17-2-3 Fees-in-lieu. Subject to limitations described elsewhere in this Article, the following types of developments are (or may be) subject to paying fees-in-lieu of building Fair Share Homes:

(a) *A development required to provide two or fewer Fair Share Homes.* In this type of development the Developer, by right, may elect to pay fees in lieu of building Fair Share Homes.

(b) *A development in which the calculation of the number of required Fair Share Homes results in a fraction of a Fair Share Home.* In such cases, the requirement for a fraction of a Fair Share Home shall be satisfied by payment

of a fractional fee in lieu as described in the Administrative Procedures Manual.

(c) *Any other type of development for which this Article and the Administrative Procedures Manual allow the Developer the option of meeting some or all of the Fair Share Obligation by payment of fees-in-lieu.* It is the intent of this Article that the city may permit alternatives to the provision of Fair Share Homes within a development, including but not limited to the payment of fees-in-lieu, which Alternative Means of Compliance, if permitted, will be described in the Administrative Procedures Manual. Such alternatives may be amended from time to time and must have a rational basis for achieving similar public benefits to the provision of Fair Share Homes in a development.

17-2-4 Simplified compliance for certain developments. Developments in which all of the dwelling units meet the definition of affordable or attainable housing will be subject to simplified compliance requirements. The Administrative Procedures Manual shall provide the detailed criteria and procedures for such simplified compliance.

17-2-5 Provisions for developments proposed for lot sales. Developments in which the developer does not intend to construct and sell homes directly to buyers, but rather intends to develop and sell lots to builders or individual owners shall be subject to Fair Share Requirements, as defined in the Administrative Procedures Manual.

Sec. 17-3. Definitions.

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

Area Median Income (AMI) - The median income for La Plata County, Colorado as adjusted for various household sizes and published and revised periodically by the U.S. Department of Housing and Urban Development (HUD).

Alternate Means of Compliance - Compliance with this Article by payment of a fee-in-lieu contribution or through the donation of land for affordable-attainable housing.

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

Fair Share Agreement - An agreement between a property owner of record and the City whereby the City confers benefits in the form of fee waivers and the property owner pledges to provide affordable-attainable homes or Alternative Means of Compliance.

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

Fair Share Development - A tract of land or improvements thereon subject to a Fair Share Agreement.

Fair Share Home - A home designed, built, priced, marketed and sold to satisfy a Fair Share Requirement for the provision of required affordable-attainable housing.

Fair Share Homebuyer or Fair Share Buyer - A purchaser of a Fair Share Home or the entire household occupying a Fair Share Home.

Fair Share Home Price - A price or prices that must not be exceeded for Fair Share Homes that are required to be built in Fair Share Developments.

Fair Share Pricing and Delivery Schedule - A schedule of the number, size, price and timeframe for delivery of Fair Share Homes within a Fair Share Development. This schedule may be included in a Fair Share Agreement for one

or more phases of a development. Alternatively, such a schedule may be created later by the developer and approved by RHA for future phases of larger projects with multiple phases, in which the exact requirements for delivering Fair Share Homes cannot be determined at the time of execution of a Fair Share Agreement.

Fair Share Proposal – A plan containing all of the required elements of a Fair Share Agreement, which is submitted by an applicant as part of the City’s development approval process.

Fair Share Property Owner - The owner of any property which is subject to a Fair Share Requirement, or as defined herein, certain successors in title.

Fair Share Requirement or Fair Share – The obligation, as defined within this Article, to provide affordable or attainable housing in conjunction with a Fair Share Development, either through the actual provision of housing or through Alternative Means of Compliance.

Market-Rate Homes or Market Rate Units – Homes in a Fair Share Development that are not subject to a Fair Share Home Price or other requirements.

Median Income - Area median income, as defined herein.

Regional Housing Alliance of La Plata County or RHA – A governmental entity that has been designated by the City to carry out administrative tasks not reserved for City departments and boards.

Sec. 17-4. Fair Share Agreements; Appeals; Noncompliance

17-4-1 Fair Share Proposals and Agreements. Applicants subject to Fair Share Requirements shall prepare and present Fair Share Proposals for review by the City and its agent as described elsewhere in this Article. The provisions of such Fair Share Proposals shall be incorporated in Fair Share Agreements if and when approved by the City. The Administrative Procedures Manual shall set forth requirements and guidance for the preparation of Fair Share Proposals and Agreements.

17-4-2 Approval of development proposals subject to Fair Share Requirements. No development proposal subject to Fair Share Requirements may be heard by the review body unless a Fair Share Proposal has been recommended as complying with Fair Share Requirements by the RHA and City staff, or the lack of such recommendation has been successfully appealed as set forth elsewhere in this Article. Such Fair Share Proposal presented by the Applicant shall correspond to the other aspects of the final development, including but not limited to the total numbers of dwelling units proposed.

17-4-3 Execution of Fair Share Agreements. After all development approvals (except for building permits) have been received, the Fair Share Agreement may be executed by the City Manager and the applicant. The Fair Share Agreement shall be recorded in the offices of the La Plata County, Colorado Clerk and Recorder prior to any permits being issued or the start of any work. The Fair Share Agreement shall be referred to and recorded as follows:

(a) The Fair Share Agreement shall be referred to in the annexation agreement or the rezoning ordinance and referred to on the annexation plat, final subdivision plat, or final development plan as appropriate. It shall be included as a condition of approval for any extension of or connection to City utilities beyond the city limits.

(b) The Fair Share Agreement shall be recorded in the offices of the La Plata County, Colorado Clerk and Recorder at the time of recording the annexation plat, rezoning ordinance, final subdivision plat, final development plan, as appropriate, or prior to issuance of a building permit if the previous documents are not required, in which case a copy of the recorded agreement shall be included with the submittal for a building permit.

17-4-4 Noncompliance. If the RHA determines that a property owner subject to a Fair Share Agreement has failed to comply with any terms or conditions of that

agreement, the RHA shall immediately notify the Planning and Community Development Department in writing. Upon such notification, or if the Planning and Community Development Department itself determines there is noncompliance, the Department shall notify the property owner of the noncompliance in writing and order compliance by the most reasonable and expeditious means. This notification shall describe a date certain by which the property owner shall be in full compliance (which may not be less than one week or more than one year from the date of the notice), and shall describe: (i) the exact nature of the noncompliance, and (ii) the possible sanctions for noncompliance with this notification. The RHA shall receive a copy of such notification and will be responsible for follow-up monitoring.

17-4-5 Sanctions for noncompliance. If on a date certain by which compliance has been ordered by the City, the Fair Share Property Owner is still considered in noncompliance, the RHA shall notify the City Manager and the Planning and Community Development Department of the noncompliance and request that sanctions be imposed. The City shall have the authority to impose one or more of the following sanctions which the City (acting in consultation with the RHA) deems most effective and appropriate considering the nature of the noncompliance:

- (a) Withholding the recording of plats,
- (b) Withholding or revoking building permits,
- (c) Issuing stop-work orders, and/or
- (d) Withholding or revoking certificates of occupancy.

17-4-6 Legal action and fines. When requests for compliance or subsequent sanctions have not resulted in compliance with a Fair Share Agreement, the RHA or the Planning and Community Development Department may request that the City Manager instruct the City Attorney's office to pursue enforcement in the appropriate court of law. The failure to comply with the provisions of an executed Fair Share Agreement is declared to be a violation of this Article and, upon proof thereof, shall subject the Applicant or Fair Share Developer to the fines and penalties set forth in §1-16 of the Code of Ordinances of the City of Durango.

17-4-7 Enforcement outside the city limits. If after having been given notice as set forth in §17-4-4, a property owner subject to a Fair Share Agreement, as a condition of the extension of or connection to City utilities beyond the city limits, fails to comply with said agreement, the RHA or Planning and Community Development Department may request that the City Manager direct the City Attorney's office to pursue enforcement of specific performance requirements in accordance with the Fair Share Agreement in an appropriate court of law.

17-4-8 Enforcement by other means. Nothing herein shall limit the city's ability to enforce the provisions of this Article by any other legal means.

Sec. 17-5. Requirements for Providing Fair Share Homes. Fair Share Homes shall be provided in accordance with the following requirements, which shall be further defined in the Administrative Procedures Manual:

17-5-1 Eligible homebuyers. A household eligible to purchase a Fair Share Home shall have an income not to exceed 125% of area median income and within a range corresponding to one of several tiers of affordable-attainable home prices. RHA shall certify buyer's eligibility and administer waiting lists and preferences for residents and workers in La Plata County, as described elsewhere in this Article. It is the Fair Share Developer's responsibility to match eligible buyers with Fair Share Homes in the appropriate price tier.

17-5-2 Fair Share Home Prices. The sales price of Fair Share Homes (exclusive of closing costs) that are sold to certified, eligible owner-occupants

pursuant to a Fair Share Agreement shall be at or below certain prices described in the Administrative Procedures Manual. Such prices shall be amended from time to time, based upon changes in area median incomes, prevailing interest rates and other market conditions that affect housing affordability. Fair Share Home prices shall be divided into several tiers corresponding to several tiers of household incomes below 125% of area median income, so that discount-priced homes are reasonably and cost-efficiently distributed to eligible families at different income levels. Fair Share Home prices shall be determined by using reasonable formulas for calculating affordability, taking into account various factors, including but not limited to current prevailing interest rates, estimated minimum down payment requirements of lenders, estimated costs of property insurance and real estate taxes, estimated typical costs of homeowner association fees, and a reasonable percentage of income to be spent on these housing costs. The Administrative Procedures Manual shall describe Fair Share Home Prices by various bedroom sizes of Fair Share Homes, based upon reasonable assumptions regarding the space needs of households of various sizes which occupy a Fair Share Home. The Manual shall also contain procedures for calculating and updating home prices for purposes of this Article, so that such prices reasonably reflect current market conditions and so that the prices of Fair Share Homes cannot be manipulated by side agreements or added fees.

17-5-3 Price adjustment for green building features. As an incentive for Fair Share Developers to provide homes with energy-efficient and healthy designs and materials, and considering the addition benefits to Fair Share Homebuyers, the maximum Fair Share Home Price of such homes will be adjusted upwards in accordance with a schedule of price adjustments in the Administrative Procedures Manual.

17-5-4 Restrictions on use of third-party subsidies by for-profit builders. The required sale price of a Fair Share Home by a for-profit Developer may not be achieved by use of subsidies from any source other than the Developer, so that, given the scarcity of subsidy funds, all Fair Share Applicants that are for-profit entities will be treated equally and fairly. However, the City encourages the use of such subsidies to reduce prices of Fair Share Homes from the maximum amounts allowed by this Article to a lower price, or to fund or partially fund down payments and closing costs of Fair Share Buyers. It is expected that local nonprofit and government mortgage assistance programs will offer such subsidies on some Fair Share Homes. Nonprofit builders and developers may use subsidies to achieve the required Fair Share Home Prices.

17-5-5 Required number of Fair Share Homes - In any development which is obligated to fulfill Fair Share Requirements by directly providing Fair Share Homes, the number of Fair Share Homes shall be equal to 16 percent of the total number of homes proposed to be built—the total to include both Fair Share Homes and market-rate homes. The whole number resulting from this calculation shall be the number of homes required. Provisions elsewhere in this Article apply if fractions result from this calculation. It is anticipated that in larger developments being built in phases over a number of years, the number of market-rate homes may not be certain at the time of execution of the Fair Share Agreement. In such cases, the Fair Share Agreement will include an estimated number of market-rate homes and estimated required number of Fair Share Homes for the entire project. If the number of homes in the first phase of such development is certain at the time of execution of the Fair Share Agreement, then a separate Fair Share Pricing and Delivery Schedule for that phase shall be incorporated in the Agreement. As the number of homes in future phases becomes certain, the Agreement shall provide for RHA to administratively approve subsequent Fair Share Pricing and Delivery Schedules for future phases of the development, consistent with the overall Fair Share Requirements of the development.

17-5-6 Pricing and Delivery Schedules In a Fair Share Proposal or Agreement or as otherwise required by this Article, the Fair Share Pricing and Delivery Schedules shall be in the form of a chart that contains the numbers of required Fair Share Homes by bedroom size and price tier, and shall indicate the current Fair Share Price for each size of home in each tier. The Administrative Procedures Manual shall describe how the required number of Fair Share Homes shall be distributed in the various price tiers and required bedroom sizes. Such distribution by price tiers shall be based primarily upon an assessment of housing needs among the income groups corresponding to price tiers, but shall take into account the economic impact on developments subject to Fair Share.

17-5-7 Providing “Fractions” of Fair Share Homes. If the calculation of the required number of Fair Share Homes results in a fraction of a home, this obligation will be satisfied by payment of a fee-in-lieu pursuant to §17-2-3(b) of this Article or through a land donation of equivalent value in support of affordable/attainable housing.

17-5-8 Required numbers of bedrooms in Fair Share Homes. In each Fair Share Development, Fair Share Homes shall represent a mix of bedroom sizes as similar as possible (given rounding of numbers) to the mix of bedroom sizes of the market-rate homes in the Development.

17-5-9 Standards for design and construction. The Administrative Procedures Manual shall define reasonable standards for the design and construction of Fair Share Homes to ensure livability and compatibility with nearby market-rate homes in the development, including but not limited to numbers of bathrooms, garages and parking areas, minimum floor areas, mechanical equipment and hookups, location of Fair Share Homes within developments, design and materials, and green building features.

17-5-10 Marketing to and certifying eligibility of Fair Share Buyers. Fair Share Developers shall market and sell Fair Share Homes in accordance with provisions described in the Administrative Procedures Manual. These provisions will address factors such as preferences for current residents and workers in La Plata County, waiting list management, marketing materials, responsibilities for marketing Fair Share Homes, inability to identify qualified buyers, procedures for certification of buyer eligibility, purchase contracts, and full disclosures to buyers of their obligations and rights under this Article.

17-5-11 Filing of deed restrictions and liens; escrow instructions. A Fair Share Developer selling a Fair Share Home shall cause to be recorded in the offices of the La Plata County, Colorado Clerk and Recorder, simultaneous with the recording of the deed of conveyance, a form of deed restriction, restrictive covenant, deed of trust or other legal instrument, approved by RHA, that fulfills long-term affordability controls and recapture requirements described in this Article.

17-5-12 Monitoring by RHA of completed sales. Upon receipt of a settlement statement for a Fair Share Home, RHA will determine if the completed Fair Share Home sale complies with Fair Share Requirements, and if not, notify the City in writing as to the specifics of noncompliance.

17-5-13 Rental Prohibition. Fair Share Homes shall not be rented to a second party, since the intent of the program is to provide these homes only for income-qualified owner occupants.

Sec. 17-6. Provisions for rental housing.

17-6-1 No Fair Share requirements. At this time, the City has no Fair Share requirements regarding the construction of rental housing.

17-6-2 Residential condominiums. All newly-built residential condominiums, or subdivisions of existing multi-family buildings to create condominium units, will be considered as essentially creating purchase opportunities for owner-occupied housing, even if such units are temporarily rented. In these cases, the developer must enter into a Fair Share Agreement with the City agreeing to build and/or market and sell Fair Share Homes as provided herein, except that conversions of existing properties to condominiums will be subject to the provisions of §17-5-9 herein, regarding standards for design and construction, only with regard to those components of the building and grounds which are rebuilt or replaced as a part of any renovations prior to their initial marketing as owner-occupied dwelling units.

Sec. 17-7. Timing of compliance. Required Fair Share units or Alternative Means of Compliance shall be provided in accordance with the following requirements:

17-7-1 Timing of Providing Fair Share Homes. In each development in which more than one Fair Share Home is required to be sold, the Fair Share Agreement shall provide for Fair Share Homes to be sold in sequence and in proportion to the sale of unimproved lots or Market Rate Homes. This sequence shall be defined precisely. Such timing of compliance shall be represented in a Fair Share Pricing and Delivery Schedules as described elsewhere in this Article.

17-7-2 Earlier Delivery. A developer may sell affordable or attainable units earlier than required in a Fair Share Agreement or a Fair Share Pricing and Delivery Schedule.

17-7-3 Timing of providing in-lieu contributions. In-lieu contributions when required or permitted shall be due and deliverable to the City or RHA (as designated in the Fair Share Agreement) before the recordation of the Fair Share Agreement. An Applicant may, at his or her option, propose an alternative to this requirement in which staged contributions are made upon the predicted occurrence of certain events, such as the sale of lots.

17-7-4 Staged delivery of in-lieu contributions. In the case of staged delivery of in-kind contributions when permitted, the value of each contribution shall be determined in accordance with provisions elsewhere in this Article that take into account the differential financial value to the City of payments that are made a substantial amount of time later than recordation of the Fair Share Agreement, using conventional methods of discounting future cash flows to present value.

Sec. 17-8. Alternative Means of Compliance; payments of fees-in-lieu

17-8-1 Alternatives to building Fair Share Homes. It is recognized that in some circumstances, a developer otherwise required to provide Fair Share Homes on-site within a Development may be able to offer an alternative means of compliance of equal value to the City. Such alternatives, if approved by the City, might include contributions of cash, undeveloped land, or partially developed land.

17-8-2 Allowable Alternative Means of Compliance. Only certain Alternative Means of Compliance will be allowed by the City, as approved by the City Council from time to time, in consideration of then-current housing market conditions, and as described in the Administrative Procedures Manual.

17-8-3 Payment of fees in lieu. If and when in-lieu cash payments are allowed by the City, the amounts of such payments for each Fair Share Home not provided will be described in the Administrative Procedures Manual, derived by a market analysis and formula which will result in a good-faith estimate of the amount of funds required to subsidize the purchase of a similar Market-Rate Home to achieve approximately the same effective price. The Administrative Procedures

Manual will describe different procedures for calculating fees-in-lieu for different circumstances, such as Developments providing some or no Fair Share Homes on-site.

Sec. 17-9. Qualifying and certifying eligibility of Fair Share Homebuyers. A reasonable and prudent method of qualifying and certifying Fair Share Homebuyers and renters as eligible to buy Fair Share Homes will be used and described in the Administrative Procedures Manual. With regard to determining qualifying incomes of prospective Fair Share Homebuyers, such method may (but is not required to) make adjustments for such household financial circumstances such as extraordinary medical expenses, dependent care expenses, and ownership of significant non-income-producing assets.

Sec. 17-10. Resale controls and subsidy recapture. It is assumed that most Fair Share Homes will be sold at a price discount, which is defined as the difference between the appraised value at the time of the initial sale to a qualified Fair Share Homebuyer and the Fair Share Home Price. Upon resale or transfer of Fair Share Homes, the City intends to perpetuate housing affordability by recapturing a portion of the value of the home or placing price and other restrictions as follows:

17-10-1 In instances in which the priced discount is substantial, as defined in the Administrative Procedures Manual, a Fair Share Home may be sold or transferred only to an income-qualified buyer with restrictions on the resale price, except that the Administrative Procedures Manual will describe special provisions for waiving income qualification requirements for sales and transfers to family members.

17-10-2 In all other instances, the following amounts of funds will be due and payable to the City or RHA for reuse as mortgage assistance or other means of making housing in Durango more affordable:

- (a) The amount of the price discount on the Fair Share Home, and
- (b) A share of any home price appreciation, in proportion to the ratio between the price discount and the appraised value at the time of initial sale.

Sec. 17-11. Cost offsets for Fair Share Developers. In an effort to assist in making residential construction less costly and therefore more affordable, the City offers the following cost offsets to Fair Share Developers in consideration of their construction and sale of Fair Share Homes, and to the extent that price discounts on such homes are equal to or exceed such cost offsets. These cost offsets do not apply to applications for residential developments located outside the city limits, which are requesting the extension of or connection to City utilities.

17-11-1 Fee Refunds and Waivers. Developers of Fair Share Homes are entitled a refund of certain development fees paid to the City, as follows:

- (a) Such refunds will be made only for fees paid in connection with the construction of a Fair Share Home in Price Tiers 1, 2 or 3, with such refund payable only after a sale to a qualified buyer has been certified by RHA.
- (b) The fees paid or allocable on a per-dwelling-unit basis that qualify for such refunds are as follows:
 - (1) Building permit fees,
 - (2) Use tax,
 - (3) Water plant investment fees,
 - (4) Sewer plant investment fees, and
 - (5) Water tap fees.
- (c) With regard to sewer plant investment fees, the City will, via a refund, subsidize a portion of the fee paid for connection to the South Durango Sewer District (SDSD) lines. Such portion shall be equal to the sewer plant

