

ATTACHMENT A-2
INCLUSIONARY HOUSING ORDINANCE (IHO) COMPLIANCE OPTIONS:
PROCEDURE FOR BUILD OFF-SITE OPTION
(PROVIDING FOR-SALE INCLUSIONARY UNITS)

I. Introduction

This attachment to the Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by building For-Sale Inclusionary Units (Inclusionary Homes) off-site and transferring those homes to eligible households. Definitions for capitalized terms may be found in the Guidelines and the Ordinance.

II. Build Off-Site Obligation (San José Municipal Code - SJMC Sections 5.08.410, 5.08.500.B, 5.08.510)

Developers who elect to build off-site must build (consistent with the standards as described in Part VII) and transfer at least twenty percent (20%) of the homes built within the Residential Development to income qualified buyers. These homes must be made available for purchase at an Affordable Housing Cost for households earning no more than 110 percent (110%) of the Area Median Income (AMI) adjusted for family size, as shown in the table contained in 25 Cal. Code Reg. 6932, as amended from time to time. The Income Limit and Affordable Housing Cost will be determined by the City for each Inclusionary Home as described in section VIII below. Such Inclusionary Homes may be sold to households earning no more than one hundred twenty percent (120%) of the AMI. The City of San José annually publishes [AMI levels](#) for the City and posts these on its website.

The San José Housing Department is in the process of creating a calculator to assist Developers with the Affordable Housing Cost calculations.

When computing the number of units required to satisfy the 20% off-site obligation, resulting fractions of one-half (1/2) or greater shall be rounded up to the next highest whole number, and fractions of less than one-half (1/2) shall be rounded down to the next lowest whole number.

III. Location of Off-Site Inclusionary Units (SJMC Sections 5.08.110, 5.08.510)

The site chosen for the off-site Inclusionary Homes (“off-site land”) must have a General Plan designation allowing residential uses, and environmental review shall have been completed with hazards mitigated to the satisfaction of the City prior to the acceptance of the site in the Affordable Housing Compliance Plan. The off-site land must also be zoned for Residential Development at a density that will accommodate at least the number of required Inclusionary Units no later than the approval of the entitlement(s) for the market rate project. Completion of these entitlements and documentation of ownership or control of off-site land must be obtained and provided consistent with the construction schedule that was provided with the Affordable Housing Compliance Plan.

Where the market rate Residential Development is located in a Redevelopment Project Area, the off-site Inclusionary Homes must be located within the same Redevelopment Project Area unless, at the time of submission of the Affordable Housing Compliance Plan, the Developer has petitioned and provided credible documentation in writing to the City that there is insufficient available land within the Redevelopment Project Area to construct the off-site Inclusionary Homes, in which event such Inclusionary Homes shall be constructed upon a site approved by the City in another Redevelopment Project Area.

The San José Housing Department is in the process of creating a map to assist Developers in understanding if the location of their off-site development satisfies the Ordinance requirements.

The Ordinance specifies that Inclusionary Homes built off-site of the Residential Development must be built on a site that is consistent with the City's Affordable Housing Dispersion Policy. The Housing Department encourages affordable housing to be constructed throughout San José to achieve socio-economic integration at the neighborhood level. The Housing Department discourages concentration of extremely low-income units in census tract where the poverty rate in the census tract is 20% or greater.

If the proposed development is located in a census tract where the poverty rate is 20% or greater, you must demonstrate two of the four following:

- 1) Neighborhoods that show signs of revitalization, through indicators such as declining census tract poverty rates, low or declining violent crime rates or evidence of increased educational opportunities (educational opportunity includes adult education, vocational school, state or community college); and/or
- 2) New market-rate residence have been/are being developed in the same census tract where the proposed development will be located and it is likely that those units will positively impact the poverty rate in the area; and/or
- 3) Neighborhoods in which there is high private and public investment in retail or commercial that is already occurring or will imminently occur in the area, as economic advancement opportunities include retail and other business offering entry-level job opportunities.
- 4) Neighborhoods with high-quality public transportation, this includes proposed developments near rail stations, bus-rapid transit, or bus stops with high-frequency service.

The San José Housing Department is in the process of updating its Dispersion Policy.

IV. Affordable Housing Compliance Plan Application (SJMC Sections 5.08.120, 5.08.155 5.08.320.H, 5.08.420, 5.08.510, 5.08.610)

As part of the application for First Approval¹ of any Residential Developments, Developers are required to submit a signed Affordable Housing Compliance Plan application to the City, and

¹ SJMC Section 5.08.185 - "First Approval" means the first of the following approvals to occur with respect to a Residential Development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning,

pay the application processing fee. If an Affordable Housing Compliance Plan was not submitted and approved at First Approval, it is due when a Developer applies for any other Planning Permit. Additionally, upon the expiration of any Planning Permit, and unless otherwise exempted, the Residential Development shall be subject to the requirements of the Ordinance, and shall not proceed until an Affordable Housing Compliance Plan application is approved in conjunction with any other required Planning Permit or amendment thereto.

Developers who elect the Build Off-Site Compliance Option must provide the following information when submitting the Project’s Affordable Housing Compliance Plan application:

- 1) General information about the Developer and the Residential Development;
- 2) Whether the Developer intends to seek a parcel, or tentative and final map for the market rate project;
- 3) Affirming that the Developer intends to build Inclusionary Homes off-site consistent with the standards in Part III and VII;
- 4) Detailed information about the entitlement, timing, and unit makeup for both the market rate project and the off-site project, including:
 - i. Location of the market rate project and the proposed off-site land,
 - ii. Total number of units,
 - iii. Total number of market rate and Inclusionary Homes by income level of the units,
 - iv. Unit type (e.g. townhouse, detached single-family) and tenure (e.g. For-Sale or Rental),
 - v. Number of bedrooms and baths,
 - vi. Parcel maps and/or site plan(s) indicating the proposed location and square footage of both the Inclusionary Units and the market rate units,
 - vii. General Plan designation of the off-site land which must allow residential uses,
 - viii. Current phase I environmental review for the off-site land, and if called for, phase II and evidence of completed hazard mitigation,
 - ix. Construction and completion schedule of all Inclusionary and market rate units, construction of Inclusionary Units to be completed prior to or concurrent with market rate units. Construction schedule must show ownership or control of the off-site land and that it will be zoned for Residential Development at adequate density no later than the entitlement of the market rate project, and
 - x. Phasing of Inclusionary Homes in relation to market rate units consistent with Part VI and VII.
- 5) As part of the Affordable Housing Compliance Plan application process, Developers shall provide a sales and marketing plan that includes the following:
 - i. Anticipated timeline for the sale of both market rate and Inclusionary Homes,
 - ii. The planned approach to offering the Inclusionary Homes to the public in a non-discriminatory and equitable manner, and
 - iii. The use of a California licensed real estate broker, listing homes on the local Multiple Listing Service (MLS), and holding a series of “open houses.”

rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

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- 6) The Affordable Housing Compliance Plan Application shall contain sufficient information to show that the off-site project is likely to be built at about the same time as the market rate project,
- 7) A comparison of the fixtures and amenities for the market rate units and off-site Inclusionary Homes,
- 8) Whether the Developer or any affiliate owns, has an interest in, or controls any property contiguous to the project,
- 9) Identify any public funding anticipated in connection with the project with the off-site Inclusionary Homes,
- 10) Affirming the off-site Inclusionary Units have been not been sold or rented,
- 11) A title report, and
- 12) Any other information, including a detailed narrative that facilitates the Housing Department’s ability to evaluate the Project’s compliance with the Ordinance and Guidelines.

Interested parties may obtain the Affordable Housing Compliance Plan application from the City of San José Housing Department website, currently available at: www.sjhousing.org/IHO or by contacting the Housing Department by sending an email to: IHO@sanjoseca.gov.

V. Inclusionary Housing Agreement (SJMC Sections 5.08.195, 5.08.420, 5.08.460, 5.08.600, 5.08.610, 5.08.710)

The Inclusionary Housing Agreement is a covenant by the Developer for the benefit of the City of San José governing how the project’s inclusionary housing obligation will be satisfied. The Inclusionary Housing Agreement may be comprised of more than one document. The City may require that the approved Affordable Housing Compliance Plan application, including all components required to satisfy the Developer’s selected compliance option, be attached to the Inclusionary Housing Agreement.

Prior to the approval of any final or parcel map, or the issuance of any Building Permit for a project subject to the Ordinance, the City and Developer will execute an Inclusionary Housing Agreement. The Inclusionary Housing Agreement will then be recorded against the entire project, any CPCOC Property (as defined below), and the off-site land.

The Inclusionary Housing Agreement shall contain a specific section or exhibit which applies only to the Contiguous Property under Common Ownership or Control (“CPCOC Property”). This anti-piecemealing section will list the number of residential units in the underlying project, and provide in the event that a Planning Permit is filed for residential development on any CPCOC Property it will subject to the Ordinance and will not be eligible for an exemption on the grounds of having less than 20 residential units. The requirements of the Ordinance imposed on the underlying project shall not be imposed on the CPCOC Property by the recording of the Inclusionary Housing Agreement against those parcels.

VI. Timing of Construction and Sale of Inclusionary Homes (SJMC Sections 5.08.460, 5.08.510, 5.08.610)

Off-site Inclusionary Homes must be developed and made available for occupancy either prior to or concurrently with the market rate units. Construction must also be consistent with the phasing plan for Inclusionary Homes in relation to market rate units. The City may not issue Building Permits for more ninety percent (90%) of the market rate units within the Residential Development (or construction phase) until it has issued Building Permits or authorized occupancy for all the Inclusionary Homes.

Additionally, no more than six (6) market rate unit Building Permits will be issued for each Inclusionary Home Building Permit and no final inspections or Certificates of Occupancy for market rate units will be approved unless 15% of the final inspections or Certificates of Occupancy for the Inclusionary Homes, except in compliance with Section 5.08.460.D and with City Manager approval.

If the For-Sale units are attached units without separate Building Permits, the foregoing Building Permit ratio requirement shall be applied consistent with the general intent of the Ordinance.

A marketing plan for the Inclusionary Homes is required including a commitment to provide the Inclusionary Homes to the public in a nondiscriminatory and equitable manner. Such a plan should provide for concurrent marketing and the sale of one (1) Inclusionary Home for each five (5) market rate units.

If a Developer intends to seek alternative construction timing for off-site Inclusionary Homes under section 5.08.460.D of the Ordinance the Developer should consult with Housing staff at the timing of submittal of the Affordable Housing Compliance Plan.

The following information is required in connection to the request for alternative construction timing for off-site units under section 5.08.460.D of the Ordinance:

- Information on redevelopment area of off-site land
- Documentation of ownership or control of off-site land
- Information on proposed affordable housing developer
- An agreement with an approved affordable housing developer
- Proforma that explains gap financing/tax credits
- All Planning entitlements
- Any other information reasonably required to evaluate request

VII. Standards for Inclusionary Housing Units (SJMC Sections 5.08.470, 5.08.510)

The off-site Inclusionary Homes shall have a comparable square footage and the same bedroom count and bedroom count ratio as the market rate units. Square footage will be considered comparable if the total average square footage of Inclusionary Homes is at least 85% of the total average square footage of the market rate units, by bedroom type (for example, the average square footage for 3-bedroom Inclusionary Homes must be at least 85% of the average square footage for 3-bedroom market rate units).

The quality of exterior design and overall quality of construction of the Inclusionary Homes must be consistent with the exterior design of the market rate units. Inclusionary Homes may have different interior finishes and features than the market rate units in the Residential Development, as long as the finishes and features are functionally equivalent to the market rate units and are durable and of good quality. Functional equivalency includes the architectural style, detailing, and, to some extent, the quality of materials and the size of structures.

VIII. Pricing For-Sale Inclusionary Homes (SJMC Section 5.08.600A)

Inclusionary Homes are sold at their Fair Market Value, as defined below but discounted by an amount that is equal to the difference between the Fair Market Rate value of the home and the Affordable Housing Cost as adjusted to an Affordable Sales Price pursuant to these Guidelines, and the buyer of an inclusionary home acknowledges the discount provided under the Ordinance by execution of subordinate shared appreciation loan documents and agrees to the income restriction and other conditions. In escrow, the buyer executes a City promissory note and other subordinate shared appreciation loan documents that reflect this cost differential, also referred to as “Developer Discount.”

"Fair Market Value" for the purposes of the Ordinance and the Guidelines, means the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obligated to sell, and a buyer, being ready, willing and able to buy but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Inclusionary Home is reasonably adaptable and available but as though there was no affordability requirement imposed on the home. The Fair Market Value shall be verified by a licensed real estate appraiser, commissioned by the borrower or borrower’s lender, prior to the close of escrow.

The Developer must provide 90 days advance written notice to the City of the initial marketing of the Inclusionary Homes. The Housing Department will calculate the Affordable Housing Cost, as adjusted to an Affordable Sales Price pursuant to these Guidelines which will then be identified as the maximum affordable price that may be charged to prospective homebuyers for the inclusionary homes within a Residential Development. This calculation of Affordable Sales Price shall be done within 90 days before the date of the first close of escrow for an Inclusionary Home in a project and the values (Affordable Sales Price and Fair Market Value) shall be updated every 90 days thereafter.

Method of Calculating the Income Limit for Pricing

First, using the number of bedrooms in the particular Inclusionary Home, the maximum income limit of 110% of AMI (as shown in the Santa Clara County table contained in 25 Cal. Code Reg. Section 6932, or successor regulation, prorated from the 100% of AMI amount if needed) is adjusted for family size. In order to adjust for family size as defined in Health and Safety Code Section 50052.5 (h) the family size appropriate for the Inclusionary Home is determined by the number of bedrooms. That “family size” is equal to one person greater than the number of bedrooms in the home. Specifically, for the purpose of determining the Income Limit in order to

calculate the Affordable Housing Cost each Inclusionary Home shall be adjusted for family size appropriate for the unit based on the number of bedrooms as follows: a studio = one person, one bedroom = two persons, two bedrooms = three persons, three bedrooms = four persons, and four bedrooms = five persons.

The income limits in 25 Cal. Code Reg. Section 6932 are updated annually by the California Department of Housing and Community Development (HCD) and posted on the [City's website](#).

Method of Calculating the Affordable Housing Cost and Affordable Sales Price

Pursuant to Health & Safety Code Section 50052.5, the Affordable Housing Cost for an owner occupied unit is 35% of the Income Limit. The monthly Affordable Housing Cost is calculated by dividing the Affordable Housing Cost by 12. This monthly Affordable Housing Cost is intended to cover all of the purchaser's housing costs, so in order to determine the maximum affordable sales price ("Affordable Sales Price") that Affordable Housing Cost amount must be adjusted as described below.

The City uses the procedures adopted by HCD in 25 Cal. Code Reg. Section 6920 as a basis to establish the Affordable Sales Price based on the Affordable Housing Cost.

To determine the Affordable Sales Price from the monthly Affordable Housing Cost involves a three-step process:

- 1) Subtract applicable property taxes, homeowners' association fees, annual maintenance and repair allowance, insurance – including hazard insurance, mortgage insurance and other applicable insurance – and utilities cost from the monthly Affordable Housing Cost amount. The remainder is the amount that would be available to pay the monthly mortgage payment (monthly **Affordable Mortgage Payment**).

To establish a consistent methodology, the Housing Department has defined the following criteria for calculating housing related expenses that must be covered by the Affordable Housing Cost in addition to the mortgage payment:

- i. Homeowner Association (HOA) Fees – Actual amount approved by the State of California Department of Real Estate for the project.
- ii. Property Tax – The Housing Department shall use the standard of 1.25% of the Market Price of the unit. In the event that any special assessments bring the property tax rate above 1.25%, the City will utilize the actual property tax rate for the Inclusionary Home.
- iii. Utility Costs – See current Utility Allowance schedule provided by the Santa Clara County Housing Authority. The utility allowance must include heating, cooking, other electric, water heater, water, and garbage, if not included in HOA fees. The utility allowance changes periodically so please check the Santa Clara County Housing Authority website to obtain current information www.hacsc.org.
- iv. Hazard Insurance Cost – If not included in HOA fees, the City will estimate the monthly cost of hazard insurance at \$75. This amount may be adjusted for inflation.

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- v. Mortgage Insurance Premium – If the calculated amount of the Developer Discount Loan is not greater than 20% of the Fair Market Value of the property, the Housing Department will establish a market rate Private Mortgage Insurance (PMI) premium corresponding to the rates published by the Federal Housing Administration (FHA).
 - vi. Maintenance and Repair Allowance of \$25 per bedroom, per month. This amount may be adjusted for inflation.
- 2) Follow the process below to calculate the amount of the mortgage loan that could be obtained (**Financed Affordable Loan**) based on the amount of monthly Affordable Mortgage Payment as determined in Step 1 above.
- i. The mortgage loan interest rate shall be based on a 5% down payment, thirty (30) year, fully amortizing fixed rate mortgage based on the Freddie Mac Weekly Mortgage Survey at the time of pricing, as determined by the Housing Department. This mortgage should not include any pre-paid points or loan fees.
 - ii. Using the Monthly Affordable Mortgage Payment, the interest rate calculated above, and a fully amortized fixed rate mortgage without points or loan fees to determine the maximum Financed Affordable Loan.
- 3) Add to the Financed Affordable Loan amount determined in Step 2 an assumed amount of borrowers' own funds of 5% for a down payment to determine the **Affordable Sales Price**.

Waiver required under SJMC 5.08.400.B.4

A Developer may apply for limited term waiver of the terms of the subordinate shared appreciation documents required by SJMC Section 5.08.600.A, which shall be granted if the appraised unrestricted market value of an inclusionary home is less than 5% greater than the Affordable Sales Price (as determined from the Affordable Housing Cost). The term of the waiver shall not exceed 6 months. The waiver shall require that the Inclusionary Home be sold at or below the Affordable Sales Price and that the inclusionary home shall initially be owner-occupied. In the event that the waiver is granted, requirements of the subordinate shared appreciation documents will be waived and the City will not require income verification for the purchaser.

IX. Homeowner Inclusionary Housing Requirements (SJMC 5.08.600.F)

1) First Time Home Buyer Requirement

Purchasers of Inclusionary Homes must be certified by the Housing Department as First Time Home Buyers. In order to be certified as a First Time Homebuyer, the home buyer must be the unit's Principal Occupant, and cannot hold or have held an Ownership Interest, in whole or in part, of a residential property during the three-year period immediately prior to the home buyer(s) certification of eligibility by the Housing Department to purchase an Inclusionary Home unless one of the following is true.

- i. Is a “displaced homemaker” who within the past two years has not worked on a full-time basis in the labor market, experiencing difficulty in obtaining employment, and has worked primarily without pay to care for the home and family;
- ii. Is a single parent who is unmarried or legally separated from a spouse, is pregnant, or has sole or joint custody of at least one minor child, and does not have an Ownership Interest in residential property; or
- iii. Is a current owner-occupant of a mobile home that does not meet local building codes, and the home cannot be brought into compliance for less than the cost of constructing a new home.

2) Household Composition Definition

The Household is comprised of **all** eligible individuals who are currently living together at the same address and will continue to be living together in the Inclusionary Home. New household members **cannot** be added to the application to income qualify for an Inclusionary Home after initial submission of an application. In addition, the following individuals are not counted as part of the household: foster children, unborn children, children who are subject to a shared-custody agreement, in which the child resides with the household less than 50% of the time, children being pursued for legal custody or adoption who are not yet living with the household at the time of application, and non-related live-in care-takers.

To be considered an Eligible Household Member, an individual must comply with the above criteria and meet one of the following criteria:

- i. All household members who are 18 years of age or more (adult household members) must be included for income qualification purposes documents and must appear on the application to purchase the inclusionary home; or
- ii. Any minor individual who is a dependent listed on the most recent year’s tax returns of an adult household member. All household members who are under 18 years of age must be the legal dependent of an adult household member.

3) Household Income Limits for Buyers

To establish the eligibility of households who intend to purchase an Inclusionary Home, limits are set on the amount of income Households (including all Eligible Household Members) can earn. These limits are based on the AMI and the number of Eligible Household Members.

The Ordinance allows moderate-income households to purchase Inclusionary Homes. Moderate-income households are defined as those with gross incomes between 80% and 120% of AMI. The City publishes the [AMI](#) and the income limits are updated annually.

4) Household Income Definition

Households may not have an income in excess of 120% of AMI (Household Income Limit). The family size to be used for determining the Household Income Limit is the number of

Eligible Household Members. For income eligibility purposes, the gross annual income (income before deductions or exemptions) received by all members of the household 18 years of age or older (except for non-related live-in caretakers paid by an outside source who are not considered household members) will be considered. The gross annual income is determined by calculating the household's total current monthly income and then multiplying that total by 12.

In the event that current monthly income deviates by more than 15% from the preceding 12-month average, the gross annual income will be determined by combining the preceding half year's gross income with one-half year's gross income at the current level.

5) Types of Income

- i. All wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services, before payroll deductions;
- ii. The net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness, or any allowance for depreciation of capital assets);
- iii. Interest and dividends (including income from assets – see Excluded Income section below);
- iv. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;
- v. Payments in lieu of earnings, such as unemployment, disability compensation, and severance pay;
- vi. The maximum amount of public assistance available to household members, other than the amount of assistance specifically designated for shelter and utilities;
- vii. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the home;
- viii. All regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of household or spouse; and
- ix. Any earned income tax credit to the extent that it exceeds income tax liability.

6) Excluded Income

- i. Casual, sporadic or irregular gifts;
- ii. Amounts that are specifically for, or in reimbursement of, medical expenses;
- iii. Lump sum additions to household assets (as defined in the Assets section below), such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains, and settlement for personal losses;
- iv. Monies received for educational scholarships paid either directly to students, or to the educational institution, as well as amounts paid by the Government to a Veteran of the U.S. Armed Forces for use in meeting the costs of tuition, fees, books, and

- equipment. Any money received over and above the associated educational costs listed are not exempt and considered income;
- v. Special pay to a person in the U.S. Armed Forces who is head of household who is deployed and exposed to hostile fire;
 - vi. Foster child care payments; and
 - vii. The value of benefits received from the Supplemental Nutrition Assistance Program.
 - viii. Payments to volunteers under the Domestic Volunteer Service Act of 1973;
 - ix. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes;
 - x. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
 - xi. Payments received from the Job Training Partnership Act; and
 - xii. Income derived from the disposition of funds of the Grand River band of Ottawa Indians.

7) Determination of Income from Assets

To determine a Household's income eligibility for purchase of an Inclusionary Home, a percentage of the Household's assets (as defined in the Assets section below) shall be added to the Household income only when the Household's assets exceed the annual Household Income Limit. Please refer to the Housing Department website for current [income limits](#).

When the total of the Household's assets exceed the Household Income Limit for the Household, then the amount of income attributed to these assets shall be computed as the higher of:

- i. The actual annual income generated from the assets; or
- ii. 2.5% of all assets in excess of the Household Income Limit.

8) Assets

Assets are defined as:

- i. Cash savings, including but not limited to bank accounts, credit union accounts, certificates of deposit, and money market funds;
- ii. Marketable securities, stocks, bonds and other forms of capital investment;
- iii. Inheritance and lump sum insurance payments, already received;
- iv. Settlements for personal or property damage already received;
- v. Equity in non-residential real estate such as commercial property and unimproved land, except as described as "not considered asset" #3 below; and
- vi. Other personal property that is readily convertible into cash.

The following are not considered assets:

- i. Ordinary household effects including furniture, fixtures, and personal property;
- ii. Automobiles used for personal use;

- iii. Any deposits on Inclusionary Home (Equity on a parcel or lot on which an Inclusionary Home is to be built; and
- iv. Cash, securities, stocks, bonds, and other forms of capital held in a tax deferred retirement plan recognized by the Federal Internal Revenue Service.

9) Execution of Subordinate Shared Appreciation Loan Documents; Restrictions (SJMC Section 5.08.600)

Each purchaser will be required to execute a promissory note in favor of the City of San José, secured by a deed of trust for the amount of the Subordinate Shared Appreciation Loan. The City will also require a recorded Affordability Restriction as described in Part IX, Section 10 below and may require execution of a loan agreement and other ancillary documents. The Subordinate Shared Appreciation Loan amount is Developer Discount, which the difference, if any, between the restricted Affordable Sales Price of the Inclusionary Home and its Fair Market Value at the time of the initial sale to the purchaser.

If the property is subsequently transferred to a non-qualified affordable buyer, the Subordinate Shared Appreciation Loan would become due and payable along with a prorated percentage of any equity received in the sale to a non-qualifying buyer under the Ordinance.

The Subordinate Shared Appreciation Loan would not become due and payable if the property is sold to a qualified buyer under the Ordinance who agrees to assume the loan, in an arm's length transaction. If the property is sold to a qualified buyer under the Ordinance who does not agree to assume the loan, then the Subordinate Shared Appreciation Loan would become due and payable along with a prorated percentage of any equity based on the then Fair Market Value of the unit.

The Inclusionary Home shall be the purchaser's principal place of residence. To be considered as a principal place of residency, the Inclusionary Home must not be rented or leased unless the purchaser has a household hardship and has applied for and obtained an emergency limited term authorization to rent approved by the Director of Housing. In the event that the purchaser fails to comply with this requirement the City may enforce and pursue any and all remedies in law or equity for such violations, including, but not limited to, declaring the Subordinate Shared Appreciation Loan due and payable.

Upon request of the Housing Department, the purchaser of the Inclusionary Home must provide, within 30 days, documents verifying the purchaser's occupancy of the home as the purchaser's primary residence, that the home is not rented or leased, and that there have been no changes in the title to the home. Such documents may include but are not limited to utility bills, property tax bills, and mortgage statements reflecting the owners name and address of the inclusionary home. Pursuant to the Subordinate Shared Appreciation Loan documents, an annual submittal will be required thereafter, along with a monitoring fee.

10) Execution of an Affordability Restriction (SJMC Section 5.08.600.A)

Each purchaser of an inclusionary home will be required to execute and consent to recording of an Affordability Restriction for their unit at close of escrow, and shall be subject to the terms of the Affordability Restriction for a duration of 45 years. The Restriction will be recorded and “run with the land” such that it is binding on any successor to the purchaser.

The Affordability Restriction will require that the purchaser occupying the home as a principle residence, unless a hardship exception is granted. It will also require any sale of the Inclusionary Home be to a new qualified affordable purchaser at an Affordable Sales Price for a term of 45-years. A request to sell to a non-qualified buyer must be approved by the City, and the sale to a non-qualified buyer must be consistent with the terms of the City’s adopted equity share program.