

ATTACHMENT A-7
INCLUSIONARY HOUSING ORDINANCE (IHO) COMPLIANCE OPTIONS:
PROCEDURE TO PROVIDE HUD RESTRICTED UNITS
(FOR-SALE)

I. Introduction

This attachment to the Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by providing units that are restricted to Affordable Housing Cost for Lower or Very Low Income households through an agreement between the Developer and the U.S. Department of Housing and Urban Development (HUD) “HUD-Restricted Units.” Definitions for capitalized terms may be found in the Guidelines and the Ordinance.

II. Qualifying Criteria for HUD-Restricted Units (SJMC Section 5.08.560)

In order to be eligible to be considered HUD-Restricted Units, the City Manager or his or her designee must determine that all of the following criteria are met:

- 1) The units must be rental units restricted to Affordable Housing Cost for Lower or Very Low Income households (60% of the Area Median Income – AMI or 50% AMI; adjusted for family size, as defined in California Health & Safety Code and as amended from time to time) pursuant to an existing unexpired agreement between the Developer and HUD;
- 2) The use of the site upon which the units are located is not a nonconforming use;
- 3) The units comply with all current applicable Building and Housing Codes;
- 4) An environmental review (Phase I, and if needed, Phase II) must have been completed to the satisfaction of the City and any deficiencies corrected;
- 5) A geological hazards review must have been completed to the satisfaction of the City indicating the site is free of all such hazards;
- 6) A Physical Needs Assessment (determining if any items need repair, replacement, or maintenance) for the units, the property and the common areas must be performed and any repairs completed prior to the acceptance of the units as HUD-Restricted Units; and
- 7) The current lenders on the site consent to the recording of a forty (40) year inclusionary housing restriction on the units.

If the City determines that a Dwelling Unit qualifies as a “HUD-Restricted Unit,” then the unit is eligible to be used to satisfy the inclusionary housing obligation consistent with the requirements of the Ordinance and these guidelines. These units may not be used for credits or transfers.

The City of San José annually publishes [AMI levels](#) for the City and posts these on its website.

III. Number of HUD-Restricted Units Required

The Developer must provide HUD-Restricted Units equal to 40% of the total number of Dwelling Units in the Residential Development.

When computing the number of units required to satisfy the forty percent (40%) 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. At least 40% of those HUD-Restricted Units shall be affordable to Very Low Income Households (50% AMI) and no more than 60% of the HUD-Restricted Units shall be affordable to Lower Income Households (60% AMI).

For example, if the Residential Development has 100 units, the off-site requirement would be 12 Lower Income Inclusionary Units and 8 Very Low Income Inclusionary Units. If the Developer wishes to provide HUD-Restricted Units to satisfy the inclusionary obligation, then 24 Lower Income Inclusionary Units and 16 Very Low Income Inclusionary Units are required.

Attachment B-2 contains guidance and standards for all off-site Inclusionary Units, including income qualification for tenants, affordable rent calculations, and minimum standards for the units. HUD-Restricted Units must comply with all requirements for off-site Inclusionary Units per **Attachment B-2**.

IV. Affordable Housing Compliance Plan Application (SJMC Sections 5.08.120, 5.08.155, 5.08.320.H, 5.08.420, 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 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 propose to satisfy a project's Inclusionary Housing Obligation by providing HUD-Restricted Units must provide the following information when submitting the Affordable Housing Compliance Plan application:

- 1) General information about the Developer, the Residential Development and the HUD-Restricted Units;
- 2) Whether the Developer or any affiliate owns, has an interest in, or controls any property contiguous to the project;
- 3) Whether the Developer intends to seek a parcel or tentative, and final map for the project;
- 4) Affirming that the Developer intends to use HUD-Restricted Units consistent with the standards in Part III;
- 5) Detailed information about the Residential Development, including:
 - i. Total number of units,

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

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- ii. Unit type (e.g. townhouse, detached single-family) and tenure (e.g. For-Sale or Rental),
 - iii. Number of bedrooms and bathrooms,
 - iv. Parcel map and/or site plan(s) and square footage of the units, and
 - v. Anticipated construction and completion schedule
- 6) Detailed information about the HUD-Restricted Units, the property upon which they are located, and any associated common area, including:
 - i. Year built,
 - ii. Total number of units,
 - iii. Identification of the specific units proposed to be “HUD-Restricted Units” for the purpose of satisfying the Residential Development’s Inclusionary Housing Obligation,
 - iv. Unit type (e.g. townhouse, detached single-family) and tenure (e.g. For-Sale or Rental),
 - v. Number of bedrooms and bathrooms,
 - vi. Current income restrictions on the units, and
 - vii. Site plan(s).
- 7) A copy of the current agreement between Developer and HUD;
- 8) Detailed information sufficient to demonstrate that the proposed units would qualify as HUD-Restricted Units, as described in Section II of this Attachment;
- 9) Statement of intent to perform a Physical Needs Assessment no more than six (6) months prior to the termination of the agreement between the Developer and HUD;
- 10) Statement of intent to complete work on all items identified in the Physical Needs Assessment as needing repair, replacement or maintenance at the time of the assessment, or as likely to require repair or replacement within three years;
- 11) As part of the Affordable Housing Compliance Plan application process, Developers shall provide a marketing plan that includes the following:
 - i. Anticipated timeline for the sale of the market rate homes and rental of the HUD Restricted Units, and
 - ii. The planned approach to renting the Inclusionary Units to the public in a non-discriminatory and equitable manner.
- 12) A reliable financing mechanism for the ongoing administration and monitoring of the HUD-Restricted Units;
- 13) A description of the manner by which a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve; and
- 14) 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 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 Residential Development site and any Contiguous Property under Common Ownership and Control (as described below), and the site of the HUD-Restricted Units to be provided.

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.

Unless otherwise specified in the Ordinance, the restrictions on the HUD-Restricted Units shall be for 40 years and shall commence upon the initial rental of the first market rate unit in the Residential Development subsequent to the approval of the Affordable Housing Compliance Plan. The Inclusionary Restrictions on the HUD-Restricted Units shall run concurrently with the agreement between the Developer and HUD.