

**ATTACHMENT B-6
INCLUSIONARY HOUSING ORDINANCE (IHO) COMPLIANCE OPTIONS:
PROCEDURE TO ACQUIRE AND REHABILITATE
EXISTING DWELLING UNITS
(RENTAL)**

I. Introduction

This attachment to the Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation through the acquisition and rehabilitation of existing market rate units for conversion to Rental Inclusionary Units affordable to Lower or Very Low Income Households. Definitions for capitalized terms may be found in the Guidelines and the Ordinance.

II. Qualifying Criteria for Rehabilitated Unit (SJMC Section 5.08.550)

In order to be eligible to be considered a “Rehabilitated Unit,” the City Manager or his or her designee must determine that all of the units proposed as the acquired and rehabilitated Dwelling Units meet all of the following criteria:

- 1) The value of the rehabilitation work must equal or exceed twenty five percent (25%) of the value of the dwelling unit prior to rehabilitation, inclusive of land value. The developer will be required to submit the following reports to the Housing Department:
 - i. Property appraisal (including land) prior to rehabilitation (as determined by a California Licensed Residential Appraiser using the Comparable Approach Method);
 - ii. Property appraisal (including land) that assumes the rehabilitation cost (as determined by a California Licensed Residential Appraiser); and
 - iii. Project rehabilitation cost estimate and description submitted by a licensed contractor or architect.
- 2) The proposed site for the Rehabilitated Units must be zoned for Residential Development at a density to accommodate at least the number of Rehabilitated Units and have a General Plan designation that authorizes residential uses;
- 3) The use of the proposed site of the Rehabilitated Units shall not constitute a nonconforming use;
- 4) The Rehabilitated Units shall comply with all current applicable Building and Housing Codes;
- 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) The property is not currently restricted for affordable housing;

- 7) A Physical Needs Assessment to the satisfaction of the City shall be performed on each Dwelling Unit to be acquired and rehabilitated, the property upon which it is located, and any associated common area; all items identified in the Physical Needs Assessment needing repair, replacement and maintenance at the time of the Assessment or that will likely require repair or replacement within three (3) years of the Assessment shall be completed prior to the acceptance of the units as Rehabilitated Units;
- 8) The bedroom mix of the Rehabilitated Units must be substantially the same as the bedroom mix of the market rate units in the Residential Development;
- 9) Rental Rehabilitated Units must be provided to satisfy Ordinance requirements for Rental Residential Developments; and
- 10) Acquisition of the site must be completed prior to the acceptance of the units as Rehabilitated Units.

If the Developer demonstrates to the City that a Dwelling Unit qualifies as a “Rehabilitated Unit,” and the City approves that the unit is eligible, the Rehabilitated Units may be used to satisfy the Inclusionary Housing Obligation of a Residential Development.

III. Rehabilitation Units Required

The Developer must provide Rehabilitated 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 Rehabilitated Units shall be affordable to Very Low Income Households and no more than 60% of the Rehabilitated Units shall be affordable to Lower Income Households.

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 Rehabilitated 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. Rehabilitated 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 use the Acquire and Rehabilitation Compliance Option must provide the following information when submitting the Affordable Housing Compliance Plan application:

- 1) General information about the Developer, the Residential Development, and the Rehabilitated 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 acquire and rehabilitate existing units consistent with the standards in Part II and III;
- 5) Detailed information about the Residential Development, including:
 - i. Total number of units,
 - 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, and
 - v. Construction and completion schedule.
- 6) Detailed information about the Rehabilitated Unit(s), the property upon which it is 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. Site plan(s) before and after rehabilitation, if different,
 - vii. Acquisition schedule, 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, rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

- viii. Rehabilitation schedule.
- 7) Schedule for transfer of the site, including estimated dates for commencement and completion of rehabilitation consistent with the criteria in Part II;
 - 8) Description of how and when Developer will provide a relocation plan for existing residents of the Rehabilitated Units, and comply with the requirements of the Tenant Protection Ordinance (see Section V below for a summary of requirements) and if applicable Government Code Section 7260 et seq;
 - 9) 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 rental of both market rate and Rehabilitated Units, and
 - ii. The planned approach to renting the Rehabilitated Units, when vacant, to the public in a non-discriminatory and equitable manner.
 - 10) Detailed information sufficient to demonstrate that the proposed acquisition and rehabilitation units would qualify as Rehabilitated Units, as described in Section II of this Attachment, including appraisals, construction plans and estimates, a Physical Needs Assessment;
 - 11) A reliable financing mechanism for the ongoing administration and monitoring of the Rehabilitated Units;
 - 12) 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;
 - 13) Information regarding the planned financing and the planned timing of both the Residential Development and the Rehabilitation Units (including acquisition and rehabilitation). The Affordable Housing Compliance Plan Application shall contain sufficient information to show that the Rehabilitation Units are likely to be completed at about the same time as the Residential Development; 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 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 Contiguous Property (as described below), and the Rehabilitated Units property for the purposes of memorializing the requirement to meet the obligations of the Ordinance.

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.

The Agreement shall also stipulate that the Developer must comply with all applicable laws regarding notice and relocation of existing residents, and that the Developer will cover all costs associated with the relocation of any existing residents in the units that will be rehabilitated.

VI. Tenant Noticing and Relocation

The Developer is responsible for complying with all state and local laws regarding requirements for relocation of existing residents.

Under the Tenant Protection Ordinance, a property owner who intends to rehabilitate units must follow the procedures in SJMC Section 17.23.1250 regarding substantial rehabilitation which includes noticing, relocation benefits, and the right to return. The Developer is responsible for all costs associated with noticing and relocation.

A summary of the City’s Tenant Protection Ordinance noticing and relocation requirements is available here: <http://www.sjhousing.org/rent> or email to: RSP@sanjoseca.gov