

**Revised Guidelines for Implementation of the
Inclusionary Housing Ordinance
of the City of San José,
Chapter 5.08 of the San José Municipal Code.**

Revised Version Approved April 18, 2024

**to Implement Inclusionary Housing Ordinance Amendments Applicable to
New Residential Developments as of May 1, 2021**

These Revised Guidelines for Implementation of the Inclusionary Housing Ordinance (Revised Guidelines), Chapter 5.08 of the San José Municipal Code (SJMC), are provided by the City of San José's Department of Housing (Housing Department).

Residential developers are encouraged to check the [Inclusionary Housing Ordinance \(IHO\) website](#) for the most recent version of the [Ordinance](#) and Revised Guidelines and other updated documents. For projects approved prior to May 1, 2021, please see the [original Ordinance](#) and Guidelines, available here: [INCLUSIONARY HOUSING PROGRAM](#).

The City reserves the right to modify or supplement this document as the need arises and further information is developed. Therefore, no express or implied guarantees should be inferred regarding the accuracy of this information.

Inclusionary Housing Guidelines

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1 General Provisions

1.1 Adoption and Purpose of the Inclusionary Housing Guidelines (SJMC Sections 5.08.020; 5.08.140, 5.08.200; 5.08.730, 5.08.740)

On January 12, 2010, the San José City Council adopted a Citywide Inclusionary Housing Ordinance No. 28689, (“the original IHO”) to enhance the public welfare by establishing policies that require the development of housing affordable to households of very low, lower, and moderate incomes, meet the City’s regional share of housing needs, and implement the housing element’s goals and objectives.

On March 9, 2021, the City Council amended the original IHO pursuant to Ordinance Number 30538 (IHO). The IHO is codified in Chapter 5.08 of the San José Municipal Code (SJMC). The IHO expressly calls for the adoption of the inclusionary housing guidelines by the City Manager or their designee.

1.2 Definitions, Guidelines Interpretation (SJMC Sections 5.08.107, 5.08.120, 5.08.175, 5.08.730)

These Revised Guidelines elaborate upon and are intended to be used in conjunction with the IHO and should be read together with the IHO. All undefined capitalized terms in the Revised Guidelines shall be as defined in the IHO. If there is an express conflict between the IHO and the Revised Guidelines, the IHO will prevail. Certain terms defined in the IHO have been further described below to provide clarity and assist in the IHO’s implementation.

- a. “Affordable Housing Compliance Plan” is to provide developers with background and a general understanding of the IHO requirements, to define what information must be provided for Housing Department staff to determine the extent to which any Obligation may be associated with the project, and to describe the process of Compliance Plan Application submittal, review and determination. The Affordable Housing Compliance Plan shall also refer to and include any application for such plan.

Interested parties may access the Compliance Plan application form through the City’s Housing Department website at www.sjhousing.org/IHO. More information is provided in Section 4 of these guidelines.

- b. “Affordable Housing Developer” means an organization with experience developing 100% affordable housing in the City of San Jose and meeting all the criteria outlined in Section 3.6 of these guidelines.
- c. “Affordable Housing Development” means:
 - 1. for a rental Residential Development, a development that has a recorded affordability restriction that:

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- i. has a term of at least 55 years,
 - ii. limits the rental of all dwelling units except the manager’s units to an Affordable Rental Rate for households earning no more than sixty percent (60%) of the Area Median Income (AMI) or the units have rents not in excess of those rents required by the California Tax Credit Allocation Committee (TCAC) for an income averaged 100% affordable housing project (i.e., average rent of 60% of AMI using TCAC rents and incomes and consistent with a project specific TCAC allocation resolution.
 - iii. restricts at least 10 percent (10%) of the units to Very Low-Income households at incomes up to fifty percent (50%) of AMI, and
 - iv. is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency.
2. for a for-sale Residential Development, a development that has a recorded affordability restriction that:
 - i. has a term of at least 45 years,
 - ii. limits the sale of all dwelling units to households with an income not exceeding 110% of the AMI at a price not exceeding the Affordable Sales Price,
 - iii. and is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency.
- d. “Affordable Rental Rate” shall mean the restricted monthly rent for an inclusionary housing unit based on its income category and unit size calculated according to the methodology outlined in Appendix A and published annually by the City, on the City’s website.
- e. “Affordable Sales Price” shall mean the restricted below market sales price for a for-sale inclusionary housing unit based on its income category and unit size calculated according to the methodology outlined in Appendix B and published annually by the City, on the City’s website.
- f. “Downtown High Rise” shall mean a Residential Development that:
 1. is located in the Downtown Core Area (as described in Resolution Number 73587 adopted January 9, 2007) or located in such other geographic area as may be specified in a Resolution adopted to implement SJMC Section 5.08.520(F);
 2. has ten (10) or more floors or stories in height, not including any non-residential uses, with the highest occupied floor at an elevation at least 150 feet above street level;
 3. for which the Developer has provided the information requested by the City for compliance with Government Code (GC) Section 53053 and Resolution 77135 for disclosure of public subsidies and the public hearing has been held; and

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4. receives its final certificates of occupancy for 80% of the dwelling units on or prior to June 30, 2025 or such deadline as may be specified in a Resolution implementing SJMC Section 5.08.520(F).

If all these criteria are met, then the Downtown High Rise may request that the applicable reduced In Lieu Fee rate be applied in the Residential Development's Affordable Housing Compliance Plan and Inclusionary Housing Agreement and a waiver letter or partial waiver letter be provided at the time the In Lieu Fee is due.

- g.** “Dwelling Unit” means any type of dwelling allowed by SJMC Title 20, including less traditional types of developments described or designed or permitted based on shared common facilities (e.g., single room occupancy, suite-style student or senior housing), accessory dwelling units (ADUs), including junior ADUs (and associated facilities), and co-living dwelling units, and in such nontraditional projects, the number of Dwelling Units shall be determined in a manner that reasonably reflects the design of the project for separate rental of bedrooms or suites. Any bedroom, room or suite that is only available as part of and within a State-licensed residential care facility for the elderly and is part of a development permitted by the City as a residential care facility for the elderly (RCFE unit) will not be considered a Dwelling Unit subject to the IHO as long as the development is required to pay the commercial linkage fee for the RCFE unit. This exemption shall not apply to any dwelling units that are not RCFE units, such as staff units or other types of dwelling units.
- h.** “First Approval” shall mean 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.
- i.** “For-Sale” shall mean a development with a tentative map, final map, parcel map, condominium plan, or other similar documentation allowing for the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments). Attached units are presumed to be rental units. A Development with attached units that wishes to qualify as for-sale must provide all the following: Prior to issuance of any Certificate of Occupancy and/or satisfaction of the IHO obligations, For-Sale projects shall provide evidence of compliance with the Subdivided Lands Act, including:

 1. recordation of the covenants, conditions, and restrictions,
 2. the formation of a Homeowner’s Association including executed governing documents and completed incorporation,
 3. California Bureau of Real Estate approval of a final subdivision report and
 4. evidence of marketing of the Residential Development as a For- Sale Development.

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- j. “Market Area” means as a specific geographic area designated through the adoption by the City Council of a resolution or policy. Resolution 79904, adopted March 9, 2021, provided detailed descriptions of the boundaries of eleven (11) distinct Market Areas comprising the entire City.
 - 1. “Moderate” and “Strong” Market Area means a Market Area or other geographic area designated by or pursuant to a City Council resolution or policy based on certain findings, including but not limited to residential building activity levels for market rate housing. Resolution 79904, adopted March 9, 2021 identified the West Valley Market Area and the Central Market Area as Strong Market Areas and all other Market Areas as Moderate Market Areas.
- k. “Opportunity Area” means a geographic area designated by or pursuant to a City Council resolution or policy. Until such time as the Council designates Opportunity Areas, Developers who wish to provide off site units must do so in the same the Market Area as the Residential Development.
- l. “Residential Development” means any project requiring a Planning Permit for which an application has been submitted to the City, and where the Residential Development:
 - 1. would create ten (10) or more new, additional or modified Dwelling Units by:
 - i. the construction or alteration of structures,
 - ii. the conversion of a use to residential from any other use, or
 - iii. the conversion of a residential use from Rental to For-Sale.
 - 2. is contiguous to property under Common Ownership or Control and the combined residential capacity of all Applicant’s property pursuant to the General Plan designation or zoning at the time of the Planning Permit application for the Residential Development is ten (10) or more residential units

1.3 Administrative Responsibility (SJMC Sections 5.08.140, 5.08.200, 5.08.730)

The IHO is intended to be administered by the City Manager or their designee.

A Developer shall not be excused from fulfilling its obligations under the IHO and these Revised Guidelines due to a failure by a City official or employee to fully execute the IHO procedures in accordance with these Revised Guidelines. The City Attorney is authorized to enforce the requirements of the IHO, these Revised Guidelines, and related agreements by civil action and any other proceeding permitted by law.

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2 Operative Date

The original Inclusionary Housing Ordinance's Operative Date was January 1, 2013, but implementation was delayed due to a legal challenge. On June 15, 2015, the California Supreme Court upheld the legislation, allowing the City to initiate enforcement of the Ordinance. A subsequent petition for review to the U.S. Supreme Court was denied.

2.1 Operative Date of Amended Inclusionary Housing Ordinance (SJMC 5.08.740)

The Amended Inclusionary Housing Ordinance became operative on May 1, 2021. Residential Developments that receive First Approvals (or for which the application is deemed complete pursuant to GC Section 65589.5) or other Planning Permits on or after that date are subject to the Amended IHO requirements, to which these Revised Guidelines apply.

2.2 Projects with Approvals Prior to the Effective Date

Residential Developments with unexpired Planning Permit approvals (or Residential Developments that otherwise deemed final or vested pursuant to State law) prior to May 1, 2021, will be subject to the terms of the original Inclusionary Housing Ordinance and should refer to the original [Ordinance No. 28689](#) and the prior Guidelines, the version dated June 30th, 2016 can be found at [Old Inclusionary Guidelines](#). Notwithstanding the foregoing, Residential Developments with unexpired Planning Permit approvals (or otherwise deemed final pursuant to State law) prior to May 1, 2021, that have not paid the In Lieu Fee, recorded an Inclusionary Housing Agreement or been issued a Building Permit, may elect to comply with these amended IHO requirements by completing a replacement Affordable Housing Compliance Plan and acknowledgment and submitting all required additional and or /updated information and documents listed in the replacement Affordable Housing Compliance Plan or reasonably requested by staff in order to establish the current status of the Residential Development and eligibility hereunder.

2.3 Projects Subject to the Ordinance (SJMC Sections 5.08.250, 5.08.310, 8.05.420)

The IHO applies to all Residential Developments as defined in SJMC Section 5.08.250 and Section 1.2 of these Revised Guidelines, above.

For the purposes of these Revised Guidelines, the term Modified (as referenced in SJMC Section 5.08.250) is not intended to include projects where Dwelling Units are remodeled, where the use of the Dwelling Units is unchanged, and no new or additional Dwelling Units are created as a part of the project.

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2.4 Claims for Exemption or Fee Reductions (SJMC Sections 5.08.320, 5.08.520.F, 5.08.610.B.9)

Residential Developments that claim they are exempt from the requirements of the IHO or subject to a fee reduction must indicate the basis for the exemption or fee reduction in the Affordable Housing Compliance Plan Application. Residential Developments may lose their exemptions or fee reductions if their Planning Permits expire.

2.4.1 Small Projects Exemption (SJMC Section 5.08.320.A.2)

Residential Developments that have nine (9) or fewer For Sale Dwelling units will be exempt from compliance with the requirements of the IHO. Regardless, Applicants with Residential Developments of three (3) or more dwelling units shall submit a Compliance Plan Application for approval. This will allow staff to verify that the Residential Development qualifies for the claimed exemption and conditions for any claimed exemption are addressed.

Residential Developments that are part of a construction phased development or are being developed on Contiguous Property under Common Ownership or Control with a total unit count of ten (10) or more units across the phases or properties are not eligible for this Small Projects Exemption.

2.4.2 Projects with Map Act Exemptions (SJMC Section 5.08.320.A.5)

Residential Developments will be exempt from the substantive requirements of the IHO if they are exempted pursuant to GC Section 66474.2 or 66498.1, provided that such Residential Developments shall comply with any predecessor ordinance, resolution, or policy in effect on the date the application for the development was deemed Substantially Complete.

Regardless, Applicants with Residential Developments of three (3) or more dwelling units shall submit a Compliance Plan Application for approval. This will allow staff to verify that that the Residential Development qualifies for the claimed exemption and conditions for any claimed exemption are addressed.

2.4.3 Projects in a Planned Community Approved Prior to 1993 (SJMC Section 5.08.320.A.7)

Residential Developments located within a Planned Community approved prior to 1993 will be exempt from the substantive requirements of the IHO provided that: (a) the project is not in a Redevelopment Project Area; (b) the Specific Plan and/or Planning Permit specifies that the project will occur in phases and authorizes phased construction of new on-site and off-site infrastructure; and (c) one or more phases of the project and the required infrastructure improvements related to each of those phases, has been completed in conformance with the Specific Plan and Planning Permits prior to the Operative Date.

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Regardless, Applicants with Residential Developments of three (3) or more Dwelling Units shall submit a Compliance Plan Application for approval. This will allow staff to verify that the Residential Development qualifies for the claimed exemption and conditions for any claimed exemption are addressed.

2.4.4 Projects Subject to Development Agreement (SJMC Section 5.08.320.A.3)

Residential Developments which are developed in accordance with the terms of a development agreement adopted by ordinance prior to the Operative Date of the IHO will be exempt from the substantive requirements of the IHO provided that such projects shall comply with any affordable housing requirements included in the development agreement or any predecessor ordinance in effect on the date the development agreement was executed.

Regardless, Applicants with Residential Developments of three (3) or more Dwelling Units shall submit a Compliance Plan Application. This will allow staff to verify that the Residential Development qualifies for the claimed exemption and conditions for any claimed exemption are addressed.

2.4.5 Projects Subject to a Disposition and Development Agreement (SJMC Section 5.08.320.A.4)

Residential Developments which are developed in accordance with the terms of a disposition and development agreement (DDA) pursuant to the authority and provisions of California Health and Safety Code Section 33000 *et seq.*, and that was approved by the Board of the San José Redevelopment Agency and executed prior to the Operative Date will be exempt from the substantive requirements of the IHO, provided that such Residential Development must comply with any affordable housing requirements included in the DDA or any other law or policy in effect at the time of execution of the disposition and development agreement.

Regardless, Applicants with Residential Developments of three (3) or more Dwelling Units shall submit an Affordable Housing Compliance Plan Application. This will allow staff to verify that the Residential Development qualifies for the claimed exemption and conditions for any claimed exemption are addressed.

2.4.6 Downtown High Rise Term Limited In Lieu Fee Reduction (SJMC Section 5.08.520.F, Resolution Nos. 79867 and 79688)

Qualified Downtown High Rise developments may be eligible to pay a reduced In Lieu fee at the time of issuance of its Certificate of Occupancy upon compliance with the requirements in these Revised Guidelines by selecting this

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option in the Affordable Housing Compliance Plan and executing a Downtown High Rise Inclusionary Housing Agreement on the City's form, prior to May 30, 2025.

If the development is claiming a Downtown High Rise Fee Reduction, it must also comply with all terms of that Plan and Agreement, including but not limited to a verified location in the Downtown Core, height requirements and deadline to obtain the final Certificates of Occupancy for 80% of the units on or prior to June 30, 2025 (see Section 1.2 of these Revised Guidelines, above).

2.5 Expiration of Exemption – Planning Permit Expiration (SJMC Section 5.08.320.B)

Upon the expiration of any Planning Permit, a Residential Development shall be subject to the then current IHO (and any previously claimed exemption shall be considered to have expired), and it shall not proceed until such time as an Affordable Housing Compliance Plan (or a revised Plan) is approved in conjunction with any other required Planning Permit or amendment thereto. This Section shall not apply to a non-discretionary extension of a Planning Permit or Land Use approval beyond its initial term where extension is required by state or local law.

2.6 Residential Developments Seeking Ministerial Approval (SJMC 5.08.110, 5.08.320; 5.08.610.B.9)

Residential Developments which do not require any Planning Permits are not subject to the IHO as currently written. Thus, Residential Developments that are seeking ministerial approval under state 'ministerial approval' laws such as SB 35 and AB 2162 may be exempt from the IHO.

Regardless, Applicants with Residential Developments that are seeking Ministerial Approval under SB 35, AB 2162, or other ministerial approval laws shall submit a Compliance Plan Application for approval. This will allow staff to confirm that the Residential Development qualifies for the claimed ministerial approval exemption and that conditions for the claimed exemption are addressed including recording of an appropriate Regulatory Agreement.

The City will monitor compliance as described in Section 10 below. Prior to the issuance of the Building Permit, the City will confirm that the Developer and Residential Development are still in compliance with the Compliance Plan, and that an appropriate Regulatory Agreement has been recorded against the property.

2.7 100% Affordable Housing Projects (SJMC 5.08.110, 5.08.400.A.3.3)

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Affordable Housing Developments that have received funding from the Housing Department and record an unsubordinated City affordability restriction applicable to all non-manager units will be deemed compliant with Section 5.08.400 of the IHO.

To be eligible for treatment as an Affordable Housing Development meeting the requirements of Section 5.08.400.C, Applicants must submit a complete Compliance Plan Applications as part of the application submittal for the First Approval and attach a copy of a funding award letter or resolution from the City indicating the income restrictions for the proposed project.

If Staff determines that the project is an eligible Affordable Housing Development as defined in the IHO Ordinance (SJMC Section 5.08.110) and an unsubordinated City affordability restriction has been recorded, then staff will provide a letter indicating that the project has been deemed compliant with the IHO. If the unsubordinated City affordability restriction lasting at least 55 years is recorded prior to building permit issuance, no Inclusionary Housing Agreement will be required.

3 Ordinance Compliance Options

Residential Developments may satisfy the requirements of the IHO through any of the options provided under the IHO. Each compliance option is briefly described below, with more detailed information for each option in the respective Attachments to these Revised Guidelines. Please note that the described requirements are only applicable if the Applicant selects that compliance option. Most compliance options, other than the Build On-Site and Clustered Options are based on an underlying requirement that is equivalent to the provision of at least 20% of the number of units in the Residential Development.

3.1 Build On-Site (SJMC Sections 5.08.400, 5.08.450, 5.08.500.A, 5.08.520, 5.08.525, 5.08.620)

Developers may satisfy their inclusionary housing obligation by building Inclusionary Units on-site dispersed throughout the Residential Development and transferring/renting those units to income-eligible households. Developers who select to build on-site to satisfy the requirements of the IHO must build a percentage of the units within a Residential Development and dispersed throughout the project site according to the following requirements:

- a. For For-Sale Residential Developments, fifteen percent (15%) of the units must be sold or transferred at a price affordable to those households earning no more than 110 percent (110%) of the AMI based on assumed family size for the unit sold. Such units may be sold to households earning no more than

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one hundred twenty percent (120%) of the AMI, determined based on actual family size.

- b. For Rental Residential Developments or For-Sale Residential Developments electing to provide Rental units on-site In Lieu of For-Sale units, there are two options for compliance:
 - 1. Five percent (5%) of the units in the Residential Development shall be made available at an Affordable Rental Rate to households earning no more than one hundred percent (100%) of the AMI adjusted for family size, five percent (5%) of the units in the Residential Development shall be made available at an Affordable Rental Rate to households earning no more than sixty percent (60%) of the AMI adjusted for family size, and five percent (5%) of the units in the Residential Development shall be made available at an Affordable Rental Rate to households earning no more than fifty percent (50%) of the AMI adjusted for family size; or
 - 2. Ten percent (10%) of the units in the Residential Development shall be made available at an Affordable Rental Rate to households earning no more than thirty percent (30%) of the AMI adjusted for family size.

Unless otherwise specified in the IHO, the affordability restrictions shall be for a term not less than ninety-nine (99) years for all Inclusionary Units. Affordable Housing Projects where a shorter affordability period is strictly required to obtain financing may request a term of not less than 55 years according to the procedures outlined in Appendix A, Section XII. Inclusionary Units must be geographically disbursed throughout the entire development.

NOTE: The Mixed Compliance option below provides an option to provide some of the required Rental Inclusionary Units on-site along with an adjusted In Lieu Fee, while the Partnerships for Clustered Units compliance option below provides an option to concentrate affordable units in one portion of a larger site in order to access affordable housing financing.

3.1.1 Incentives (SJMC Section 5.08.450)

Developers who wish to apply for incentives, waivers or density bonuses must do so in writing consistent with the requirements of the applicable state law and City ordinances and coordinate incentives directly with PBCE. Any incentives authorized by the City pursuant to SJMC Section 20.190 shall be included in the Affordable Housing Plan for the Residential Development. For projects requesting changes to the IHO regulations, each substantial variance from these guidelines will count as a separate incentive under the Density Bonus program.

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3.1.2 Financial Subsidies

It is anticipated that the City will fund the required Inclusionary Units. Developers may apply for financial subsidy from City funds for the difference in costs that results if the Developer provides more Inclusionary Housing Units or all units in the Residential Development as Inclusionary Units at an Affordable Housing Cost to households in income classifications that are substantially lower than required for the Residential Development pursuant to SJMC Section 5.08.400.

Required affordable housing units provided under the Density Bonus law and SB 330 (Housing Crisis Act), and affordable units provided under the City's Ellis Act Ordinance, may also be counted as Inclusionary Units if they meet all the applicable requirements of the IHO and the Revised Guidelines.

3.1.3 Accessory Dwelling Units

For Sale Residential Developments may comply with the IHO by providing rental units that are Accessory Dwelling Units attached to individual for-sale units provided that:

- a. Developer shall expressly disclose the IHO regulatory obligations (including the IHO obligations to rent and continue renting the inclusionary unit at affordable rent to qualified tenants for 99 years, with ongoing monitoring by City) to the initial purchaser during marketing, with such disclosure materials reasonably acceptable to the City;
- b. Inclusionary units shall expressly allow for rental to Section 8 voucher holders;
- c. Developer will obtain a written assumption or acknowledgement of these obligations reasonably acceptable to the City from the purchaser; and
- d. Developer will record a separate City Notice of Affordability Restriction and Rental Obligation at the time of sale of the townhome with the inclusionary rental unit.

The inclusion of any Rental Accessory Dwelling Units within a For Sale Residential Development will not change the development into a Rental Development for the purpose of determining the relevant IHO requirements.

Please refer to Attachment 1 of these Revised Guidelines for further details on the Build On-Site compliance option.

3.2 Build Off-Site (SJMC Section 5.08.500)

The inclusionary housing requirement may be satisfied by the construction of affordable housing on a site different from the site of the Residential Development

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In Lieu of constructing the affordable units within the Residential Development. The location of the off-site units must be within the same Opportunity Area and be consistent with the City's Affordable Housing Siting Policy, The location requirements are described further in the Attachments noted below. Developers who select to build off-site to satisfy the requirements of the IHO must build at least twenty percent (20%) of the units according to the following requirements:

- a.** For For-Sale Residential Developments, the units built at the alternate location must be sold or transferred at a price affordable to those households earning no more than 110 percent (110%) of the AMI adjusted for family size. Such units may be sold to households earning no more than one hundred twenty percent (120%) of the AMI. A market rate For-Sale Residential Development may provide For-Sale units or Rental apartments to satisfy their off-site requirement, but they must follow the appropriate AMI limits

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that pertain to income and affordable rent or sales price depending on the tenure provided.

- b. For Rental Residential Developments, the equivalent of five percent (5%) of the dwelling units in the Residential Development shall be made available for rent at an Affordable Rental Rate to households earning no more than eighty percent (80%) of the AMI, adjusted for family size. The equivalent of five percent (5%) of the dwelling units in the Residential Development shall be made available for rent at an Affordable Rental Rate to households earning no more than sixty percent (60%) of the AMI adjusted for family size). The equivalent of ten percent (10%) of the dwelling units in the Residential Development shall be made available for rent at an Affordable Rental Rate to households earning no more than fifty percent (50%) of the AMI adjusted for family size.

Please refer to Attachment 2 of these Revised Guidelines for further details on the Build Off-Site compliance option.

3.3 Payment of an In Lieu Fee (SJMC Sections 5.08.520, 5.08.525)

Developers may select to pay an In Lieu fee to the City to satisfy the requirements of the IHO. The City publishes a schedule of In Lieu fees on its website [Fees & Charges](#) page 102. The In Lieu fee obligation will be calculated by the City at the time the Developer provides payment and will be based on the adopted In Lieu Fee Schedule in place at that time. For each Residential Development the total In Lieu fee will be calculated by multiplying the project size (measured in net residential square feet) by the appropriate In Lieu fee rate.

For Rental Developments, the applicable In Lieu fee rate will also depend on the Market Area in which the project is located. Projects located in Moderate Market Areas will pay reduced In Lieu fees. The City publishes a map and descriptions of the Market Area Boundaries on its web site [IHO Market map](#).

Developers are entitled to a 50% reduction in the assessed In Lieu fee for smaller projects up to nineteen (19) units that provide at least 90% of the maximum residential density allowed by the General Plan.

Developers may pay the In Lieu fee at any time after the Inclusionary Housing Agreement has been recorded, but prior to the City issuing a Certificate of Occupancy. The final In Lieu fee will be calculated at the time when the Developer provides payment, based on the adopted In Lieu fee in place at that time.

Please refer to Attachment 3 of these Revised Guidelines for further details on the In Lieu Fee compliance option.

3.4 Mixed Compliance Option (SJMC Section 5.08.525)

Developers who elect to build some of the required Rental Inclusionary Units on-site may opt to satisfy their inclusionary housing obligation by:

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- a. providing at least five percent (5%) of the total Dwelling Units in the Residential Development at an Affordable Rental Rate to households earning no more than one hundred percent (100%), sixty percent (60%) or fifty percent (50%) of the AMI adjusted for family size; and
- b. paying a reduced In Lieu fee applied to the entire residential development, based on the Mixed Option In Lieu Table [Fees & Charges](#) page 104. The In Lieu fee rate is lower for projects that provide more deeply affordable units and for projects that elect to provide 10% affordable units at a mix of income levels.

Please refer to Attachment 4 of these Revised Guidelines for further details on the Mixed Compliance option.

3.5 Land Dedication In Lieu of Construction (SJMC Section 5.08.530)

Developers may select to convey residentially zoned land to satisfy the requirements of the IHO, provided certain conditions are met, and the City Manager agrees to such dedication. The land must be immediately available, suitable for construction of housing, free from hazardous materials, and have unencumbered marketable title.

3.5.1 SB 35-eligible Land Dedication (SJMC Section 5.08.530.C)

Alternatively, Developers may satisfy the requirements of the IHO by dedicating suitable land within the City that meets the applicable conditions required for SB 35 permit approval streamlining, consistent with GC Section 65913.4.

Please refer to Attachment 5 of these Revised Guidelines for further details on the Land Dedication compliance option.

3.6 Option to Purchase Land (SJMC Section 5.08.580)

Developers may select to provide the City with an option to purchase residentially zoned land to satisfy the requirements of the IHO, provided certain conditions are met and the City Manager agrees to execute such option. The option must be for a minimum term of five (5) years, and the land must be immediately available, suitable for construction of housing, free from hazardous materials, and have unencumbered marketable title.

Please refer to Attachment 6 of these Revised Guidelines for further details on the Option to Purchase Land compliance option.

3.7 Partnership for Clustered Units (SJMC Section 5.08.590)

Developers may select to partner with an Affordable Housing Developer to construct clustered rental affordable housing to satisfy their IHO obligations,

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provided certain conditions are met. The clustered units must be in close proximity to the Residential Development, part of the same building envelope, either on the same site or contiguous site, and must be part of an Affordable Housing Development with the required affordability and be on a separate legal parcel that will be distinct from the Residential Development. Note that the definition (above) of Affordable Housing Development requires that all units (other than a manager unit) be income restricted either at or below 60% of Area Median Income or with an average of 60% of AMI. This definition would exclude any building that was mixed income including 80%/20% or 60/40% affordable housing developments.

An eligible Affordable Housing Developer must have a sponsor that has successfully completed development of a 100% affordable housing development with funding from the City of San Jose within the past ten (10) years. Developers of mixed income projects (IHO, 80/20 or 60/40) would not qualify unless they also have developed 100% affordable projects. An Affordable Housing Developer may be a non-profit or for-profit corporation or an affiliate of that organization, provided that the affiliate meets the requirements for tax credit funding.

If the Applicant is not an Affordable Housing Developer, it must partner with such a developer and the City and provide at least seventy-five percent (75%) of the In Lieu fee amount and a guaranty of project commencement within a specified time.

The clustered Inclusionary Units must comply with the standards established by SJMC 5.08.470, with the same percentages and levels of affordability as required by the IHO for on-site rental units. See Section 3.1(b) of these Guidelines, above.

Please refer to Attachment 7 of these Revised Guidelines for further details on the Partnership for Clustered Units compliance option.

3.8 Surplus Inclusionary Unit Credits (SJMC Section 5.08.540.C)

Developers may satisfy the requirements of the IHO by purchasing or transferring credits for another project's on-site Inclusionary Units in excess of the number required by the Ordinance ("Surplus Inclusionary Units") that otherwise meet the standards of SJMC Section 5.08.470 and that are available for occupancy concurrently with the Developer's Market Rate units.

Please refer to Attachment 8 of these Revised Guidelines for further details on the Surplus Inclusionary Unit Credits compliance option.

3.9 Acquisition and Rehabilitation of Existing Units (SJMC Section 5.08.550)

Developers may select to acquire and rehabilitate existing market rate units for conversion to units affordable to Lower or Very Low-Income Households and satisfy their IHO obligations by providing twice the number of Inclusionary Units as otherwise required.

The affordability restrictions shall be for a term not less than ninety-nine (99) years for all Inclusionary Units. Developers of Affordable Housing Developments may request

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a term of affordability of less than ninety-nine (99) years, but not less than fifty-five (55) years.

Please refer to Attachment 9 of these Revised Guidelines for further details on the Acquisition and Rehabilitation of Existing Units compliance option.

3.10 HUD Restricted Units (SJMC Section 5.08.560.H)

Developers who select to satisfy the requirements of the IHO by providing units that are restricted to Affordable Housing Cost for Lower or Very Low-Income Households may do so through entering into an agreement with the U.S. Department of Housing and Urban Development (HUD).

Please refer to Attachment 10 of these Revised Guidelines for further details on the HUD Restricted Units compliance option.

3.11 Combination of Methods (SJMC Section 5.08.570)

Developers may propose any combination of the Compliance Options to satisfy their IHO obligations as long as the proposed combination provides substantially the same or greater level of affordability and amount of affordable housing as is otherwise required. For each component of the proposed combined option, the Developer should consult the appropriate attachment for details on compliance.

Developers interested in proposing a combination of compliance options should contact Housing Department staff prior to submitting the Affordable Housing Compliance Plan application.

3.12 Alternative Method (SJMC Section 5.08.610.F)

Applicants may also propose alternative methods to satisfy their IHO obligations that are not included in this Section or do not otherwise strictly comply with the IHO. The City Manager or their designee may approve such an alternative if they determine that the proposed alternative will provide as much or more affordable housing at the same or lower income levels, and of the same or superior quality of design and construction, and will otherwise provide greater public benefit, than one or more of the compliance options expressly provided herein.

Developers interested in proposing an alternative method should contact Housing Department staff prior to submitting the Affordable Housing Compliance Plan application. The Housing Department will provide an addendum to the Compliance Plan Application which enables developers to identify specific requirements of these guidelines which would need to be waived or modified in order to enable the project to exceed the level of public benefit otherwise required. Applicants must indicate how any requested waiver or modification of specific guidelines are necessary in order for the project to offer the proposed additional public benefits.

Any application requesting consideration of an alternative method must also identify one of the available Compliance Options outlined in SJMC 5.08.500 as the baseline for compliance with the IHO and comply with all of the provisions of the

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relevant Attachment to these Guidelines unless a specific modification has been requested and approved in writing by the City Manager or their designee.

Projects proposing alternative methods may request amendment or modification of their Compliance Plan, but those changes will require approval in the same manner as the original plan and shall not be considered “minor modifications” as described in Section 5.08.610 (E) of the Inclusionary Housing Ordinance.

In evaluating whether a proposed alternative method provides ‘greater public benefit,’ the City will expect projects to provide significantly more benefit than otherwise provided under the existing compliance options. While the City will consider any and all potential public benefits, requests will be reviewed relative to the following guidelines:

- a. For projects that propose to provide a greater number of affordable units, a ‘significant’ improvement in public benefit will involve a 10% or more increase in the number of affordable units.
- b. In the specific case of projects subject to the provisions of the ‘builder’s remedy’ provisions of the Housing Accountability Act (Govt. Code 65589.5(d)(5)), the City will consider the provision of at least 20 percent of the units rented or sold at affordable levels to lower- income households, or projects in which 100% of units are rented or sold to “middle-income” households as providing a ‘significant improvement’ in public benefit so long as these units meet the other standards of the IHO guidelines.
- c. For projects that propose to provide deeper levels of affordability than would be required under the IHO, the degree of public benefit will be evaluated based on the affordable rent levels of the proposed alternative relative to the IHO requirements. A ‘significant’ improvement in public benefit will result in a 10% or more increase in the total rent discount relative to the otherwise applicable IHO affordable rents. (ie. The sum of the total monthly allowable rent for all affordable units would be 10% lower than it would otherwise be.)
- d. Projects that are pursuing the Partnership for Clustered Units compliance option are anticipated to provide deeper affordability as a consequence of their use of outside affordable housing subsidy. For these projects, providing deeper affordability alone would not constitute a ‘significant’ increase in public benefit, though providing a greater than required number of units could be.
- e. Some projects propose to provide a greater number of restricted affordable units but seek a waiver of the IHO’s requirements related to unit sizes or bedroom counts of affordable units. For example, IHO Guidelines Attachment 1, section VII requires that on-site affordable rental units must have an average size of at least 85% of the average size for market rate units of the same type. These projects will not be considered to provide a ‘significant’ improvement in public benefit unless the total floor area of the proposed affordable units exceeds the floor area that would be required if the project complied with the relevant IHO requirements with affordable units that were 100% of the average size of market rate units. Generally this will mean that for on-site rental projects, for example, the City will consider alternatives only when the combined square footage of the affordable units is at least 15% of the total project.

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- f. The City will not consider projects providing units smaller than 200 square feet to be providing improved public benefit regardless of the number of units provided.

4 Phased or Master Planned Developments (SJMC Section 5.08.155)

The IHO provides for an exemption (SJMC Section 5.08.320.A.2) for projects with fewer than ten (10) residential units. However, Residential Developments with a total unit count of ten (10) or more units across the phases or properties are not eligible for the Small Projects Exemption.

Phased or master planned developments are expected to comply with the IHO through the Combination of Methods compliance option (Section 3.11 above) with each phase generally including affordable units or another method of compliance relative to the obligation generated by market rate housing in that phase. In phased Residential Developments, the City may not issue Building Permits for more than ninety percent (90%) of the Market Rate Units within a Construction Phase in a Residential Development until it has issued Building Permits or authorized for occupancy at an Affordable Housing Cost, as applicable, for all of the Inclusionary Units to be included in that Construction Phase. The City may also not approve final inspections for single-family detached homes, or certificates of occupancy for all other residences, for more than ninety percent (90%) of the Market Rate Units within a Construction Phase until it has approved final inspections or certificates of occupancy, as appropriate, or authorized for occupancy at an Affordable Housing Cost as applicable, for all the Inclusionary Units within that Construction Phase.

4.1 Definition of Construction Phase.

“Construction Phase” means either:

- a. The area included within a City-approved tentative subdivision map for Residential Development where a single final map implements the entire approved tentative map;
- b. The area included within each separate final map for Residential Development where multiple final maps implement the entire approved tentative map; or
- c. An area designated as a Construction Phase in an approved Affordable Housing Plan.

Planning permits for phased or master planned projects must reflect the proposed phasing. The City will record an Inclusionary Housing Ordinance Agreement against the entire site initially but once a site is legally subdivided, the City may execute a partial recission to reflect completed compliance with respect to certain parcels.

5 Affordable Housing Plan and Application

The IHO requires that Developers submit an Affordable Housing Plan. The Affordable Housing Plan will also be referred to in these Revised Guidelines and attachments as the Affordable Housing Compliance Plan Application or the Compliance Plan Application,

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and after approval, as the Affordable Housing Compliance Plan or Compliance Plan. The Compliance Plan Application may be obtained from the Housing Department [website](#), or by contacting the Housing Department.

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5.1 Timing of Submittal of the Compliance Plan Application

The City's goal is to ensure that the IHO's requirements are considered early in the planning process. Therefore, as part of the application submittal for the First Approval of any Residential Development with three (3) or more dwelling units, Developers are required to submit a signed Compliance Plan Application to the Housing Department and pay the appropriate application processing fee. See the current Compliance Plan Application for the current application processing fee. Note that this application fee is subject to change.

No application for a First Approval¹ (or other Planning Permit) for a Residential Development may be deemed complete unless the Compliance Plan Application has been submitted and approved in accordance with the IHO and these Revised Guidelines. No request for First Approval should be heard by the approval authority until the Compliance Plan Application is or has been submitted and approved by the Housing Department. No permit shall be granted for a project until the Housing Department has approved the Compliance Plan.

If a Compliance Plan Application was not submitted and approved at First Approval, it is due upon the earlier of: a request from the Housing Department sent to the Developer, or when a Developer applies for any other Planning Permit; or upon request for amendment or extension of any Planning Permit.

5.2 Contents of the Compliance Plan Application

The Compliance Plan Application provides information about the Developer, the Project, and how they intend to satisfy their IHO obligations. All Compliance Plan Applications, regardless of the chosen IHO compliance option, require the following general requirements. Please see the Attachments to these Revised Guidelines for details of any additional Compliance Plan Application requirements specific to each compliance option.

¹ Pursuant to 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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- 1) A detailed narrative that facilitates the Housing Department’s ability to evaluate the project’s compliance with the IHO and Revised Guidelines, including the following:
 - a. General information about the Developer and the Residential Development.
 - b. Whether the Developer intends to seek a parcel, or tentative and final map for the project.
 - c. Affirming that the Developer intends to build Inclusionary Units on-site consistent with the standards in Part VII.
 - d. Detailed information about the unit makeup of the Residential Development, including but not limited to:
 - i. Total number of units, including Inclusionary Units;
 - ii. Total number of Inclusionary Units and breakdown of income levels of the units;
 - iii. Unit type (e.g. townhouse, detached single-family, attached multi-family) and tenure (e.g. For-Sale or Rental);
 - iv. Number of bedrooms and bathrooms for all units;
 - v. Parcel map and/or site plan(s) indicating the proposed location and square footage of both the Inclusionary Units and the market rate units;
 - vi. Construction and completion schedule of all Inclusionary and Market Rate Units; and
 - vii. Phasing of Inclusionary Units in relation to Market Rate Units consistent with Section VI of this attachment.
 - e. Detailed information about the marketing plan that includes the following:
 - i. Anticipated timeline for the sale or rental of both the Market Rate and Inclusionary Units;
 - ii. The planned approach to offering the Inclusionary Units to the public in a non-discriminatory and equitable manner, consistent with federal, state and local Fair Housing laws;
 - iii. If the Developer seeks to apply a limit or preference to the sales or rental of Inclusionary Units to a specific class or type of household must include evidence acceptable to the City that this approach is consistent with Federal, State, and Local fair housing laws, including providing evidence acceptable to the City that the preference does not result in a disparate impact on any protected class and an anti-displacement policy to be incorporated in lease agreements that includes a policy that tenants of rental Inclusionary Units are not evicted or displaced on the grounds that they cease to meet the Developer’s preference policy after initial occupancy;
 - iv. For any For Sale Units, confirmation of the use of a California licensed real estate broker who shall list homes on the local Multiple Listing Service (MLS), and hold a series of “open houses;” and

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- v. For any For Sale Units, a plan for coordination between the Developer and the Developer's lender and sales team regarding implementation for the marketing and sales of Units.
 - vi. For projects that includes Accessory Dwelling Units which are intended to be rented as Inclusionary Rental Units, the Marketing Plan shall include Disclosure language which will be provided to all prospective renters informing them in plain language of the inclusionary housing requirements including the requirement that units must be continually occupied by income eligible households and that eligible households may not be related to the homeowner.
 - f. For Inclusionary Rental Units, 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 a reliable financing mechanism for the ongoing administration and monitoring of the Inclusionary Units.
 - g. Whether the Developer or any affiliate owns, has an interest in, or controls any property contiguous to the project.
 - h. Any exemptions claimed, along with supporting information, as described in Section 2.3, above.
- 2) For phased or master planned projects, the Compliance Plan Application shall include a draft map reflecting the phasing of development as well as the following information for each proposed phase in the development:
- a. Whether the development is for sale or rental;
 - b. How the inclusionary housing requirement will be satisfied pursuant to this Chapter;
 - c. The number, Unit Type, tenure, number of bedrooms and baths, approximate location, size and design, construction and completion schedule of all Inclusionary Units;
 - d. Phasing of Inclusionary Units in relation to Market Rate Units including the specific timing required by Section 5.08.460;
 - e. Marketing plan, including (i) the manner in which Inclusionary Units will be offered to the public in a nondiscriminatory and equitable manner, or (ii) the manner in which Inclusionary Units will be offered in a nondiscriminatory manner intended to further the City's fair housing goals and accompanied by an anti-displacement policy applicable to the Inclusionary Units;
 - f. Specific methods to be used to verify tenant incomes, when applicable, and to maintain the affordability of the Inclusionary Units;
 - g. A reliable financing mechanism for the ongoing administration and monitoring of rental Inclusionary Units;
 - h. The Physical Needs Assessment where applicable, the manner in which repairs shall be made in compliance with this Chapter, and the manner by which a capital reserve for repair, replacement and

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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

- i. Any other information that is reasonably necessary to evaluate the compliance of the Affordable Housing Plan

5.3 Approval of the Compliance Plan (SJMC Section 5.08.610.C-D)

Housing Department staff will review the submitted Compliance Plan Application as part of the application for First Approval of any project(s). The Director of Housing shall determine if the Compliance Plan Application is complete and conforms to the provisions of the IHO and the Revised Guidelines. A Developer may appeal the decision of the Director of Housing in writing to the City Manager and shall include a copy of the submitted Compliance Plan Application and a statement explaining why the proposed compliance option complies with the requirements of the IHO. The decision of the City Manager may be appealed to the City Council in accordance with procedures for notice and hearing contained in SJMC Title 20.

The Director of Housing may approve minor modifications to an approved Compliance Plan Application. Any alterations to an approved Compliance Plan Application must be consistent with the IHO and these Revised Guidelines and must be substantially in conformance with the originally approved Compliance Plan Application. Amendment of any Compliance Plan Application may be subject to a fee, consistent with the adopted City fee schedule.

5.4 Confirming Adherence to the Compliance Plan (SJMC Section 5.08.710)

The City will monitor compliance as described in Section 8, below. Prior to the issuance of the Building Permit and Certificate of Occupancy, the City will confirm that the Developer and Residential Development are still in compliance with the Compliance Plan, including any exemption claims.

6 Inclusionary Housing Agreement (SJMC Sections 5.08.600, 5.08.610.G)

The Inclusionary Housing Agreement is a covenant by the Developer for the benefit of the City governing how the project's inclusionary housing obligation will be satisfied. Prior to the approval of any final or parcel map, or the issuance of any Building Permit for a Residential Development subject to the IHO, the City and Developer will execute an Inclusionary Housing Agreement, which will then be recorded senior to any deeds of trust against the entire Residential Development and any other property used to meet the requirements of the IHO. The Inclusionary Housing Agreement shall recite that it is made for the benefit of the City for the purposes of ensuring that the requirements of the IHO are met.

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Prior to the execution of an Inclusionary Housing Agreement, the Developer will submit final project plans and maps for the project and, for phased or master planned projects a final phasing map.

6.1 Contents of the Inclusionary Housing Agreement

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. The City may require that any or all elements of the Compliance plan be updated prior to attachment.

6.2 Requirements for Contiguous Property under Common Ownership and Control (SJMC Section 5.08.420)

- a.** The IHO provides for an exemption (SJMC Section 5.08.320.A.2) for projects with fewer than 10 residential units. However, Residential Developments that are part of a construction phased development or are being developed on Contiguous Property under Common Ownership or Control with a total unit count of ten (10) or more units across the phases or properties are not eligible for the Small Projects Exemption.
- b.** The Inclusionary Housing Agreement shall be recorded against the Residential Development and the Inclusionary Housing Agreement or, at the City’s option, a separate anti piecemealing covenant with a term of twenty (20) years shall be recorded against all Contiguous Property under Common Ownership or Control and such agreements shall require compliance with this Chapter upon development of each Contiguous Property at such time as there are Planning Permit applications that would authorize a total of ten (10) or more residential units for the Residential Development and the Contiguous Property under Common Ownership or Control.
- c.** 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. In the event that a Planning Permit is filed for residential development on any CPCOC Property, it will be subject to the IHO and will not be eligible for an exemption on the grounds of having fewer than ten (10) residential units.

6.3 Termination of the Inclusionary Housing Agreement (SJMC Section 5.08.600.B)

An Inclusionary Housing Agreement restriction Inclusionary Units may be terminated upon a determination by the City Manager that the inclusionary housing units within a Residential Development subject to such agreement have been involuntarily demolished or destroyed and after the owner has applied for a demolition permit for the Residential Development. The involuntary destruction of the Residential Development occurs only after a catastrophic event or sudden cause which is beyond the control of the property owner, and which could not

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otherwise have been prevented by reasonable care and maintenance of the structure. In such instances, and in the event that the Developer does not seek to rebuild the destroyed units and obtains a demolition permit for the Residential Development, the Developer must notify the City Manager and request for the termination of the Inclusionary Housing Agreement, with supporting documentation of such involuntary demolition or destruction.

In the event of partial involuntary demolition or destruction, and in the absence of a permit for full demolition of the Residential Development, the City will expect the Developer to rebuild the Inclusionary Units, but that Developers may petition the City Manager for an amendment to the Inclusionary Housing Agreement, subject to the specific circumstances of the Residential Development.

The Developer may also request the City Manager for termination of the Inclusionary Housing Agreement after the voluntary demolition of the Residential Development after applying for a demolition permit for the Residential Development as long as the Developer has provided the minimum period of affordability of fifty-five (55) years after completion and has provided all relocation benefits required at the time of the demolition to the occupants of the Inclusionary Units, including a relocation service fee to the City and a refund of the occupants' security deposits, with any interest due. Such relocation benefits and fee shall be determined by the City Manager, and shall be of the type otherwise required by SJMC Section 17.23.1150 ("Ellis Act Ordinance"), which requires Relocation Assistance, including Base Assistance for all tenants in Covered Units, based on the number of bedrooms in such units or other metric, and any applicable Qualified Assistance as outlined in SJMC Section 17.23.1150.C.2, and a fee to the City for Relocation Specialist Services as outlined in SJMC Section 17.23.1150.E.

7 Other Enforcement Documents

The City has developed form documents to be used in implementing the IHO, including but not limited to: Affordable Housing Agreements, which shall be recorded, senior to any deeds of trust, on the fee interest in the property, including the Residential Development, all Inclusionary Units, and any site subject to the provisions of this Chapter, as well as deeds of trust, resale restrictions, and other documents determined as necessary or convenient by the City Attorney. The documents for For-Sale Units shall also include subordinate shared appreciation promissory notes permitting the City to capture at resale the difference between the market rate value of the Inclusionary Unit and the Affordable Sales Price, plus a share of appreciation realized from an unrestricted sale in such amounts as deemed necessary by the City to replace the Inclusionary Unit.

For-Sale units must be occupied by the owner as a principal residence during the term of the restriction unless a hardship consistent with the standards in Appendix B is present and a temporary hardship waiver has been granted by the City.

Form documents will be posted on the Housing Department [website](#).

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8 Waiver of Inclusionary Housing Obligation (SJMC Sections 5.08.610, 5.08.720)

Any request for a waiver, adjustment, or reduction under SJMC Section 5.08.720 shall be submitted to the City concurrently with the Compliance Plan Application. The request for a waiver, adjustment or reduction shall set forth in detail the factual and legal basis for the claim. The request shall be reviewed and may be appealed as described in SJMC Section 5.08.720.

9 Monitoring and Reports (SJMC Section 5.08.710)

Per the IHO, the City is required to monitor each Residential Development and each Inclusionary Unit, whether on-site and off-site, including rehabilitated and HUD-Restricted units, for compliance. As such, the City shall require annual or at its discretion, biennial compliance reports to be submitted by the owner or property manager, and the City shall conduct periodic on-site audits to ensure compliance with all applicable laws, policies, and agreements. Fees have been adopted for the costs of monitoring and compliance by the City and will be made part of each applicable Inclusionary Housing Agreement.