

**GUIDELINES FOR COMPLYING WITH
THE CITY OF SAN JOSE
INCLUSIONARY HOUSING POLICY
IN REDEVELOPMENT PROJECT AREAS**

July 1, 2007

Index

- I. Introduction**
- II. Inclusionary Housing Compliance Plan**
- III. Income Limits Defined**
- IV. Small Project Exemption and Policy Exceptions**
 - A. Exemption for Projects with Ten or Fewer Units**
 - B. Exception for Projects with Development Agreements**
- V. For-Sale Projects**
 - A. Developer Requirements and Options for Compliance**
 - B. Pricing For-Sale Inclusionary Units**
 - C. Affordability Restrictions**
 - D. Subordination of Inclusionary Housing Restrictions**
 - E. Homebuyer Requirements**
- VI. Rental Projects**
 - A. Developer Requirements and Options for Compliance**
 - B. Rents for Inclusionary Units**
 - C. Affordability Restrictions**
 - D. Compliance with Affordability Restrictions**
 - E. Subordination of Inclusionary Housing Restriction**
- VII. In-lieu Fees to Satisfy Developers Inclusionary Obligation**
 - A. Calculating In-lieu Fees**
 - B. Timing Requirements in Paying In-lieu Fees**
 - C. Refunds for Early Payment of In-lieu Fees**
 - D. In-lieu Fee for a Fractional Unit**
 - E. Incentive In-lieu Fee for Selected High-Rise Developments**
- VIII. Pooling and Credits**
- IX. Contact Information**

ATTACHMENTS

- Attachment A - City of San Jose Inclusionary Housing Policy**
- Attachment B - Income Table, County of Santa Clara**
- Attachment C - Schedule of Allowable Utility Costs**
- Attachment D - Setting Price - For-Sale Inclusionary Units**
- Attachment E - Sample Pricing Worksheets: For-Sale & Rental Projects**
- Attachment F - High Rise Incentive Area Map**
- Attachment G - In-lieu Fee Handout**

I. Introduction

State law requires that 15% of residential development occurring in Redevelopment Project Areas adopted after January 1, 1976 be subject to long-term affordability restrictions, to be fulfilled on a cumulative basis every 10 years. To satisfy the inclusionary requirement, the City Council and Agency Board jointly adopted an Inclusionary Housing Policy entitled “City of San Jose Policy On Implementation of the Inclusionary Housing Requirement of Health and Safety Code Section 33413(b) (2)”. A developer must provide the income restricted inclusionary housing units required by the Policy without the use of Housing Department funds. The inclusionary requirement does not apply in the following Redevelopment Project Areas because they were formed before 1976: Park Center Plaza, San Antonio Plaza, Pueblo Uno and the original Rincon de los Esteros Project Area.

The Agency has delegated to the City’s Housing Department the authority to implement and to enforce compliance with the Inclusionary Housing Policy (“Policy”). The Department of Planning, Building and Code Enforcement (“PBCE”) will assist with the implementation and enforcement of the requirements of the Inclusionary Housing Policy by informing developers during the entitlement process about the Inclusionary Housing Policy.

In addition to monitoring the enforcement and compliance with the Policy’s inclusionary requirements, the Housing Department verifies eligibility of proposed buyers and renters of the designated inclusionary units, approves pricing of inclusionary units, and reviews annual re-certifications of renters by the property managers.

These Guidelines for Complying with the City of San Jose Inclusionary Housing Policy In Redevelopment Project Areas were prepared primarily for developers and property owners to assist in complying with the Inclusionary Housing Policy. The Inclusionary Housing Policy is an attachment to these Guidelines.

II. Inclusionary Housing Compliance Plan

A developer is required to submit a signed Inclusionary Housing Compliance Plan Application (“Compliance Plan Application”) to the Affordability Manager for the Redevelopment Agency for Agency approval prior to the issuance of the project’s first foundation or building permit. The Compliance Plan Application outlines how the developer plans to satisfy its inclusionary housing obligation as set forth in the Inclusionary Housing Policy.

To obtain the Compliance Plan Application from the Redevelopment Agency use one of the following methods:

- ❑ Download the one page Compliance Plan Application from:
<http://www.sjredevelopment.org/housing.htm>
- ❑ Call (408) 535-8500 and request to speak to the Affordability Manager in the Housing and Real Estate Division.
- ❑ Submit a written request to:
The Redevelopment Agency of the City of San Jose
Housing & Real Estate Division, Attention Affordability Manager
200 East Santa Clara Street, Tower, 14th Floor
San José, CA 95113
(408) 292-6755-fax

The Compliance Plan Application can also be obtained from PBCE as part of developers' early meetings with Planning Staff.

A completed and signed Compliance Plan Application must be mailed or fax'd to the Redevelopment Agency (Attention: Affordability Manager) for approval by the Agency. For more complicated Compliance Plan Applications developer will be required to add a written letter along with the one page Compliance Plan Application that describes in more detail how compliance with the Policy is to be achieved. After approval by the Agency of the Compliance Plan Application, the required agreement(s) to evidence compliance with the Inclusionary Housing Policy will then be drafted by the Agency or the Housing Department for developer's review and execution..

A developer shall have recorded against the property evidence of compliance with the Inclusionary Housing Policy prior to issuance of a project's first foundation or building permit. Approval of a Compliance Plan Application is not evidence of compliance with the Inclusionary Housing Policy. Payment of in-lieu fees and/or the execution of Affordability Agreement(s), such as Affordability Restrictions Implementing Health and Safety Code Section 33413, are examples of evidence of compliance.

III. Income Limits Defined

The City of San José Inclusionary Housing Program Policy Income definitions shall be consistent with the Income Limits as defined in Health and Safety Code Section 33413. As of March 2008, the income limits, adjusted for household size, are as follows:

- Extremely Low Income is defined as up to 30% of the County's reported median income.
- Very Low Income is defined as 30 to 50% of the County's reported median income.
- Low Income is defined as 50 to 80% of the County's reported median income. For purposes of determining maximum allowable sales prices, the upper limit is lowered to 70% of the County's reported median income. For purposes of determining maximum allowable rent, the upper limit is lowered to 60% of the County's reported median income.
- Moderate Income is defined as 80 to 120% of the County's reported median income. For purposes of determining maximum allowable sales prices, the upper limit is lowered to 110% of the County's reported median income.

Median income is adjusted for family size as shown in the attached Income Table for Santa Clara County. Income limits are published by the California Department of Housing and Community Development and available on their website at www.hcd.ca.gov.

IV. Small Project Exemption and Development Agreement Exceptions

A. Exemption for Projects with Ten or Fewer Units

Projects that have ten (10) or fewer units are exempt from the City's Inclusionary Housing Policy. This provision is by right and does not require City Council or Agency Board approval. Such projects are not required to provide income restricted inclusionary units. The developer does not need to complete a Compliance Plan Application or execute an Affordability Agreement. However, a project that has phased development with a total unit count that exceeds the 10 unit limit is not eligible for the exemption. For purposes of the Small Project Exemption the term Project is defined as the project described in the developers approved Plan Development or Site Development Permit by PBCE

B. Exception for Project with Development Agreements

If the City Council approves a Development Agreement and pursuant to such agreement, the developer agrees to provide a greater number of affordable units and/or greater level of affordability then is required under the Inclusionary Housing Policy and the location, construction, and phasing of inclusionary units is approved by the Director of Housing and set forth in an Affordable Housing Plan

attached to the Development Agreement then the developer will be deemed to be in compliance with the Inclusionary Housing Policy.

V. For-Sale Projects

A. Developer Requirements and Options for Compliance

While it is the City's preference to see affordable housing units integrated into mixed-income projects, the developer of a for-sale housing project with greater than ten (10) units may satisfy the Inclusionary Housing Policy through any of the following options:

1. Make available at least twenty percent (20%) of the units developed at an affordable housing cost to individuals or families of moderate or low income. To calculate the required inclusionary units required to satisfy the Inclusionary Housing Policy, multiply the total number of units in the project by 20 %. If the result contains a fractional unit, the developer may either: (i) make an in-lieu fee payment for the fractional unit as discussed in Section VII below, or (ii) round up and provide one (1) additional affordable unit.

2. Make available at least fifteen percent (15%) of the units at an affordable housing cost, with at least six percent (6%) of the total project unit's set-aside for very low-income households, and the remaining balance (9%) set aside for moderate or low-income households. To calculate the required inclusionary units under this option multiply the total number of units in the project by fifteen percent (15%), with at least six percent (6%) of the total project units set-aside for very low-income households, and the remaining balance of the affordable units made available to moderate or low income households. In determining the final number of very low and moderate/low income units, the developer may have to round to the nearest whole unit to reach the required total number of inclusionary units for the project or pay an in-lieu fee for the fractional unit. Note: if the required number of units for very low income households results in a fractional unit, then the fractional unit shall be rounded up to the nearest whole number so that the six percent (6%) threshold is maintained either through the delivery of inclusionary units or through a combination of inclusionary units and a in-lieu fee payment. It should also be noted that the at least 6% very low income is a minimum threshold and should more units be provided at this level, the moderate/low income requirement would lessen commensurately.

3. Pay an in-lieu fee instead of providing the required inclusionary units. In-lieu fees are based on product type and on the total average net living area of the units in the project. In calculating in-lieu fees a 20% inclusionary obligation on

the project total units is to be used. In-lieu fees can be paid any time after approval of a Compliance Plan Application and with an approved site development or planned development permit for the project but prior to the first close of escrow of the project or the developer is deemed to have elected to provide the affordable units in the project. Additional information about in-lieu fees is provided below in Section VII.

4. Provide a stand-alone affordable rental project(s) to satisfy the inclusionary obligation of a market rate for-sale project. As a rule, the stand-alone project shall be located within the same Redevelopment Project Area as the market rate project. Under this option the inclusionary obligation can be either 20% or 15% of the total units depending on the level of affordability in the stand-alone rental project as discussed in the Rental Projects section below. At a minimum the stand-alone project must be restricted at least to a combination of very-low and lower-income households in order for the units to count against the combined inclusionary obligation. The stand-alone project must be rental in order for the units to count against the combined project's inclusionary obligation created by the construction of both the market rate and stand-alone rental development. Specifically, when electing this option the Developer must include the stand alone units as part of the calculation of the overall project's total inclusionary obligation.

Developers electing the stand-alone option must submit with their Compliance Plan Application, a written attachment which explains in detail the specifics of the stand alone affordable project. The Compliance Plan Application shall include the planned financing of the stand alone affordable rental project and the planned timing of both the market rate project and stand alone affordable rental project. The Compliance Plan Application shall contain sufficient information to show that the stand alone affordable rental project is likely to be built with-in 12 months of the market rate project. The developer of the market rate project should submit their Compliance Plan Application to the Agency for approval soon after the market rate project has received a Site Development or Planned Development Permit.

After approval of the Compliance Plan Application but before the market rate project receives a foundation or building permit for any phase of the market rate project, developer and the Housing Department shall enter into a compliance & implementation agreement that reflects the following:

- the stand alone rental project shall be located in the same redevelopment project area as the market rate project, (there are exceptions to this requirement for projects located in certain small redevelopment project areas as listed in Section II (D) (4) of the Policy);

- market rate developer shall have provided adequate security that the stand alone project will get built or will transfer the stand alone project site to a developer that will build the stand alone project prior to issuance of a foundation or building permit for the market rate project;
- that the site of the standalone affordable rental project must have either a Site Development or Planned Development Permit, on or before the site is transferred or adequate security is provided, reflecting at least the minimum required number of affordable units as shown in the compliance plan; and
- the stand alone site shall have recorded against it affordability restrictions in a form acceptable to the Agency showing at least the required number of affordable units and the required level of affordability.

5. Satisfy a project's inclusionary obligation through a combination of the above options.

Developers electing this option must submit to the Agency an attachment to the Compliance Plan Application that explains how compliance is proposed to be met through a combination of the above options.

Combination can include paying in-lieu fees that cover a portion of the project's units along with providing on-site or off-site affordable units to satisfy the project's remaining inclusionary obligation. For-example developer can pay an in-lieu fee based on 10% of the project's total units and provide affordable units equal to 10% of the project's total units, thereby fulfilling the overall 20% requirement. **When combining in-lieu fees with providing affordable units within the market rate project developer is required to use the 20% option and not the 15% option in calculating in-lieu fees.**

Different options can be applied to different portions of a project's units to satisfy a project's total inclusionary housing obligation. The final total number of affordable units and in-lieu fee payments for a project must reflect compliance of the total inclusionary housing obligation as set forth in the Inclusionary Housing Policy.

B. Pricing For-Sale Inclusionary Units

Developers shall calculate the maximum affordable price that can be charged to prospective homebuyers for the inclusionary units within a project and these calculations shall be approved by the Housing Department of the City of San Jose. Affordable units shall be sold at their fair market values, and the developer will credit the homebuyer the difference between the maximum affordable housing cost and the fair market value of the home. This calculation is normally done

within 90 days prior to the date of the first close of escrow for an affordable unit in a project.

Greater Detail regarding calculating the maximum affordable price, as required under State law and the City's policy of implementing the Affordable Housing Cost is described in Attachment D.

C. Affordability Agreement

If a developer elects to provide affordable housing units or decides to wait and pay the in-lieu after approval of the foundation or building permit, the developer shall execute the Agency's standard Affordability Restrictions Implementing Health and Safety Code Section 33413 covering a period of 45 years ("Affordability Agreement"). The Affordability Agreement is first recorded against the entire project and is released from each individual market rate unit. The Affordability Agreement is rescinded and replaced with an individual restriction covering each affordable unit as the units are transferred to the buyer.

PBCE will require that an Affordability Agreement in a form that is acceptable to the Agency is executed by the developer and recorded against the entire project as a condition of approval of a project's first foundation or building permit.

If the developer elects to integrate affordable units into a project, the Affordability Agreement will require that the inclusionary units be generally distributed throughout the project and not grouped or clustered or otherwise located in a manner that would cause or exacerbate racial ethnic or economic segregation. The Affordability Agreement will also require the developer to provide a mix of unit types (i.e. number of bedrooms) for the inclusionary units generally in the same proportion as the project's overall mix of unit types, and shall require that the inclusionary units be of comparable quality with similar amenities available to other non-inclusionary units in the project. Residents of affordable units shall have equal access and enjoyment to all common facilities of the project.

The allocation of affordable units in mixed projects or in project's complying with the City's Inclusionary Housing Policy through the use of the stand alone rental option can create projects or portion(s) of a project (e.g. a separate building) with a high concentration of affordable units. In such instances, the distribution of the affordable units would not be considered out of compliance with the distribution requirements described above.

The Affordability Agreement also provides a work sheet that assists the developer in calculating the sales price of the inclusionary units. A similar worksheet is attached to this guide for reference.

The Agency will approve the developer's specific plan for the allocation and distribution of the required inclusionary units by the time the Housing Department approves the final affordable sales prices for the inclusionary units. Developer may request written approval by the Agency of its allocation and distribution plan any time after the developer has obtained approval of a Site Development Permit or Planned Development Permit from Planning for the project.

Before an Affordability Agreement is prepared by the Agency for a proposed for-sale development project, a Compliance Plan Application, discussed above, must be submitted and approved by the Agency.

D. Subordination of Inclusionary Housing Restrictions in For-Sale Projects

Subject to certain findings, the Inclusionary Housing Policy allows subordination of an Affordability Agreement in rental or for-sale projects to a lien, an encumbrance, or a regulatory agreement other than with the City or from certain bond issuances. If such lien, encumbrance or regulatory agreement foreclosed on the inclusionary unit, the Inclusionary Housing restrictions are extinguished. The Inclusionary Housing Policy now delegates the making of these findings to the Director of Housing, or its designee, to enable a developer or buyer to obtain financing.

E. Homebuyer Requirements

Each purchaser of a restricted/affordable unit will be required to execute and record an Affordability Restriction for their unit and shall be subject to the terms of the Affordability Restriction. In addition, each purchaser will be required to execute a promissory note in favor of the City of San Jose, secured by a deed of trust for the amount of the Developer Discount Loan. The Developer Discount Loan is the difference, if any, between the restricted price and the fair market value at the time of the initial sale.

If the property is subsequently transferred to a non-qualified affordable buyer, the Developer Discount Loan would become due and payable along with a prorata percentage of any equity received in the sale to a non-qualifying affordable buyer.

The Developer Discount Loan would not become due and payable if the property is sold to a qualifying affordable buyer, who agrees to assume the loan.

VI. Rental Projects

A. Developer Requirements and Options for Compliance

While the City's preference is to see affordable housing units integrated into mixed-income projects, developers of rental housing projects with greater than ten (10) units may satisfy the Inclusionary Housing Policy through any of the following options:

1: Make available at least twenty percent (20%) of the rental units at an affordable housing cost, with at least eight percent (8%) of the units set-aside for very-low income households and the balance available to low-income households. Low-income rents shall be calculated based on sixty percent (60%) of area median income, ("AMI") although low income households up to eighty percent (80%) of AMI shall be eligible to occupy such units. To calculate the required inclusionary units to satisfy the Inclusionary Housing Policy, multiply the total number of units in the project by twenty percent (20%), with at least eight percent (8%) of the total units set-aside to very low-income households, and the balance of units made available to low-income households. In determining the final number of very-low and low-income units, the developer may have to round to the nearest whole unit to reach the required total number of inclusionary units for the project or pay an in-lieu fee for the fractional unit, but at all times the at least eight percent (8%) threshold must be maintained either through inclusionary units or through a combination of inclusionary units and a in-lieu fee payment. It should be noted that the at least eight percent (8%) very-low income is a minimum threshold and should more units be provided at this level, the moderate/low income requirement would lessen commensurately.

2: Pay an in-lieu fee instead of providing required inclusionary units. In-lieu fee payments are based on product type and on the total average net living area of the units in the project. In calculating in-lieu fees a twenty percent (20%) inclusionary obligation on the project total units must be used. In-lieu fees can be paid any time after approval of a compliance plan, and a site development or planned development permit for the project but the in-lieu fee must be paid before the first unit is occupied under a temporary or permanent Certificate of Occupancy by PBCE or the developer is deem to have elected to provide the affordable units in the project. Additional information about in-lieu fees is provided below in Section VII.

3: Provide a stand-alone affordable rental project(s) to cover the inclusionary obligation of a market rate rental project. As a rule, the stand-alone project shall be located within the same Redevelopment Project Area as the market rate project.

Under this option the inclusionary obligation can either be 20% or 15% of the total units depending on the level of affordability in the stand-alone rental projects, (see option # 4 regarding the 15% option). The stand-alone project must be rental and be subject to a fifty-five year affordability restriction in order for the units to count against the combined project's inclusionary obligation.

If the stand alone option is selected, the developer must include the stand-alone units as part of the calculation of the overall project's total inclusionary obligation. For example, if a developer of a 500 unit rental market rate project wanted to use the 20% stand alone project option to fully satisfy its inclusionary obligation then the total obligation would be 125 affordable units, $(500+125=625) \times .20 = 125$ to be built in the stand-alone rental project and not 100 affordable units based on a simple calculation of 20% of 500 units. This same approach is to be used in determining the total inclusionary obligation applies if a 15% stand-alone rental option is selected by the developer.

Developers electing this option must submit with their Compliance Plan Application, and an attached letter which explains in detail the specifics of the stand-alone affordable rental project. The Compliance Plan Application shall include the planned financing and the planned timing of both the market rate and stand alone rental projects. The Compliance Plan Application shall contain sufficient information to show that the stand alone rental project is likely to be built at about the same time as the market rate project. The developer of the market rate project should submit their Compliance Plan Application soon after the market rate project has received a Site Development or Planned Development Permit.

After approval of the Compliance Plan Application for this option but before the market rate project receives a foundation or building permit for any phase of the market rate project, developer and the Housing Department shall enter into a compliance & implementation agreement that reflects the following:

- the stand alone project shall be located in the same redevelopment project area as the market rate project, (there are exceptions to this requirement for project located in certain small redevelopment project areas as listed in Section II (D) (4) of the Policy);
- market rate developer shall have provided adequate security that the stand alone project will get built or will transfer the stand alone project site to developer that will build the stand alone project prior to issuance of a foundation or building permit for the market rate project;
- that the site of the stand alone affordable rental project must have either a Site Development or Planned Development Permit reflecting at least the

- minimum required number of affordable units as shown in the compliance plan;
- the stand alone site shall have recorded against it affordability restrictions in a form acceptable to the Agency showing at least the required number of affordable units and the required level of affordability.

In a stand-alone rental housing project option, the inclusionary housing obligation can also be set at 15% of the total project units, (instead of 20%) if at least 25% of the required affordable units in the stand-alone project are affordable to extremely low-income households with the remaining required affordable units of the stand alone project affordable to very low-income households. To calculate the required inclusionary units for this option, multiply the total number of units in both the proposed market rate and stand-alone affordable rental project by 15% with at least 25% of the required affordable units set-aside for extremely low-income households, and the remaining balance of affordable units made available to very low-income households. In determining the final number of extremely low-income and very low-income units it may be necessary to round to the nearest whole unit to reach the required total 15% affordable units, with a minimum threshold of at least 25% of the affordable units being available to extremely low-income households.

4: Satisfy a project's inclusionary obligation through a combination of the above options.

Developers electing this option must submit to the Agency an attachment to the Compliance Plan Application that explains how compliance is proposed to be met through a combination of the above options.

Combination can include paying in-lieu fees that cover a portion of the project's units along with providing on-site or off-site affordable units to satisfy the project's remaining inclusionary obligation. For-example a developer can pay in-lieu fees based on 10% of the project's total units and provided affordable units within the project based on 10% of the project's total units, thereby fulfilling the overall 20% requirement. **When combining in-lieu fees with providing affordable units within the market rate project developer is required to use the 20% option and not the 15% option in calculating in-lieu fees.**

Different options can be applied to different portions of a project's units to satisfying a project's total inclusionary housing obligation. The final total number of affordable units and in-lieu fee payments must reflect the complete satisfaction of the inclusionary housing obligation as set forth in the Inclusionary Housing Policy for the product type involved.

B. Rents for Inclusionary Units

Rents for moderate, low, and very-low income units are limited to 30% of the maximum income limits based on the County Median Income for the defined household size, as described in Section III of this guide, less the County's standard allowance for utilities. In terms of determining maximum rental prices, the maximum annual income for a moderate household is defined as 110% of the County Median Income, for low income it is defined as 60% of the County Median Income and for very low it is defined as 50% of the County Median Income. For example, to calculate a two person household's maximum monthly rent for a low income one bedroom unit you would take the annual County Median Income for a two person household which is \$84,400, times 60%, times 30%, divided by 12 or \$1,266.00 less the standard county utility allowance for a one bedroom unit, (assume it is \$37), to come up with a maximum allowable monthly rent of \$1,229. Please note that the household size assumption for a given unit is one plus the number of bedrooms. A work sheet is attached to this guide to assist developers in calculating the rental price of the inclusionary units.

C. Affordability Agreement

If a developer elects to provide affordable units in the project or decides to wait and pay the in-lieu after approval of the foundation or building permit, the developer must execute Agency's standard Affordability Restrictions Implementing Health and Safety Code Section 33413 covering a period of 55 years ("Affordability Agreement"). The Affordability Agreement is recorded against the entire project.

PBCE will require that an Affordability Agreement containing the appropriate affordability restrictions be executed by the developer and recorded against the entire site/project as a condition of approval of the projects first foundation or building permit.

If the developer elects to integrate affordable units into a project, the Affordability Agreement will require that the inclusionary units be generally distributed throughout the project and not grouped or clustered or otherwise located in a manner that would cause or exacerbate racial ethnic or economic segregation. The Affordability Agreement will also require the developer to provide a mix of unit types (i.e. number of bedrooms) for the inclusionary units generally in the same proportion as the project's overall mix of unit types, and shall require that the inclusionary units be of comparable quality with similar amenities available to other non-inclusionary units in the project. Residents of affordable units shall have equal access and enjoyment to all common facilities of the project.

The allocation of affordable units in mixed projects or in project's complying with the City's Inclusionary Housing Policy through the use of the stand alone rental option can create projects or portion(s) of a project (e.g. a separate building) with a high concentration of affordable units. In such instances, the distribution of the affordable units would not be considered out of compliance with the distribution requirements described above.

The Affordability Agreement also provides a work sheet that assists the developer in calculating the allowable rents for inclusionary units. A similar worksheet is attached to this guide for reference.

The Agency will approve the developer's specific plan for the allocation and distribution of the required inclusionary units by the time the Housing Department approves the final affordable rents for the inclusionary units. Developer may request written approval by the Agency of its allocation and distribution plan any time after the developer has obtained approval of a Site Development Permit or Planned Development Permit from Planning for the project.

To request that an Affordability Agreement(s) be prepared by the Agency for a proposed rental project, please complete the Compliance Plan Application as discussed above.

D. Compliance with Affordability Restrictions

The developer of each project containing affordable units is required to submit an Annual Compliance Report. The Annual Compliance Report (ACR) consists of the following three documents which may be obtained from the Department of Housing's website at <http://www.sjhousing.org/program/inclusionary.html>.

- Tenant Income Certification: Completed and signed by residents residing in inclusionary units. It is used to document family size, income and other financial information. Residents must be recertified annually to maintain eligibility at the inclusionary project.
- Certified Rent Rolls: A report listing each affordable unit, the resident's name, rental rate, household income, and the household size. Rent Rolls should be electronically submitted in an excel spreadsheet provided by the Department of Housing.
- Certificate of Continuing Program Compliance: A signed statement attesting that the project is in compliance with the City of San José Inclusionary Housing Procedures and the Affordability Agreement between the developer and the Agency.

A completed Annual Compliance Report must be submitted at the end of the project's compliance period to the Loan Compliance Manager at the City's Department of Housing.

E. Subordination of Redevelopment Inclusionary Housing Restriction in Rental Projects.

Subject to certain findings, the Inclusionary Housing Policy allows subordination of an Affordability Agreement in rental or for-sale projects to a lien, an encumbrance, or a regulatory agreement other than with the City or from certain bond issuances. If such lien, encumbrance or regulatory agreement foreclosed on the inclusionary unit, the Inclusionary Housing restrictions are extinguished. The Inclusionary Housing Policy now delegates the making of these findings to the Director of Housing, or its designee, to enable a developer or a buyer to obtain financing.

VII. In-lieu Fees to Satisfy Developers Inclusionary Obligation

A. Calculating In-lieu Fees

The current Inclusionary Housing Policy allows as an option for both rental and for-sale housing to pay an in-lieu fee to the City instead of providing affordable units within the project or in a stand alone rental project. The current in-lieu fee, is set forth in the City Fee Schedule Rate Resolution which is reviewed each year in June by the Agency and Housing Department for possible change by the City Council. The in-lieu fee is based on the total average net living area of the project and is more fully discussed in the attached In-lieu Fee Handout.

In determining the level of affordability required for calculating in-lieu fees the number of affordable units required shall be based on the highest percentage level of affordable units that could be required for a given project at the time the project receives either a foundation or building permit which at this time is 20%.

Prior to the Housing Department accepting an in-lieu fee payment, the Agency requires the developer to have an approved Compliance Plan Application and an approved Site Development or Planned Development permit. The Agency and the Housing Department of Housing will assist developers calculate the proper fee amounts. The Department of Housing will process invoices and receipts for each project whose Inclusionary obligation is satisfied, in whole or in part, through the use of in-lieu fee payments. Developers should be prepared to provide sufficient documentation about the proposed project (e.g. site plans, blueprints, etc.) to Housing Department staff prior to receiving an in-lieu fee invoice from the City.

All payments of in-lieu fees shall be made payable to the City of San José, Department of Housing and shall be sent to the following address:

City of San José,
Department of Housing
200 E. Santa Clara Street-12th Floor
San José, CA 95113
Attn: Inclusionary Program Coordinator
Ph: (408) 535-3860

The name of the project and the project's mailing address should be noted in the memo line of the check. The City may not accept payments made by credit card or cash.

B. Timing requirements in paying In-lieu Fees

Developers electing to pay the in-lieu fee can pay the in-lieu fee, at the then current rate, any time after approval of their Compliance Plan Application and after the issuance of a site development permit or planned development permit but before the first unit is sold or occupied. **If the developer fails to pay the in-lieu fee prior to the first close of escrow for for-sale projects, or before the first unit is occupied for rental projects or before the issuance of a permanent Certificate of Occupancy for the projects regardless if any units are occupied then the developer shall be required to provide the required number of inclusionary units on-site and the fee option will no longer be available.**

If a developer elects not to pay the in-lieu fee prior to issuance of a foundation or building permit and waits until sometime prior to the first unit being sold or rented, an Affordability Agreement will be required to be executed and recorded prior to the issuance of the foundation or building permit. Upon full payment of the in-lieu fee the Agency will remove the recorded Affordability Agreement as an obligation to the project, for the benefit of the project reflecting its compliance with its Inclusionary Housing obligation.

Developers should note that by deferring payment of the in-lieu fees there is risk that the in-lieu fee payment may have increased during the time it takes to build the housing project.

With early payment of in-lieu fees (in advance of approval of either a foundation or building permit) the Certificate of Compliance will note that if the project changes at any time prior to first occupancy, such as a higher unit count, then the Certificate of Compliance will be rescinded by the City until full compliance

under the new conditions is achieved. Any added in-lieu payment required would be paid at the then current rate, however there are no refunds available for cases where fewer units are built than approved in the development permit

C. Refunds of Early Payment of In-lieu Fees

Full refunds for early payment of In-Lieu Fees are provided up to the earliest of any of the following occurrences:

- (i) The expiration of the Site Development or Planned Development Permit;
- (ii) The issuance of the first building or foundation permit for the project;
- (iii) One year from the date of payment of the in-lieu fee.

No partial refund will be issued. If a developer qualifies for a full refund no interest will be paid on the refund amount and no fee will be charged to the developer for processing of a refund request.

If a Certificate of Compliance has been recorded on the property and the refund request is granted, the developer will be required to execute a release of the recorded document as a condition to receiving the refund.

D. In-Lieu Fee for a Fractional Unit

All projects subject to the Inclusionary Housing Policy may, without City Council or Agency Board approval, pay an in-lieu fee for any fractional units determined to be required. If the number of required affordable units required from an approved Compliance Plan Application is a fractional number, (rounded to the nearest tenth) the developer may either round up the required number of affordable units or make an in-lieu payment just for the fractional unit.

E. In-lieu Fees for Selected High-Rise Developments

High-rise developments (defined as a project with at least 10 floors of exclusive residential units), located in the High Rise Incentive Area (as shown in the attached map), are allowed to pay a lower in-lieu fee to encourage high-rise development in downtown San Jose. The incentive in-lieu fee is currently \$8.50 per net square foot of living area up to a maximum of \$65,000 per required affordable unit. The incentive high-rise in-lieu fee will be re-visited and possibly modified or rescinded after building permits or foundation permits for 2,500

downtown high-rise units have been issued. For additional information on calculating in-lieu fees please refer to the attached In-Lieu Fee Handout.

VIII. Pooling and Credits

Two or more market-rate developers can pool resources to satisfy their inclusionary housing obligation through a single stand-alone affordable rental housing project, which must be constructed in a Redevelopment Project Area where one of the market rate projects is located, with some exception for small Redevelopment Project Areas as noted in the Policy.

Additionally, affordable housing units that exceed the inclusionary obligation of a project being built can be banked as credits toward future market-rate projects, or can be “sold” to another developer who has an inclusionary obligation to meet. Excess affordable housing units that are “banked” may be used to satisfy the inclusionary requirement for up to 20 years after such units that created the credit are constructed, and can be used in any Redevelopment Project Area.

IX. Contact Information

The Redevelopment Agency, the Housing Department of the City of San Jose and the Department of Planning, Building and Code Enforcement, work together to assist developers, homebuyers and renters in understanding and complying with the Inclusionary Housing Program:

- A. Redevelopment Agency of the City of San Jose
Housing and Real Estate Division, Attention: Affordability Manager
200 East Santa Clara Street, Tower, 14th Floor
San Jose, Ca 95113
(408) 535-8500, fax (408) 292-6747

- B. Department of Housing
200 East Santa Clara Street, 12th Floor
San Jose, Ca 95113
(408) 535-3860, fax (408) 998-3183
Attention: Housing Production Division (For Housing Lists, Inclusionary Housing matters, Options for Renters and Buyers, Gap Pricing Calculations, and Second Mortgage Assistance
Loan Compliance Unit (For ongoing monitoring for compliance with Affordability Restrictions)

- C. Department of Planning, Building and Code Enforcement
Planning Division
200 East Santa Clara Street, 3rd Floor
San Jose, Ca 95113
(408) 535-3555

ATTACHMENT A

CITY OF SAN JOSE POLICY ON IMPLEMENTATION OF THE INCLUSIONARY HOUSING REQUIREMENT OF HEALTH & SAFETY CODE SECTION 33413(b)(2)

Effective July 1, 2007

I. General.

The inclusionary housing requirement set forth in Health and Safety Code Section 33413(b)(2) shall be imposed upon all private housing developments, whether for-sale or rental, in the redevelopment project areas to which it applies (*i.e.*, all project areas and expansions except Park Center Plaza, San Antonio Plaza, Pueblo Uno, Mayfair One and original Rincon de los Esteros area) through the zoning process in accordance with this Policy (“Inclusionary Requirement”).

- A. The Inclusionary Requirement shall be met through any of the options set forth in Article II hereof.
- B. Residential units subject to the Inclusionary Requirement shall remain affordable to the targeted income group for the longest feasible time, but in no event less than the time periods set forth in the California Health and Safety Code Section 33413 (c)(1).
- C. Restricted units shall be made available for the term of the restriction at “affordable housing cost” or “affordable rent” to “extremely low income households”, “very low income households” and “persons and families of low or moderate income” as such terms are defined in the California Health and Safety Code.
- D. Affordability controls on rental units must be evidenced by either a recorded deed restriction or a recorded affordability agreement that is binding on subsequent owners of the property. Affordability controls on “for sale” units must be evidenced by either a recorded deed restriction or a recorded affordability agreement that is binding on subsequent owners of the property. Affordability controls on “for sale” units may be released if the owners agree to comply with a program designed to preserve the City’s supply of affordable units including, but not limited to, an equity share program.
- E. Developers subject to the Inclusionary Requirement shall submit a compliance plan detailing the manner in which the Inclusionary Requirement will be met, for the approval of the Agency’s Executive

Director, prior to the issuance of a foundation or building permit for the proposed development. The compliance plan and any agreement or restrictions recorded pursuant thereto may be subsequently modified with the approval of the Agency's Executive Director, so long as any modification is consistent with this Policy.

- F. The Agency has delegated to the City the authority to implement and enforce compliance with the Inclusionary Requirement. The City Housing Department shall monitor and report to the Agency and State Department of Housing and Community Development such information as is required by law on income and affordability of restricted units. The City's Housing Department shall report to the Executive Director periodically on the status of all implementation and enforcement activities. Unless a provision of this Policy expressly states that it requires an action by either the City Council or the Redevelopment Agency Board, any action to be taken hereunder by the Agency or City may be taken by either the Agency's Executive Director or the Director of Housing on behalf of either the Agency or the City hereunder.
- G. The City's Director of Planning shall include the Inclusionary Requirement as a condition to any new or substantially rehabilitated residential development located within a redevelopment project area to which this Inclusionary Requirement applies.
- H. It shall not be inconsistent with the inclusionary policy for the City or Agency to provide financial assistance towards the development of the required inclusionary units provided that 100% of the total units in the project will be Restricted Affordable Units, and such project is not developed under section II below.

II. Satisfaction of Inclusionary Requirement.

The Inclusionary Requirement shall be met through satisfaction by developer of any of the options set forth below, which options shall be selected by developer and evidenced in a written compliance plan submitted by developer.

A. Development of Units within the Project.

The Inclusionary Requirement may be met through the development of units situated within the Project as follows:

- 1) Rental Projects: At least twenty-percent (20%) of the rental units developed within a residential project subject to this policy shall be made available for the term of the restriction at "affordable housing cost", with at least 8% of the rental units restricted to "very-low income" households and at least 12% of the rental units restricted to "low income" households, provided that rents for "low income" households

shall be set at 60% of area median income (AMI), although “low-income” households up to 80% of AMI shall also be eligible to occupy such units.

2) For-Sale Projects: At the option of the Developer:

- a) At least twenty percent (20%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “low or moderate income” households; or
- b) At least six percent (6%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “very low income” households and nine percent (9%) must be made available to “low or moderate income” households, for a total of 15% of the units restricted pursuant to the requirements of Health and Safety Code Section 33413(b)(2).

3) Mixed Rental and For-Sale Projects: At the option of the Developer, a project containing both rental and for-sale units may satisfy the requirements of this Section by (i) either satisfying one of the rental or for-sale options in Subsections A 1 or A 2 above for the entire project; or (ii) by applying the rental option in Subsection A 1 above to the rental portion of the project and by applying either of the for-sale options in Subsection A 2 above to the for-sale portion of the project.

B. Payment of In-Lieu Fee.

The Inclusionary Requirement may be satisfied by the payment of a fee to the City *in-lieu* of constructing the required affordable units within that private housing development, provided that such fee is received by the City after the issuance of the development permit for the project, but prior to the initial occupancy of the unit. The amount of in-lieu fees will be established in the City Council’s annual resolution establishing the Schedule of Fees and Charges or as established otherwise by resolution of the City Council.

C. Dedication of Land in Lieu of Construction of Affordable Units.

A developer of a private housing development may satisfy the Inclusionary Requirement by dedicating land in lieu of constructing restricted affordable units within the private housing development if the City Council determines that all of the following criteria have been met:

- 1. The dedicated site is transferred to the City prior to commencement of construction of the private housing development or is subject to an agreement between the developer and the City that sets forth a

date certain for transfer of the dedicated site and such agreement is in the best interests of the City.

2. The value of the dedicated site at the date of dedication or the date such agreement to dedicate is executed, as applicable, is greater than the in-lieu fee in effect at the date of dedication or the date such agreement to dedicate is executed, as applicable, multiplied by the number of otherwise required affordable units within the private housing development.
3. The dedicated site could accommodate at least the number of otherwise required affordable units within the private housing development.
4. The dedicated site is adjacent to the private housing development.

If the dedicated site is not to be transferred to the City prior to commencement of construction of the private housing development subject to the Inclusionary Requirement, the agreement between the developer and the City shall provide, among other things, that:

1. The dedicated site shall be transferred by the developer to the City at a date certain acceptable to the City;
2. The developer shall, prior to commencement of construction of the private housing development, pay to the City a substantial percentage (as determined by the City Council) of the in-lieu fee in effect at the date such agreement to dedicate is executed multiplied by the number of otherwise required affordable units within the private housing development, and
3. In the event that, upon transfer of the dedicated site, the value of the dedicated site is not at least equal to the future value of the in-lieu fee remaining payable, the developer shall immediately pay the shortfall in cash.

Notwithstanding the above, the City shall not be required to construct restricted affordable units on the dedicated site, but may sell, transfer, lease or otherwise dispose of the dedicated site as necessary in furtherance of its inclusionary affordable housing goals. Notwithstanding anything to the contrary contained herein, the provisions of this Subsection C shall expire and be of no further force and effect after December 31, 2007.

D. Develop a Stand-Alone Affordable Project.

1. A developer of a private housing development may satisfy the Inclusionary Requirement by developing a stand alone rental affordable project if all of the following criteria have been met:
 - a) Except as provided otherwise in Section 3 below, the stand alone project would accommodate at least the number of affordable units which would otherwise have been required under Section II A above within the private housing development;
 - b) Except as provided otherwise in Section 3 below, the affordability levels of the stand-alone project shall be consistent with the rental requirements set forth in Section II A above to be constructed in the stand-alone project;
 - c) Except as provided otherwise in Section 4 below, the stand alone project is developed within the redevelopment project area in which the private housing development is located;
 - d) An affordability agreement in a form acceptable to the Agency and City has been recorded against the underlying real property on which the stand alone project will be constructed; and
 - e) The developer of the market rate project shall have entered into an agreement with the Agency or the City, which agreement provides: (i) a time line for completion of the stand alone project, and (ii) adequate security to the City by developer (i.e. such as a bond or letter of credit) to ensure that the stand alone project will be completed or transfer of the land for the stand alone project to an affordable housing developer with the Agency/City's standard form affordability agreement recorded against such land.
2. Two or more developers of private housing developments may satisfy the Inclusionary Requirement by mutually developing (pooling) a stand alone rental affordable project if all of the following criteria have been met:
 - a) Except as provided otherwise in Section 3 below, the stand alone project would accommodate at least the number of affordable units which would otherwise have been required under Section II A above within the private housing developments;

- b) Except as provided otherwise in Section 3 below, the affordability levels of the stand-alone project shall be consistent with the rental requirements set forth in Section II A above to be constructed in the stand-alone project;
 - c) Except as provided otherwise in Section 4 below, the stand alone project is developed within the redevelopment project area in which at least one of the private housing developments is located.
 - d) An affordability agreement in a form acceptable to the Agency and City has been recorded against the underlying real property on which the stand alone project will be constructed; and
 - e) The developers of the market rate projects shall have entered into an agreement with the City, which agreement provides:
 - (i) a time line for completion of the stand alone project, and
 - (ii) adequate security to the City by such developers (i.e. such as a bond or letter of credit) to ensure that the stand alone project will be completed or transfer of the land for the stand alone project to an affordable housing developer with the Agency/City's standard form affordability agreement recorded against such land.
3. Notwithstanding anything to the contrary contained herein, the Inclusionary Requirement of twenty percent (20%) of the units set forth in Section II A 1 above shall be reduced to fifteen percent (15%), if, in connection with the development of a stand alone rental affordable project under this Section, the developer, pursuant to a recorded affordability agreement against the stand alone project, agrees to provide at least 25% of the units to extremely low-income (ELI) households and the remaining units are provided to very low-income households (VLI).
4. If, after a written request from a developer of a market rate project to be located in any of the project areas identified below, the Agency and City mutually determine that sufficient land is not available within the applicable project area for a stand alone project to be constructed under Section 1 or 2 above, the requirement that a stand alone project be developed within the redevelopment project area in which the private housing development is to be located may be waived by the City Council of Redevelopment Agency Board. This requirement shall only apply to a market rate project developed in a Neighborhood Business District, a Neighborhood Business Cluster, the Almaden Gateway Project Area, the Guadalupe-Auzerais Project Area, the Market Gateway Project Area, the Century Center Project

Area, or the Civic Plaza Project Area. This requirement may only be waived if the Redevelopment Agency Board or the City Council finds, based on substantial evidence, after a public hearing, that the development of the stand alone project in another project area will not cause or exacerbate racial, ethnic, or economic segregation.

E. Combination of Other Inclusionary Options.

A developer of a private housing development may satisfy the Inclusionary Requirement by electing any combination of the above options, so long as such election fully satisfies the developers Inclusionary Requirement under this Policy. For example, if a market-rate developer has an inclusionary obligation of 100 affordable units but the site for the stand-alone affordable rental project can only accommodate 80 units, the developer could either: (i) pay an in-lieu fee for the remaining 20 units or (ii) provide 20 affordable units in the developer's market rate project.

In the event the calculation for the number of restricted affordable units that the developer must provide results in a fraction of a unit, then the developer shall have the option of either (i) providing a full unit within the project at the affordable price, or (ii) making an in-lieu payment to the Housing Department in an amount equal to the percentage represented by the fractional unit multiplied by the then current in-lieu fee.

F. Exception for Small Housing Projects.

Notwithstanding the Inclusionary Requirements set forth above, a private developer of a private housing development of ten (10) housing units or less shall not be subject to the requirements of this Policy.

G. Inclusionary Credits, Transfers.

If, in connection with satisfying the Inclusionary Requirements hereunder, a private developer under either Section II A or D above, develops affordable units without any Agency or City Assistance in excess of such developer's Inclusionary Requirement ("Surplus Inclusionary Units"), such developer shall have the right to utilize such Surplus Inclusionary Units to satisfy any future Inclusionary Requirements of such developer for a period of up to twenty (20) years after construction of such units. Such developer shall also have the right to sell or otherwise transfer to another developer any Surplus Inclusionary Units. The City and Agency shall establish administrative procedures to monitor Surplus Inclusionary Units.

III. Subordination of Redevelopment Inclusionary Housing Restriction in Rental Projects.

The restriction for the Redevelopment Inclusionary Housing Requirement for a rental project may be subordinated to a lien, encumbrance or regulatory agreement of a federal or state government agency when all of the following conditions are met:

- A. The agency is providing financing or other assistance for the housing development;
- B. The statute or regulation governing the financing or assistance from that agency does not permit the restriction for the Inclusionary Requirement to be senior to the agency's lien, encumbrance or regulatory agreement.
- C. The agency will record a regulatory agreement that will require the housing development to provide affordable units in an amount not less than the amount required for the Inclusionary Requirements for the particular housing development.
- D. The City and Agency have determined that there is no economically feasible alternative method of financing or assisting the housing development on substantially comparable terms and conditions without subordination.
- E. The City and Agency obtain written commitments reasonably designed to assure that the restricted affordable units in the housing development will not be removed in the event of default of the agency's lien, encumbrance or regulatory agreement, such as the following:
 - 1. A right of the City or Agency to cure a default on the agency lien, encumbrance or regulatory agreement
 - 2. A right of the City or Agency to negotiate with the agency after notice of default from the agency.
 - 3. An agreement that if prior to foreclosure by the agency, the City or Agency takes title to the property and cures the default on the lien, encumbrance or regulatory agreement, the agency will not exercise any right it may have to accelerate a loan by reason of the transfer of title to the City or Agency.
 - 4. A right of the City or Agency to purchase property from the owner at any time after a default on the lien, encumbrance or regulatory agreement.

IV. Subordination of Redevelopment Area Inclusionary Housing Restriction in For Sale Projects.

The restrictions for the Inclusionary Requirement for a “for sale” unit may be subordinated to a lien, encumbrance, or regulatory agreement of a lender other than the City or from a bond issuance providing financing, refinancing, or other assistance of “for sale” units or parcels where the Director of Housing, or his/her designee, makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the “for sale” units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the City obtains written commitments reasonably designed to protect the City’s affordable housing supply in the event of default, such as any of the following:

- (A) A right of the City to cure a default on the loan.
- (B) A right of the City to negotiate with the lender after notice of default from the lender.
- (C) An agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City.
- (D) A right of the City to purchase property from the owner at any time after a default on the loan.

V. Request for Adjustment.

Notwithstanding the general requirements set forth above, the City Council shall, upon request of a private residential developer, reduce, adjust or relieve the developer of its obligations under this Redevelopment Area Inclusionary Housing Policy, but only to the extent the Developer demonstrates that there is no nexus between the proposed development and the purposes of this Policy.

VI. Projects Constructed Pursuant to a Development Agreement.

Notwithstanding the general requirements set forth herein, if the City Council approves a development agreement, by ordinance pursuant to the authority and provisions of Government Code Section 65864 *et. seq.* and City Ordinance 24297, with a private developer of a private housing development and, pursuant to such development agreement, the private developer agrees to provide the number of affordable units required pursuant to this Redevelopment Area Inclusionary Housing Policy but at lower levels of affordability, then the location, construction and phasing of such inclusionary units within such project if approved by the Director of Housing and set forth in an Affordable Housing Plan attached as an exhibit to the development agreement shall be deemed to be consistent with the

provisions of this Redevelopment Area Inclusionary Housing Policy so long as the developer remains in compliance with the terms and conditions of such development agreement. Any breach of such Affordable Housing Plan shall constitute a material breach of the development agreement.

CAUTION: THIS POLICY IS REVISED FROM TIME TO TIME. TO BE SURE YOU ARE REVIEWING THE POLICY THAT IS CURRENTLY IN EFFECT YOU MUST CONTACT THE REDEVELOPMENT AGENCY AT 408.535.8500

ATTACHMENT B

2008 Income Table, County of Santa Clara

**INCOME RANGES AT VARYING HOUSEHOLD SIZES
2008 INCOME STANDARDS DISTRIBUTED BY HCD
SANTA CLARA COUNTY CALIFORNIA**

Household Size	HCD Median	Very-Low Income		Low Income		Moderate Income	
1 Person	\$68,500	\$22,300	\$37,150	\$37,150	\$59,400	\$59,400	\$88,600
2 Person	78,200	\$25,500	42,450	42,450	67,900	67,900	101,300
3 Person	88,000	\$28,650	47,750	47,750	76,400	76,400	113,900
4 Person	97,800	\$31,850	53,050	53,050	84,900	84,900	126,600
5 Person	105,600	\$34,400	57,300	57,300	91,650	91,650	136,700
6 Person	113,400	\$36,950	61,550	61,550	98,450	98,450	146,900
7 Person	121,300	\$39,500	65,800	65,800	105,250	105,250	157,000
8 Person	129,100	\$42,050	70,050	70,050	112,050	112,050	167,100

Note: Eligibility criterion is subject to change and is typically modified annually.

ATTACHMENT C

2008 Utility Allowances Schedule

Effective 10/01/07

Unit Type:		PHAS Tables						PHAS Codes
Semi-Detached, Rowhouse/Townhouse, and Low-rise (Garden) Apt		A008						2,3,&4
Monthly Dollar Allowances; Number of Bedrooms								
Utility or Service		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Heating	a. Natural Gas	8	11	14	17	23	27	32
	b. Electric	10	13	18	23	30	34	39
Cooking	a. Natural Gas	4	6	7	9	11	13	15
	b. Electric	5	6	8	10	13	15	17
Other Electric/Lighting		10	15	19	23	29	33	38
Air Conditioning		No Allowance						
Water Heat	a. Natural Gas	7	10	13	16	21	24	27
	b. Electric	10	14	18	22	28	32	37
Water		10	12	16	22	29	36	43
Sewer		18	18	18	18	18	18	18
Trash Collection		26	26	26	52	52	77	77
Range/Microwave		7	7	7	7	7	7	7
Refrigerator		7	7	7	7	7	7	7
Unit Type:		PHAS Tables						PHAS Codes
Apartment (high rise)		H008						5
Monthly Dollar Allowances; Number of Bedrooms								
Utility or Service		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Heating	a. Natural Gas	7	9	12	15	19	23	27
	b. Electric	10	11	15	20	26	29	34
Cooking	a. Natural Gas	4	6	7	9	11	13	15
	b. Electric	5	6	8	10	13	15	17
Other Electric/Lighting		10	15	19	23	29	33	38
Air Conditioning		No Allowance						
Water Heat	a. Natural Gas	7	10	13	16	21	24	27
	b. Electric	10	14	18	22	28	32	37
Water		10	12	16	22	29	36	43
Sewer		18	18	18	18	18	18	18
Trash Collection		26	26	26	52	52	77	77
Range/Microwave		7	7	7	7	7	7	7
Refrigerator		7	7	7	7	7	7	7
Unit Type:		PHAS Tables						PHAS Codes
Single Family Detached; Manufactured Home		D008						1 & 6
Monthly Dollar Allowances; Number of Bedrooms								
Utility or Service		0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	6 BR
Heating	a. Natural Gas	8	12	15	19	25	29	34
	b. Electric	10	14	19	25	32	37	42
Cooking	a. Natural Gas	4	6	7	9	11	13	15
	b. Electric	5	6	8	10	13	15	17
Other Electric/Lighting		10	15	19	23	29	33	38
Air Conditioning		No Allowance						
Water Heat	a. Natural Gas	7	10	13	16	21	24	27
	b. Electric	10	14	18	22	28	32	37
Water		11	14	19	26	38	49	61
Sewer		26	26	26	26	26	26	26
Trash Collection		26	26	26	52	52	77	77
Range/Microwave		7	7	7	7	7	7	7
Refrigerator		7	7	7	7	7	7	7

ATTACHMENT D

Setting Price - For-Sale Inclusionary Units

The Affordable Housing Cost (“AHC”) calculation required by State law has two elements. First, the household size is defined based on the number of bedrooms in the unit. The defined household size is equal to one person greater than the number of bedrooms in the unit and sets the maximum allowable household size for the unit. For example, the defined maximum household size for a three-bedroom unit is four persons.

Next, the applicable AHC limit is obtained by multiplying the required percentage of income times the required percentage of Area Median Income, (“AMI”) for the defined household size.

- 1) Moderate-Income Units: 35% x 110% of AMI
- 2) Low-Income Units: 30% x 70% of AMI
- 3) Very Low-Income Units: 30% x 50% of AMI

The final calculations should occur approximately 90 days prior to the first anticipated close of escrow of an affordable unit. The Agency or Housing Department of the City of San Jose will provide the developer with assistance, as needed, in calculating the difference between the market value and the maximum affordable housing cost for inclusionary units. The Housing Department will approve the final pricing calculations.

To determine the maximum sales price from the monthly AHC 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 costs from the monthly Affordable Housing Cost amount. The remainder is the amount that would be available to pay the monthly mortgage payment.
2. Calculate the amount of mortgage loan based on the amount of monthly mortgage payment (amount that can be carried by the net amount indicated in Step 1 above).
3. Add to the loan amount the assumed amount of borrowers own funds for down payment to determine the maximum affordable price.

To establish a consistent policy regarding the methodology to set a maximum selling price, the Agency has developed the following rules for calculating the

maximum housing price. Developers are permitted to use the actual numbers of prospective purchasers except when noted below.

1. Household Income Used to Establish the Affordable Housing Cost:
Use the benchmark standard as required by State Law (Section 50052.5) not the actual income of the homebuyer. For a moderate income unit, set the household income level equal to 110% of the Median Household Income for a household size equal to one person greater than the number of bedrooms in the unit. For low-income units the percentage is set at 70% of County Median Income and for very low-income units the percentage is set at 50% of County Median Income. Household income information is published by HCD each calendar year.
2. Costs for Housing Related Expenses:
 - i. Homeowner Association Fees (HOA) – Actual amount approved by the State of California Department of Real Estate for the project
 - ii. Property Tax – Actual tax rate for the parcel, with the value based on the Market Price of the unit. If the tax rate is unknown, the default tax and assessment rate is 1.25%
 - iii. Utility Costs – Use current utility allowances 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 for possible updates to this schedules @ www.hacsc.org
 - iv. Hazard Insurance Cost – If not included in HOA fees will be included at average annual amounts for similar unit types in size and location. Costs for Personal Property Insurance is not to be included unless contractually required
 - 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 PMI premium corresponding to the loan-to-value ratio resulting from the difference between the fair market value and the Developer Discount Loan. The mortgage insurance premium shall be consistent with CalHFA's published PMI rates for 30 -year fixed rate mortgages. CalHFAs PMI rates can be obtained from www.calhfa.ca.gov.
 - vi. Maintenance and Repair Allowance - Current allowances established by the Housing Department must be used
 - vii. Charges for a parking space are considered a housing related expense. However, costs charged for additional parking above the Agency's required minimum is not considered a housing related expense.

3. Financing Assumptions:

The interest rate shall be based on a 5% down, 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, and not including any pre-paid points or fees for the loan. The interest rate applied must reflect the existing market conditions for similar loans, and must consider whether the amount of the loan qualifies it as a conforming loan or a jumbo loan. One-quarter point will be added to the interest rate for loans assumed to exceed Fannie Mae conforming loan limits at the time the units are purchased by qualified buyers. For purposes of calculating sales prices the down payment is deemed to be 5% of the fair market price, (i.e. sales price) of the unit, however, assisted homebuyers are not required to contribute a 5% down payment at the time of purchase.

To determine the maximum “affordable” price, it is necessary to add the homebuyer’s “assumed” down payment amount, exclusive of any secondary financing from public agencies or non-profit organizations, to the loan amount calculated using the identified variables. Please refer to attached sample pricing worksheets for additional information on pricing of affordable for-sale units.

Final review and determination of the maximum purchase price will be made by the City Department of Housing, normally within 90 days of the date the affordable units are expected to close escrow.

Regardless of the maximum housing price established in the calculation, all inclusionary units must be sold to buyers whose incomes are at or less than the corresponding very-low, low or moderate income ceiling, published by the California Department of Housing and Community Development (HCD), for the buyers’ actual household size. In all cases, the buyer’s household income may not exceed the HCD published income levels at the time the units are purchased.

ATTACHMENT E Sample Pricing Worksheets

For-Sale Projects

Illustration of the calculation of the maximum Sales Price for a Person or Family of Moderate Income* to be paid by a **Purchaser** of the Assisted Unit, pursuant to the provisions of Health and Safety Code section 50052.5. The calculation in this Exhibit is based on the following definition of household size: the defined household size is equal to one person greater than the number of bedrooms in the unit.

Assumptions for calculating the maximum Sales Price:

1. Unit Size = _____
2. Family Size = _____
3. Interest Rate** = _____
- Property taxes and assessments (per month) = _____
(Based on actual tax rate with value based on the Market Price of unit)
5. Actual insurance premiums (per month) = _____
(If not included in homeowner's association dues)
6. Property maintenance and repair (per month)*** = _____
(If not included in homeowner's association dues)
7. Project's budgeted Homeowner's Association Dues = _____
- Utility allowance (per month)***** = _____
9. Mortgage Insurance Premium, if any*** = _____
10. Required parking fees paid by residents, if any = _____

Pursuant to Health & Safety Code §50052.5, Affordable Housing Cost shall not be less than 28% of the Gross Income of the household nor exceed 35% of 110% Area Median.

- Pursuant to 25 Cal. Code of Regulations §6932, the current maximum income level for a Person or Family of Moderate Income at 120% of the area median income with a family size of 4 for example is \$126,600.00, effective March 2008. The State of California periodically changes income amounts, by household size, pursuant to said Code of regulations. The amount may change in the future, and if so, the new number will be used for calculating the maximum income level at that point in time.

** The interest rate shall be based on a 5% down, 30 year, fully amortizing fixed rate mortgage that is widely available in the current owner occupied real estate loan market. City will use Freddie Mac's Weekly Mortgage Survey for the appropriate 30 year market interest rate.

*** Amount is obtained from City's Housing Department.

**** Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

ATTACHMENT E (continued)

For Sale Projects

ILLUSTRATIVE CALCULATION OF MAXIMUM SALES PRICE- MODERATE INCOME LEVEL

I. Calculate monthly Affordable Housing Cost:

\$116,050.00	[110% of Area Median Income adjusted for family size (4 person household \ 3 bedroom unit)(\$105,500.00)]
$\frac{X \quad .35}{\$40,617.50}$	[Affordable Housing Cost cannot exceed 35% times 110% of Area Median Income]
<u>divided by 12</u>	[To calculate the maximum <u>monthly</u> Affordable Housing Cost]
\$3,385	[As this hypothetical illustrates, no Family of Moderate Income with a family size of 4 shall spend more than \$3,385.00 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost.]

II. Calculation of maximum amount to be spent on principal and interest of all mortgage loans and loan insurance fees, if any.

- A. \$ 3,385 [Maximum monthly Affordable Housing Cost] *less:*
- B. [-]_____ [Property taxes and assessments (per month)]
- C. [-]_____ [Hazard Insurance premiums (per month)]
- D. [-]_____ [Utility allowance (per month)]
- E. [-]_____ [Mortgage Insurance Premiums (per month)]
- F. [-]_____ [Property maintenance and repair (per month)]
- G. [-]_____ [Homeowner's Association dues (per month)] *equals:*
- H. [-]_____ [Resident paid Parking Fees] equals

maximum Monthly Mortgage Payment

III. Calculation of Sales Price: The Sales Price is calculated by adding the Maximum Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based on a fixed rate, 5% down, 30 year, fully amortizing, widely available owner occupied loan, and the above calculated Maximum Monthly Mortgage Payment allowable. The calculation is as follows:

1. At a _____% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of \$_____ will allow a Maximum Mortgage Amount of \$_____.

(Note: The above step requires the use of a financial calculator.)

2. The Maximum Mortgage Amount of \$_____ plus 5% of the market price of the unit equals the Maximum Affordable Sales Price of \$_____.

ATTACHMENT E (continued)

Rental Projects

The following hypothetical examples illustrate the calculation of Affordable Rent for a **Very Low Income Household** and a **Low Income Household** renting units in Santa Clara County.

Assumptions.

1. Affordable Unit to be made available to very low or low income household.
2. Unit Size = 2 Bedroom (which for purposes of calculating rent is assumed to be occupied by a household of 3 persons).
3. Household need not have the maximum income for a person or family in the income category (adjusted for family size).
4. The Utility Allowances for an Affordable Unit in these examples is based on all electric services (if the utilities are not all electric, then the Utility Allowance should be adjusted accordingly). These allowances are also based on a tenant paying for gas and/or electricity for cooking, apartment space heat and lights (if additional utilities are paid for by tenant, then the Utility Allowance should be adjusted accordingly).

Pursuant to 25 CCR Section 6932, the maximum income level for a Very Low Income Household cannot exceed 50% of Area Median Income.

Pursuant to 25 CCR Section 6918, rent includes, among other things, payment for use or occupancy of a housing unit and a reasonable allowance for utilities (“Utility Allowance”). The Utility Allowance for an Affordable Unit will be based on the Santa Clara County Schedule of Allowances for Tenant Purchased Utilities and Other Services, which is incorporated herein by reference. Santa Clara County's current Schedule of Allowances for Tenant Purchases and Other Services can be found on Santa Clara County Housing Authority's website at www.hacsc.org/utility. If the actual cost of the utilities for the Affordable Unit exceeds the Utility Allowance, the Eligible Tenant will be responsible to pay for the difference.

Pursuant to Section 50053 of the Health and Safety Code, the Rent paid by a very low income household shall not exceed 30% of 50% of the area median income adjusted for family size and the Rent paid by a low income household shall not exceed 30% of 60% of the area median income adjusted for family size.

ATTACHMENT E (continued)

Rental Projects

CALCULATION OF MAXIMUM RENT CHARGEABLE FOR A **VERY LOW** INCOME UNIT:

\$47,500.00	[50% of the area median income for Very Low Income Household as of April 2007 adjusted for family size (3 person) (\$95,000.00)]
x _____ .30	[Rent cannot exceed 30% of income level]
\$14,250.00	
divided by 12	[to calculate the maximum monthly housing cost]
\$1,187.50	[This figure includes the Utility Allowance amount.]
- 42.00	[Use most current schedule of Allowances to calculate actual utility allowance]
\$1,145.50	[Actual Affordable Rent]

As this hypothetical illustrates, no very low income household with a family size of 3 shall be charged or pay rent in excess of the Actual Affordable Rent per month as of the date of this Restriction; this amount may be adjusted as the CCR sections above and published income guidelines are amended.

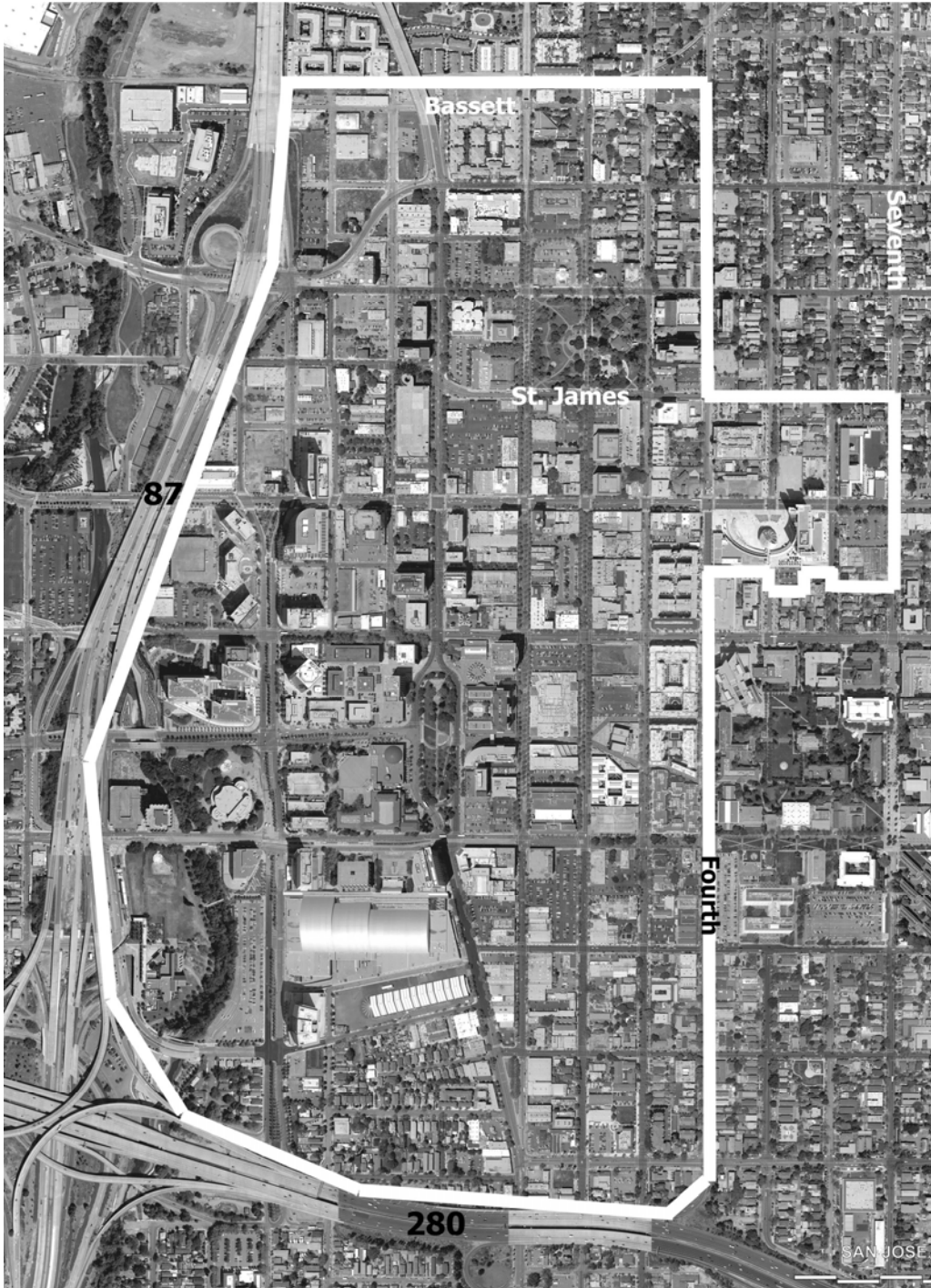
CALCULATION OF MAXIMUM RENT CHARGEABLE FOR A **LOW** INCOME UNIT:

\$57,000.00	[60% of the area median income for Low Income Household as of April 2007 adjusted for family size (3 person) (\$95,000.00)]
x _____ .30	[Rent cannot exceed 30% of income level]
\$17,100.00	
divided by 12	[to calculate the maximum monthly housing cost]
\$1,425.00	[This figure includes the Utility Allowance amount.]
- 42.00	[Use most current schedule of Allowances to calculate actual utility allowance]
\$1,383.00	[Actual Affordable Rent]

As this hypothetical illustrates, no low income household with a family size of 3 shall be charged or pay rent in excess of the Actual Affordable Rent per month as of the date of this Restriction; this amount may be adjusted as the CCR sections above and published income guidelines are amended.

ATTACHMENT F

Downtown High-Rise Incentive Area



ATTACHMENT G

INCLUSIONARY HOUSING: IN-LIEU FEE HANDOUT

Effective July 1, 2007, the City Council adopted a resolution amending the annual Fee Resolution to increase the in-lieu fees applicable to the Inclusionary Housing Policy, as follows: (1) \$17.00 per net square foot of market-rate housing with a maximum fee of \$85,500 for rental units, \$90,000 for for-sale units in low-rise condominium/stacked flat projects, \$120,000 for for-sale units in townhouse/row-house projects, \$200,000 for single-family detached units, and \$200,000 for high-rise units not located in the Downtown High-Rise Incentive Area; and (2) \$8.50 per net square foot of market-rate high-rise units located in a Downtown High-Rise Incentive Area, up to a maximum fee of \$65,000 per unit.

In-lieu fee option is based on the total average net living area of market-rate units in the project up to a fixed maximum fee. In this context “net living area” means the average square footage of all of the units in the project, exclusive of balconies, common corridors & stairs, recreation rooms, fitness centers, garages, and other common interior areas.

IN-LIEU FEES as of July 1, 2007

Product Type	Fee Per Net Square Foot of Living Area	Not to Exceed, Per Affordable Unit
Rental Units	\$17.00	\$85,500
For-Sale – Low-Rise Condominium/Stacked Flat Units	\$17.00	\$90,000
For-Sale – Townhouse/Row-House Units	\$17.00	\$120,000
For Sale – Single-Family Detached Units	\$17.00	\$200,000
For-Sale – High Rise not in “High-Rise Incentive Area”	\$17.00	\$200,000
For-Sale – In Downtown “High-Rise Incentive Area”	\$8.50	\$65,000

The proposed \$17.00-per-square-foot in-lieu fee and the maximum fee per unit are calculated based on the requirement that 20% of the total units in the project are required to be affordable. For example a 300 unit for-sale condominium project

with a total net living area of 300,000 square feet would have a total in lieu fee payment of \$5,100,000 (300,000 x \$17). The total fee shall not exceed the per-unit cap of \$90,000. The per unit in-lieu fee of \$85,000 in this example, (300,000/300/.2 x \$17), does not exceed the per unit cap of \$90,000 per affordable unit.

High-rise developments (defined as a project with at least 10 floors of exclusive residential units), located in the High-Rise Incentive Area are allowed to pay a lower in-lieu fee to encourage high-rise development in downtown San Jose. The incentive in-lieu fee is currently \$8.50 per net square foot of living area up to a maximum of \$65,000 per required affordable unit. The incentive in-lieu fee level in the High-Rise Incentive Area is to be re-evaluated after building permits or foundation permits for 2,500 downtown high-rise units have been issued.

Definition of In-lieu Fee Product Types

Rental Units - residential dwelling units in projects that are developed to standards that would **not** allow, under current laws, for the units to be sold to individual buyers.

For-Sale Units – residential dwelling units in projects that are mapped and developed to standards that would allow, under current laws, for the units to be sold to individual buyers. Developer will be charged the for-sale in-lieu fees for these units regardless if the developer rents the units upon completion of the project.

For-Sale Product Types:

High Rise - a residential building that has at least 10 floors of exclusive residential occupancy. Residential floors must be above ground to be counted towards the requirement of 10 floors.

Single-Family Detached - a detached residential building of permanent character placed in a permanent location on a single lot which is designed or used for residential occupancy by one family. A single mobile home on a foundation system on a single lot is included within this definition. All rooms within must be integral to each other.

Townhouse/Row-House - a residential building with all of the following characteristics; at least one common side wall, a common roof, no residential units built above or below another residential unit, common ownership of the surrounding shared land that is controlled by a Home

Owners Association, and fee simple ownership of the land underneath the residential dwelling unit.

Low-Rise Condominium/Stacked Flat – all residential dwelling units that do not qualify as any of the other product types defined above.

In-lieu fee calculation will reflect the different product types for mixed product type projects.

The Housing Department of the City of San Jose will approve the in-lieu fee amount and generate an invoice to the developer and a receipt reflecting the payment and any other evidence of compliance required for the proper implementation of Inclusionary Housing Policy.