



San José's Inclusionary Housing Ordinance (IHO)

OVERVIEW

What is the Inclusionary Housing Ordinance (IHO)?

- The Inclusionary Housing Ordinance, Chapter 5.08 of the San José Municipal Code, was adopted on January 12, 2010.
- The IHO requires all residential developers who create new, additional, or modified For-Sale or Rental units to provide 15% of housing on-site that is affordable to income qualified buyers/renters.
- IHO allows alternative compliance options that a developer may meet the affordable unit requirement. Please see other side for more information.

Which projects are subject to the Ordinance?

- Any proposed project that the owner intends to create 20 or more residential units.

IMPLEMENTATION PROCESS

- Submit a Compliance Plan to Housing for review and approval (download form from IHO website or call Housing Department at 408-975-4416)
- Upon approval of Compliance Plan, projects may then move forward with their entitlement process
- Execute an Inclusionary Housing Agreement with the City, recorded against the property
- Pull building permits
- Chosen IHO compliance option is completed prior to its first Certificate of Occupancy

Compliance Plan Application

Developers are required to submit a signed [Affordable Housing Compliance Plan Application](http://www.sjhousing.org/AHIF) (Compliance Plan) and \$4,582 processing fee payable to the "City of San José" to the Housing Department for approval. This Compliance Plan Application will provide the Housing Department with enough information to calculate the Housing obligations associated with the development. The information obtained will be included in the project's conditions of approval. The IHO Compliance Plan Application can be found online at: www.sjhousing.org/IHO.

Projects with 3 to 19 dwelling units for rent are subject to the Affordable Housing Impact Fee (AHIF). For-Sale residential developments with 19 or less units are exempt, but are still required to submit a Compliance Plan under AHIF. To learn more, please visit: www.sjhousing.org/AHIF.

ELLIS ACT ORDINANCE

How is IHO related to Ellis Act Ordinance?

- Ellis Act applies to all apartments with 3 units or more and provides requirements for landlords removing these apartments from the rental housing market. The most frequent use of the Ellis Act Ordinance would be the demolition and redevelopment of existing rent controlled housing. Additional information on Ellis Act Ordinance may be found online at: www.sjhousing.org/RENT
- The Ordinance creates a standardized process for issuing Ellis Act notices, and possible relocation benefits, Tenant's right to return and the re-control of rents for units returned to the market.
- A project that demolishes an apartment that was built before 1979 (an "Ellis Act" building) is required to re-control the greater of: 50% of all the newly constructed rental units or the number of covered units removed from the rental market.
- Re-control means capping rents from increasing annually at 5% (or as amended by City Council)

	IHO Rental—Option 1	IHO Rental—Option 2
Inclusionary Housing Ordinance	Choose <u>Build On-Site</u> : 15% of totals units are deed-restricted affordable units: <i>Where 9% at 80% AMI Where 6% at 50% AMI</i>	Choose an <u>Alternative Compliance Option</u>
Ellis Act Ordinance	Add an additional 5% at 100% AMI → No re-control OR The greater of: 50% of all the newly constructed rental units or the number of covered units removed from the rental market are re-controlled.	The greater of: 50% of all the newly constructed rental units or the number of covered units removed from the rental market are re-controlled.



Housing Department
200 E. Santa Clara Street
Tower, 12th Floor
San Jose, CA 95113
Phone: (408) 975-4489
inclusionary@sanjoseca.gov

INCLUSIONARY HOUSING ORDINANCE COMPLIANCE OPTIONS

	Obligation	For-Sale	Rental
On-Site	15%	Purchasers must be at or below 120% AMI	9% at MOD (80% AMI) 6% at VLI (50% AMI)
<i>Inclusionary Housing Ordinance Alternative Compliance Options</i>			
Off-Site	20%	Purchasers must be at or below 120% AMI	12% at LI (60% AMI) 8% at VLI (50% AMI)
In-Lieu Fee	20%	In-lieu fee per Inclusionary home is \$167,207 (July 1, 2018 - June 30, 2019)	In-lieu fee per Inclusionary unit is \$125,000 (January 1, 2018 - June 30, 2019)
Dedication of Land	20%	Marketable title, general plan designation zoned for residential development and at a density required, and suitable for inclusionary units.	
Surplus In-Lieu Credits	20%	Developers may purchase or transfer credits for affordable housing units that are available for occupancy concurrently with market rate units.	
Acquisition and Rehab of Units	20%	Rehabilitate existing market rate units for conversion to units affordable to Lower and Very Low Income Households. Number of Rehabilitation units must be 2 to 1 of the base inclusionary obligation.	
HUD Restricted Units	20%	Developers may provide units that are restricted to Affordable Housing Cost for Lower or Very Low Income Households through entering into an agreement with the U.S. Department of Housing and Urban Development (HUD).	
Combination of Methods	20%	Developers may propose any combination of methods to satisfy the project's inclusionary housing obligation.	

EXEMPTION CLAIMS

Are there any exemptions? If so, what are they?

For-Sale Exemptions:

- Small Projects with 19 or less units (this is being reevaluated by City Council in Fall 2018)
- Residential Developments that claim they are exempt from the requirements of the Ordinance must indicate the basis for the exemption in the Compliance Plan for IHO

Rental Exemptions:

- Developments that are eligible for the Downtown High-Rise Exemption, but must meet the following requirements:
 - ◆ Located in Downtown Core
 - ◆ Ten(10) or more stories of residential development
 - ◆ Receive a Certificate of Occupancy on or before June 20, 2021

For a full list of exemptions, please see Section 5.08.320 of the Ordinance



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