

ATTACHMENT A-3
INCLUSIONARY HOUSING ORDINANCE (IHO) COMPLIANCE OPTIONS:
PROCEDURE FOR UTILIZING THE IN LIEU-FEE OPTION
(FOR-SALE)

I. Introduction (SJMC Sections 5.08.500, 5.08.520)

This attachment to the Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by paying an In-Lieu Fee rather than build the requisite number of For-Sale Inclusionary Homes. If the Developer selects this compliance option, the number of units for which the In-Lieu Fee shall be collected shall be no less than twenty percent (20%) of the total number of units in the Residential Development. Definitions for capitalized terms may be found in the Guidelines and the Ordinance.

II. For-Sale In-Lieu Calculation (SJMC Section 5.08.520)

The In-Lieu Fee obligation will be calculated by the City at the time the Developer provides payment and will be based on the adopted In-Lieu Fee in place at that time. The total obligation will be calculated as follows: twenty percent (20%) times the total number of units in the Residential Development times the For-Sale In-Lieu Fee. See Attachment A-3.1 for an example of this calculation.

The per unit In-Lieu Fee shall be determined based on the difference between (a) the median sales price of an attached market rate unit in the prior thirty six (36) month reporting period as determined by the Housing Department and (b) the Affordable Housing Cost (as defined in this attachment) for an eligible household of 2.5 persons earning no more than one hundred ten percent (110%) of the Area Median Income (AMI) based on the published data for the year prior to the In-Lieu Fee adoption.

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

The Housing Department will utilize data published by the [Santa Clara County Association of Realtors \(SCCAOR\)](#) to calculate the median sales price of an attached market rate unit in the prior thirty-six (36) month reporting period ending in December of the year prior to the In-Lieu Fee adoption. In the event this data is no longer available from SCCAOR, the Director of Housing may designate another source.

The adopted In-Lieu Fee may also include the estimated costs of administration and the estimated cost of increases in the price of housing and construction from the time of payment of the In-Lieu fee to the estimated time of provision of the affordable units by the City.

The In-Lieu fee shall be included as part of the Annual “Schedule of Fees and Charges” adopted by Council during the annual budget process, or by virtue of adoption by another resolution of the City Council.

The City will not issue a Certificate of Occupancy for any market rate unit in the Residential Development prior to the payment in full of all In-Lieu Fees to the City.

III. Affordable Housing Compliance Plan Application (SJMC Sections 5.08.120, 5.08.155, 5.08.320.H, 5.08.420, 5.08.520, 5.08.610)

As part of the application for First Approval¹ of any Residential Developments, Developers are required to submit a signed Affordable Housing Compliance Plan application to the City, and pay the application processing fee. If an Affordable Housing Compliance Plan was not submitted and approved at First Approval, it is due when a Developer applies for any other Planning Permit. Additionally, upon the expiration of any Planning Permit, and unless otherwise exempted, the Residential Development shall be subject to the requirements of the Ordinance, and shall not proceed until an Affordable Housing Compliance Plan application is approved in conjunction with any other required Planning Permit or amendment thereto.

Developers who elect the In-Lieu Fee Compliance Option must provide the following information when submitting the Affordable Housing Compliance Plan Application:

- 1) General information about the Developer and the Residential Development;
- 2) Whether the Developer intends to seek a parcel, or tentative, and final map for the project;
- 3) Affirming that the Developer intends to pay an In-Lieu Fee;
- 4) The total number of units, unit type, number of bedrooms and bathrooms, approximate location, size and design, construction completion schedule for all development phases of the Residential Development;
- 5) Whether the Developer, or any affiliate, owns, has an interest in, or controls any property contiguous to the project; and
- 6) Any other information, including a detailed narrative that facilitates the Housing Department's ability to evaluate the project's compliance with the Ordinance and Guidelines.

Interested parties may obtain the Affordable Housing Compliance Plan application from the City of San José Housing Department website, currently available at: www.sjhousing.org/IHO or by contacting the Housing Department by sending an email to: IHO@sanjoseca.gov.

IV. Inclusionary Housing Agreement (SJMC Sections 5.08.195, 5.08.420, 5.08.460, 5.08.600, 5.08.610, 5.08.710)

The Inclusionary Housing Agreement is a covenant by the Developer for the benefit of the City of San José governing how the project's inclusionary housing obligation will be satisfied. The Inclusionary Housing Agreement may be comprised of more than one document. The City may require that the approved Affordable Housing Compliance Plan application, including all components required to satisfy the Developer's selected compliance option, be attached to the Inclusionary Housing Agreement.

¹ SJMC Section 5.08.185 - "First Approval" means the first of the following approvals to occur with respect to a Residential Development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

Prior to the approval of any final or parcel map, or the issuance of any Building Permit for a project subject to the Ordinance, the City and Developer will execute an Inclusionary Housing Agreement. The Inclusionary Housing Agreement must then be recorded against the entire Project, and any Contiguous Property (as defined below) and any other property used for the purposes of memorializing the requirement to meet the obligations of the Ordinance.

The Inclusionary Housing Agreement shall contain a specific section or exhibit which applies only to the Contiguous Property under Common Ownership or Control (“CPCOC Property”). This anti-piecemealing section will list the number of residential units in the underlying project, and provide in the event that a Planning Permit is filed for residential development on any CPCOC Property it will subject to the Ordinance and will not be eligible for an exemption on the grounds of having less than 20 residential units. The requirements of the Ordinance imposed on the underlying project shall not be imposed on the CPCOC Property by the recording of the Inclusionary Housing Agreement against those parcels.

A Residential Development’s estimated In-Lieu Fee obligation will be calculated at the time when the Inclusionary Housing Agreement is recorded based on the per unit In-Lieu Fee adopted by the City. This per unit In-Lieu-Fee will apply to the Residential Development until a new In-Lieu Fee is adopted by the City. The Developer may pay the In-Lieu Fee at any time after the Inclusionary Housing Agreement has been recorded, but prior to the City issuing any Certificate(s) of Occupancy for the Residential Development. The final In-Lieu Fee will be calculated at the time when the Developer provides payment, based on the adopted In-Lieu fee in place at that time. The City will not issue a certificate of occupancy for any market rate unit in the Residential Development prior to the payment in full of all In-Lieu Fees to the City.

The Inclusionary Housing Agreement will state the per unit and total In-Lieu Fee amount at the time of execution, including the estimated costs of administration, and the estimated cost of increases in the price of housing and construction and that the actual fee due will be based on the adopted fees as of date of payment, which must be prior to the issuance of any Certificate of Occupancy. Additionally, if the Residential Development is modified so that number of units increase, the tenure type changes or a permit expires and must be reprocessed, the City may require the In-Lieu Fee obligation to be recalculated.

Once the Developer has paid the In-Lieu Fee in full for the Residential Development, the City will remove the recorded Inclusionary Housing Agreement from the property.

V. Method of Calculating For-Sale In-Lieu Fee

See Attachment A-3.1 Illustrative Calculation of the In-Lieu Fee Compliance Option.