

ATTACHMENT B-3
INCLUSIONARY HOUSING ORDINANCE (IHO) COMPLIANCE OPTIONS:
PROCEDURE FOR THE IN-LIEU FEE OPTION
(PAYING AN IN-LIEU FEE ON RENTAL UNITS)

I. Overview (SJMC Sections 5.08.500, 5.08.520)

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

II. Rental 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 Rental In-Lieu Fee. See Attachment B-3.1 for an example of this calculation.

To update the In-Lieu Fee each year, the Housing Department shall identify three (3) projects with construction closings in the reporting period (the prior calendar year) and utilize the described methodology to calculate a new recommended fee amount, which shall be made effective July 1 of the current year by the way of City Council approved fees and charges.

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.

In the event that there are fewer than three (3) City-subsidized affordable rental developments that have not achieved a construction closing in the prior twelve (12) month reporting period, the Ordinance calls for the following methodology to be used.

Alternate Calculation Using the Northern California Real Estate Construction Report:

In the event that there are fewer than three (3) city-subsidized rental affordable housing new construction projects within any twelve (12) month reporting period, the In-Lieu Fee shall be updated annually using the change in the Northern California Real Estate Construction Report published by the Real Estate Research Council of Southern California at California State Polytechnic University, Pomona. The change in the In-Lieu Fee shall be adjusted based upon the percentage difference in the new home prices in Santa Clara County published in the fourth quarter for the then current year from the immediately preceding year as published in the Northern California Real Estate Construction Report.

Qualifying High Rise Rental Residential Development Fee Reduction Program:

The City may, by City Council resolution or policy, adopt reduced In-Lieu Fees for Residential Development of ten (10) or more floors or stories in height, not including any non-residential uses in a specified area of the City. The reduction of the Fees shall only apply to all such development and not to individual High Rise Residential Developments. See Section IV, Inclusionary Housing Agreement, for more information on the process and timing of calculating a Developer's In-Lieu Fee obligation.

III. Affordable Housing Compliance Plan Application (SMJC 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 bath rooms, 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 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 5.08.195, 5.08.420, 5.08.460, 5.08.600, 5.08.610, 5.08.710)

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.

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

Prior to the approval of any final or parcel map, or the issuance of any Building Permit for a project subject to the Ordinance, the City and Developer will execute an Inclusionary Housing Agreement. The Inclusionary Housing Agreement will then be recorded against the entire project, 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 Rental In-Lieu Fee

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