

ATTACHMENT 2. BUILD OFF-SITE OPTION

I. Introduction

This attachment to the Revised Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by building Inclusionary Units off-site and transferring or renting those units to eligible households. Definitions for capitalized terms may be found in the Revised Guidelines and the IHO.

II. Build Off-Site Obligation (SJMC Sections 5.08.410, 5.08.500.B, 5.08.510)

Developers of for sale projects that elect to build off-site may choose to provide either for sale or rental inclusionary units. Developers of rental projects that elect to build off-site must provide inclusionary rental units.

A. Build Inclusionary For Sale Units consistent with the following standard:

Transfer at least twenty percent (20%) of the units built in the Residential Development to income-qualified buyers. These units must be made available for purchase at an Affordable Sales Price based on the income limit for households earning no more than 110 percent (110%) of the AMI, adjusted for family size. The Income Limit and Affordable Sales Price will be determined by the City for each Inclusionary Home as described in Appendix B of these guidelines. Such Inclusionary Units may be sold to households earning no more than one hundred twenty percent (120%) of the AMI. The City of San José annually publishes limits that pertain to income and affordable rent or affordable sales price for the City and posts these on its website.

B. Build Inclusionary Rental Units consistent with the following standard:

Make available for rent in the Residential Development the following:

1. At least five percent (5%) of the total Dwelling Units in the Residential Development at an Affordable Rental Rate to Households earning no more than eighty percent (80%) of the AMI, adjusted for family size;
2. At least five percent (5%) of the total Dwelling Units in the Residential Development at an Affordable Rental Rate to Households earning no more than sixty percent (60%) of the AMI, adjusted for family size; and
3. At least ten percent (10%) of the total Dwelling Units in the Residential Development at an Affordable Rental Rate to Very Low Income Households earning nor more than fifty percent (50%) of the AMI adjusted for family size.

When computing the number of Dwelling Units required to satisfy the twenty percent (20%) off-site obligation, resulting fractions of one-half (1/2) or greater shall be rounded up to the next highest whole number, and fractions of less than one-half (1/2) shall be rounded down to the next lowest whole number.

III. Location of Off-Site Inclusionary Units (SJMC Sections 5.08.110, 5.08.500, 5.08.510)

The site chosen for the off-site Inclusionary Units (“off-site land”) must have a General Plan designation allowing residential uses, and both environmental review and geological review shall have been completed with hazards mitigated to the satisfaction of the City prior to the acceptance of the site in the Affordable Housing Compliance Plan. The off-site land must also be zoned for residential development at a density that will accommodate at least the number of required Inclusionary Units no later than the approval of the entitlement(s) for the market rate project. Completion of these entitlements and documentation of ownership or control of off-site land must be obtained and provided consistent with the construction schedule that was provided with the Affordable Housing Compliance Plan.

The off-site Inclusionary Units must be located consistent with the City’s adopted Affordable Housing Siting Policy, if any, and within the same Opportunity Area unless, at the time of submission of the Affordable Housing Compliance Plan, the Developer has petitioned and provided credible documentation in writing to the City Manager that there is insufficient available land within the Opportunity Area to construct the off-site Inclusionary Units, in which event such Inclusionary Units shall be constructed upon a site approved by the City Manager in another Opportunity Area.

Notwithstanding the preceding, until such time as the Council designates Opportunity Areas or provides criteria for such designation, the off-site Inclusionary Units shall be located in the same Market Area as the Market Rate Units unless, at the time of submission of the Affordable Housing Plan, the Developer has petitioned and provided credible documentation in writing to the City Manager that there is insufficient available land within the same Market Area to construct the off-site Inclusionary Units, in which case the Inclusionary Units shall be constructed upon a site approved by the City.

The Housing Department encourages affordable housing to be constructed throughout San José to achieve socio-economic integration at the neighborhood level. The Housing Department discourages concentration of Extremely Low-Income units in Census tracts where the poverty rate is twenty percent (20%) or greater.

The San José Housing Department is in the process of developing an Affordable Housing Siting Policy, including a map to assist Developers in understanding if the location of their off-site land satisfies the IHO requirements.

IV. Affordable Housing Compliance Plan Application
(SJMC Sections 5.08.120, 5.08.155 5.08.320, 5.08.420, 5.08.510, 5.08.610)

Developers who elect the Build Off-Site Compliance Option must provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- 1) Detailed information about the entitlement, timing, and unit makeup for both the market rate project and the off-site project, including but not limited to:
 - i. Location of the market rate project and the proposed off-site land;

- ii. Affirmation that the off-site location is consistent with the standards in Section III, above;
- iii. Affirmation that the General Plan designation of the off-site land allows for residential use, at adequate density;
- iv. A comparison of the fixtures and amenities for the Market Rate Units and off-site Inclusionary Units;
- v. Current Phase I environmental review for the off-site land, and if called for, Phase II and evidence of completed hazard mitigation;
- vi. Construction and completion schedule of all Inclusionary and Market Rate Units, showing ownership or control of the off-site land no later than the entitlement of the market rate project;
- vii. Identify any public funding anticipated in connection with the project's off-site Inclusionary Units;
- viii. Affirming the off-site Inclusionary Units have not been sold or rented; and
- ix. A title report dated within thirty (30) days of submittal.

V. Inclusionary Housing Agreement

(SJMC Sections 5.08.195, 5.08.420, 5.08.460, 5.08.600, 5.08.610, 5.08.710)

See the requirements of Section 5 of the Revised Guidelines. The Inclusionary Housing Agreement shall incorporate and include the approved Affordable Housing Compliance Plan, containing all information relating to the proposed off-site Inclusionary Units.

VI. Timing of Construction and Marketing of Inclusionary Units

(SJMC Sections 5.08.460, 5.08.510, 5.08.610)

Off-Site Inclusionary Units created under this compliance option must be developed and made available for occupancy either prior to or concurrent with the Market Rate Units. Construction must also be consistent with the phasing plan for Inclusionary Units in relation to Market Rate Units. Where new construction is needed, the City shall not issue more than six (6) Building Permits for Market Rate Units per Inclusionary Unit Building Permit issued and may only approve final inspections for single-family detached homes, or issue Certificates of Occupancy for all other types of residences, until at least fifteen percent (15%) of such final inspections or Certificates of Occupancy have been approved or issued for the Inclusionary Units. Where new construction is not needed, the City shall not issue more than five (5) Building Permits for Market Rate Units per authorization of occupancy for each Inclusionary Unit at an Affordable Housing Cost, and may only approve final inspections for market rate single-family detached homes, or issue Certificates of Occupancy for all other types of market rate residences, until it has authorized occupancy in at least twenty percent (20%) of the Inclusionary Units at an Affordable Housing Cost.

Further, the City may not issue Building Permits, or approve final inspections or issue Certificates of Occupancy, for more than ninety percent (90%) of the Market Rate Units within the Residential Development (or construction phase) until it has issued Building Permits or authorized occupancy for all the off-site Inclusionary Units of the project.

Developers seeking alternative construction timing for off-site Inclusionary Units by contracting with a City-approved Affordable Housing Developer should consult with Housing Department staff prior to submitting the Affordable Housing Compliance Plan. Developers must provide the following information in support of a request for alternative construction timing:

1. Information on the Market Area of off-site land.
2. Current Documentation of ownership or control of off-site land.
3. Contractual agreement with a City-approved Affordable Housing Developer.
4. Pro forma information that describes gap financing or tax credits needed.
5. All Planning entitlements.
6. Any other information reasonably required to evaluate such a request.

Developers seeking alternative construction timing should be prepared, upon request, to provide assurance of construction and permanent financing, including an agreement to close on construction financing for all Inclusionary Units prior to issuance of the first Certificate of Occupancy for the Residential Development, or the provision of a letter of credit or escrow account in an amount equal to the projected In Lieu Fee. Developers shall also be responsible for paying the City's monitoring and administrative costs for the requirements under this section.

The Inclusionary Housing Agreement shall also include a marketing plan for the Inclusionary Units, including a commitment to provide the Inclusionary Units to the public in a nondiscriminatory and equitable manner, consistent with the obligation to Affirmatively Further Fair Housing, while ensuring that any preference policy does not result in a disparate impact on a protected class.

VII. Standards for Inclusionary Housing Units (SJMC Sections 5.08.470, 5.08.510)

The off-site Inclusionary Units shall have a comparable square footage and the same bedroom count and bedroom count ratio as the Market Rate Units. Square footage will be considered comparable if the total average square footage of Inclusionary Units is at least 85% of the total average square footage of the Market Rate Units by bedroom type (for example, the average square footage for a 1-bedroom Inclusionary Unit must be at least 85% of the average square footage for a 1-bedroom Market Rate Unit).

The quality of exterior design and overall quality of construction of the Inclusionary Units must be consistent with the exterior design of the Market Rate Units. Inclusionary Units may have different interior finishes and features than the Market Rate Units in the Residential Development, provided the finishes and features are functionally equivalent to the Market Rate Units and are durable and of good quality. Functional equivalency includes the architectural style, detailing, and, to some extent, the quality of materials and the size of structures.

VIII. Requirements for Inclusionary Units

See Appendix A for Rental Unit compliance requirements and Appendix B for For-

sale Unit compliance requirements.