

ATTACHMENT 4. MIXED COMPLIANCE OPTION – RENTAL INCLUSIONARY UNITS ON-SITE AND ADJUSTED IN LIEU FEE

I. Introduction

This attachment to the Revised Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation through a new Mixed Compliance option. Definitions for capitalized terms may be found in the Revised Guidelines and the IHO.

II. Criteria for Mixed Compliance (SJMC Section 5.08.400, 5.08.525)

Developers who elect to pursue the Mixed Compliance option must do the following:

- A. Specify Build and make available at least five percent (5%) of the units in the Residential Development available for rent at an Affordable Rental Rate to income-qualified renters, at any of the following maximum income levels: one hundred percent (100%), sixty percent (60%), fifty percent (50%); and
- B. Pay an Adjusted In Lieu Fee due consistent with the Inclusionary Units provided calculated based on the rentable square footage of the Residential Development.

When computing the number of units required to satisfy the on-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. Build On-Site Incentives (SJMC Section 5.08.450)

The Developer of a Residential Development providing Inclusionary Units upon the same site as the market rate units may, at the Developer's sole option and concurrently with the submittal of the Affordable Housing Compliance Plan, and the earlier of the zoning or Planning Permit application, submit a written request for a density bonus, waivers or incentives pursuant to California Government Code Section 65915 et seq. and SJMC Chapter 20.190, if the Residential Development includes the provision of Inclusionary Units within the Residential Development that meets the minimum thresholds for a density bonus pursuant to California GC Section 65915 et seq.

The Developer of a project providing Inclusionary Units on-site may request a density bonus based on those Inclusionary Units, consistent with Chapter 20.190, provided the units meet the Density Bonus requirements.

IV. In Lieu Fee Calculation (SJMC Section 5.08.525)

The adjusted In Lieu fee obligation will be calculated by the City at the time the Developer provides payment and will be based on the adopted adjusted In Lieu fee Schedule in place at that time. For each Residential Development the total adjusted In

Lieu fee will be calculated by multiplying the project size (measured in net residential square feet) by the appropriate adjusted In Lieu fee rate. To account for inflation in affordable housing development costs the adjusted In Lieu fee shall be increased on July 1 of each year by the Engineering News Record (“ENR”) Construction Cost Index for the San Francisco area published by McGraw Hill on or about January 1 of that year, or its successor publication, for the preceding twelve (12) months until such time that a new in adjusted lieu fee is determined pursuant to Section 5.08.525.

A. Applicable Square Footage

The adjusted In Lieu fee for each Rental Residential Development shall be determined based on the rentable square footage of the Rental Residential Development as calculated by the City as described below.

Measurement shall be from the outside surface of the exterior stud walls and will include all finished living space. The measurement will not include the following (exclusions):

1. Vehicular (automobile, motorcycle, bicycle) parking areas, whether assigned or not, that are separate areas from the unit,
2. Common hallways that access the front doors of two or more units,
3. Common rooms/lounges together with supporting facilities such as kitchens and restrooms,
4. Building lobbies,
5. Balconies, whether private or open to all residents,
6. Common stairwells that serve two or more units,
7. Elevator shafts,
8. Utility shafts,
9. Custodial or janitorial closets,
10. Common recreation areas – such as fitness centers, community rooms, and roof spaces,
11. Storage lockers not located within residential units, and
12. Other qualifying areas that are not associated with residential units, upon approval of the Director of Housing.

With respect to developments designed or permitted based on shared common facilities (e.g., co-living, single room occupancy, suite-style student or senior housing) the square footage to be assessed shall be determined in a manner that reasonably reflects the design of a project for separate rental of bedrooms or suites with shared common facilities. For those developments, the exclusions to square footage assessment will not include community rooms, common rooms/lounges together with supporting facilities such as kitchens and restrooms and other heated interior residential areas associated with the dwelling units or suites.

B. The Adjusted In Lieu Fee Rate

The current adjusted In Lieu Fee Schedule is available online at [Fees & Charges](#) page 104.

The adjusted In Lieu fees 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 adjusted In Lieu fee schedule only applies to rental developments.

C. On-Site In Lieu Fee Adjuster (SJMC Section 5.08.525)

Developers that provide at least five percent (5%) and up to ten percent (10%) on-site Inclusionary Rental Units in their Residential Developments may pay a reduced In Lieu fee calculated based on the percentage of on-site affordable units and the income category of those restricted units. The In Lieu Fee Schedule will include reduced In Lieu fee rates for projects in Strong Market Areas and for Moderate Market Areas for each of the following combinations:

1. 5% at 100% AMI
2. 5% at 60% AMI
3. 5% at 50% AMI
4. 5% at 100% AMI, plus 5% at 60% AMI
5. 5% at 100% AMI, plus 5% at 50% AMI
6. 5% at 60% AMI, plus 5% at 50% AMI

D. Strong vs Moderate Market Areas

The Fee Schedule includes per square foot adjusted In Lieu fee rates for rental developments in both Strong Market Areas and Moderate Market Areas. These Market Areas have been designated by City Council resolution based on residential building activity levels for market rate housing. Resolution 79904, adopted March 9, 2021 identified the West Valley Market Area and the Central Market Area as Strong Market Areas and all other Market Areas as Moderate Market Areas. Council may revise these Market Area Designations in the future based on changing market conditions.

A map and detailed descriptions of the Market Area boundaries is available on the Housing Department web site [IHO Market map](#).

E. Small Project Reduction

The adjusted In Lieu fee for Residential Developments with up to nineteen (19) dwelling units that provide ninety percent (90%) or more of the maximum residential density permitted for the site by the City’s General Plan shall be half the amount otherwise due.

When calculating the allowable density on a site, the density will be based on net developable acreage that would exclude, Right-of-Ways, internal private streets or drives and riparian areas setbacks.

V. Affordable Housing Compliance Plan Application

(SJMC Sections 5.08.120, 5.08.155, 5.08.320, 5.08.420, 5.08.610)

Developers who elect this Mixed Compliance Option must provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- A. The specific combination of percentages and income levels of on-site Rental Inclusionary Units to be provided.
- B. Net Residential Square footage of the project.
- C. Whether the project is claiming eligibility for the Small Project or Highrise fees rather than the generally applicable In Lieu Fee.
- D. The Market Area within which the project is located

VI. 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 Inclusionary Units provided on-site and the Adjusted In Lieu Fee obligation.

A Residential Development's estimated adjusted In Lieu Fee obligation will be calculated at the time when the Inclusionary Housing Agreement is recorded based on the per square foot adjusted In Lieu Fee adopted by the City. This per square foot 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 adjusted 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 adjusted In Lieu Fee will be calculated at the time when the Developer provides payment, based on the adopted In Lieu fee Schedule 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 adjusted In Lieu Fees to the City.

The Inclusionary Housing Agreement will state the total estimated adjusted In Lieu Fee amount based on the adopted fees at the time of execution, 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 residential square footage increases, the tenure type changes or a permit expires and must be reprocessed, the City may require the adjusted In Lieu Fee obligation to be recalculated.

I. Timing of Construction and Marketing of Inclusionary Units

(SJMC Sections 5.08.460, 5.08.610)

On-Site Inclusionary Units 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.

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 Inclusionary Units within the project.

A marketing plan for the Inclusionary Units is also required, 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 any protected class. Such a plan should provide for concurrent marketing and the rental of both the Inclusionary Units and Market Rate Units.

II. Standards for Inclusionary Housing Units
(SJMC Section 5.08.470)

The 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 for each unit by bedroom type (i.e., the average square footage for 3-bedroom Inclusionary Units must be at least 85% of the average square footage for 3-bedroom Market Rate Units).

In addition, Inclusionary Units must be dispersed throughout the project site with the Market Rate Units and not clustered together. When the Residential Development is comprised of attached townhouses, row houses or multi-family buildings, the Inclusionary Units shall be located so as to avoid a geographic concentration, defined as where the Inclusionary Units are clustered in (a) one area of the Residential Development away from the Market Rate Units, (b) in a separate building from the Market Rate Units, and/or (c) all on one floor or one side of a building.

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.