

## **ATTACHMENT 7. PARTNERSHIP FOR CLUSTERED UNITS**

### **I. Introduction**

This attachment to the Revised Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by entering into a Partnership for Clustered Units In Lieu of constructing Inclusionary Units integrated within the Residential Development. Definitions for capitalized terms may be found in the IHO and the Revised Guidelines.

### **II. Percentage of Clustered Units Required (SJMC 5.08.590(F))**

The Clustered Inclusionary Units shall be built consistent with the percentages and standards of On-Site Rental Units, using one of the two following standards:

Standard One. Make available for rent in the Clustered Units 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 one hundred percent (100%) 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; and
3. 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 fifty percent (50%) of the AMI.

Standard Two. Make available for rent in the Clustered Units the following:

1. At least ten percent (10%) of the units in the Residential Development at an Affordable Rental Rate to households earning no more than thirty percent (30%) of the AMI.

The number of restricted units required is calculated by multiplying 15% (or 10%) times the total number of units in the project excluding any units in the Clustered Unit project.

*When computing the number of units required to satisfy the 15% (or 10%) Clustered Unit 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. Criteria for Partnership for Clustered Units (SJMC Section 5.08.590)**

In order to satisfy the requirements of the IHO under this compliance option, the City Manager or their designee must determine that the proposed partnership for clustered units is in the best interests of the City. To inform that determination the City Manager or their designee will consider the following criteria:

- A. The Developer has marketable fee title on the site proposed to be used for the Clustered Units.
- B. The Clustered Unit project is a residential rental development which will meet all of the criteria for an Affordable Housing Development as defined in these Revised Guidelines including a recorded affordability restriction enforceable by the City, Santa Clara County or a State or Federal Agency.
- C. The financing for the Clustered Unit project includes financing that requires that the Clustered Units be located on a separate legal parcel from the Market Rate Units, such as low income housing tax credit financing.
- D. The inclusionary obligations will be determined based on the total number of units in the residential development project exclusive of the Clustered Unit project. For example, if the market rate portion of the project is 300 units, the clustered Affordable Housing Development would need to include at least 45 units (a total of 345 units times 15% is 45 affordable units.)
- E. The Clustered Units are in close proximity to the Residential Development, either on the same building envelope site or on a contiguous site. If a street or road separates the Clustered Inclusionary Units from the Market Rate Units in the Residential Development, the road width shall not exceed sixty (60) feet and shall contain a crosswalk to facilitate safe pedestrian travel. If a wide road (greater than 60 feet) separates the affordable housing cluster from the larger development, the City requires that the portion of the development that contains the cluster units must also include market rate housing units. The number of market rate units on the same side of the road as the affordable clustered building must be equal to or greater than the number of affordable units in the clustered building. Including market rate units on both sides of the street affirms the clustered units receive the same level of investment and infrastructure and are not isolated.
- F. Whether the Developer has entered into an agreement (Clustering Agreement) with the City and a City-approved Affordable Housing Developer to develop the Clustered Inclusionary Units, which shall be included in an Affordable Housing Development (all units are affordable consistent with the definition provided in these guidelines) with financing that requires a separate legal parcel from the remainder of the Residential Development.
- G. The Developer provides a Minimum Contribution to the Clustered Units project of seventy-five percent (75%) of the In Lieu Fee that would otherwise be applicable at that time. For the purpose of calculating this minimum contribution, the square footage will be determined based on the total size of the entire project exclusive of the Clustered Unit project.
- H. The Minimum Contribution Agreement includes a construction financing and construction commencement timeline to ensure construction of the Clustered Units begins prior to the earliest of either issuance of the first Certificate of Occupancy for the remaining portions of the Residential Development or five (5) years after execution of the Minimum Contribution agreement. In the event that the Affordable Housing Developer and the

Developer wish to execute an agreement with the City that allows for the closing of construction financing and commencing of construction after these time periods, the Developer shall secure its obligations to the City by means of a letter of credit or escrow account in the amount of the In Lieu fee that would otherwise be due, acceptable to the City in form and substance.

- I. The site proposed for the Clustered Units has a General Plan designation that authorizes residential uses and is zoned for residential development at a density to accommodate at least the number of otherwise required Inclusionary Units within the Residential Development and conforms to City development standards.
- J. If the clustered Inclusionary Units are provided on contiguous property, they may be provided with equivalent amenities and open space in lieu of access to the amenities and open space in the Residential Development.

**IV. 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 the Partnership for Clustered Units compliance option must provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- 1) Draft of a Written agreement between the Developer, the City and a City-approved Affordable Housing Developer (“Minimum Contribution Agreement”) including the following:
  - a. The amount of proposed Developer Contribution that meets or exceeds the Minimum Developer Contribution required by SJMC section 5.08.590.
  - b. The method or methods for providing the developer contribution including cash or in kind including a schedule for payment of each proposed element of the Minimum Contribution.
  - c. If any portion of the Developer Contribution is to be provided in kind, the proposed method for establishing an objective value for each element of the in kind contribution.
  - d. Proposed construction timeline for both the Market Rate and Clustered Unit Projects.
  - e. If construction of the Clustered Units are not expected to commence construction first, a detailed description of the proposed Letter of Credit or Escrow Account to be used to provide security for construction of the Clustered Units.
- 2) Detailed information about the site for the Clustered Units if it is on a contiguous property, including:
  - a. Parcel APN(s), site size, General Plan designation and Zoning designation,
  - b. Preliminary Title Report showing the Developer as owner of the site and dated within 30 days of submittal,
  - c. Recent Land/Site Surveys, Geotechnical Report, Phase I Environmental Report (must be current and for the benefit of the City), Phase II Environmental Report if hazardous materials are suspected in Phase I Report,

- and cost estimate for mitigation of any hazardous materials (which must be completed prior to commencement of construction of the Residential Development),
- d. An assessment of the site's ability (with existing zoning, occupancy, building, and use restrictions) to provide at least the number of otherwise required Inclusionary Units, with the same bedroom mix and substantially the same size as within the Residential Development,
  - e. If the value of the site is to be counted for the Minimum Contribution requirement, a Fair Market Value Appraisal of the site, to be completed to Uniform Standards of Professional Appraisal Practice Standards by qualified appraisers holding a California Certified General Appraisal License (issued by the Office of Real Estate Appraisers), preferably with a Member of the Appraisal Institute member designation (issued by the Appraisal Institute), and with experience valuing similar properties in the Bay Area, with provision for update on the date of execution of the dedication agreement, and
  - f. Infrastructure study by a licensed professional assessing the availability and capacity of infrastructure (sewer, utilities, water, light, street access and sidewalk) available to support the proposed affordable housing project. If adequate infrastructure is not present, a third-party cost estimate of providing such infrastructure must be provided (which work must be completed prior to the execution of the Minimum Contribution Agreement).
- 3) The qualifications of the proposed nonprofit Affordable Housing Developer who will manage development of the Clustered Units Project.
  - 4) The expected sources of Affordable Housing financing (public and private) for the Clustered Units Project.
  - 5) The prior relationship, if any, between the Developer of the Market Rate Project and the Clustered Units Project.
  - 6) The proposed entity or entities that will provide long-term ownership, asset management and property management of the Clustered Units Project.

**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. Prior to the recording of an Affordable Housing Agreement, the Developer, Affordable Housing Developer and City will execute a Minimum Contribution Agreement. A final revised Minimum Contribution Agreement must be provided to the City no less than 30 days prior to execution along with documentation of the value of any and all in kind contributions (appraisals, receipts or other supporting materials as described in the Minimum Contribution Agreement). The City Manager or their designee must determine that the values assigned to the in kind contributions fairly reflect the value of each contribution to the affordable project prior to execution of the Minimum Contribution Agreement.

The Inclusionary Housing Agreement shall incorporate and include the approved

Affordable Housing Compliance Plan, containing all information relating to the Minimum Contribution Agreement to further document the Developer's intent to partner with a City-approved Affordable Housing Developer to build the Clustered Units.

The Inclusionary Housing Agreement will include a standard agreement form and process, unless another method is approved.

### **VIII. Standards for Clustered Inclusionary Units (SJMC Section 5.08.470)**

The Clustered 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 (for example, 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).

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.

### **IX. Standards for Minimum Contribution**

The contribution to the Affordable Housing Development may consist of any combination of cash contribution, appraised value of land (if conveyed to the Affordable Housing Developer) and entitlements, documented costs of predevelopment, environmental mitigation, infrastructure, or parking construction attributable to the Affordable Housing Development or any other similar costs documented to the satisfaction of and approved by the City Manager or their designee. Only contributions made by the Developer or its affiliates may be included in the Minimum Contribution calculation. No third-party contributions may be included.

### **X. Timing of Construction of Clustered Units**

The City, Affordable Housing Developer, and the Developer will enter into a Minimum Contribution Agreement, or other documentation deemed necessary, on a form satisfactory to the City Attorney. Entering into this agreement is subject to a determination by the City Manager or designee that the agreement satisfies the requirements of the IHO and Revised Guidelines. The agreement shall require the Developer to pay a Minimum Contribution into the Affordable Housing

Development, and provide a timeline for securing construction financing, and commencing construction, prior to the earlier of either the issuance of the first Certificate of Occupancy for the Project, or within five (5) years.

Alternatively, should the Affordable Housing Developer and the Applicant wish to allow for a different construction financing and commencement timeline in the Agreement, or if the Applicant and Affordable Housing Developer otherwise fail to meet the timeline and requests extension that would allow the Applicant to obtain the certificates of occupancy for the remaining portions of the Residential Development, the Applicant must provide the City with a letter of credit or escrow account for amount of the of the In Lieu Fee that would be otherwise required for the Residential Development.