

## **ATTACHMENT 8. SURPLUS INCLUSIONARY UNIT CREDITS OPTION**

### **I. Introduction**

This attachment to the Revised Guidelines provides more information on how a Developer can satisfy their inclusionary housing obligation by using purchased or transferred credits for another Residential Development's restricted Inclusionary Units in excess of the number required by the Ordinance ("Surplus Inclusionary Units") Surplus Inclusionary Units ("Surplus Credits"). It also explains how a Developer can build and restrict Surplus Inclusionary Units (a "Generating Developer" as defined below) that can be credited to another Residential Development and describes the standards for Surplus Credits. Definitions for capitalized terms may be found in these Revised Guidelines and the IHO.

### **II. Surplus Inclusionary Units and Credits (SJMC Section 5.08.255, 5.08.540)**

The Residential Development where Surplus Inclusionary Units are located may not receive any City subsidies or affordable housing loans. Fee credits that are generally available to affordable housing projects (e.g., park impact fee credits) are not considered City subsidies. For-Sale credits may only be used by For-Sale projects. Rental credits may be used by both For-Sale and Rental projects. Surplus Inclusionary Units shall be restricted by the Generating Developer for affordability consistent with the requirements for off-site units in SJMC Section 5.08.510(A) and (B).

A developer who declares that they will construct Surplus Inclusionary Units in the project's Affordable Housing Compliance Plan and then constructs the project with on-site Inclusionary Units and Surplus Inclusionary Units is a "Generating Developer." Once the project with the Surplus Inclusionary Units has been entitled, a Generating Developer may: 1) claim Credits on their Compliance Plan for its own separate concurrent or near future project, or 2) after the compliance plan is approved agree to sell Credits to a different developer with a concurrent or near future project.

### **III. Location of Surplus Inclusionary Units**

The site chosen for the Surplus Inclusionary Units must have a General Plan designation allowing residential uses, and environmental 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 site of the Surplus Inclusionary Units 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 site of the Surplus Inclusionary Units must be obtained and provided consistent with the construction schedule that was provided with the Affordable Housing Compliance Plan. Certificates of Occupancy for the Surplus Inclusionary Units must be received prior to issuance of Certificates of Occupancy for units in the Residential Development.

#### **IV. Affordable Housing Compliance Plan Application**

Developers who elect to satisfy a project's inclusionary housing obligation with Surplus Credits purchased or otherwise transferred from another Residential Development ("Surplus Project") shall provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- A. Agreement to purchase or otherwise receive Surplus Credits from a Generating Developer, consistent with the IHO and the standards in this attachment.
- B. Anticipated date for the recording of the Affordable Housing Agreement restricting the Surplus Inclusionary Units.
- C. Documentation that the Surplus Credits are being utilized within five (5) years of the Certificates of Occupancy for the Surplus Inclusionary Units.
- D. Affirmation that the Surplus Credits have not previously been sold or transferred.

#### **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 Surplus Inclusionary Units including documenting the Affordable Housing Agreement restricting the Surplus Inclusionary Units and the timing required for use of the Surplus Credits. The Inclusionary Housing Agreement will include a standard agreement form and process for documenting the purchase or transfer of Surplus Credits and their use to satisfy the Residential Development's Inclusionary obligation, and the inclusionary obligation that will apply if the Surplus Credits are not available or are expired when the Residential Development's first certificate of occupancy is sought.

#### **VI. Timing Restrictions on Surplus Credits**

(SJMC Sections 5.08.460, 5.08.540, 5.08.610)

As of the date of approval of the Affordable Housing Compliance Plan, a Surplus Credit is eligible to be sold, transferred or otherwise utilized within five (5) years after issuance of the Certificate of Occupancy for the restricted Surplus Inclusionary Unit. After the five-year period, the Surplus Credit expires and can no longer be used. The Surplus Inclusionary Unit must receive its Certificate of Occupancy prior to or concurrent with the Market Rate Units in the Residential Development project utilizing such Surplus Credits.

Each Surplus Inclusionary Unit that receives a Certificate of Occupancy results in a Surplus Credit for that size, affordability and tenure unit type. For example, a two-bedroom rental apartment restricted to 50% AMI, will result in a 2-bedroom Very Low-Income rental Surplus Credit. Credits can only be used to satisfy an inclusionary housing obligation for the same income level or a higher income level.

No Surplus Credit shall be accepted to fulfill a residential Development's Inclusionary obligation until after the issuance of the Certificate of Occupancy for the Surplus Inclusionary Unit and restriction of that unit, and the City receives sufficient confirmation that the Surplus Inclusionary Unit has been sold or rented to an income-eligible household at an Affordable Housing Cost as required by the IHO.

## **VII. Standards for Surplus Inclusionary Units**

### **A. Minimum Size (Net Livable Square Feet) of Surplus Units restricted as **For-Sale:****

1. Studio: 500 sq ft
2. 1-bedroom: 650 sq ft
3. 2-bedrooms: 850 sq ft
4. 3-bedrooms: 1,050 sq ft
5. 4-bedrooms: 1,200 sq ft

### **B. Minimum Size (Net Livable Square Feet) of Surplus Units restricted as **Rentals:****

1. Studio: 400 sq ft
2. 1-bedroom: 550 sq ft
3. 2-bedrooms: 750 sq ft
4. 3-bedrooms: 950 sq ft

**Bedroom Count Equivalency:** The unit mix of the Residential Development project proposing to use Surplus Credits should be the same as the Surplus Project, although the City Manager or their designee may, in their sole discretion, agree to a different unit mix if the proposed unit mix is in the City's best interests.

## **VIII. Surplus Credit Tracking**

Housing Department staff will determine the number of Surplus Credits that may be earned by a Generating Developer's project, by income level and unit type and tenure, and shall maintain a record of all Surplus Credits earned, transferred and utilized. Generating Developers shall cooperate with such tracking effort and will be required to provide necessary information to the Housing Department upon request.

## **IX. List of Developers with Credits**

A Developer interested in utilizing Surplus Credits to satisfy its inclusionary housing obligation may contact Housing Department staff for a list of Generating Developers and available Surplus Credits. It is the Developer's responsibility to commence any negotiation with a Generating Developer to acquire needed Surplus Credits.

Developers interested in acquiring Surplus Credits are strongly encouraged to seek guidance from the Housing Department prior to filing an Affordable Housing Compliance Plan to ensure they understand the timing limitations and other restrictions. Upon request, the Housing Department will review the Utilizing Developer's proposed project, the status of Generating Developer's Surplus Credits, and the planned

utilization of such Surplus Credits to determine whether the Developer's inclusionary housing obligation can be satisfied through this option.

The Developer interested in utilizing Surplus Credits bears sole responsibility for compliance with all elements of the IHO, including timing requirements for use of Surplus Credits.