

## **ATTACHMENT 10. PROVIDE HUD-RESTRICTED UNITS**

### **I. Introduction**

This attachment to the Revised Guidelines provides more information on how Developers may satisfy their inclusionary housing obligation by providing units that are restricted as affordable housing for Lower or Very Low Income households through an agreement between the Developer and the U.S. Department of Housing and Urban Development (HUD) (“HUD-Restricted Units”). Definitions for capitalized terms may be found in the IHO and the Revised Guidelines.

### **II. Qualifying Criteria for HUD-Restricted Units (SJMC Section 5.08.560)**

In order to be eligible to be considered HUD-Restricted Units, the City Manager or their designee must determine that all the following criteria are met:

- A. The units must be rental units restricted to Affordable Rental Rates for households earning no more than sixty percent (60%) of the Area Median Income (AMI) adjusted for family size) pursuant to an existing unexpired agreement between the Developer and HUD;
- B. The use of the site upon which the units are located is not a nonconforming use;
- C. The units comply with all current applicable Building and Housing Codes;
- D. An environmental review (Phase I, and if needed, Phase II) must have been completed to the satisfaction of the City and any deficiencies corrected;
- E. A geological hazards review must have been completed to the satisfaction of the City indicating the site is free of all such hazards;
- F. A Physical Needs Assessment (determining if any items need repair, replacement, or maintenance) for the units, the property and the common areas must be performed, and any repairs completed prior to the acceptance of the units as HUD-Restricted Units; and
- G. The current lenders on the site consent to the recording of a forty (40) year inclusionary housing restriction on the units.

If the City determines that a Dwelling Unit qualifies as a “HUD-Restricted Unit,” then the unit is eligible to be used to satisfy the inclusionary housing obligation consistent with the requirements of the Ordinance and these guidelines. These units may not be used for credits or transfers.

The City of San José annually publishes limits that pertain to income and affordable rent or sales price for the City and posts these on its website.

### **III. Number of HUD-Restricted Units Required**

The Developer must provide HUD-Restricted Units equal to forty percent (40%) of the total number of Dwelling Units in the Residential Development.

*When computing the number of units required to satisfy the forty percent (40%) 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.*

At least 50% of those HUD-Restricted Units shall be affordable to Very Low-Income Households. For example, if the Residential Development has 100 units, the off-site requirement would be 5 units restricted to 80% of AMI, 5 units restricted to 60% of AMI and 10 Very Low-Income Inclusionary Units restricted to 50% of AMI. If the Developer wishes to provide HUD-Restricted Units to satisfy the inclusionary obligation, then 10 Units restricted to 80% of AMI; 10 Units restricted to 60% of AMI; and 20 Very Low-Income Units are required.

**Appendix A** contains guidance and standards for all off-site Inclusionary Units, including income qualification, Affordable Rental Rates calculations, and minimum standards for the units. Rehabilitated Units must comply with all requirements for off-site Inclusionary Units per **Attachment 2**.

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

Developers who propose to satisfy a project's Inclusionary Housing Obligation by providing HUD-Restricted Units must provide the information required by Section 4 of the Revised Guidelines, as well as the following additional requirements:

- A. Affirming that the Developer intends to use HUD-Restricted Units consistent with the standards in Section III;
- B. Detailed information about the HUD-Restricted Units, the property upon which they are located, and any associated common area, including:
  1. Year built,
  2. Total number of units,
  3. Identification of the specific units proposed to be "HUD-Restricted Units" for the purpose of satisfying the Residential Development's Inclusionary Housing Obligation,
  4. Unit type (e.g. townhouse, detached single-family) and tenure (e.g. For-Sale or Rental),
  5. Number of bedrooms and bathrooms,
  6. Current income restrictions on the units,
  7. Site plan(s), and
  8. Information sufficient to demonstrate that the proposed units would qualify as HUD-Restricted Units, as described in Section II.
- C. A copy of the current agreement between Developer and HUD;
- D. Statement of intent to perform a Physical Needs Assessment no more than six (6) months prior to the termination of the agreement between the Developer and HUD.
- E. Statement of intent to complete work on all items identified in the Physical Needs

Assessment as needing repair, replacement or maintenance at the time of the assessment, or as likely to require repair or replacement within three (3) years.

- F. A reliable financing mechanism for the ongoing administration and monitoring of the HUD-Restricted Units.
- G. A description of how a capital reserve for repair, replacement and maintenance shall be maintained for the term of the affordability restriction, with provision for sufficient initial capitalization and periodic contributions to the capital reserve.

**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 HUD-Restricted Units, including any agreement between Developer and HUD, to further document the Developer's intent to use such HUD-Restricted Units to satisfy its obligation. The Agreement will be recorded against both the Residential Development and the property containing the HUD- Restricted Units. The Agreement shall also stipulate that, unless otherwise required by the IHO, the restrictions on the HUD-Restricted Units shall be for forty (40) years and shall commence upon the initial sale or rental of the first market rate unit in the Residential Development subsequent to the approval of the Affordable Housing Compliance Plan. The Inclusionary Restrictions on the HUD-Restricted Units shall run concurrently with the agreement between the Developer and HUD.