

## **APPENDIX A: INCOME, RENT AND TENANT REQUIREMENTS FOR FOR-RENT INCLUSIONARY UNITS**

### **I. Inclusionary Renter Household Income Limits** (SJMC Sections 5.08.400.B, 5.08.600.A)

The Developer is responsible for verifying the income eligibility of Inclusionary Rental tenants, based on the following methodology and definitions.

#### **A. Household Composition Definition**

The Household is comprised of **all** eligible individuals who are currently living together at the same address and will continue to be living together in the Inclusionary Rental. New household members **cannot** be added to the application to income qualify for an Inclusionary Rental after initial submission of an application. In addition, the following individuals are not counted as part of the household: foster children, unborn children, children who are subject to a shared-custody agreement in which the child resides with the household less than 50% of the time, children being pursued for legal custody or adoption who are not yet living with the household at the time of application, and non-related live-in caretakers.

To be considered an Eligible Household Member, an individual must comply with the above criteria and meet one of the following criteria:

1. All household members who are 18 years of age or more (adult household members) must be included on the application to rent the inclusionary unit; or
2. Any minor individual who is a dependent listed on the most recent year's tax returns of an adult household member. All household members who are under 18 years of age must be the legal dependent of an adult household member.

#### **B. Household Income Limits**

To establish the eligibility of households who intend to occupy the Inclusionary Rental, limits are set on the amount of income that households (including all Eligible Household Members) can earn. These limits are based on the number of Eligible Household Members; the family size to be used for determining the Household Income Limit is the number of Eligible Household Members.

Each Inclusionary Rental Unit is designated with an income category. Onsite units may be designated for one hundred percent (100%), sixty percent (60%), fifty percent (50%) or thirty (30%) of the Area Median Income (AMI). Offsite units may be designated for eighty percent (80%), sixty percent (60%) or fifty percent (50%) of the AMI.

The City annually publishes an updated [schedule of income and rent limits](#). The

City publishes income limits for both state and federally regulated affordable housing units and these limits are sometimes different. Incomes limits for Inclusionary housing units are regulated based on information from the tables for Santa Clara County published annually by the California Department of Housing and Community Development (HCD) at 25 Cal. Code Reg Section 6932. The State only publishes income limits for moderate (120%), median (100%), low-income (~80%), very low-income (~50%) and extremely low-income (~30%). The State income limits often include adjustments which result in the income limits for a given category not exactly corresponding to the IHO target income category (i.e., the “low-income” limit may not be exactly 80% of the Median income). Where these Revised Guidelines refer to income categories based on their percentage of median income (i.e., “30% of AMI”) the income limits from the City’s published table should be used even in cases where those limits are not exactly the stated percentage of the median income. For example, the limit for 30% of AMI may actually be 33% of the median income.

Note that the state uses the term “Moderate Income” to refer to households earning 120% of AMI while San Jose’s IHO uses “Moderate Income” to refer to households earning either 80% or 100% of AMI in rental projects. For the purposes of the IHO, San Jose adopts the published income limits from HCD for extremely low income (~30%), very low income (~50%), low income (~80%) and median income (100%) and calculates income limits for the 60% of AMI category based on HCD’s published Median Income (100%) as shown in the City schedule.

The income limits table published by the City provides a different income limit for each household size for each income category (as well as several categories that are not relevant to the Inclusionary Housing program).

#### C. Household Income Definition

For income eligibility purposes, the gross annual income (income before deductions or exemptions) received by all members of the household 18 years of age or older (except for non-related live-in caretakers paid by an outside source who are not considered household members) will be considered. The gross annual income is determined by calculating the household’s total current monthly income and then multiplying that total by 12.

In the event that current monthly income deviates by more than 15% from the preceding 12-month average, the gross annual income will be determined by combining the preceding half year’s gross income with one-half year’s gross income at the current level.

#### D. Types of Income

1. All wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services, before payroll deductions;
2. The net income from the operation of a business or profession or from the

rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness, or any allowance for depreciation of capital assets);

3. Interest and dividends (including income from assets – see Excluded Income section below);
4. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;
5. Payments In Lieu of earnings, such as unemployment, disability compensation, and severance pay;
6. The maximum amount of public assistance available to household members, other than the amount of assistance specifically designated for shelter and utilities;
7. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the home;
8. All regular pay, special pay and allowances of a member of the Armed Forces (whether living in the dwelling or not) who is the head of household or spouse; and
9. Any earned income tax credit to the extent that it exceeds income tax liability.

#### E. Excluded Income

1. Casual, sporadic or irregular gifts;
2. Amounts that are specifically for, or in reimbursement of, medical expenses;
3. Lump sum additions to Household assets (as defined in the Assets section below), such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains, and settlement for personal losses;
4. Monies received for educational scholarships paid either directly to students, or to the educational institution, as well as amounts paid by the Government to a Veteran of the U.S. Armed Forces for use in meeting the costs of tuition, fees, books, and equipment. Any money received over and above the associated educational costs listed are not exempt and considered income;
5. Special pay to a person in the U.S. Armed Forces who is head of household who is deployed and exposed to hostile fire;
6. Foster childcare payments;
7. The value of benefits received from the Supplemental Nutrition Assistance Program.

8. Payments to volunteers under the Domestic Volunteer Service Act of 1973;
9. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes;
10. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
11. Payments received from the Job Training Partnership Act; and
12. Income derived from the disposition of funds of the Grand River band of Ottawa Indians.

F. Determination of Income from Assets

To determine a Household's income eligibility for occupancy of an Inclusionary Rental, a percentage of the Household's assets (as defined in the Assets section below) shall be added to the Household income only when the Household's assets exceed the annual Household Income Limit. Please refer to the Housing Department website for current [income limits](#).

When the total of the Household's assets exceeds the Household Income Limit for the Household, then the amount of income attributed to these assets shall be computed as the higher of:

1. The actual annual income generated from the assets; or
2. 2.5% of all assets in excess of the Household Income Limit.

G. Assets

Assets are defined as:

1. Cash savings, including but not limited to bank accounts, credit union accounts, certificates of deposit, and money market funds;
2. Marketable securities, stocks, bonds and other forms of capital investment;
3. Inheritance and lump sum insurance payments, already received;
4. Settlements for personal or property damage already received;
5. Equity in real estate including residential and commercial property and unimproved land; and
6. Other personal property that is readily convertible into cash.

The following are not considered assets:

1. Ordinary household effects including furniture, fixtures, and personal property;
2. Automobiles used for personal use; and
3. Cash, securities, stocks, bonds, and other forms of capital held in a tax deferred retirement plan recognized by the Federal Internal Revenue Service.

## **II. Affordable Rental Rates for Inclusionary Units (SJMC Section 5.08.400.A)**

Affordable Rental Rates are set by the City annually based on the AMI as annually published by HCD at 25 Cal. Code Reg Section 6932.

For the purposes of the IHO, the City publishes maximum rents based on published income limits in 25 CCR 6932. Maximum rents are calculated based on the relevant income limits assuming 30% of each income limit for housing costs including utilities. These rents are listed on City's website of the [schedule of income and rent limits](#).

For projects containing Inclusionary Rentals that are not financed with federal Low Income Housing Tax Credits, the Affordable Rental Rates are set based on California HCD occupancy guidelines which assume one person per bedroom plus one. For these projects, the "family size" is equal to one person greater than the number of bedrooms in the unit. For the purpose of determining the Affordable Rental Rate, each Inclusionary Rental shall be adjusted for family size appropriate for the unit based on the number of bedrooms as follows: studio = one person, 1-bedroom = two persons, 2-bedrooms = three persons, 3-bedrooms = four persons, and 4-bedrooms = five persons.

However, if federal statutes apply (i.e., low-income housing tax credits have been allocated by the California Tax Credit Allocation Committee (TCAC) the following occupancy guidelines may be used: 1.5 persons per bedroom. Owners with tax credit projects may make an election to use these TCAC occupancy guidelines for an entire property at the time the Affordable Housing Agreement is recorded.

Affordable Rental Rate includes all charges related to occupancy of the unit including utilities, parking fees, fees for use of common facilities and other fees and charges. If utilities are paid by tenants of the Inclusionary Rentals, the rent for the Inclusionary Rentals must be adjusted downward for tenant utility expenses, calculated in accordance with the utility allowances published by the Santa Clara Housing Authority annually.

In situations where there are multiple affordability restrictions/income or rent limits set by different funding requirements or jurisdictions, the Project must adhere to the strictest requirement so it can meet all the layering restrictions.

The Affordable Rental Rate for Dwelling Units that do not include private cooking and/or bathroom facilities shall be ninety percent (90%) of the otherwise applicable Affordable Rent for studio (0-bedroom) Dwelling Units.

## **III. Occupancy Conditions**

The approved tenant(s) must occupy the Inclusionary Rental as their principal residence during the entire term of the lease. If an additional occupant (roommate, family member, etc.) moves into the Inclusionary Rental, they will be considered part of the existing household. As a condition for lease or occupancy of a Inclusionary

Rental, tenant must be required to provide notice to the owner/property manager, prior to the move in date of a new household member, and the entire household (including the new occupant) will be reevaluated to determine eligibility, including household income requirements. If the tenant(s) fail to receive approval from the owner/property manager for any changes in occupancy or if the tenant(s) subleases the property or fails to provide the annual Tenant Income Certification, the tenant shall be in violation of its lease and will no longer qualify as a Inclusionary Rental tenant.

If the owner/property manager suspects that there have been any changes to the occupancy of the Inclusionary Rental, the owner/property manager shall make a reasonable effort to determine who is occupying the unit.

#### **IV. Minimum Household Size**

To be eligible for a Inclusionary Rental, a household must be of a size at least equal to the number of bedrooms in the Inclusionary Rental. For example, in order to rent a two- bedroom unit, a household must have at least two Eligible Household Members. Minimum household sizes for Inclusionary Rentals are as follows: 1-bedroom unit = one person, 2-bedroom unit = two persons, 3-bedroom unit = three persons, 4- bedroom unit = four persons. A household is comprised of all eligible individuals who are currently living together at the same address and will continue to be living together in the Inclusionary Rental.

#### **V. Annual Rent Adjustments**

The maximum Affordable Rental Rates will be adjusted annually based on the most recently published Area Median Income limits for Santa Clara County by family size. The City or its agent will notify the property owner/property manager of the new rental rates. If the owner chooses to raise rents, the tenant must be given a sixty (60) day notice before any rent increase.

#### **VI. Ongoing Compliance with Affordability Restrictions (SJMC Section 5.08.710)**

The developer of each project containing Inclusionary Rentals is required to submit a Biennial Compliance Report and pay any City monitoring fees. The Biennial Compliance Report (BCR) consists of the following three documents which may be obtained from the Housing Department's [website](#).

1. Tenant Income Certification (TIC): Completed and signed by residents residing in the Inclusionary Rental. It is used to document family size, income and other financial information. Residents must be recertified annually to maintain eligibility at the inclusionary project.
2. Certified Rent Rolls: A report listing each affordable unit, the resident's name, rental rate, household income, the household size, and any other information regarding property tenancy. Rent Rolls should be electronically submitted in an excel spreadsheet provided by the Department of Housing. The City reserves the right to change the Rent Roll form at any time.

3. 3. Certificate of Continuing Program Compliance: A signed statement attesting that the project is in compliance with the City's Inclusionary Housing Agreement.

## **VII. Annual Tenant Income Certification (TIC) (SJMC Section 5.08.710)**

Leases for Inclusionary Rentals shall provide for submittal of signed TIC forms upon written request of the owner or property manager and if tenants fail to submit the form within thirty (30) days of receipt of a written request, then this is a violation of the lease, and the lease shall automatically terminate. If the renter fails to comply after notice, the owner or property manager will institute eviction proceedings. If a Very Low-Income inclusionary tenant's household income increases and exceeds the income limit for Very Low Income households but does not exceed the income limit for a Moderate Income household, then the tenant's rent will be increased to 30% of their actual certified income, and the tenant may remain in the unit. If a tenant's household income increases and exceeds the Moderate-Income Limit, the tenant's rent will be increased to 30% of their actual certified income. If a tenant's household income increases and exceeds 140% of the Moderate-Income Limit, the tenant will be given three months to locate alternate housing and vacate the inclusionary apartment unit. A three-month extension may be granted in cases of extreme hardship. The property may also offer the tenant a market rate unit.

## **VIII. Terms of Tenancy**

Inclusionary Rental tenants will be subject to the same conditions of tenancy as other tenants occupying the same property, except for terms relating to occupancy, income eligibility, recertification, and limits on rents. The initial lease term for the Inclusionary Rental will be for one year.

## **IX. Availability of New Units for Lease (SJMC Section 5.08.600.F)**

An Inclusionary Rental may not be leased until the City has approved the unit for occupancy.

## **X. Marketing /Leasing of Units**

The Developer is responsible for marketing the Inclusionary Rentals and identifying qualified tenants that meet the income eligibility requirements of the Inclusionary Rental. In reviewing each candidate, the owner or property manager may apply the same tenant selection criteria, such as past performance in meeting financial obligations and credit references, as those applied to applicants for non-inclusionary units on the property, except for those standards relating to income eligibility. The developer may not lease Inclusionary Rentals to Employees of the Developer or any affiliates or to family members of Employees or Officers of the Developer.

The Inclusionary Rentals within a Residential Development will not be operated at less than ninety percent (90%) occupancy for more than six consecutive months unless market conditions otherwise dictate. Developer shall post each vacant

Inclusionary Rental as soon as possible but not later than ten (10) days after notice of an impending vacancy and provide advanced notice of the opening of any wait list on the county-wide listing service site located at [www.scchousingsearch.org](http://www.scchousingsearch.org) or such other site as may be requested by the City.

### **XI. Owner/Manager Certification**

Prior to the rental of the first Inclusionary Rental on a property, the owner/property manager will sign a certification of receipt of these Guidelines with a statement of intent to manage the Inclusionary Rentals according to these procedures. Developers will also submit to the City for approval a management plan consistent with the City's standards for management of affordable units. Subsequent apartment owners/property manager may be asked to sign certifications of receipt of these Guidelines.

### **XII. Terms of Affordability Covenants**

The deed restrictions applicable to Inclusionary Rentals shall remain in effect for 99 years from the date of recordation of the Inclusionary Housing Agreement. Future owners of the property will abide by all the administrative procedures and by the conditions in the recorded Inclusionary Housing Agreement for the entire 99-year period from date of recordation.

Affordable Housing Developments may request a term of affordability of less than ninety-nine (99) years, but not less than fifty-five (55) years from the recording of the Development's Notice of Completion. This reduced affordability period will be allowed only in cases where a shorter period is strictly required for financing due to state or federal regulations or in order to meet the "true debt" test by a senior lender or investor. Requests must be made in writing to the Housing Department with a letter or other documentation from a lender or investor indicating the specific state or federal regulation that would prevent them from financing the project with a 99-year affordability term. Requests will be approved by the Director of Housing.