

APPENDIX B: PRICING AND BUYER REQUIREMENTS FOR FOR-SALE INCLUSIONARY UNITS

This section provides standards for the sale and resale of for sale inclusionary units whether provided onsite or off site.

I. Pricing For-Sale Inclusionary units (SJMC Sections 5.08.400.B, 5.08.600.A)

Inclusionary Units are sold at their Fair Market Value, as defined below but discounted by an amount that is equal to the difference between the Fair Market Rate value of the home and the Affordable Housing Cost as adjusted to an Affordable Sales Price pursuant to these Guidelines, and the buyer of an Inclusionary Home will acknowledge the discount provided under the IHO by execution of subordinate shared appreciation loan documents and agree to the income restriction and other conditions. In escrow, the buyer executes a City promissory note and other subordinate shared appreciation loan documents that reflect this cost differential, also referred to as “Developer Discount.”

"Fair Market Value" for the purposes of the IHO and the Guidelines, means the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obligated to sell, and a buyer, being ready, willing and able to buy but under no particular or urgent necessity for so doing, each dealing with the other with full knowledge of all the uses and purposes for which the Inclusionary Home is reasonably adaptable and available but as though there was no affordability requirement imposed on the home. The Fair Market Value shall be verified by a licensed real estate appraiser, commissioned by the borrower or borrower's lender, prior to the close of escrow.

The Developer must provide 90 days' advance written notice to the City of the initial marketing of the Inclusionary Units. The Housing Department will calculate the Affordable Sales Price (as determined from the Affordable Housing Cost) pursuant to these Guidelines which will then be identified as the maximum affordable price that may be charged to prospective homebuyers for the Inclusionary Units within a Residential Development. This calculation of Affordable Sales Prices for the Units shall be performed by the Housing Department no less than 90 days before the date of the first close of escrow for an Inclusionary Home in a project and the values (Affordable Sales Price and Fair Market Value) shall be updated every 90 days thereafter.

A. Method of Calculating the Affordable Housing Cost

Pursuant to Health & Safety Code Section 50052.5, the Affordable Housing Cost for an owner-occupied for-sale moderate income unit is 35% of 110% of the AMI adjusted for family size. The monthly Affordable Housing Cost is calculated by dividing the Affordable Housing Cost by 12.

Affordable Housing Cost is determined by the City annually based on the annual change in the AMI as published by the California Department of Housing and Community Development (HCD) at 25 Cal. Code Reg Section 6932.

The City annually publishes the [schedule of incomes](#). The income limits table provides a different income limit for each household size.

For the purposes of the IHO Moderate Income For-Sale units, San Jose adopts the income limits (approximately 120% of AMI) published by the California Department of Housing and Community Development Department at 25 Cal. Code Reg Section 6932.

The income limits table provides a different income limit for each household size.

For the purpose of the IHO, the Affordable Housing Cost is calculated assuming a family size equal to the number of bedrooms in the Inclusionary Unit plus one. Specifically, each Inclusionary Unit shall be adjusted for family size appropriate for the unit based on the number of bedrooms as follows: a studio = one person, one bedroom = two persons, two bedrooms = three persons, three bedrooms = four persons, and four bedrooms = five persons.

B. Method of Calculating the Affordable Sales Price

This monthly Affordable Housing Cost is intended to cover all the purchaser's housing costs, so in order to determine the maximum affordable sales price ("Affordable Sales Price") that Affordable Housing Cost amount must be adjusted as described below.

The City uses the procedures adopted by HCD in 25 Cal. Code Reg. Section 6920 as a basis to establish the Affordable Sales Price based on the Affordable Housing Cost.

Determining the Affordable Sales Price from the monthly Affordable Housing Cost involves a three-step process:

1. Subtract applicable property taxes, homeowners' association fees, annual maintenance and repair allowance, insurance – including hazard insurance, mortgage insurance and other applicable insurance – and utilities cost from the monthly Affordable Housing Cost amount. The remainder is the amount that would be available to pay the monthly mortgage payment (monthly **Affordable Mortgage Payment**).

To establish a consistent methodology, the Housing Department has defined the following criteria for calculating housing related expenses that must be covered by the Affordable Housing Cost in addition to the mortgage payment:

- a. Homeowner Association (HOA) Fees – Actual amount approved by the State of California Department of Real Estate for the project.
- b. Property Tax – The Housing Department shall use the standard of 1.25% of the Market Price of the unit. In the event that any special assessments bring the property tax rate above 1.25%, the City will utilize the actual property tax rate for the Inclusionary Home.
- c. Utility Costs – See current Utility Allowance schedule provided by the Santa Clara County Housing Authority. The utility allowance must include heating, cooking, other electric, water heater, water, and

garbage, if not included in HOA fees. The utility allowance changes periodically so please check the Santa Clara County Housing Authority website to obtain current information www.hacsc.org.

- d. Hazard Insurance Cost – If not included in HOA fees, the City will estimate the monthly cost of hazard insurance at \$75. This amount may be adjusted for inflation.
 - e. Mortgage Insurance Premium – If the calculated amount of the Financed Affordable Loan is less than 20% below the Fair Market Value of the property (and thus Private Mortgage Insurance is required) , the Housing Department will establish a market rate Private Mortgage Insurance (PMI) premium corresponding to the rates published by the Federal Housing Administration (FHA).
 - f. Maintenance and Repair Allowance of \$25 per bedroom, per month. This amount may be adjusted for inflation.
2. Follow the process below to calculate the amount of the mortgage loan that could be obtained (**Financed Affordable Loan**) based on the amount of monthly Affordable Mortgage Payment as determined in Step 1 above.
 - a. The mortgage loan interest rate shall be based on a 5% down payment, thirty (30) year, fully amortizing fixed rate mortgage based on the Freddie Mac Weekly Mortgage Survey, or comparable index, at the time of pricing, as determined by the Housing Department. This mortgage amount does not include any pre-paid points or loan fees.
 - b. Using the Monthly Affordable Mortgage Payment, the interest rate calculated above, and a fully amortized fixed rate mortgage without points or loan fees to determine the maximum Financed Affordable Loan.
 3. Add to the Financed Affordable Loan amount determined in Step 2 an assumed amount of borrower’s own funds of 5% for a down payment to determine the **Affordable Sales Price**.

C. Waiver Required (SJMC 5.08.400.B.4)

A Developer may apply for limited term waiver of the terms of the subordinate shared appreciation documents required by SJMC Section 5.08.600.A, which shall be granted if the appraised unrestricted market value of an inclusionary home is less than 5% greater than the Affordable Sales Price (as determined from the Affordable Housing Cost). The term of the waiver shall not exceed 6 months. The waiver shall require that the Inclusionary Home be sold at or below the Affordable Sales Price and that the Inclusionary Home shall initially be owner-occupied. In the event that the waiver is granted, requirements of the subordinate shared appreciation documents will be waived and the City will not require income verification for the purchaser.

II. Homeowner Inclusionary Housing Requirements (SJMC 5.08.600.F)

A. First Time Home Buyer Requirement

Purchasers of Inclusionary Units must be certified by the Housing Department as First Time Home Buyers. In order to be certified as a First Time Homebuyer, the home buyer must be the unit’s Principal Occupant, and cannot hold or have held an

Ownership Interest, in whole or in part, of a residential property during the three-year period immediately prior to the home buyer(s) certification of eligibility by the Housing Department to purchase an Inclusionary Home unless one of the following is true:

- i. Is a “displaced homemaker” who within the past two years has not worked on a full-time basis in the labor market, experiencing difficulty in obtaining employment, and has worked primarily without pay to care for the home and family;
- ii. Is a single parent who is unmarried or legally separated from a spouse, is pregnant, or has sole or joint custody of at least one minor child, and does not have an Ownership Interest in residential property; or
- iii. Is a current owner-occupant of a mobile home that does not meet local building codes, and the home cannot be brought into compliance for less than the cost of constructing a new home.

B. Prohibition on Sale to Employees or Family Members of Developer

The developer may not sell Inclusionary Units to Employees of the Developer or any affiliates or to family members of Employees or Officers of the Developer.

C. 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 Home. New household members **cannot** be added to the application to income qualify for an Inclusionary Home 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 for income qualification purposes documents and must appear on the application to purchase the Inclusionary Home; 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.

D. Household Income Limits for Buyers

To establish the eligibility of households who intend to purchase an Inclusionary Home, limits are set on the amount of income households (including all Eligible Household Members) can earn. These limits are based on the Area Median Income (AMI) and the number of Eligible Household Members.

The IHO allows moderate-income households to purchase Inclusionary Units. Moderate-income households are defined as those with gross incomes between 80% and 120% of AMI. The City annually updates the [AMI](#) and income limits and publishes it on its website.

E. Household Income Definition

Households may not have an income in excess of 120% of AMI (Household Income Limit). The family size to be used for determining the Household Income Limit is the number of Eligible Household Members. 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.

F. 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 or not living in the dwelling) who is the head of household or spouse; and
9. Any earned income tax credit to the extent that it exceeds income tax liability.

G. 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 child care 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.

H. Determination of Income from Assets

To determine a Household's income eligibility for purchase of an Inclusionary Home, 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 of 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.

I. 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 non-residential real estate such as commercial property and unimproved land, except as described as “not considered asset” iii below; 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;
3. Any deposits on Inclusionary Home (Equity on a parcel or lot on which an Inclusionary Home is to be built); and
4. Cash, securities, stocks, bonds, and other forms of capital held in a tax deferred retirement plan recognized by the Federal Internal Revenue Service.

J. Execution of Subordinate Shared Appreciation Loan Documents; Restrictions (SJMC Section 5.08.600)

Each purchaser will be required to execute a promissory note in favor of the City of San José, secured by a deed of trust for the amount of the Subordinate Shared Appreciation Loan. The City will also require a recorded Affordability Restriction as described in Part IX, Section 10 below and may require execution of a loan agreement and other ancillary documents. The Subordinate Shared Appreciation Loan amount is a Developer Discount, which is the difference, if any, between the restricted Affordable Sales Price of the Inclusionary Home and its Fair Market Value at the time of the initial sale to the purchaser.

If the property is subsequently transferred to a non-qualified affordable buyer, the Subordinate Shared Appreciation Loan would become due and payable along with a prorated percentage of any equity received in the sale to a non-qualifying buyer under the Ordinance.

The Subordinate Shared Appreciation Loan would not become due and payable if the property is sold to a qualified buyer under the Ordinance who agrees to assume the loan, in an arm’s length transaction. If the property is sold to a qualified buyer under the Ordinance who does not agree to assume the loan, then the Subordinate Shared Appreciation Loan would become due and payable along with a prorated percentage of any equity based on the then Fair Market Value of the unit.

The Inclusionary Home shall be the purchaser’s primary place of residence. To be considered as a principal place of residency, the Inclusionary Home must not be rented or leased unless the purchaser has a household hardship and has applied for and obtained an emergency limited term authorization to rent approved by the Director of Housing. In the event that the purchaser fails to comply with this requirement the City may enforce and pursue any and all remedies in law or equity for such violations, including, but not limited to, declaring the Subordinate Shared

Appreciation Loan due and payable.

The Director of Housing may grant a temporary hardship exception if: (1) the Owner must relocate due to a medical emergency, (2) the Owner loses their job or must relocate, or (3) if due to economic hardship the Owner becomes unable to pay the Owner's monthly housing costs and the value of the Assisted Unit, in the City's judgment, is less than the amount owed on the Assisted Unit. A temporary hardship exception must be obtained in advance and may not exceed twelve (12) months in duration. An Owner seeking a temporary hardship exception must submit a request in writing and provide documentation of the applicable medical emergency, job loss/relocation, reduction of Owner's income or other reason for hardship, along with information on the loan balance and Assisted Unit value.

Upon request of the Housing Department, the purchaser of the Inclusionary Home must provide, within 30 days, documents verifying the purchaser's occupancy of the home as the purchaser's primary residence, that the home is not rented or leased, and that there have been no changes in the title to the home. Such documents may include but are not limited to utility bills, property tax bills, and mortgage statements reflecting the owners name and address of the Inclusionary Home. Pursuant to the Subordinate Shared Appreciation Loan documents, an annual submittal will be required thereafter, along with a monitoring fee.

K. Execution of an Affordability Restriction (SJMC Section 5.08.600.A)

Each purchaser of an Inclusionary Home will be required to execute and consent to recording of an Affordability Restriction for their unit at close of escrow and shall be subject to the terms of the Affordability Restriction for a duration of ninety-nine (99) years. The restriction will be recorded and "run with the land" such that it is binding on any successor to the purchaser.

The Affordability Restriction requires that the purchaser occupy the home as a principal residence, unless a hardship exception is granted. It also requires that any sale of the Inclusionary Home be limited to sale to a new qualified affordable purchaser at an Affordable Sales Price for a term of ninety-nine (99) years. A request to sell to a non-qualified buyer must be approved by the City, and the sale to a non-qualified buyer must be consistent with the terms of the City's adopted equity share program and the Ordinance.