

**PROCEDURES FOR COMPLYING WITH  
THE CITY OF SAN JOSE  
INCLUSIONARY HOUSING POLICY  
IN REDEVELOPMENT PROJECT AREAS**

**December 15, 2006**

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## **I. Introduction**

State law requires that 15% of residential development occurring in project areas adopted after January 1, 1976 be subject to long-term affordability restrictions, to be fulfilled on a cumulative basis every 10 years. To satisfy the inclusionary requirement, the City and Agency Board adopted an Inclusionary Housing Policy entitled “City of San Jose Policy On Implementation of the Inclusionary Housing Requirement of Health and Safety Code Section 33413(b) (2)”. The City’s Inclusionary Housing Policy requires developers to fulfill the Agency’s production requirement on a project-by-project basis and has increased the required percentage of inclusionary units from 15% to 20% for rental projects and has provided the option of 15% or 20% for for-sale projects. The Inclusionary Housing Policy prohibits Housing Department funds from being used to assist developers in providing the income restricted inclusionary units required by the Policy. The inclusionary requirement does not apply in the following Redevelopment Project Areas because they were formed before 1976: Park Center Plaza, San Antonio Plaza, Pueblo Uno and the original Rincon de los Esteros Project Area.

The Inclusionary Housing Policy is administered by the Redevelopment Agency, Department of Housing, and the Department of Planning, Building and Code Enforcement (PBCE). The Redevelopment Agency’s Housing and Real Estate division prepares the Affordability Agreement and is charged with assisting developers with understanding the Inclusionary Housing Policy, and options available to satisfy the inclusionary requirements. The Planning Division of PBCE administers the entitlement process for all private development and ensures that development permits not be issued by the Planning Department for any projects affected by the City’s Inclusionary Housing program until an Affordability Agreement is executed by the developer. The Housing Department monitors developer compliance with the inclusionary requirements, certifies proposed buyers for the designated inclusionary units, establishes and approves the pricing of inclusionary units and reviews annual re-certifications of renters by the property managers. The Housing Department also assists buyers in obtaining primary and secondary financing for the inclusionary units when such funds are available.

These Procedures for Complying with the City of San Jose Inclusionary Housing Policy In Redevelopment Project Areas were prepared for developers, buyers, and renters to explain the requirements and options of the Inclusionary Housing Policy. The Inclusionary Housing Policy is an attachment to these procedures.

This guide:

- Provides the Legal Authority related to Inclusionary Housing requirements;
- Explains what an Affordability Agreement is and how to request an Agreement be prepared
- Describes the Small Project Exemption/Exceptions available to developers;
- Outlines the options available to developers to meet the inclusionary requirements, including how to calculate the number of inclusionary units required for each development and how to calculate the maximum allowable price.
- Provides contacts for the Redevelopment Agency, Housing Department and Planning Division.

## **II. Legal Authority Regarding Inclusionary Housing**

Inclusionary housing requirements are set forth in the State of California Redevelopment Law, Health and Safety Code Section 33413(b) (2). The way in which the City of San Jose implements the State inclusionary housing requirements is set forth in the City of San Jose Policy on Implementation of the Inclusionary Housing Requirement Section 33413(b)(2). Affordable Housing Cost Requirements are found in the Health and Safety Code Section 50052.5.

## **III. Inclusionary Housing Compliance Plan and Affordability Agreement Application**

The Inclusionary Housing Compliance Plan and Affordability Agreement Application, (“Compliance Plan Application”) is the document that indicates the developer’s elected options in order to fulfill its inclusionary obligation.

To obtain the Compliance Plan Application from the Redevelopment Agency use one of the following methods:

- ❑ Download the one page application from [www.sjredevelopment.org](http://www.sjredevelopment.org)
- ❑ Call (408) 535-8500 and request to speak to the Affordability Manager in the Housing and Real Estate Division.
- ❑ Submit a written request to:

The Redevelopment Agency of the City of San Jose  
Housing & Real Estate Division, Attention Affordability Manager  
200 East Santa Clara Street, Tower, 14<sup>th</sup> Floor  
San José, CA 95113

The Compliance Application can also be obtained from the Planning Department as part of developers' early meetings with Planning Staff.

Completed Compliance Plan Applications must be mailed or fax'd to the Redevelopment Agency (Attention: Affordability Manager) for sign-off and approval. Once the Compliance Plan Application is approved, an Affordability Agreement will be drafted by the Agency for developer's review and execution based on the submitted Compliance Plan Application.

#### **IV. Income Limits Defined**

- Very Low Income is defined as 30 to 50% of the County's reported median income.
- Low Income is defined as 50 to 80% of the County's reported median income; however, for purposes of determining maximum allowable sales prices, the upper limit is lowered to 70% of the County's reported median income.
- Moderate Income is defined as 80 to 120% of the County's reported median income; however, for purposes of determining maximum allowable sales prices, the upper limit is lowered to 110% of the County's reported median income.

Median income is adjusted for family size as shown in the attached Income Table for Santa Clara County. Income limits are published by the California Department of Housing and Community Development and available on their website at [www.hcd.ca.gov](http://www.hcd.ca.gov). HCD does make minor adjustments to the income limits based on special circumstances and conditions.

#### **V. Small Project Exemption and Exception**

##### **A. Exemption for Projects with Ten or Fewer Units**

Projects that have ten (10) or fewer units are exempt from the inclusionary housing requirement and not subject to the Inclusionary Housing Policy. This provision is by right and does not require City Council or Agency Board approval. Such projects are not required to provide income restricted inclusionary units. The developer does not need to complete a Compliance Plan Application or execute an Affordability Agreement. However, a phased development expecting a total unit count that exceeds the 10 unit limit is not eligible for the exemption.

B. Exception for Projects with Eleven to Twenty Units

Projects that are eleven (11) to twenty (20) units have the option, by right, to either provide the inclusionary units or pay an in-lieu fee for each required inclusionary unit. If a developer elects to pay the in-lieu fee, the Redevelopment Agency shall, upon payment of the in-lieu fee, release the property from any obligation to provide inclusionary units.

The current in-lieu fee, as set forth in the City Fee Schedule (Rate Resolution) is \$65,000 per unit for for-sale projects and \$71,400 per unit for rental projects. The in-lieu is reviewed annually by the Housing Department for possible change.

Developers electing to pay the in-lieu fee will have two options: (1) Pay the in-lieu fee, at the current rate, based on 20% of the units as part of the issuance of the site development permit; or (2) Wait and pay the in-lieu fee at whatever the rate is at the time but prior to the first unit being sold or rented. **If the Developer fails to pay the in-lieu fee prior to close of escrow or rental of the first unit, then the Developer shall be deemed to have elected to provide the required number of inclusionary units and the fee option will no longer be available** If a developer elects to use option 2 and wait until prior to the first unit being sold or rented, an Affordability Agreement will be required to be executed and recorded prior to the issuance of a site development permit. Upon full payment of the in-lieu fee the Agency will remove the Affordability Agreement as an obligation to the property.

C. Exception for Project with Development Agreements

If the City Council approves a Development Agreement and pursuant to such agreement, the developer agrees to provide a greater number and/or greater level of affordability in terms of the required sales price or rents then the location, construction, and phasing of inclusionary units can be deem to be consistent with the City's Inclusionary Housing Policy.

**VI. In-Lieu Fee for a Fractional Unit**

All projects subject to the Inclusionary Housing Policy can, without City Council or Agency Board approval, pay an in-lieu fee for any fractional units determined to be required. If the result of the developer's calculation to determine the required number of inclusionary units is a fraction, the developer may either round up and provide an additional inclusionary unit within the project or make an in-lieu payment for the fractional unit. Developers also have the choice in the timing of the payment of the in-lieu fee for a fractional unit. The developer can pay the

in-lieu fee at the time the first unit is sold/rented or at the time the affordability agreement is executed, but there is a risk in waiting to pay the in-lieu fee as the in-lieu fee may increase during the time it takes to build the housing project.

For example, a developer of a 16 unit for-sale project would be required to provide 3.2 inclusionary units. The developer may provide 3 inclusionary units and pay an in-lieu fee for the 0.2 units (0.2 units times the current in-lieu fee of \$65,000 equals \$13,000) or may round up and provide 4 inclusionary units and pay no in-lieu fee.

## **VII. For-Sale Projects**

### **A. Developer Requirements and Options**

Notwithstanding the small project exception discussed above in section V, Developers of for-sale units have three options to meet their inclusionary requirements for homeownership projects:

Option 1: Make available at least twenty percent (20%) of the for-sale units developed at an affordable housing cost to individuals or families who are of moderate or low income.

Option 2: Make available a total of at least fifteen percent (15%) of the units at an affordable housing cost, with at least six percent (6%) of the total project units set-aside for very low-income households, and the remaining balance (9%) for moderate or low-income households.

Option 3: Request City Council approval to pay an in-lieu fee instead of providing the required inclusionary units. This option requires a City Council finding of economic hardship for the project and that an equal number of other for-sale units have been identified that will be available in the City on a similar time schedule and with the same or greater affordability restrictions as would be required of the developer's project. These replacement units must be new affordable housing units not previously committed to satisfy an affordability requirement. The developer needs to contact the Redevelopment Agency's Affordability Manager to begin this process.

The developer is to select from the options above by completing the Compliance Plan Application discussed in section III.

## B. Calculating the Number of Inclusionary Units

To calculate the number of inclusionary units required:

For Option 1 - Multiply the total number of units by 20 %

For Option 2 - Multiply the number of units by 15%, with at least six percent (6%) of the total project units set-aside for very low-income households, and the remaining balance of units made available to moderate or low income households. In determining the final number of very low and moderate/low income units, the developer may have to round to the nearest whole unit to reach the required split of the total 15% inclusionary units for the project, but at all times the at least six percent (6%) threshold must be maintained either through inclusionary units or through a combination of inclusionary units and the payment of the required in-lieu fee for fractional units. For example: consider a project with 80 units. The total number of inclusionary units required is 12 ( $15\% \times 80$ ). Next step is to split the 12 inclusionary units into very low and moderate/low income units. ( $6\% \times 80$ ), the result is 4.8 very low-income units and ( $9\% \times 80$ ) the result is 7.2 moderate / low-income units. To determine the final correct split 4.8 would be rounded up to 5 and 7.2 units would be rounded down to 7 to provide the required 12 total inclusionary units assuming the fractional unit in-lieu fee option is not selected. In the case where in-lieu fee option is selected the inclusionary unit split would be 4 very low income units and 7 moderate/low income units plus a payment of the in-lieu for one inclusionary unit. It should be noted that the at least 6% very low income is a minimum threshold and should more units be provided at this level, the moderate/low income requirement would lessen commensurately.

If the number of units derived from either option is a whole number the developer must provide that number of units. If this number results in a fractional number, rounded to the nearest tenth, the developer may either round up and provide an additional inclusionary unit or make an in-lieu payment for the fractional amount.

The current in-lieu fee for for-sale units, as adopted by the City Council, is \$65,000 per unit. Therefore, each tenth of a unit would currently require a \$6,500 payment to the Housing Department to fund affordable housing developments. As an illustration, for a project required to provide 3.9 inclusionary units the developer would have the option to provide 4 inclusionary units or provide 3 inclusionary units and pay \$58,500 ( $0.9 \times \$65,000$ ) to the Housing Department as an in-lieu fee at the time the Affordability Agreement is executed.

### C. Pricing For-Sale Inclusionary Units

The maximum price that can be charged for inclusionary units is established by adding the loan that can be supported by the defined “Affordable Housing Cost” and the amount of the homebuyer’s down payment.

The Affordable Housing Cost (“AHC”) calculation required by State law has two elements. First, the household size is defined based on the number of bedrooms in the unit. The defined household size is equal to one person greater than the number of bedrooms in the unit and sets the maximum allowable household size for the unit. For example, the defined maximum household size for a three-bedroom unit is four persons.

Next, the applicable AHC limit is obtained by multiplying a required percentage of income times a required percentage of Area Median Income for the defined household size.

- 1) Moderate-Income Units: 35% x 110% of AMI
- 2) Low-Income Units: 30% x 70% of AMI
- 3) Very Low-Income Units: 30% x 50% of AMI

Developers will prepare the pricing calculations at the time they market the units for sale. The Redevelopment Agency or Housing Department will provide the developer with assistance, as needed, in establishing a sales price for the inclusionary units. The Housing Department will approve the final pricing calculations.

**Regardless of the maximum housing price established in the calculation, all inclusionary units must be sold to buyers whose incomes are at or less than the corresponding very-low, low or moderate income ceiling, published by the California Housing and Community Development Department (HCD), for the buyers’ actual household size. In all cases, the buyer’s household income may not exceed the HCD published income levels at the time the units are purchased.**

To determine the maximum sales price from the monthly AHC involves a three-step process:

1. First, subtract applicable property taxes, homeowners’ association fees, annual maintenance and repair allowance, insurance – including hazard insurance, mortgage insurance and other applicable insurance - and utilities costs from the monthly Affordable Housing Cost amount. The

remainder is the amount that would be available to pay the monthly mortgage payment.

2. Second, calculate the amount of mortgage loan based on the amount of monthly mortgage payment (amount that can be carried by the net amount indicated in Step 1 above).
3. Third, add to the loan amount the assumed amount of borrowers own funds for down payment to determine the maximum affordable price.

To establish a consistent policy regarding the methodology to set a maximum selling price, City of San Jose Redevelopment Agency and Housing Department have developed the following rules for calculating the maximum housing price. Developers are permitted to use the actual numbers of prospective purchasers except when noted below.

1. Household Income Used to Establish the Affordable Housing Cost:  
Use the benchmark standard as required by State Law (Section 50052.5) not the actual income of the homebuyer. For a moderate income unit, set the household income level equal to 110% of the Median Household Income for a household size equal to one person greater than the number of bedrooms in the unit. For low-income units the percentage is set at 70% of County Median Income and for very low-income units the percentage is set at 50% of County Median Income. Household income information is published by HCD each calendar year.
2. Costs for Housing Related Expenses:
  - i. Homeowner Association Fees (HOA) – Actual amount approved by the State of California Department of Real Estate for the project
  - ii. Property Tax – Actual tax rate for the parcel, with the value based on the Market Price of the unit
  - iii. Utility Costs – Use current utility allowances 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 of possible updates to this schedules @ [www.hacsc.org/utility\\_allowances.htm](http://www.hacsc.org/utility_allowances.htm)
  - iv. Insurance Cost – If not included in HOA fees will be included at actual amount. Costs for Personal Property Insurance is not to be included unless contractually required

- v. Mortgage Insurance Premium – If the calculated amount of the Developer Discount Loan is not greater than 20% of the fair market value of the property, the Housing Department will establish a market rate PMI premium corresponding to the loan-to-value ratio resulting from the difference between the fair market value and the Developer Discount Loan.
- vi. Maintenance and Repair Allowance, if not included in HOA fees. Current allowances established by the Housing Department must be used and includes an allowance amount for interior repair and maintenance costs.
- vii. Charges for a parking space are considered a housing related expense. However, costs charged for additional parking above the Agency’s required minimum is not considered a housing related expense.

3. Financing Assumptions:

The interest rate shall be based on a 5% down, 30 year, fully amortizing fixed rate mortgage based on the Freddie Mac Weekly Mortgage Survey at the time of pricing, as determined by the Housing Department, and not including any pre-paid points or fees for the loan. The interest rate applied must reflect the existing market conditions for similar loans, and must consider whether the amount of the loan qualifies it as a conforming loan or a jumbo loan. One-quarter point will be added to the interest rate for loans assumed to exceed Fannie Mae conforming loan limits at the time the units are purchased by qualified buyers. For purposes of calculating sales prices the down payment is deemed to be 5% of the market price and the loan term is deemed to be 30 years.

To determine the maximum “affordable” price, it is necessary to add the homebuyer’s “assumed” down payment amount, exclusive of any secondary financing from public agencies or non-profit organizations, to the loan amount calculated using the identified variables. Please refer to Attachment D.

Final review and determination of the maximum purchase price will be made by the City Department of Housing, normally within 90 days of the date the inclusionary units are expected to be purchased by qualified buyers and the close of escrow.

#### D. Affordability Agreements

If a developer is required to provide inclusionary housing units, the developer must execute a 45-year Affordability Agreement prepared by the Redevelopment Agency. The Affordability Agreement is first recorded against the entire project. As inclusionary units are sold the affordability restrictions are released from such units and replaced with individual affordability restrictions on just the inclusionary units. The Planning Division of the Department of Planning, Building and Code Enforcement will require that an Affordability Agreement be recorded by the developer as a condition of a Planned Development Permit, Conditional Use Permit, or a Site Development Permit. Developers must have executed an Affordability Agreement before the Department of Planning, Building and Code Enforcement issues a Site Development Permit, Conditional Use Permit, or Planned Development Permit.

The Affordability Agreement includes requirements that the inclusionary units be distributed throughout the project and not grouped or clustered or otherwise separated from other non-inclusionary units. The Affordability Agreement shall require the developer to provide a mix of unit types (i.e. number of bedrooms) for the inclusionary units in the same proportion as the project's overall mix of unit types, and shall require that the inclusionary units be of comparable quality with similar amenities available to other non-inclusionary units in the project excluding any upgrades paid for by the buyer of any unit. The Affordability Agreement shall also require that owners of the inclusionary units shall have equal access and enjoyment to all common facilities of the Project.

For example: A for-sale housing project with 200 total units of which 120 units are one bedroom units and 80 units are two bedroom units with three different floor plans of varying sizes for each of the two unit types would have the requirement to provide the following: sixty percent (60%) of the required inclusionary units would need to be one bedroom units; and forty percent (40%) of the required inclusionary units would need to be two bedroom units. However, the inclusionary units could be any one of the three floor plans for the two unit types of the project as long as the inclusionary units are distributed throughout the project.

The Housing Department will approve the Developer's specific plan for the allocation and distribution of the required inclusionary units at the time the Housing Department approves the final maximum sales prices for the inclusionary units. Developer may request written approval by the Housing Department of its allocation and distribution plan earlier as long as the Developer has obtained

approval of its Site Development Permit or Planned Development Permit from Planning for the project.

The Affordability Agreement also includes the requirements and associated forms for buyers who wish to sell the inclusionary unit they purchased from the developer, such as: a Notice of Intent to Transfer, an Approval Request and a form of Assumption Agreement. The Affordability Agreement also provides a work sheet that assists the developer in calculating the sales price of the inclusionary units and is attached to this document as Attachment D.

To request that an Affordability Agreement be prepared by the Redevelopment Agency for a proposed for-sale private development project, please complete the Compliance Plan Application discussed in section III

#### E. Subordination of Inclusionary Housing Restrictions

The Inclusionary Housing Policy allow subordination of an Affordability Agreement, subject to certain findings, in rental or for-sale projects to a lien, an encumbrance, or a regulatory agreement other than with the City or from certain bond issuances. If such lien, encumbrance or regulatory agreement foreclosed on the inclusionary unit, the Inclusionary Housing restrictions are extinguished. The Inclusionary Housing Policy now delegates the making of these findings to the Director of Housing, or its designee, to enable a developer or buyer to obtain financing.

#### F. Homebuyer Requirements

Each purchaser of a restricted unit will be required to execute and record an Affordability Agreement for their unit and shall be subject to the terms of the Affordability Agreement. In addition, each purchaser will be required to execute a promissory note in favor of the City of San Jose, secured by a deed of trust for the amount of the Developer Discount Loan. The Developer Discount Loan is the difference, if any, between the restricted price and the fair market value at the time of the initial sale.

If the property is subsequently transfer to a non-qualify affordable buyer the Developer Discount Loan would become due a payable along with a prorata percentage of any equity received in the sale to a non-qualify affordable buyer.

The Developer Discount Loan would not become due and payable if the property is sold to a qualifying affordable buyer.

## **VIII. Rental Projects**

### **A. Developer Requirements and Options**

Notwithstanding the small project exception discussed above in section V, Developers of rental units have two options to meet their inclusionary requirements for rental projects:

Option 1. Make available at least 20% of the rental units at an affordable housing cost, with at least 8% of the units set-aside for very low income households and the remaining balance available to low or moderate-income households.

Option 2. Request City Council approval to pay an in-lieu fee instead of providing the required inclusionary units. This option requires a City Council finding of economic hardship for the project, and that an equal number of other rental units have been identified that will be available in the City on a similar time schedule and with the same or greater affordability restrictions as would be required of the developer's project. These replacement units must be new inclusionary housing units not previously committed to satisfy an affordability requirement. The developer should contact Redevelopment Agency's Affordability Manager to begin this process.

The Developer is to select from the options above by completing the Compliance Plan Application discussed in section III.

### **B. Calculating the Number of Inclusionary Units**

To calculate the number of inclusionary units required:

For Option 1 – Multiply the number of units by 20%, with at least eight percent (8%) of the total project units set-aside to very low-income households, and the remaining balance of units made available to moderate or low income households. In determining the final number of very low and moderate/low income units you may have to round to the nearest whole units to reach the required total 20% inclusionary units for the project, but at all times the at least eight percent (8%) threshold must be maintained either through inclusionary units or through a combination of inclusionary units and the payment of the required in-lieu fee for fractional units For example: consider a project with 80 units. The number of inclusionary units required is 16 (20% x 80). Next you will split the 16 inclusionary units into very low and moderate/low income units. (8% x80), the result is 6.4 very low-income units and (12% x 80) the result is 9.6 moderate/low

income units. To determine the final correct split 6.4 would be rounded up to 7 and 9.6 units would be rounded down to 9 to provide the required 16 total inclusionary units, assuming the fractional unit in-lieu fee option is not selected. In the case where in-lieu fee option is selected the inclusionary unit split would be 6 very low income units and 9 moderate/low income units plus a payment of the in-lieu for one inclusionary unit. It should be noted that the at least 8% very low income is a minimum threshold and should more units be provided at this level, the moderate/low income requirement would lessen commensurately.

If the number of units derived from Option 1 above is a whole number the developer must provide that number of inclusionary units. If this number results in a fractional, number rounded to the nearest tenth, the developer may either round up and provide an additional inclusionary unit or make an in-lieu payment for the fractional amount. This option would most likely be used only if there was tax-credit and/or tax-exempt financing for the project.

The current in-lieu fee for rental units, as adopted by the City Council, is \$71,400 per unit. Therefore, each tenth of a unit would currently require a \$7,140 payment to the Housing Department to fund affordable housing developments. As an illustration, for a project required to provide 3.9 inclusionary units the developer would have the option to provide 4 affordable units or provide 3 inclusionary units and pay \$64,260 (.9 x \$71,400) to the Housing Department as an in-lieu fee at the time the Affordability Agreement is executed.

### C. Pricing of Rents

Rental prices for moderate, low, and very-low income units are limited to 30% of the maximum income limits based on the County Median Income for the defined household size less the County's standard allowance for utilities. In terms of determining maximum rental prices, the maximum annual income for a moderate household is defined as 110% of the County Median Income, for low income it is defined as 60% of the County Median Income and for very low it is defined as 50% of the County Median Income. For example to calculate a two person household's maximum monthly rent for a low income one bedroom unit you would take the annual County Median Income for a two person household which is \$84,400, times 60%, times 30%, divided by 12 or \$1,266.00 less the standard county utility allowance for a one bedroom unit, (for this example let us assume it is \$37), to come up with a maximum allowable monthly rent of \$1,229. Please note that the maximum household size for a given unit is one plus the number of bedrooms.

#### D. Affordability Agreements

If the developer of a rental project is required to provide inclusionary units, the developer must execute a 55-year Affordability Agreement. The Affordability Agreement is recorded against the inclusionary units. Developers must have an executed Affordability Agreement before the Department of Planning, Building and Code Enforcement issues a Site Development Permit, Conditional Use Permit, or Planned Development Permit.

The Affordability Agreement includes requirements that the inclusionary units be distributed throughout the project and not grouped or clustered or otherwise separated from other non-inclusionary units. The Affordability Agreement shall require the developer to provide a mix of unit types (i.e. number of bedrooms) for the inclusionary units in the same proportion as the project's overall mix of unit types, and shall require that the inclusionary units be of comparable quality with similar amenities available to other non-inclusionary units in the project. The Affordability Agreement shall also require that tenants of the inclusionary units shall have equal access and enjoyment to all common facilities of the Project.

For example: A rental housing project with 200 total units of which 120 units are one bedroom units and 80 units are two bedroom units with three different floor plans of varying sizes for each of the two unit types would have the requirement to provide the following: sixty percent (60%) of the required inclusionary units would need to be one bedroom units; and forty percent (40%) of the required inclusionary units would need to be two bedroom units. However, the inclusionary units could be any one of the three floor plans for the two unit types of the project as long as the inclusionary units are distributed throughout the project.

The Housing Department will approve the Developer's specific plan for the allocation and distribution of the required inclusionary units at the time the Housing Department approves the final maximum rental prices for the inclusionary units. Developer may request written approval by the Housing Department of its allocation and distribution plan earlier as long as the Developer has obtained approval of its Site Development Permit or Planned Development Permit from Planning for the project.

The Affordability Agreement also provides a work sheet that assists the developer in calculating the rental price of the inclusionary units and is attached to this document as Attachment D.

To request that an Affordability Agreement be prepared by the Redevelopment Agency for a proposed rental project, please complete the Compliance Plan Application as discussed in section III.

E. Subordination of Redevelopment Inclusionary Housing Restriction in Rental Projects.

The Affordability Agreement for a rental project may be subordinated to a lien, encumbrance or regulatory agreement of a federal or state government agency when all of the following conditions are met:

- The agency is providing financing or other assistance for the housing development;
- The statute or regulation governing the financing or assistance from that agency does not permit the restriction for the Redevelopment Area Inclusionary Housing Requirement to be senior to the agency's lien, encumbrance or regulatory agreement.
- The agency will record a regulatory agreement that will require the housing development to provide inclusionary units in an amount not less than the amount required for the Redevelopment Area Inclusionary Housing Requirements for the particular housing development.
- The City and Agency have determined that there is no economically feasible alternative method of financing or assisting the housing development on substantially comparable terms and conditions without subordination.

## **IX. Contact Information**

The Redevelopment Agency, the Department of Housing and the Department of Planning, Building and Code Enforcement, work together to assist developers, homebuyers and renters with understanding and complying with the City's Inclusionary Housing Program:

- A. Redevelopment Agency of the City of San Jose  
Housing and Real Estate Division, Attention: Affordability Manager  
200 East Santa Clara Street, Tower, 14<sup>th</sup> Floor  
San Jose, Ca 95113  
(408) 535-8500, fax (408) 292-6747
  
- B. Department of Housing  
200 East Santa Clara Street, 12<sup>th</sup> Floor  
San Jose, Ca 95113  
(408) 535-3860  
Housing Production Division (For Housing Lists and Options for Renters and Buyers, Unit Pricing Calculations, Assistance for Buyers to Secure Financing)  
Loan Compliance Unit (For Ongoing Compliance Monitoring For Rental and For Sale Housing)
  
- C. Department of Planning, Building and Code Enforcement  
Planning Division  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, Ca 95113  
(408) 535-3555

**Attachment A**

City of San Jose Inclusionary Housing Policy

**CAUTION: THIS POLICY IS REVISED FROM TIME TO TIME. TO BE SURE YOU ARE REVIEWING THE POLICY THAT IS CURRENTLY IN EFFECT YOU MUST CONTACT THE REDEVELOPMENT AGENCY AT 408.535.8500**

**CITY OF SAN JOSE POLICY ON IMPLEMENTATION OF THE INCLUSIONARY HOUSING REQUIREMENT OF HEALTH & SAFETY CODE SECTION 33413(b)(2)  
As Amended June 21, 2005**

I. General.

The Redevelopment Area Inclusionary Housing Requirement set forth in Health and Safety Code Section 33413(b)(2) shall be imposed upon all private housing developments, whether for-sale or rental, in the redevelopment project areas to which it applies (*i.e.*, all project areas and expansions except Park Center Plaza, San Antonio Plaza, Pueblo Uno, Mayfair One and original Rincon de los Esteros area) through the zoning process in accordance with this Policy.

- A. Residential units subject to the Redevelopment Area Inclusionary Housing Requirement must remain affordable to the targeted income group for the longest feasible time, but in no event less than the life of the redevelopment plan for the project area in which the units are located.
- B. Those restricted units must be made available for the term of the restriction at “affordable housing cost” or “affordable rent” to “very low income households” and “persons and families of low or moderate income”. These terms shall be as defined in the California Health and Safety Code.
- C. Except under extraordinary circumstance, the Redevelopment Area Inclusionary Housing Requirement shall be met through the development of units situate within the development as follows:
  - 1) Rental Projects: At least twenty-percent (20%) of the rental units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost”, with at least 8% of the units restricted to “very-low income” households.

2) For-Sale Projects: At the option of the Developer:

- a) At least twenty percent (20%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “low or moderate income” households; or
  - b) At least six percent (6%) of the “for sale” units developed within a residential project subject to this policy must be made available for the term of the restriction at “affordable housing cost” to “very low income” households and nine percent (9%) must be made available to “low or moderate income” households, for a total of 15% of the units restricted pursuant to the requirements of Health and Safety Code Section 33413(b)(2).
- D. Affordability controls on rental units must be evidenced by recorded deed restrictions that are binding on subsequent owners of the property. Affordability controls on “for sale” units must be evidenced by recorded deed restrictions that are binding on subsequent owners of the property, unless the owners agree to comply with a program designed to preserve the City’s supply of affordable units required by Health and Safety Code Section 33413 (b)(2), including, but not limited to, an equity share program.
- E. The deed restriction for a rental project subject to the Redevelopment Area Inclusionary Housing Requirement shall provide that for the life of the restriction, monthly rents must remain at or below the amounts determined to be affordable cost.
- F. Developers subject to the Redevelopment Area Inclusionary Housing Requirement shall submit a compliance plan detailing the manner in which the Redevelopment Area Housing Requirement will be met, for the approval of the Agency’s Executive Director, prior to the issuance of a discretionary land use permit for the proposed development. The compliance plan and any restrictions recorded pursuant thereto may be subsequently modified with the approval of the Agency’s Executive Director, so long as any modification is consistent with this Policy.
- G. The Agency has delegated to the City all other authority to implement and enforce compliance with the Redevelopment Area Housing Requirement. The City Housing Department shall monitor and report to the Agency and State Department of Housing and Community Development such information as is required by law on income and affordability of restricted units. The City’s Housing Department shall report to the Executive Director periodically on the status of all implementation and enforcement activities. The City’s Director of Planning shall include the Redevelopment Area Inclusionary Housing Requirement as a condition to development.

H. It shall not be inconsistent with the inclusionary policy for the City or Agency to provide financial assistance towards the development of the required inclusionary units provided that:

1. At least 50% of the total units in the project will be Restricted Affordable Units;
2. Such assistance is provided pursuant to a Second Mortgage Program established by the City or Agency to expand the income levels of potential homebuyers of Restricted Affordable Units; or
3. Such assistance is provided by the Redevelopment Agency from 80% funds to a project that is approved by the Agency Board.

II. In Lieu Fee /Alternative Designated Units.

Notwithstanding the general requirements set forth above, the City Council may relieve a private developer of its obligation to construct restricted affordable units within the private housing development if: (i) the developer pays an *in lieu* fee to the City; and (ii) a sufficient number of other residential units have been identified that will be available in the City on a similar time schedule and with the same or greater affordability restrictions as would be required of the private housing development (Alternative Designated Units). This exception applies only when all of the following criteria are met:

- A. The City Council may approve the use of this Alternative Designated Units Option pursuant to this provision, only upon making all of the following determinations:
1. The private developer would incur an unreasonable economic hardship in meeting the Inclusionary Housing Requirement as part of the development. There are no feasible financial, design and developmental methodologies for providing the affordable units within the private housing development. The developer has explored and exhausted the alternative possibilities, including but not limited to: i) low income housing tax credits, ii) below market rate financing from governmental affordable housing programs; iii) tax exempt bond financing; and iv) reducing development costs.
  2. The City Council approves the designation of the specific Alternative Designated Units.
  3. The Alternative Designated Units meet all of the conditions of the private developer's Redevelopment Area Inclusionary Housing Requirement.

4. The City Council has ascertained that the Alternative Designated Units will actually be constructed and/or acquired within the Project Area or outside of a project area within a reasonable period of time after approval of the project which created the Inclusionary Housing requirement. The City Council will make this determination based on all of the facts and circumstances available to it at the time of approval of the Alternative Designated Units.
- B. To the extent that state law permits, Alternative Designated Units may be located outside of a redevelopment project area, so long as the required number of restricted units is doubled, and all of the units will be under construction before January 1, 2002 or any legislative extensions of Health and Safety Code Section 33413(h).
  - C. The developer of the private housing development pays a fee to the City *in-lieu* of constructing required affordable units within that private housing development prior to the issuance of the development permit for the project. The amount of in-lieu fees will be established in the City Council's annual resolution establishing the Schedule of Fees and Charges
  - D. At the discretion of the City Council, the Redevelopment Area Inclusionary Housing Requirement may be satisfied with a combination of restricted units constructed within the project and Alternative Designated Units allowed pursuant to this Part II.
  - E. In the event the calculation for the number of restricted affordable units that the developer must provide results in a fraction of a unit, then the developer shall have the option of either (i) providing a full unit within the project at the affordable price, or (ii) making an in-lieu payment to the Housing Department in an amount equal to the percentage represented by the fractional unit multiplied by the then current in-lieu fee.
- III. Subordination of Redevelopment Inclusionary Housing Restriction in Rental Projects.

The restriction for the Redevelopment Inclusionary Housing Requirement for a rental project may be subordinated to a lien, encumbrance or regulatory agreement of a federal or state government agency when all of the following conditions are met:

- A. The agency is providing financing or other assistance for the housing development;
- B. The statute or regulation governing the financing or assistance from that agency does not permit the restriction for the Redevelopment Area Inclusionary Housing Requirement to be senior to the agency's lien, encumbrance or regulatory agreement.

- C. The agency will record a regulatory agreement that will require the housing development to provide affordable units in an amount not less than the amount required for the Redevelopment Area Inclusionary Housing Requirements for the particular housing development.
- D. The City and Agency have determined that there is no economically feasible alternative method of financing or assisting the housing development on substantially comparable terms and conditions without subordination.
- E. The City and Agency obtain written commitments reasonably designed to assure that the restricted affordable units in the housing development will not be removed in the event of default of the agency's lien, encumbrance or regulatory agreement, such as the following:
  - 1. A right of the City or Agency to cure a default on the agency lien, encumbrance or regulatory agreement
  - 2. A right of the City or Agency to negotiate with the agency after notice of default from the agency.
  - 3. An agreement that if prior to foreclosure by the agency, the City or Agency takes title to the property and cures the default on the lien, encumbrance or regulatory agreement, the agency will not exercise any right it may have to accelerate a loan by reason of the transfer of title to the City or Agency.
  - 4. A right of the City or Agency to purchase property from the owner at any time after a default on the lien, encumbrance or regulatory agreement.

IV. Subordination of Redevelopment Area Inclusionary Housing Restriction in For Sale Projects.

The restrictions for the Redevelopment Area Inclusionary Housing Requirement for a "for sale" unit may be subordinated to a lien, encumbrance, or regulatory agreement of a lender other than the City or from a bond issuance providing financing, refinancing, or other assistance of "for sale" units or parcels where the Director of Housing, or his/her designee, makes a finding that an economically feasible alternative method of financing, refinancing, or assisting the "for sale" units or parcels on substantially comparable terms and conditions, but without subordination, is not reasonably available, and where the City obtains written commitments reasonably designed to protect the City's affordable housing supply in the event of default, such as any of the following:

- (A) A right of the City to cure a default on the loan.
- (B) A right of the City to negotiate with the lender after notice of default from the lender.

(C) An agreement that if prior to foreclosure of the loan, the City takes title to the property and cures the default on the loan, the lender will not exercise any right it may have to accelerate the loan by reason of the transfer of title to the City.

(D) A right of the City to purchase property from the owner at any time after a default on the loan.

V. Exception for Small Housing Projects.

Notwithstanding the general requirements set forth above, a private developer of a private housing development of ten (10) housing units or less shall not be subject to the requirements of this Policy. For the development of eleven (11) to twenty (20) housing units, the private developer of a private housing development shall have the option to pay, by right, an in-lieu fee as described in Section II herein, provided that with respect to a "for sale" project, the developer shall be deemed to have selected option (a) as set forth in Section I C 2 above in determining the amount of the fee.

VI. Request for Adjustment.

Notwithstanding the general requirements set forth above, the City Council shall, upon request of a private residential developer, reduce, adjust or relieve the developer of its obligations under this Redevelopment Area Inclusionary Housing Policy, but only to the extent the Developer demonstrates that there is no nexus between the proposed development and the purposes of this Policy.

VII. Projects Constructed Pursuant to a Development Agreement.

Notwithstanding the general requirements set forth herein, if the City Council approves a development agreement, by ordinance pursuant to the authority and provisions of Government Code Section 65964 *et. seq.* and City Ordinance 24297, with a private developer of a private housing development and, pursuant to such development agreement, the private developer agrees to provide the number of affordable units required pursuant to this Redevelopment Area Inclusionary Housing Policy but at lower levels of affordability, then the location, construction and phasing of such inclusionary units within such project if approved by the Director of Housing and set forth in an Affordable Housing Plan attached as an exhibit to the development agreement shall be deemed to be consistent with the provisions of this Redevelopment Area Inclusionary Housing Policy so long as the developer remains in compliance with the terms and conditions of such development agreement. Any breach of such Affordable Housing Plan shall constitute a material breach of the development agreement.

## Attachment B

**INCOME RANGES AT VARYING HOUSEHOLD SIZES  
2006 INCOME STANDARDS DISTRIBUTED BY HCD  
SANTA CLARA COUNTY CALIFORNIA**

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Household Size	HCD Median	Very-Low Income		Low Income		Moderate Income	
1 Person	\$73,900	\$22,300	\$37,150	\$37,150	\$59,400	\$59,400	\$88,600
2 Person	84,400	\$25,500	42,450	42,450	67,900	67,900	101,300
3 Person	95,000	\$28,650	47,750	47,750	76,400	76,400	113,900
4 Person	105,500	\$31,850	53,050	53,050	84,900	84,900	126,600
5 Person	113,900	\$34,400	57,300	57,300	91,650	91,650	136,700
6 Person	122,400	\$36,950	61,550	61,550	98,450	98,450	146,900
7 Person	130,800	\$39,500	65,800	65,800	105,250	105,250	157,000
8 Person	139,300	\$42,050	70,050	70,050	112,050	112,050	167,100

SCHEDULE OF ALLOWANCES FOR TENANT-PURCHASED UTILITIES AND OTHER SERVICES FOR SANTA CLARA COUNTY									
EFFECTIVE: OCTOBER 1, 2006									
			NUMBER OF BEDROOMS						
			Studio	One	Two	Three	Four	Five	Six
Heating	Attached	Gas	\$7	\$10	\$13	\$16	\$21	\$24	\$28
		Elec.	\$8	\$11	\$15	\$20	\$26	\$29	\$34
	Detached	Gas	\$9	\$12	\$16	\$20	\$26	\$31	\$36
		Elec.	\$10	\$14	\$19	\$25	\$32	\$37	\$42
Cooking	Gas		\$4	\$6	\$8	\$9	\$12	\$13	\$16
	Elec.		\$5	\$6	\$8	\$10	\$13	\$15	\$17
Other Electric			\$10	\$15	\$19	\$23	\$29	\$33	\$38
Water Heater	Gas		\$8	\$11	\$14	\$17	\$22	\$25	\$29
	Elec.		\$10	\$14	\$18	\$22	\$28	\$32	\$37
Water	Attached		\$9	\$10	\$14	\$20	\$27	\$33	\$40
	Detached		\$11	\$13	\$18	\$27	\$36	\$46	\$58
Sewer*	Attached		\$20	\$20	\$20	\$20	\$20	\$20	\$20
	Detached		\$28	\$28	\$28	\$28	\$28	\$28	\$28
Garbage			\$20	\$20	\$20	\$40	\$40	\$60	\$60
Tenant-provided Range**			\$7	\$7	\$7	\$7	\$7	\$7	\$7
Tenant-provided Refrigerator**			\$7	\$7	\$7	\$7	\$7	\$7	\$7
<p>* Applicable only to the cities of: Gilroy, Milpitas, Morgan Hill, Mountain View, Palo Alto, Santa Clara and Sunnyvale</p> <p>** Tenant provided appliance - tenant allowance only</p>									

## Attachment D

### For-Sale Projects

Illustration of the calculation of the maximum Sales Price for a Person or Family of Moderate Income\* to be paid by a **Purchaser** of the Assisted Unit, pursuant to the provisions of Health and Safety Code section 50052.5. The calculation in this Exhibit is based on the following definition of household size: the defined household size is equal to one person greater than the number of bedrooms in the unit.

#### Assumptions for calculating the maximum Sales Price:

1. Unit Size = \_\_\_\_\_
2. Family Size = \_\_\_\_\_
3. Interest Rate\*\* = \_\_\_\_\_
4. Property taxes and assessments (per month) = \_\_\_\_\_  
(based on actual tax rate with value based on the Market Price of unit)
5. Actual insurance premiums (per month) = \_\_\_\_\_  
(if not included in homeowner's association dues)
6. Property maintenance and repair (per month)\*\*\* = \_\_\_\_\_  
(if not included in homeowner's association dues)
7. Project's budgeted Homeowner's Association Dues = \_\_\_\_\_
8. Utility allowance (per month)\*\*\*\* = \_\_\_\_\_
9. Mortgage Insurance Premium, if any\*\*\* = \_\_\_\_\_

Pursuant to Health & Safety Code §50052.5, Affordable Housing Cost shall not be less than 28% of the Gross Income of the household nor exceed 35% of 110% Area Median.

\* Pursuant to 25 Cal. Code of Regulations §6932, the current maximum income level for a Person or Family of Moderate Income at 120% of the area median income with a family size of 4 for example is \$126,600.00, effective March 2004. The State of California periodically changes income amounts, by household size, pursuant to said Code of regulations. The amount may change in the future, and if so, the new number will be used for calculating the maximum income level at that point in time.

\*\* The interest rate shall be based on a 5% down, 30 year, fully amortizing fixed rate mortgage that is widely available in the current owner occupied real estate loan market. City will use Freddie Mac's Weekly Mortgage Survey for the appropriate 30 year market interest rate.

\*\*\* Amount is obtained from City's Housing Department.

\*\*\*\* Amount is obtained from the Housing Authority of the County of Santa Clara's most recent schedule of allowances for tenant purchased utilities.

**Attachment D For-Sale**

**ILLUSTRATIVE CALCULATION OF MAXIMUM SALES PRICE- MODERATE INCOME LEVEL**

**I. Calculate monthly Affordable Housing Cost:**

\$116,050.00	[110% of Area Median Income adjusted for family size (4 person household \ 3 bedroom unit )(\$105,500.00)]
<u>    X    .35</u>	[Affordable Housing Cost cannot exceed 35% times 110% of Area Median Income]
\$40,617.50	
<u>divided by 12</u>	[To calculate the maximum <u>monthly</u> Affordable Housing Cost]
\$3,385	[As this hypothetical illustrates, no Family of Moderate Income with a family size of 4 shall spend more than \$3,385.00 per month, as of the date hereof, on the sum of the items which make up the Affordable Housing Cost.]

**II. Calculation of maximum amount to be spent on principal and interest of all mortgage loans and loan insurance fees, if any.**

- A. \$ 3,385 [Maximum monthly Affordable Housing Cost] less:
- B. [-]\_\_\_\_\_ [Property taxes and assessments (per month)]
- C. [-]\_\_\_\_\_ [Insurance premiums (per month)]
- D. [-]\_\_\_\_\_ [Utility allowance (per month)]
- E. [-]\_\_\_\_\_ [Mortgage Insurance Premiums (per month)]
- F. [-]\_\_\_\_\_ [Property maintenance and repair (per month)]
- G. [-]\_\_\_\_\_ [Homeowner's Association dues (per month)] equals:
- H. \_\_\_\_\_ Maximum Monthly Mortgage Payment

**III. Calculation of Sales Price:** The Sales Price is calculated by adding the Maximum Mortgage Amount to the down payment. The Maximum Mortgage Amount will be based on a fixed rate, 5% down, 30 year, fully amortizing, widely available owner occupied loan, and the above calculated Maximum Monthly Mortgage Payment allowable. The calculation is as follows:

1. At a \_\_\_\_\_% interest rate, and a loan term of 30 years, the Maximum Monthly Mortgage Payment (H.) of \$\_\_\_\_\_ will allow a Maximum Mortgage Amount of \$\_\_\_\_\_.

**(Note: The above step requires the use of a financial calculator.)**

2. The Maximum Mortgage Amount of \$\_\_\_\_\_ plus 5% of the market price of the unit equals the Maximum Sales Price of \$\_\_\_\_\_.

## Attachment D Rental Projects

The following hypothetical illustrates the calculation of Affordable Rent for a person or family of **Moderate Income** who is renting a unit in Santa Clara County.

### Assumptions.

1. Assisted Unit to be made available to person or family of Moderate Income.
2. Family Size = 1 person. [Note: Can be adjusted according to the procedures set forth in the Restriction.]
3. Person or family need not have the maximum income for a person or family of Moderate Income.
4. The Utility Allowance for an Assisted Unit is based on all electric services (if the utilities are not all electric, then the Utility Allowance should be adjusted accordingly based on Attachment C). The Utility Allowance for an Assisted Unit is also based on a tenant paying for gas and/or electricity for cooking, apartment space heat and lights (if additional utilities are paid for by tenant, then the Utility Allowance should be adjusted accordingly).

Pursuant to this Restriction the maximum income level for a person or family of Moderate Income cannot exceed 120% of Area Median Income.

Pursuant to 25 CCR Section 6918, rent includes, among other things, payment for use or occupancy of a housing unit and a reasonable allowance for utilities ("Utility Allowance"). The Utility Allowance for an Assisted Unit will be based on the Santa Clara County Schedule of Allowances for Tenant Purchased Utilities and Other Services as set forth in Attachment 1 hereto, and incorporated herein by reference. If the actual cost of the utilities for the Assisted Unit exceeds the Utility Allowance (as defined in Attachment 1 hereto), the Eligible Tenant will be responsible to pay for the difference.

Pursuant to Section 50053 of the Health and Safety Code, a Moderate Income Family shall not pay rent in excess of the product of 30% times 110% of area median income adjusted for family size.

**Attachment D Rental**

CALCULATION OF MAXIMUM RENT CHARGEABLE:

\$81,235.00	[110% of the 2004 Area Median Income adjusted for family size (1 person) (\$73,850.00)]
x <u>      .30</u>	[Rent cannot exceed 30%]
\$24,370.50	
divided by 12	[to calculate the maximum monthly rent]
\$2,030.88	[This figure includes the Utility Allowance amount. ]
- 27.00	[Use most current Schedule of Allowances to calculate utility allowance]
\$2,004.00	[Actual Affordable Rent, rounded up ]

As this hypothetical illustrates, no person or family of Moderate Income with a family size of 1 shall be charged or pay rent in excess of the Actual Affordable Rent per month as of the date of this Restriction.