

**AFFORDABLE HOUSING COMPLIANCE PLAN  
APPLICATION PACKET FOR THE  
INCLUSIONARY HOUSING ORDINANCE (IHO)**

**Affordable Housing Programs**

The City of San José has demonstrated a commitment to ensure that affordable housing is available to moderate, low, and very-low income households by adopting an Inclusionary Housing Ordinance (“IHO”) [Chapter 5.08 of the Municipal Code](#), and an Affordable Housing Impact Fee (“AHIF”) initially implemented by [City Resolution No. 77218](#). The IHO and the AHIF are collectively referred to as the “Affordable Housing Programs”)The City of San José also has Inclusionary Housing Ordinance Guidelines (“Guidelines”) and AHIF [Regulations](#). The Guidelines can be found at [www.sjhousing.org/IHO](http://www.sjhousing.org/IHO). For more information on the AHIF program please visit: [www.sjhousing.org/AHIF](http://www.sjhousing.org/AHIF) and review the [AHIF Regulations](#).

**Overview**

Developments in San José that create twenty (20) or more new, additional, or modified dwelling units including co-living dwelling units (“Residential Developments”) are subject to the requirements of the IHO, resulting in an affordable housing obligation (an “Obligation”). Developments in San José that create three (3) to nineteen (19) dwelling units may be subject to AHIF, also resulting in an Obligation. In order to determine the extent of the Obligation, and whether any exemptions may apply, all residential developments with three (3) or more units seeking permits are required to submit an Affordable Housing Compliance Plan Application (“Compliance Plan Application”), as described in this packet. Developers who claim their project is exempt or waived from the Inclusionary Housing Ordinance must comply with this process in order for the claim to be evaluated by Housing Department staff.

The purpose of this packet is 1) to provide developers with background and a general understanding of the IHO requirements; 2) to define what information must be provided for Housing Department Staff to determine the extent to which any Obligation may be associated with the project; and 3) to describe the process of Compliance Plan Application submittal, review, and determination.

A separate AHIF Compliance Plan Application for developments with 3-19 dwelling units will be available in August.

**Inclusionary Housing Ordinance**

**For-Sale:** The Inclusionary Housing Ordinance requires all developers who create new, additional, or modified for-sale units to provide 15% of housing **on-site** that is affordable for buyers with incomes not

to exceed 110% of the Area Median Income (“AMI”) or to comply with one of the alternatives discussed below. On-site inclusionary housing must be dispersed through the development and meet standards intended to ensure inclusionary units are comparable to the market rate units.

A Residential Development that has tentative map(s) or other map(s) or plan(s) allowing the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments) will be considered For-Sale even if the Developer intends to rent the units.

*If the project is anticipated to be partially or completely For-Sale, please submit Attachment A - Unit Mix Worksheet with your Compliance Plan Application.*

**Rental:** The Inclusionary Housing Ordinance requires all developers who create new, additional, or modified rental units (including efficiency, single room occupancy, and senior apartments) to provide 15% of housing **on-site** that is affordable and price-restricted comprised of 9% for Moderate Income Households (defined in the IHO as 80% of the AMI) and 6% for Very Low Income Households (50% AMI) or to comply with one of the alternatives discussed below. If selecting the On-site Compliance Option, the inclusionary housing must not be geographically concentrated in the development and must meet standards intended to ensure inclusionary units are comparable to the market rate units.

Developers may cluster or concentrate Inclusionary Units in a wing of a building or separate the units in another building on the same parcel if needed due to the type of financing needed to support the project, such as tax credits. However, if Inclusionary Units are clustered rather than integrated with market rate units, the development will be considered to have elected an off-site compliance option and subject to the provisions outlined in Attachment A-2 – Build Off-Site.

The Off-Site Compliance Option includes the following price-restrictions: 12% for Low Income Households at 60% AMI, and 8% for Very Low Income Households at 50% AMI.

The Housing Department will work with the Developer to acknowledge and understand the requirements of their financing plan and how that will impact the compliance option they elect.

A Residential Development that has tentative map(s) or other map(s) or plan(s) allowing the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments) will be considered For-Sale, even if the Developer intends to rent the units.

*If the project is anticipated to be partially or completely Rental, please submit Attachment B - Unit Mix Worksheet with your Compliance Plan Application.*

For either **For-Sale or Rental**, the Developer may alternatively satisfy their Inclusionary Housing Ordinance through a variety of compliance options to provide units or unit equivalents equal to at least 20 percent of the number of units in the Residential Development. Please see the following chart and the IHO website for specific subchapters of the Guidelines on each Compliance Option:

	Obligation	For-Sale Project	Rental Project
<b>On-Site</b>	15%	Attachment A-1	Attachment B-1
<b>Off-Site</b>	20%	Attachment A-2	Attachment B-2
<b>In-Lieu Fee</b>	20%	Attachment A-3	Attachment B-3
<b>Dedication of Land</b>	20%	Attachment A-4	Attachment B-4
<b>Surplus Inclusionary Credits</b>	20%	Attachment A-5	Attachment B-5
<b>Acquisition and Rehab</b>	20%	Attachment A-6	Attachment B-6
<b>HUD Restricted Units</b>	20%	Attachment A-7	Attachment B-7

For more information on these options please visit: [www.sihousing.org/IHO](http://www.sihousing.org/IHO) to review the [Guidelines](#).

### **Affordable Housing Compliance Plan Application**

As part of the application for “First Approval” of any development, the Developer must submit to the Department of Housing an original wet signed copy of the completed Compliance Plan Application and all relevant attachments (including the Unit Mix Worksheet). If the project is a mix of For-Sale and Rental, attach both Attachment A and B to indicate how many units are for each tenure. All information supporting the qualification for an exemption or waiver must also be submitted with this packet.

The application fee must be paid by check in the amount of \$4,582 (as may be adjusted in the annual Schedule of Fees and Charges) and attached to the Compliance Plan Application. The check must be made out to “City of San José”.

“First Approval” means the first of the following approvals to occur with respect to a Residential Development: development agreement, general plan amendment, specific or area plan adoption or amendment, zoning, rezoning, pre-zoning, annexation, planned development permit, tentative map, parcel map, conditional use permit, special use permit, or building permit.

No application for a “First Approval” will be deemed complete by the City unless the Compliance Plan application is submitted and approved by the Housing Department. The Compliance Plan must be approved before public hearings on the First Approval and before any permits are issued.

Submit by mail or deliver in-person to the following:

City of San José Housing Department  
 Attention: Tina Vo  
 200 E. Santa Clara Street, 12<sup>th</sup> Floor  
 San José, CA 95113

### **Application Review Process**

As a part of the initial permit application review process, the Housing Department will provide the developer an initial response letter with a preliminary determination of the affordable housing obligations associated with the project and a request for an Affordable Housing Compliance Plan.

The Housing Department will use the information provided to evaluate any exemption/waiver claims, and review any proposals for satisfying obligations under the Inclusionary Housing Ordinance, if applicable. The Housing Department will coordinate with Planning, Building and Code Enforcement (PBCE) in connection of the review of the Affordable Housing Compliance Plan. Additionally, the Housing Department may contact the developer to request additional information required in connection with the Compliance Plan Application and/or the Developer's proposed method of satisfying the obligation. Failure to fully complete the application and provide all attachments may delay approval of the Compliance Plan.

After review of the Compliance Plan, if the Compliance Plan is complete, consistent with the IHO and Implementation Guidelines, and all required submittals have been provided, the plan will be approved and the permit conditions will be provided to PBCE and developer. These permit conditions will be made a part of the project's conditions of approval. After this step the planning application with respect to affordable housing obligations will be complete and a hearing may be scheduled.

### **Inclusionary Housing Agreement**

Prior to issuance of any demolition, building or foundation permit, the developer must provide updated information that will allow the Housing Department to confirm ongoing eligibility of any exemption claims, compliance with the selected method of satisfying the obligation(s) and the applicable permit conditions. This information may include, but is not limited to, building plans, tentative maps and an updated Unit Mix Worksheet.

Prior to the approval of any final or parcel map, or issuance of any building permit for a residential development that may be subject to the IHO, the following must occur:

- 1) The Developer will execute and record an Inclusionary Housing Agreement to memorialize and implement the project's affordable housing obligation against the property, against any property under common ownership or control, and if other property is part of the Developer's proposed satisfaction of affordable housing obligation, against the other property;
- 2) If confirmation of the compliance with waiver requirements is not due until Certificate of Occupancy, the Inclusionary Housing Agreement must be recorded against the entire development, any property under common ownership or control, and any other property used for the purpose of satisfying the project's affordable housing obligation.

Please contact Amy Chen at (408) 975-4489 or [Amy.Chen@SanJoseCA.gov](mailto:Amy.Chen@SanJoseCA.gov) to answer any questions or discuss the requirements of the Inclusionary Housing Ordinance or the Affordable Housing Impact Fee programs.

## AFFORDABLE HOUSING COMPLIANCE PLAN (IHO)

In order for Staff to assess the potential Inclusionary Housing obligations of a project, the developer must complete this Compliance Plan in its entirety, along with a check made out to the “City of San José” in the amount of \$4,582 (as may be adjusted). The Developer should answer each question thoroughly, attaching additional documents, as needed. Please enter “N/A” if a field is not applicable. **Only an authorized representative of the property owner or developer is authorized to sign this application.**

DEVELOPER INFORMATION	
Company Name:	E-Mail:
	Phone #:
Company Address (Street, City, State, Zip Code):	
Contact Name:	E-Mail:
	Phone #:

PROJECT INFORMATION	
Project Name:	Project Address:
Project APN(s):	Planning file number, if assigned:

PROJECT DETAILS
<i>Please select an answer or fill in the blanks to the following questions:</i>
1. Provide the name of the Property Owner(s) and complete and attach an owner’s authorization:
2. Does the Developer/Owner of the Property or an affiliated/related person or entity (as described in IHO section 5.08.150) own/have any interest in any property contiguous to the project? <i>If Yes, please attach a list of all the properties by APN(s) and addresses.</i> <i>If No, please complete an attached <a href="#">Affidavit of No Common Interest or Control</a>.</i>

3. Number of Residential Buildings \_\_\_\_\_ and total number of Residential Units \_\_\_\_\_ anticipated

4. This project is anticipated to be a:  
 \_\_\_ For-Sale (Please submit Attachment A - Unit Mix Worksheet)  
 \_\_\_ Rental (Please submit Attachment B - Unit Mix Worksheet)  
 \_\_\_ Both For-Sale and Rental (Please provide a separate unit mix worksheet for each type: A + B)

5. Is the project a mixed-use (commercial and residential) development? \_\_\_ Yes or No \_\_\_  
*If yes, please provide the total square footage of commercial space: \_\_\_\_\_*

6. Is this a rehabilitation or conversion project? \_\_\_ Yes or No \_\_\_  
*If yes, please provide the number of new or converted units: \_\_\_\_\_*

7. Will any residential units be demolished or converted? \_\_\_ Yes or No \_\_\_  
*If yes, were any of the units built before 1979? \_\_\_ Yes or No \_\_\_*

8. Is there any intention to obtain a parcel/tentative, and final map for the project?  
 \_\_\_ Yes or No \_\_\_

9. Is there any intention to create residential condominiums, a stock cooperative, or community apartments? \_\_\_ Yes or No \_\_\_

**AFFORDABLE HOUSING EXEMPTIONS/CLAIMS/WAIVERS**

*Please select an answer or fill in the blanks to the following questions if applicable:*

Some projects are eligible to seek an exemption/waiver from the IHO for the project. Additional documentation may be required prior to approval of the application, and further evidence of exemption qualification may be requested prior to building permit issuance and certificate of occupancy issuance. Please complete the following section(s) if seeking an exemption/waiver:

10. The project includes less than 20 dwelling units and none of the contiguous property is under Common Ownership Control:  
 \_\_\_ Yes or No \_\_\_ *If Yes, please provide Owner's Affidavit and Compliance AHIF Compliance Plan)*

11. The project has an application for a tentative map or an approved tentative map which the Developer claims has conferred vesting rights under the Subdivision Map Act. *If yes, provide:*  
 Tentative or Parcel Map Number: \_\_\_\_\_ Date of Application Submitted: \_\_\_\_\_  
 Date Deemed Substantially Complete: \_\_\_\_\_ Approval Date: \_\_\_\_\_  
*If you are claiming this exemption, please attach a description of why your project is exempt from the Ordinance under California Government Code section 66474.2 or 66498.1.*

12. Project is being developed in accordance with a Development Agreement executed by or prior to January 1, 2013:

Yes or No  *If Yes, please provide approval date:* \_\_\_\_\_

13. Project is being developed in accordance with a Development and Disposition Agreement executed by or prior to January 1, 2013:

Yes or No  *If Yes, please provide approval date:* \_\_\_\_\_

14. Project will include "deed restricted" affordable units:  Yes or No

*If yes, provide how many* \_\_\_\_\_.

15. Project is not in a redevelopment project area and had at least one phase of its residential development and its infrastructure completed in conformance with a pre-1993 specific plan and Planning Permits prior to January 1, 2013:  Yes or No

16. Project is claiming it is a Downtown High-Rise Rental development as described in Resolution 78576:  Yes or No

#### IHO COMPLIANCE OPTIONS

**Please select an option even if claiming an exemption. To learn more about each option, click hyperlinked text to download a specific subchapter from the IHO Implementation Guidelines.**

*Provide the following attachments with the Compliance Plan, based on the selected Compliance Option.*

*Regardless of the option selected, a title report for the Residential Development and*

*Unit Mix Worksheet(s) must also be submitted (Attachment A for For-Sale and B for Rentals).*

*If a project is intended to be permitted as co-living or single room occupancy, provide a site map and/or plans showing the co-living/SRO dwelling units*

#### **Build On-Site Compliance Option (5.08.500):**

- Parcel maps and/or site plans marked to indicate the proposed location within the development and square footage for both the Inclusionary units and the Market Rate units
- Construction and completion schedule of all Inclusionary and Market Rate units consistent with the Guidelines
- Phasing of Inclusionary units in relation to Market Rate units, consistent with the Guidelines
- A sales/leasing and marketing plan consistent with the Guidelines
- Any requested density bonus, waivers, or incentives pursuant to California Government Code Section 65915 et seq. and Chapter 20.190 A reliable financing mechanism for the ongoing administration and monitoring of Rental Inclusionary Units, if applicable
- A comparison of the bedrooms, fixtures, and access to amenities for the Market Rate units and On-site Inclusionary units

- List Inclusionary Units to be provided (and Surplus Inclusionary Units, if any) with tenure, number of bedrooms, square footage, and affordability for the units.

**\_\_\_ Build Off-Site Compliance Option (5.08.510):**

- The address of the Off-Site land and Redevelopment Project area, if any; and the name of the owner
- The General Plan designation and the number and tenure of units (For-Sale/Rental) in the Off Site project
- Current phase I environmental review for the Off-Site land, and if called for, phase II and evidence of completed hazard mitigation
- Parcel maps and site plans indicating the proposed location, number of bedrooms, and square footage of both Off-Site Inclusionary units and the Market Rate units
- Construction and completion schedule (including entitlements and ownership/control of the Off-Site land) of all Inclusionary and Market Rate units, showing that the inclusionary units will be provided prior or concurrently
- Phasing of Inclusionary units in relation to Market Rate units, consistent with the Guidelines
- A sales/leasing and marketing plan consistent with the Guidelines
- A reliable financing mechanism for the ongoing administration and monitoring of Rental Inclusionary Units, if applicable
- A title report for the Off Site property
- A comparison of the bedrooms, fixtures and amenities for the Market Rate units and Off-site Inclusionary units

**\_\_\_ Payment of an In-Lieu Fee Compliance Option (5.08.520):**

- Unit Mix Worksheet
- If a project is intended to be permitted as assisted living and is claiming a room(s) or suite(s) does NOT meet the definition of a Dwelling Unit in the Guidelines, provide a site map and/or plans with sufficient details which units may not be considered subject

**\_\_\_ Dedication of Qualifying Land Compliance Option (5.08.530):**

- Parcel APN(s), site size, General Plan designation and Zoning designation
- Preliminary Title Report showing the Developer as owner of the site and dated within 30 days of submittal
- Recent Land/Site Surveys
- Geotechnical Report
- Phase I Environmental Report (must be current and for the benefit of the City)

- Phase II Environmental Report if hazardous materials are suspected in Phase I Report
- Cost estimate for mitigation of any hazardous materials (which must be completed prior to dedication)
- An assessment of the proposed site's ability (with existing zoning, occupancy, building, and use restrictions) to provide at least the required Inclusionary Units (20% of total dwelling units, consistent with the Guidelines)
- Fair Market Value Appraisal, consistent with the Guidelines
- Infrastructure study by a licensed professional, consistent with the Guidelines
- Schedule for transfer of the site, consistent with the Guidelines
- A narrative that describes consistency with the City's Affordable Housing Dispersion Policy, consistent with the Guidelines

**\_\_\_\_ Credits and Transfers - Use of Surplus Inclusionary Credits Compliance Option (5.08.540):**

- The address of the Project with Surplus Inclusionary Units ("Surplus Project") and Redevelopment Project area, if any; and the name of the owner
- The General Plan designation and the number and tenure of units (For-Sale/Rental) in the Surplus Project
- Copies of recorded affordability restrictions on the Surplus Project, if any
- Current phase I environmental review for the Surplus Project, and if called for, phase II and evidence of completed hazard mitigation, if requested by the City
- Parcel maps and site plans indicating the proposed location and square footage of both Surplus Inclusionary units and the Market Rate units, if any
- Construction and completion schedule (including entitlements and execution of agreement for transfer of the credit for Surplus Inclusionary units) of all Surplus Inclusionary and Market Rate units showing that the Surplus Inclusionary units will be provided prior or concurrently
- The date of issuance (or projected issuance) of the Certificates of Occupancy for the Surplus Inclusionary Units
- A sales/leasing and marketing plan for Surplus and Market Rate units, consistent with the Guidelines
- A title report for the Surplus property

**\_\_\_\_ Acquisition and Rehabilitation of Existing Units Compliance Option (5.08.550):**

- Detailed information about the Rehabilitated Unit(s), the property upon which it is located, and any associated common area, consistent with the Guidelines

- Schedule for transfer of the site, consistent with the Guidelines
- Description of how and when the Developer will provide a relocation plan for existing residents of the Rehabilitated Units, Schedule for transfer of the site, consistent with the Guidelines
- A sales/leasing and marketing plan consistent with the Guidelines
- A reliable financing mechanism for the ongoing administration and monitoring of Rental Inclusionary Units

\_\_\_ **HUD Restricted Units Compliance Option (5.08.560):**

- Detailed information about the HUD Restricted Unit(s), the property upon which it is located, and any associated common area, consistent with the Guidelines
- A copy of the current agreement between Developer and HUD
- Statement of intent to perform a Physical Needs Assessment no more than six (6) months prior to the termination of the agreement between the Developer and HUD
- Statement of intent to complete work on all items identified in the Physical Needs Assessment as needing repair, replacement, or maintenance at the time of the assessment, or as likely to require repair or replacement within three years
- Description of how and when the Developer will provide a relocation plan for existing residents of the HUD Restricted Units
- Schedule for transfer of the site, consistent with the Guidelines
- A sales/leasing and marketing plan consistent with the Guidelines
- A reliable financing mechanism for the ongoing administration and monitoring of HUD Restricted Units

\_\_\_ **Combination of Methods to Provide Inclusionary Housing (5.08.570):**

- A narrative describing how this project will comply with the requirements for each option used in the Combination of Methods
- Describe how the Combined Methods will provide substantially the same or greater level of affordability and amount of affordable housing
- Provide submittals for each method (e.g., off-site, in-lieu) to be used

\_\_\_ **Alternative Methods to Provide Inclusionary Housing (5.08.610F):**

- *An Applicant should work with the Housing Department to determine the necessary submittals for a proposed alternative method of meeting inclusionary housing requirements that does not strictly comply with the requirements of the Ordinance*

**PROJECT DATES**

*Please fill in all the dates below to the best of your knowledge (provide projected estimates as needed):*

Actual/Projected Date of Public Outreach Meeting:  _____(mm/dd/yyyy)	Actual/Projected Date of First Approval (Entitlement):  _____(mm/dd/yyyy)
Projected Date to Pull Building Permits:  _____(mm/dd/yyyy)	Projected Completion Date (Certificate of Occupancy):  _____(mm/dd/yyyy)

**SIGNATURES**

**By signing below, the developer acknowledges that the project must comply with the conditions of the Inclusionary Housing Ordinance and the selected Compliance Option(s). Additionally, developer acknowledges exemption claims can only be conditionally approved at the time the Compliance Plan Application is approved and final approval is not guaranteed. The Developer will be required to record an Affordable Housing Agreement agreeing to satisfy the Obligation and comply with any exemption conditions.**

Authorized Developer's Signature:	Date:
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*Housing Department Office Use Only*

Housing's Acceptance of Application:	Date:
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**ATTACHMENT A – FOR-SALE PROJECTS  
UNIT MIX WORKSHEET**

**The following is to help estimate the inclusionary obligation for the following compliance options. Simply fill out the following fields and the obligation will be calculated below.**

<b>UNIT TYPE/ PLAN</b>	<b># OF BDRMS</b>	<b>LIVING SQ'</b>	<b># OF UNITS</b>	<b>TOTAL SQ'</b>
		<b>TOTALS</b>		

**These estimates are for illustrative purposes only and the obligation will be codified prior to issuance of building permits in an affordable housing agreement recorded on the property.**

<b>Build On-Site 15%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 15%:</b>	<b>15%</b>
	<b>Units Income Restricted at 120% AMI:</b>	
	<b>Market Rate Units:</b>	

<b>Build Off-Site 20%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 20%:</b>	<b>20%</b>
	<b>Units Income Restricted at 120% AMI:</b>	
	<b>Market Rate Units:</b>	

<b>Pay In-Lieu Fee 20%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 20%:</b>	<b>20%</b>
	<b>Units Required to Pay \$167,207* In-Lieu Fee:</b>	
	<b>In-Lieu Fee to be paid prior to Certificate of Occupancy:</b>	

\* In-Lieu Fee is calculated each Fiscal Year (July 1 - June 30) - see Attachment A-3.1 of the IHO Guidelines

**ATTACHMENT B – RENTAL PROJECTS  
UNIT MIX WORKSHEET**

The following is to help estimate the inclusionary obligation for the following compliance options. Simply fill out the following fields and the obligation will be calculated below.

UNIT TYPE/ PLAN	# OF BDRMS	LIVING SQ'	# OF UNITS	TOTAL SQ'
		<b>TOTALS</b>		

These estimates are for illustrative purposes only and the obligation will be codified prior to issuance of building permits in an affordable housing agreement recorded on the property.

<b>Build On-Site 15%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 15%:</b>	<b>15%</b>
	<b>Units Income Restricted:</b>	
	9% of these units at 80% AMI	
	6% of these units at 50% AMI	
	<b>Market Rate Units:</b>	

<b>Build Off-Site 20%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 20%:</b>	<b>20%</b>
	<b>Units Income Restricted:</b>	
	12% of these units at 60% AMI	
	8% of these units at 50% AMI	
	<b>Market Rate Units:</b>	

<b>Pay In-Lieu Fee 20%</b>	<b>Total Number of Residential Units:</b>	
	<b>Multiplied by 20%:</b>	<b>20%</b>
	<b>Units Required to Pay \$125,000* In-Lieu Fee:</b>	
	<b>In-Lieu Fee to be paid prior to Certificate of Occupancy:</b>	

\* In-Lieu Fee is calculated each Fiscal Year (July 1 - June 30) - see Attachment B-3.1 of the IHO Guidelines