CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Erik L. Soliván

SUBJECT: **See Below**

DATE: October 27, 2025

Approved [signature] Date: 11/4/25

COUNCIL DISTRICT: Citywide

SUBJECT: Amendments to Chapter 5.08 of Title 5 of the San José Municipal Code and Regulations for the Inclusionary Housing Ordinance

RECOMMENDATION

Approve an ordinance amending Chapter 5.08 (Inclusionary Housing) of Title 5 of the San José Municipal Code to:

(a) Update affordability levels;
(b) Refine compliance options (including Surplus Credits);
(c) Align the affordability term for inclusionary units with state practice; and
(d) Clarify treatment of 100% affordable developments.

SUMMARY AND OUTCOME

Approval of the recommendation enables the Housing Department (Department) to:

- Shift the Inclusionary Housing Ordinance (IHO) emphasis from sole focus on low and very low affordable units below 80% Area Median Income (AMI) to workforce housing between 80% to 110% AMI, improving feasibility for market-rate and mixed-income projects amid current market realities.
- Simplify compliance with clearer options and definitions and implement a functional Surplus Credits marketplace.
- Align affordability terms for inclusionary rental units with state practice.
- Further streamline 100% affordable projects by providing a simple, enforceable compliance mechanism.

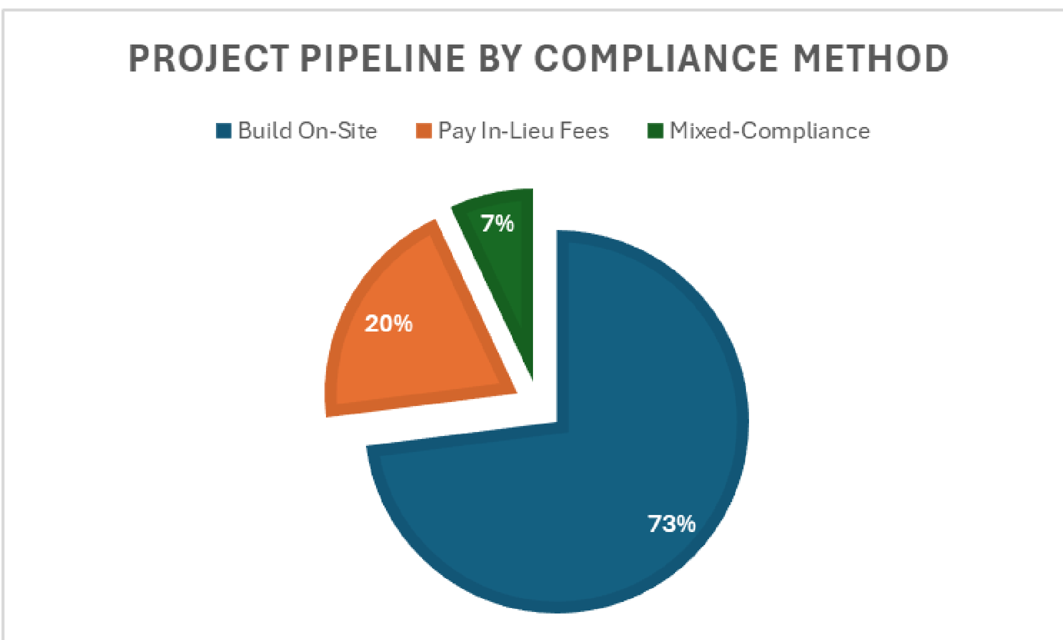
Collectively, these changes would make the IHO clearer, more predictable, and better aligned with financing realities, supporting housing abundance and the production of housing for San José's workforce.

BACKGROUND

Since its establishment, the IHO has produced affordable workforce housing across San José, and there are opportunities for improvement in program administration in order to convert more applications into construction units. Historically, less than 10% of projects subject to IHO requirements have advanced from application to construction, with 43 completed projects delivering 1,442 inclusionary units. Of these units, 43% are at 50% AMI and 56% are at 60-110% AMI. The IHO was revised in 2010, 2019 and 2021 to add multiple compliance options and modernize requirements.

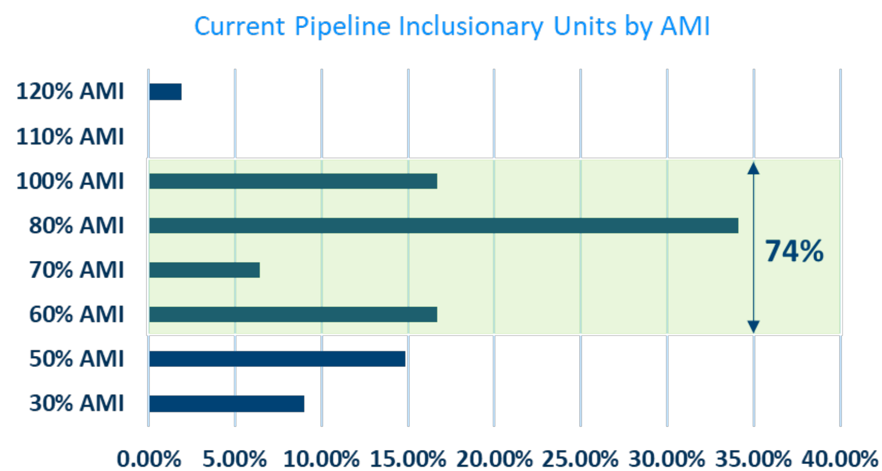
Since the March 2021 IHO update, the Department has received over 260 development applications. The current pipeline of applications includes 73 projects that are seeking City of San José (City) approval or under construction representing 12,900 total units of which 1,900 units are affordable. As shown in Figure 1, of the 73 projects, 53 projects or 73% are building affordable units on-site. Another 15 projects or 20% of the projects selected to pay in-lieu fees only, while the remaining 7% of projects are utilizing mixed compliance. Total in-lieu fees collected from 15 projects total approximately $50 million. Projects under the 100% Affordable Compliance Option are excluded, as they follow a separate approval process.

Figure 1: Project Pipeline By Compliance Method



The on-site unit affordability levels for these projects are predominantly targeted toward households within the workforce income range. Across the 73 projects in the pipeline, an estimated 1,850 affordable units are planned on site, and a majority of those homes are targeted to households earning 60% to 100% of AMI. These are income levels that can be served without substantial public subsidy and correspond to middle-income households in San José, including teachers, nurses, and other middle-income earners. A smaller share of projects proposes mixed compliance (a blend of on-site units and fees), representing 45 on-site affordable units and $12.4 million in fees. Projects proposing fee-only compliance account for approximately $38.2 million in total fees. Figure 2 shows that 74% of all inclusionary units in the current pipeline are targeted to middle-income households (60% to 100% AMI).

Figure 2: Current Pipeline Inclusionary Units by AMI



This pattern shows two important dynamics. First, feasibility in today's environment is fragile: only about 28% of initial applications filed since 2021 are still active, reflecting the impact of high land costs, construction costs that are roughly double national averages, and interest rates near 7%, all of which have made it significantly harder for projects that were feasible in 2021 to remain viable in 2025. Second, when projects do remain viable, they overwhelmingly attempt to produce deed-restricted workforce units on site within the 60% to 100% AMI range rather than rely solely on fee payment. In other words, the private development pipeline is currently the City's most immediate, scalable source of mixed-income housing, including workforce housing, if those projects can continue to move forward.

Because the current IHO was not built for today's conditions and can constrain market-rate feasibility, the City Council-approved Mayor's March Budget Message for Fiscal Year 2025–2026 directs staff to streamline requirements, encourage on-site homes affordable to 60% to 120% AMI, and eliminate arduous regulatory processes for 100% affordable projects at or below 100% AMI.

These proposed changes are intended to:

(1) keep more projects financially feasible so they do not drop out of the pipeline; and
(2) make it easier for those projects to deliver on-site, income-restricted workforce units rather than default to fee payment.

Additionally, staff identified a way to add another tool to the mixed-compliance mix by activating a dormant provision of the IHO, the Surplus Credit Exchange.

ANALYSIS

The proposed policy shift is to build more units on-site across the AMI scale to foster mixed-income communities and abundant housing stock.

Changes to Affordability Levels (San José Municipal Code § 5.08.500, 5.08.510)

To align the IHO with today's financing realities and the approved Mayor's Fiscal Year 2025-2026 budget direction, staff proposes amendments that recalibrate affordability targets to the 60% to 120% AMI "workforce" band, simplify compliance, and preserve a clear preference for on-site, mixed-income production. The focus is on households that earn too much for deeply subsidized housing but cannot afford market prices.

Tables 1 and 2 below summarize the current income targeting requirements under the IHO and the proposed changes.

Table 1: Current and Proposed Income Levels for the On-site Compliance Option

Option	Current	Proposed
Rental	5% at 50% AMI 5% at 60% AMI 5% at 100% AMI 15% total OR 10% at 30% AMI	5% at 60% AMI 5% at 80% AMI 5% at 110% AMI 15% total
For-Sale	15% at 120% AMI (maximum sales price at 110% AMI)	15% at 120% AMI (maximum sales price at 120% AMI)

- **On-site rental:** Moves affordability bands modestly into workforce ranges (60/80/110% AMI) and removes the 10% Extremely Low-Income alternative that is not financeable in most market-rate capital stacks today.

- **On-site for-sale:** Continues to serve moderate-income home buyers (15% at 120% AMI) while adjusting the price cap from 110% to 120% AMI to reflect cost realities and market constraints to spur more affordable homeownership development.

Table 2: Current and Proposed Income Levels for the Off-site Compliance Option

Option	Current	Proposed
Rental	10% at 50% AMI 5% at 60% AMI <u>5% at 100% AMI</u> 20% total	10% at 60% AMI 10% at 80% AMI <u>10% at 100% AMI</u> 30% total
For-Sale	20% at 120% AMI (maximum sales price at 110% AMI)	25% at 110% AMI (maximum sales price at 110% AMI)

- **Off-site (rental and for-sale):** Applies to the same workforce bands and increases total affordable shares to maintain a strong policy preference for on-site, mixed-income development outcomes.

Very deep affordability at 30% AMI inside market-rate buildings prohibit financial feasibility under current financing structures. Centering inclusionary targets in the 60% to 120% AMI band keeps projects financeable while still delivering affordability where most working households struggle. The City will continue delivering the deepest subsidies through dedicated 100% affordable developments and the Gap Financing Program. Since January 2023, the City has provided $222.7 million to fund 16 affordable housing projects that will produce 1,639 below-market-rate units. The inclusionary path focuses on homes for the local workforce and every day, mixed-income communities. Currently, approximately 20% of moderate- or middle-income households are housing cost-burdened.

Affordability Period for Rental Inclusionary Units (San José Municipal Code § 5.08.600)

Reducing the rental affordability term from 99 years to 55 years for inclusionary rental units will align local covenants with prevailing state standards and financing practice and recognizes the inherit caps on the useful life of the built environment.

- **State Density Bonus Law:** Requires affordable rental units created under State Density Bonus Law to be restricted by a recorded covenant for at least 55 years.

- **California Tax Credit Allocation Committee:** California's tax-credit program applies a 55-year affordability term through the California Qualified Allocation Plan regulation.

- **Low-Income Housing Tax Credit:** Federal law generally ensures at least 30 years of affordability (15-year compliance and an additional 15-year extended use); California extends further to 55 years via state policy.

Aligning locally to 55 years matches what most lenders, investors, and compliance monitors already underwrite, as 99-year restrictions have no beneficial policy gains.

This proposal realigns with state-anchored terms, reduces redundancy, and improves administrability. Additionally, in 2024, Assembly Bill 243 prohibited jurisdictions from charging recurring monitoring fees on 100% affordable State Density Bonus Law projects already monitored under state regulatory agreements, such as agreements under California Tax Credit Allocation Committee, California Department of Housing and Community Development, and California Debt Limit Allocation Committee. When state programs conclude at year 55, continuing separate local monitoring without dedicated funding becomes impractical; aligning to 55 years removes overlap while maintaining long-term affordability.

Surplus Credits Exchange (San José Municipal Code § 5.08.540)

Since 2021, the IHO includes an existing surplus credit system, which allows developments that produce more inclusionary units than required to use those surplus homes into tradeable credits for other projects to meet their IHO obligations. However, no projects have utilized this option due to a lack of a clear regulatory path. The proposed updated ordinance clarifies how credits are created, valued, and applied; preserves equivalency between what is sold and what is bought (e.g., appropriate tenure, bedroom mix, and AMI depth); and provides a predictable, rules-based path to compliance that moves dollars toward actual unit delivery. Enhancements in this update include a focus on equivalency and transferability.

- Clear eligibility criteria for both generating and receiving developments.

- Standardized valuation methodology, providing a transparent process, setting equivalency standards.

- A City-facilitated exchange to connect buyers and sellers and reduce friction, allowing for transferability.

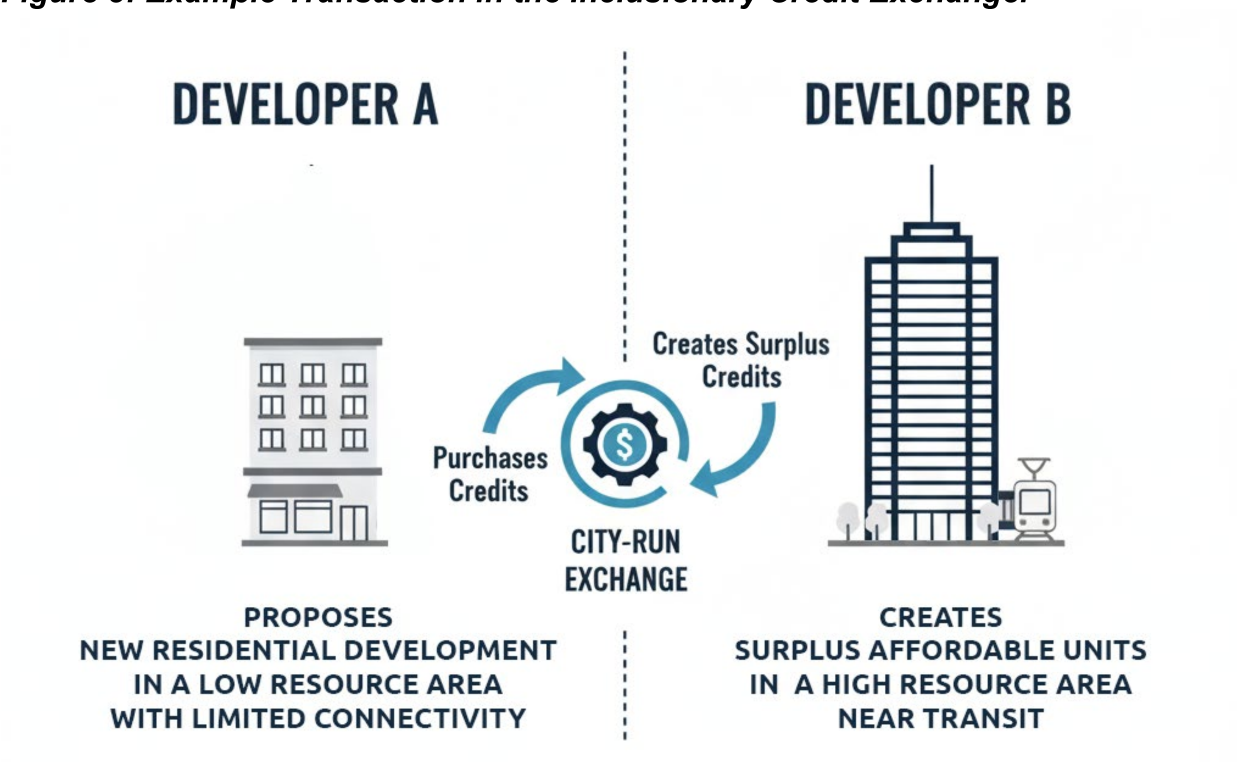
- A 12-month performance review with stakeholder input to assess outcomes and refine rules.

The City will use a room count standard to make sure that housing units are comparable when inclusionary housing credits are transferred between projects. Under this standard, each unit's total number of rooms — including bedrooms and living spaces — should match. For example, a studio counts as one room, a one-bedroom counts as two rooms, a two-bedroom counts as three rooms, and so on.

This approach allows for greater flexibility in exchanging credits between different types of projects — such as those with varying building designs or floor sizes — while ensuring that the overall quality and size of housing units remain consistent. As the program takes effect, the City will continue to monitor compliance and may add new tools or safeguards to encourage credit use and maintain fairness in the process.

The proposed inclusionary credit exchange would create a market in which projects that produce more affordable units than required generate credits, and projects that cannot feasibly meet their full requirement on-site, can purchase those credits to meet their IHO obligations. Figure 3 shows how this would work in practice. Developer B creates surplus affordable units in a high-resource area. Developer A purchases those credits through a City-run exchange to satisfy requirements in a lower-resource area.

Figure 3: Example Transaction in the Inclusionary Credit Exchange.



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Expected benefits for establishing the exchange include:

- **For "generating" developers:** The market monetizes surplus production and strengthens feasibility, encouraging mixed-income buildings without additional public subsidy.

- **For "receiving" developers:** It offers a faster, lower-cost compliance path while still requiring a meaningful on-site contribution and producing more housing units.

- **For the City:** It channels private investment into real, deed-restricted homes, increases the likelihood that stalled projects proceed, and creates a transparent, self-funding mechanism subject to periodic review. Conceptually, a project delivering about 10% more affordable units than required could generate multi-million-dollar credit value, improving its own feasibility while enabling another project to move forward - yielding more units overall with no new public subsidy, fostering an ecosystem for abundant housing.

Streamlined Processing for 100% Affordable Developments (San José Municipal Code § 5.08.400)

Projects with 100% affordable units will be allowed to demonstrate their IHO compliance through their state or federal regulatory agreements, rather than going through the typical IHO process and executing an IHO agreement. The terms of the state and federal agreements will be memorialized in an abbreviated City deed-restricted covenant rather than an Inclusionary Housing Agreement, thus removing overlapping obligations while still preserving enforceability and consequences for non-compliance.

The projects, including tax-credit developments, are already subject to rigorous state oversight and carry extensive covenant, monitoring, and reporting requirements. Requiring a parallel City agreement adds time and legal cost without improving outcomes. Projects voluntarily deed-restricting to receive City and state benefits are also subject to legal restrictions. Developers will be required to provide Affordable Housing Development Declaration Forms and record abbreviated Affordability Restriction agreements that will provide legal mechanisms to ensure compliance with affordability restrictions throughout the term of compliance. The anticipated benefits include:

- Faster delivery: Cuts processing time that can delay affordable homes by months and eliminates paperwork and time invested by City staff on already-monitored projects;

- Lower transaction costs: Reduces duplicative legal drafting, negotiation, and recording costs; and

- Clear accountability: Maintains enforceability through existing regulatory covenants and City penalty provisions.

This simpler, non-duplicative compliance path will accelerate 100% affordable housing while keeping strong, enforceable protections in place and are reflected in the Attachment – Revised Regulations for Implementation of the Inclusionary Housing Ordinance.

EVALUATION AND FOLLOW-UP

The Department will return to City Council 12 months after the effective date with a performance report assessing early outcomes and recommending any adjustments. The report will include:

- Projects Permitted: Number of projects that achieved building permits under the new provisions;
- Units by Income Tier: Affordable units produced at each AMI level (and tenure, where applicable);
- Surplus Credit Activity: Number of surplus credit transactions completed, and the associated units generated; and
- Program Refinements: Data-driven recommendations for clarifying, calibrating, or strengthening the program based on observed performance.

This evaluation will guide any targeted updates needed to improve clarity, predictability, and production outcomes.

COORDINATION

This memorandum was coordinated with the City Attorney's Office, City Manager's Budget Office, and the Planning, Building, and Code Enforcement Department.

PUBLIC OUTREACH

This memorandum will be posted on the City's Council Agenda website for the November 18, 2025 City Council meeting.

In mid-August 2025, the Department solicited feedback on the revised Inclusionary Housing regulations from 19 development professionals who use the program, including multifamily developers and single-family home builders. The Department hosted a Community Engagement session on October 9, 2025, to review the proposed IHO revisions. The Department Director presented and answered questions from attendees, including staff and members of advocacy groups, and neighborhood leaders. A recording of the session is available on the Department's website.[1]

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment.

PUBLIC SUBSIDY REPORTING

This item does not include a public subsidy as defined in section 53083 or 53083.1 of the California Government Code or the City's Open Government Resolution.

/s/
Erik L. Soliván
Director, Housing Department

For questions, please contact Banu San, Deputy Director, Housing Department, at Banu.San@sanjoseca.gov or (408) 975-4489.

ATTACHMENT
Revised Regulations for Implementation of the Inclusionary Housing Ordinance

[1] https://www.sanjoseca.gov/your-government/departments-offices/housing/resource-library/community-engagement-series

City of San José

Revised Regulations for Implementation of the Inclusionary Housing Ordinance

Chapter 5.08 of the San José Municipal Code

November 18, 2025

Table of Contents

Introduction

These Revised Regulations for Administration of the Inclusionary Housing Ordinance (IHO), Chapter 5.08 of the San José Municipal Code (SJMC), are provided by the City of San José's Department of Housing (Housing Department).

These newly Revised Regulations are intended to add to users' understanding of SJMC Chapter 5.08 and provide clarifications, rather than repeat the requirements. A full understanding of the Inclusionary Housing Ordinance (IHO) requires review of the current version of Chapter 5.08, these Revised Regulations with Exhibits, the Affordable Housing Compliance Application, and other program documents.

Note that relevant sections of Chapter 5.08 are indicated in the parentheticals under each topic in these Revised Regulations, and individual links are provided throughout as available. If there is an express conflict between the IHO and the Revised Regulations, the IHO will prevail.

Residential developers are encouraged to check the City's Inclusionary Housing Ordinance website for links to the most recent version of Chapter 5.08, Revised Regulations and other updated documents.

[For projects approved prior to May 1, 2021, please see the original Ordinance and Regulations, available here: INCLUSIONARY HOUSING PROGRAM.]

The City reserves the right to modify or supplement this document as the need arises and further information is developed. Therefore, no express or implied guarantees should be inferred regarding the accuracy of this information.

Part 1

General Provisions

These sections should be read together with the relevant San José Municipal Code sections for a complete understanding.

1.1 Adoption and Purpose of the Inclusionary Housing Regulations

(SJMC Sections 5.08.020; 5.08.140, 5.08.200; 5.08.730, 5.08.740)

On January 12, 2010, San José City Council adopted a Citywide Inclusionary Housing Ordinance No. 28689 (the original IHO). The purpose of the IHO is to enhance the public welfare by establishing policies that require the development of housing affordable to households of low and moderate incomes, meet the City's regional share of housing needs, and implement the Housing Element's goals and objectives.

On March 9, 2021, City Council amended the original IHO pursuant to Ordinance Number 30538 (IHO). The IHO is codified in Chapter 5.08 of the San José Municipal Code (SJMC). The IHO expressly calls for the adoption of the Inclusionary Housing Regulations the City Manager or their designee.

1.2 Definitions and Regulations Interpretation

(SJMC Sections 5.08.107, 5.08.120, 5.08.175, 5.08.730)

These Revised Regulations elaborate upon and are intended to be read together with the IHO in SJMC Chapter 5.08. All capitalized terms in the Revised Regulations that are undefined in this document shall be as defined in the IHO. Terms also defined in Chapter 5.08 contain links to that definition.

a. "Affordable Housing Agreement" means the recorded covenant that reflects the Residential Development's enforceable commitment to comply with the IHO as proposed in the Affordable Housing Compliance.

b. "**Affordable Housing Compliance Plan**" (or Compliance Plan) is a document that developers complete and submit to the Housing Department in conjunction with their application for land use entitlements. The Compliance Plan identifies information that must be provided for Housing Department staff to determine the extent to which any Obligation may be associated with the project. The Compliance Plan shall also refer to and include any application for such plan.

All Residential Developments with ten (10) or more units must submit a Compliance Plan. The base assumption is that technical information on a development provided in its Compliance Plan and the selected IHO compliance option will remain accurate unless amended. Details will be later be codified before the issuance of building permits in the enforceable, recorded Inclusionary Housing Agreement.

The Compliance Plan application form is posted on the City's Housing Department website at www.sjhousing.org/IHO.

c. "**Affordable Housing Developer**" means an organization with experience developing at least one Affordable Housing Development in the City of San José and meeting all the criteria outlined in Section 3.6 of these Revised Regulations.

d. "**Affordable Housing Development**" includes those Residential Developments anticipating recordation of affordability restrictions for 100% of non-manager units that restrict rents and household incomes to levels set by California Tax Credit Allocation Committee (TCAC) and may use income averaging (i.e., average rent of 60% of AMI using TCAC rents and incomes and consistent with a project specific TCAC allocation resolution.)

e. "**Affordable Rental Rate**" shall mean the restricted monthly rent for an Inclusionary Unit based on its income category and unit size calculated according to the methodology outlined in Appendix A and published periodically by the City on its website.

f. "**Affordable Sales Price**" shall mean the restricted below-market sales price for a for-sale Inclusionary Unit based on its income category and unit size and other factors, calculated by City staff for each development according to the methodology outlined in Appendix B.

g. "**Construction Phase**" shall have the meaning in SJMC Section 5.08.155 and be defined in Planning permits for phased or master planned projects.

h. "**Downtown High-Rise**" shall mean a Residential Development that could qualify for reduced In Lieu Fee rate upon request that is then documented and approved by City staff. The conditions to meet are codified in SJMC Section 5.08.520(F):

1. Is located in the Downtown Planned Growth Area as described in the Envision San José 2040 General Plan;
2. Has ten (10) or more floors or stories in height, not including any non-residential uses, with the highest occupied floor at an elevation at least 150 feet above street level;
3. For which the Developer has provided the information requested by the City for compliance with Government Code (GC) Section 53053 and Resolution 77135 for disclosure of public subsidies and the public hearing has been held; and
4. Has all units within a count of 10,000 residential units starting from the date of the Resolution that obtain a building permit and pass first inspection within 12 months of obtaining a building permit, or meet other conditions as may be specified in a Resolution implementing SJMC Section 5.08.520(F).

i. "**Dwelling Unit**" means any type of dwelling allowed by SJMC Title 20. These include less traditional types of units described, designed or permitted based on:

1. shared common facilities (e.g., single room occupancy, suite-style student or senior housing)

2. accessory dwelling units (ADUs), including junior ADUs (and associated facilities), and

3. co-living dwelling units.

In such nontraditional projects, the number of Dwelling Units shall be determined in a manner that reasonably reflects the design of the project for separate rental or sale of bedrooms or suites.

For State-licensed residential care facilities for the elderly (RFCEs), any bedroom, room, or suite that is only available as part of and within an RFCE and is part of a development permitted by the City as an RFCE (RCFE unit) will not be considered a Dwelling Unit subject to the IHO as long as the development is required to pay the commercial linkage fee for the RFCE unit. However, Dwelling Units that are not RFCE units, such as staff units or other types, are subject to the IHO.

j. "**For-Sale**" shall mean a housing development with a tentative map, final map, parcel map, condominium plan, or other similar documentation allowing for the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments).

Note that attached units are presumed to be rental units until or unless the Developer provides all of the following information to demonstrate compliance with the Subdivided Lands Act prior to issuance of any Certificate of Occupancy and/or satisfaction of the IHO obligations, including:

1. recordation of the covenants, conditions, and restrictions;
2. the formation of a Homeowner's Association including executed governing documents and completed incorporation;
3. California Bureau of Real Estate approval of a final subdivision report; and
4. evidence of marketing of the Residential Development as a For- Sale Development.

k. "**Market Area**" means a specific geographic area designated through the adoption by the City Council of a resolution or policy. Resolution 79904 (Mar. 9, 2021) provided detailed descriptions of the boundaries of eleven (11) distinct Market Areas comprising the entire City. Market Area designations affect In Lieu Fee levels.

l. "**Moderate" or "Strong" Market Area** means a Market Area or other geographic area designated by or pursuant to a City Council resolution or policy based on certain findings, including but not limited to residential building activity levels for market-rate housing. City Council passed Resolution 79904 (Feb. 23, 2021) which identified the West Valley Market Area and the Central Market Area as Strong Market Areas and all other Market Areas as Moderate Market Areas. The map for these areas are found on the City's website and are in place until or unless superseded.

m. "**Multifamily Housing Incentive Program**"(MHIP) is a program that allows certain developments using a Mixed Compliance Option to qualify for a waived In Lieu Fee. The conditions that Residential Developments must meet are defined in Resolution Numbers RES2024-420, RES2024-421 (Dec. 10, 2024) and RES2025-130:

1. Are listed as an eligible project in Resolution RES2024-420 Attachment A and RES2025-130 and any successor resolutions indicating program eligibility;
2. Possess land use applications deemed complete by the Department of Planning, Building and Code Enforcement by the end of December 2022;
3. Provide at least five (5) percent of units on-site at an Affordable Housing Cost or Affordable Rental Rate to households earning no more than 110% of Area Median Income, as approved by the Housing Director consistent with the Program requirements;

4. Complete the City's program form to amend an existing Compliance Plan;
5. Record an initial or amended Inclusionary Housing Agreement by the end of 2025;
6. Obtain a building permit by 18 months after planning approval;
7. Pass first building inspection six (6) months after building permit issuance; and
8. Meet all other non-fee IHO and Revised Regulations requirements.

n. "**Opportunity Area**" means a geographic area that meets the definition of an Affordable Housing Expansion Area per City Council resolution (Resolution 80807, passed Dec. 6, 2022). A Residential Development's Opportunity Area affects the allowed location of the production of any off-site Inclusionary Units per SJMC 5.08.500.

o. "**Residential Development**" means a development subject to IHO requirements.

p. "Affordability Restriction Agreement" required for housing development projects proposing 100% of units deed restricted to up to 80% AMI.

1.3 Administrative Responsibility

(SJMC Sections 5.08.140, 5.08.200, 5.08.730)

The IHO is intended to be administered by the City Manager or their designee. The Housing Director is the implementing designee.

A Developer shall not be excused from fulfilling its obligations under the IHO and these Revised Regulations due to a failure by a City official or employee to fully execute the IHO procedures in accordance with these Revised Regulations.

Any determination of IHO's applicability or exemption for a particular Residential Development shall be made by City staff after receipt of an Affordable Housing Compliance Plan and all supporting information reasonably requested.

The City Attorney is authorized to enforce the requirements of the IHO, these Revised Regulations, and related agreements by civil action and any other proceeding permitted by law.

1.4 Operative Date

1.4.1 Operative Date of Amended Inclusionary Housing Ordinance

(SJMC Section 5.08.740)

The Amended Inclusionary Housing Ordinance became operative on May 1, 2021. Residential Developments that receive First Approvals (or for which the application is deemed complete pursuant to GC Section 65589.5) or other Planning Permits on or after that date are subject to the Amended IHO requirements, to which these Revised Regulations apply.

1.4.2 Projects with Approvals Prior to the Effective Date

Residential Developments with unexpired Planning Permit approvals (or Residential Developments that otherwise were deemed final or vested pursuant to State law) prior to May 1, 2021, will be subject to the terms of the original Inclusionary Housing Ordinance and should refer to the original Ordinance No. 28689 and the prior Regulations, the version dated June 30, 2016 (Old Inclusionary Guidelines).

Notwithstanding, Residential Developments with unexpired Planning Permit approvals (or otherwise deemed final pursuant to State law) prior to May 1, 2021, that have not paid the In Lieu Fee, recorded an Inclusionary Housing Agreement, or been issued a Building Permit may elect to comply with these amended IHO requirements.

Election to comply with these IHO requirements involves completing a replacement Compliance Plan and acknowledgment and submitting all required additional and or /updated information and documents to establish the current status of the Residential Development and its eligibility.

1.5 Projects Subject to the Ordinance

(SJMC Sections 5.08.250, 5.08.310, 8.05.420)

The IHO applies to all Residential Developments as defined in SJMC Section 5.08.250 and Section 1.2 of these Revised Regulations, above.

Note that the term “modified” (as referenced in SJMC Section 5.08.250.A) is not intended to include projects where Dwelling Units are remodeled, where the use of the Dwelling Units is unchanged, and no new or additional Dwelling Units are created as a part of the project. Simple rehabilitation of an existing residential unit alone does not trigger IHO compliance.

1.6 Claims for Exemption or Fee Reductions

(SJMC Sections 5.08.320, 5.08.520.F, 5.08.610.B.9)

Developers for all Residential Developments with three (3) or more Dwelling Units must fill out an Affordable Housing Compliance Plan, indicate the basis for the exemption or fee reduction, and submit any required information so that staff can determine eligibility.

City Staff will review to verify that the Residential Development qualifies for the claimed exemption, that conditions for any claimed exemption are addressed, and then may approve.

Note that Residential Developments may lose their exemptions or fee reductions if their Planning Permits expire.

The following are types of exemptions and fee reductions.

1.6.1 Small Projects Exemption

(SJMC Section 5.08.320.A.2)

Residential Developments with nine (9) or fewer For-Sale Dwelling units across all phases are exempt from the IHO under the Small Projects Exemption.

Residential Developments that are part of a phased development or are being developed on Contiguous Property under Common Ownership or Control with a total unit count of ten (10) or more units across the phases or properties are not eligible for the Small Projects Exemption.

1.6.2 Downtown High-Rise Term Limited In Lieu Fee Reduction

(SJMC Section 5.08.520.F, Resolution Nos. 79867 and 79688)

Qualified Downtown High Rise developments, as defined, may be eligible to pay a reduced In Lieu fee upon compliance with the requirements in these Revised Regulations by selecting this option in the Compliance Plan and executing a Downtown High Rise Inclusionary Housing Agreement on the City's form. If the Residential Development is claiming a Downtown High-Rise Fee Reduction, it must also comply with all terms of that program as amended, Plan and Agreement (see Section 1.2 of these Revised Regulations, above).

1.6.3 Multifamily Incentive Program Limited In Lieu Fee Reduction

(SJMC Section 5.08.520.F, Resolution Nos. RES2024-420 and RES2024-421)

Qualified developments listed in Attachment A to RES2024-420 (and successor resolutions indicating program eligibility) may be eligible to pay a reduced or zero In Lieu fee upon compliance with the requirements in the program and these Revised Regulations.

Eligible applicants should select this option and either submit a new Compliance Plan application or complete the City's program form to amend an existing Compliance Plan.

If the development is claiming a Multifamily Housing Incentive Program Limited In Lieu Fee Reduction, it must also comply with all terms of that program, the Compliance Plan, Inclusionary Housing Agreement, and the Revised Regulations.

Applicants must execute and record an Inclusionary Housing Agreement and provide all other documents the City reasonably requires (see Section 1.2 of these Revised Regulations, above).

1.6.4 Expiration of Exemption – Planning Permit Expiration

(SJMC Section 5.08.320.B)

If a Residential Development's Planning Permit expires, it must comply with the IHO and Revised Regulations then in place. Any claimed exemptions would also expire, and the Applicant would need to obtain a new approval of the Compliance Plan.

This Section shall not apply to a Planning Permit or Land Use approval extension beyond its initial term where the non-discretionary extension is required by state or local law.

1.6.5 Residential Developments Seeking Ministerial Approval

(SJMC Sections 5.08.110, 5.08.320; 5.08.610.B.9)

Residential Developments using the City's ministerial approval process (SJMC 20.195 Part 3) are explicitly subject to Inclusionary Housing obligations (SJMC 20.195.090.F).

Other Residential Developments that do not require any Planning Permits are not subject to the IHO as currently written. Thus, Residential Developments seeking approval under state 'ministerial approval' laws such as SB 35 and AB 2162 may be exempt from the IHO.

Regardless, Applicants with Residential Developments that are seeking Ministerial Approval under SB 35, AB 2162, or other state ministerial approval laws shall submit a Compliance Plan Application for approval accompanied by a draft development budget and overall unit mix reflecting units' affordability and sizes that comply with IHO, density bonus, and any funding sources. This will allow staff to confirm that the Residential Development qualifies for the claimed ministerial approval exemption and that conditions for the claimed exemption are addressed including recording of an appropriate Regulatory Agreement.

The City will monitor compliance as described in Section 10 below. Prior to the issuance of the Building Permit, the City will confirm that the Developer and Residential Development are still in compliance with the Compliance Plan and that an Inclusionary Housing Agreement has been recorded against the property.

1.6.6 100% Affordable Housing Developments

(SJMC Section 5.08.110, 5.08.400.A.3.3)

Affordable Housing Developments that record an unsubordinated affordability restriction up to 80% AMI to the benefit of a public agency that applies to all non-manager units will be deemed compliant with IHO under Section 5.08.400.3.

To be eligible for treatment as an Affordable Housing Development meeting the requirements of Section 5.08.400.C, Applicants must submit an Affordable Housing Development Declaration Form, instead of the standard Affordable Housing Compliance Plan, This Declaration must be submitted prior to final map approval or building permit issuance, ensuring that affordability commitments are properly documented and legally binding before construction begins. Prior to final map approval or building permit issuance, the Developer must enter into and record an Inclusionary Housing Agreement, unsubordinated to any deeds of trust, that shall include obligations to maintain affordability requirements throughout the term and penalties for non-compliance. Developers will be required to accommodate periodic inspections and requests for information by the City to verify adherence to the Inclusionary Housing Agreement.

If staff determines, based on the completed Declaration, that the project is an eligible Affordable Housing Development as defined in the IHO Ordinance (SJMC Section 5.08.110), staff will provide a letter indicating that the project has been deemed compliant with the IHO and proceed with preparing an Inclusionary Housing Agreement.

If applicants are unsure if a Residential Development will receive public agency funding at the time of Compliance Plan submittal, they must instead select the compliance option to Build On-site (see Section 3 below).

Part 2
Compliance Options

The following sections describe the options for compliance under the IHO. Please note that the described requirements are only applicable if the Applicant selects that compliance option. These sections should be read together with the relevant San José Municipal Code sections for a complete understanding.

Option One
Build On-Site

This guide provides comprehensive information on how developers may satisfy their inclusionary housing obligation by building Inclusionary Units on-site dispersed throughout their Residential Development and either selling or renting those units to income-eligible households.

The Build On-Site option promotes economic integration by ensuring affordable and market-rate units are built together, fostering diverse, mixed-income inclusive communities.

Key requirements include:

- 15% of all units must be designated as affordable in the development
- Genuine integration throughout the development
- Comparable size, quality, and design to market-rate units
- Concurrent construction with market-rate units

Relevant SJMC Section: 5.08.500

2.1 Build On-Site Compliance Option Guide

Basic Obligation

Developers that select the Build On-Site compliance option must provide a percentage of the dwelling units within the residential development as restricted affordable units. These units must meet the standards outlined in SJMC Section 5.08.470 , as well as the requirements listed below.

- **For-sale projects** may fulfill this requirement by providing either for-sale or rental inclusionary units.
- **Rental projects** must provide inclusionary rental units when selecting the Build On-Site option.

Duration of Affordability

All Inclusionary Units must remain affordable to the targeted income group for no less than fifty-five (55) years. This long-term affordability ensures the community benefit extends to future generations. The City will use shared appreciation documents and deed restrictions to maintain affordability over time.

For-Sale Residential Developments

Developers must sell at least 15% of the total units to income-qualified buyers at affordable sales prices.

Requirement	Details
Minimum Units	15% of total development
Eligible Buyers	Households earning up to 120% AMI
Sales Price	Affordable Sales prices based on 120% AMI (adjusted for family size)
Price Calculation	• Based on the most current State Income Limits • Updated annually per income limits published on the City's website

Requirement	Details
Income Verification	Based on all income earned by actual household members at the time of purchase

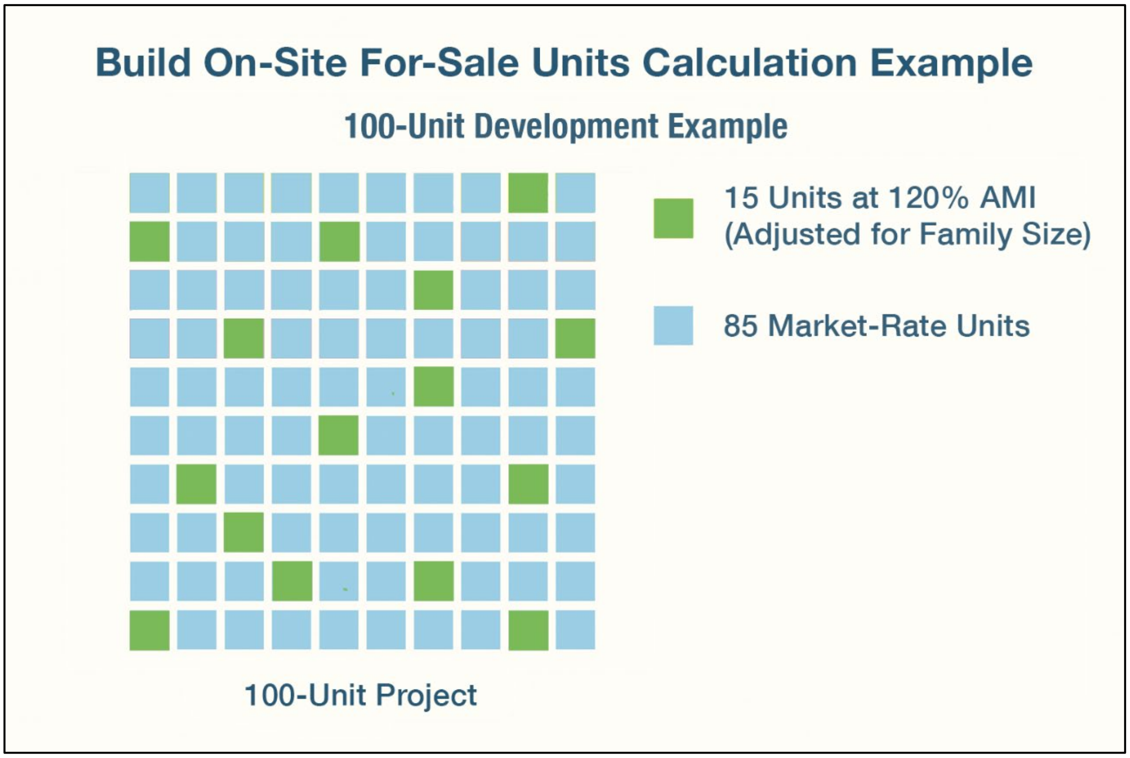


Figure 1: Build On-Site For-Sale Calculation Example

Duration of Affordability

In cases where the Affordable Housing Cost for a Moderate-Income unit is within 5% of the appraised unrestricted market value, developers may apply for a waiver of shared appreciation requirements. If approved by the Housing Director:

- The unit must still be sold at or below the Affordable Housing Cost
- The unit must be owner-occupied initially
- No income verification of the purchaser is required
- The waiver expires after 6 months unless extended

For Rental Residential Developments

For rental residential developments - or for-sale residential developments that elect to provide on-site rental units in lieu of for-sale units - developers must construct inclusionary rental units in accordance with one of the following standards. All maximum rents must be at or below the applicable Affordable Rental Rate, and Area Median Income (AMI) levels are adjusted based on household size.

Income Level	Percentage of Units	Maximum Household Income	Maximum Rents
Low	At least 5%	60% AMI	60% AMI
Low	At least 5%	80% AMI	80% AMI
Moderate	At least 5%	110% AMI	110% AMI
Total	**At least 15%**	**Mixed income**	

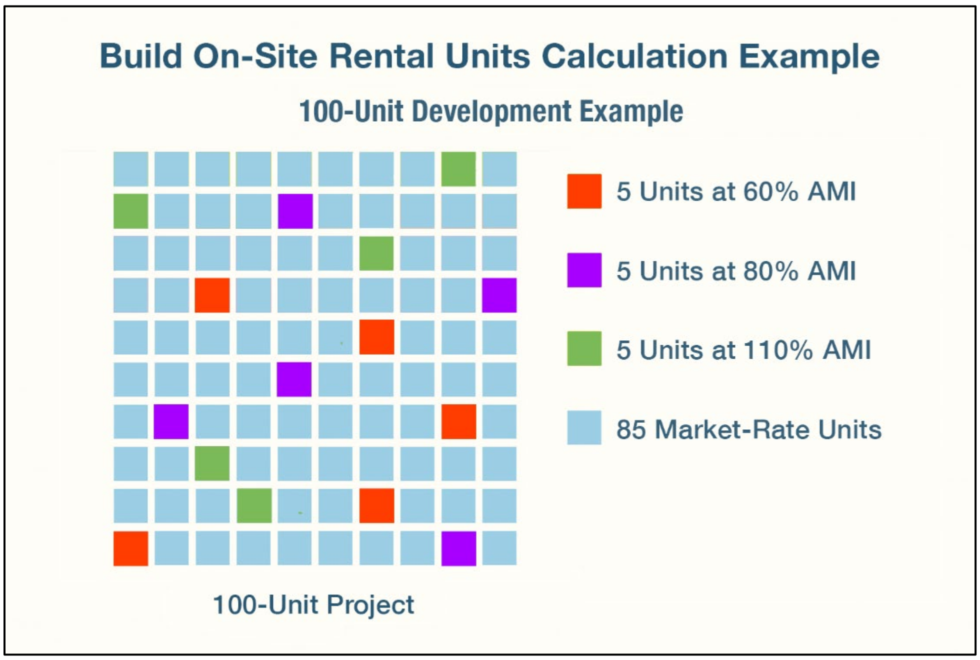
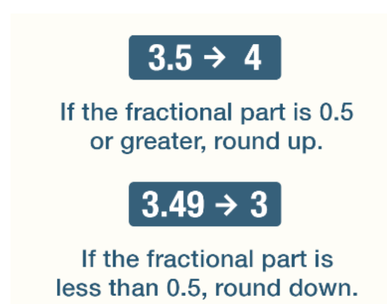


Figure 2: Build On-Site Rental Calculation Example

Rounding Rule

When calculating the number of units required to meet the on-site inclusionary housing obligation, any fractional unit of one-half (½) or greater shall be rounded up to the next whole unit, while any fraction less than one-half (½) shall be rounded down to the nearest whole unit.



Additional Compliance Options

Two additional compliance options also involve the provision of on-site Inclusionary Units:

- **Mixed Compliance Option** - Allows developers to satisfy a portion of their rental inclusionary housing obligation by providing on-site units, while paying a reduced In-Lieu Fee for the remainder.
- **Partnerships for Clustered Units Option** - Allows developers to fulfill their Inclusionary Housing Ordinance (IHO) obligation by constructing an adjacent Affordable Housing Development, enabling access to affordable housing financing mechanisms.
- **Affordable Housing Development Compliance** - Developments with 100% affordable units at up to 80% AMI (excluding manager units) that have recorded City affordability restrictions may be deemed compliant. However, these units cannot be used to meet other developments' obligations unless all applicable requirements are met.

Build On-Site Incentives

When a developer elects the Build On-Site compliance option - providing all required Inclusionary Units on the same parcel as the market-rate units - they may request additional benefits under the State Density Bonus Law and SJMC Chapter 20.190. To qualify, the Inclusionary Units must satisfy the minimum thresholds in California Government Code § 65915:

Timing

Submit the written request at the same time as:

- The Affordable Housing Compliance Plan application, and
- The earliest of the Zoning or Planning Permit applications.

Eligibility Checklist

- All Inclusionary Units are on-site and comply with SJMC § 5.08.400.
- The project meets or exceeds the density-bonus thresholds in Gov. Code § 65915.
- Requested incentives/waivers are listed in the Compliance Plan.

What You May Request

- **Density Bonus** - permission to build additional units beyond the base zoning.
- **Development Incentives** - concessions (e.g., reduced setbacks, increased FAR) that lower costs.
- **Waivers** - relief from specific development standards that would physically preclude the bonus or incentives.

Key Conditions

- **One-Stop Submission:** All requests must be made concurrently;
- **Unit Compliance:** Inclusionary Units used to qualify for the density bonus must also meet all IHO and Density Bonus Law requirements (e.g., size, design, income targeting).
- **Counting Toward Obligations:**
  - Units counted for Density Bonus purposes may also satisfy Inclusionary Housing requirements if they meet IHO standards.
  - Any major deviation from these Regulations (e.g., alternative affordability mix) counts as one development incentive under Density Bonus Law.

> **Tip:** Prepare a summary table in your Compliance Plan showing the unit mix, affordability levels, and requested concessions to streamline City review.

Partnership for Clustered Units Option

Developers who cannot disperse affordable units throughout the development due to financing requirements may consider the Partnership for Clustered Units compliance option. This alternative allows clustering of affordable units but includes additional requirements and partnerships with affordable housing developers. Details are available in Section 2.7 of this Revised Regulations.

Additional Notes on Unit Eligibility

Affordable housing units provided under the following programs may be counted toward fulfilling Inclusionary Housing obligations, if they meet all applicable IHO and Revised Regulations requirements:

- State Density Bonus Law (California Government Code § 65915)
- SB 330 (Housing Crisis Act)
- City of San José Ellis Act Ordinance

Accessory Dwelling Units (ADUs)

For-Sale Residential Developments may satisfy Inclusionary Housing Ordinance (IHO) requirements by including Accessory Dwelling Units (ADUs) as Inclusionary Units. Two distinct pathways are available: rental ADUs and for-sale ADUs.

Note that if a development also has SB 330 replacement unit requirements, the affordable units can count for both programs; however, tenure is not flexible under SB 330.

Rental ADUs as Inclusionary Units

Developers may meet their IHO obligation by providing rental ADUs attached to individual for-sale units, provided all of the following conditions are met:

- **Disclosure Requirement:** The developer must clearly disclose the IHO regulatory obligations to the initial homebuyer during marketing, including the requirement to rent and continue renting the ADU at an affordable rent to qualified tenants for 55 years, with ongoing City monitoring. Disclosure materials must be reasonably acceptable to the City.
- **Section 8 Compliance:** The ADUs must explicitly allow rental to Section 8 voucher holders.
- **Acknowledgement by Purchaser:** The developer must obtain a written assumption or acknowledgment of these obligations from the homebuyer, in a form reasonably acceptable to the City.

- **Recordation Requirement:** A separate City Notice of Affordability Restriction and Rental Obligation must be recorded at the time of sale of the home with the rental ADU.

> **Note:** The inclusion of rental ADUs within a For-Sale Residential Development does not reclassify the project as a Rental Development for IHO compliance purposes.

For-Sale ADUs as Inclusionary Units

Developers may also fulfill their IHO obligation by providing a limited number of for-sale ADUs as Inclusionary Units, subject to the following:

- **Zoning Compliance:** All requirements of SJMC Chapter 20.80, including Part 2.76, must be satisfied—except Section 20.80.185.F.5, which restricts rental of for-sale Inclusionary Units.
- **Parcel Map Approval:** The developer must submit, and the City must approve, a parcel map allowing for separate conveyance of the ADU.
- **Design Standards:** Except for flexibility in unit sizes, the ADU must comply with the unit standards in SJMC Section 5.08.470.
- **Build On-Site Compliance:** All other applicable Build On-Site requirements must also be met.

Developer Responsibilities

As with all for-sale Inclusionary Units, the developer is responsible for marketing and selling ADUs to income-qualified households, subject to Housing Department approval of the application.

Principal Residence Requirement

All households occupying Inclusionary Units must use the unit as their principal residence. Temporary rentals to third parties may be approved by the City Manager only in cases of documented household hardship, as specified in the Inclusionary Housing Regulations.

Implementation and Compliance

Basic Rule

Affordable units must be built and ready at the same time or before market-rate units.

Phasing Requirements

To ensure that affordable units are delivered alongside market-rate units, the City enforces permit limitations throughout the development process:

Development Stage	New Construction Projects	Conversions, rehabilitations
Building Permits	Maximum 6 market-rate permits may be issued per 1 affordable unit permit issued	Maximum 5 market-rate permits may be issued per 1 affordable unit authorized for occupancy at Affordable Housing Cost
Inspections / Occupancy	Cannot approve final inspections (single-family detached) or issue certificates of occupancy (all other residences) for market-rate units unless at least 15% of all final inspections/COs have been approved for affordable units	Cannot approve final inspections (single-family detached) or issue certificates of occupancy (all other residences) for market-rate units unless at least 20% of affordable units have been authorized for occupancy at Affordable Housing Cost
Final Phase	Cannot issue building permits for more than 90% of market-rate units until all affordable unit permits issued; Cannot approve final inspections/COs for more than 90% of market-rate units until all affordable units have received final inspections/COs	Cannot issue building permits for more than 90% of market-rate units until all affordable units authorized for occupancy; Cannot approve final inspections/COs for more than 90% of market-rate units until all affordable units authorized for occupancy

How Phasing Works in Practice

Example for a 100-unit development including 15 affordable units:

New Construction	Conversions, Rehabilitations
For every affordable unit permit issued, up to 6 market-rate permits allowed	For every affordable unit authorized, up to 5 market-rate permits allowed
Before reaching 85% market-rate certificates of occupancy, must have at least 15% of affordable units (~3 units) completed	Before reaching 80% market-rate occupancies, must have at least 20% of affordable units (3 units) authorized
Last 10% of market-rate units can't get permits until all 15% affordable units have permits	Last 10% of market-rate units can't get permits until all 15% affordable units are authorized

These rules ensure affordable units are built throughout the development process, not left until the end.

A marketing plan for the Inclusionary Units is also required, including a commitment to provide the Inclusionary Units to the public in a nondiscriminatory and equitable manner, consistent with the obligation to Affirmatively Further Fair Housing, while ensuring that any preference policy does not result in a disparate impact on any protected class. Such a plan should provide for concurrent marketing and the sale or rental of both the Inclusionary Units and Market Rate Units.

Marketing Plan Requirements

The marketing plan must demonstrate either:

1. How units will be offered in a nondiscriminatory and equitable manner, OR
2. How marketing furthers fair housing goals with an anti-displacement policy

Plans must ensure concurrent marketing of both affordable and market-rate units.

Contiguous Property Considerations

Developers cannot avoid inclusionary requirements through piecemeal Planning Permit applications. At the time of First Approval application, developers must identify all Contiguous Property under Common Ownership and Control. The Inclusionary Housing Agreement or a separate covenant with at least a 20-year term must be recorded against all such property, requiring compliance when development would authorize 10 or more total residential units.

Standards for Inclusionary Housing Units

Affordable units must be genuinely integrated into the development, both in terms of their physical characteristics and their location within the project. These standards ensure that residents of affordable units enjoy the same quality of living as those in market-rate units.

Size Requirements

Bedroom Mix: The affordable units must mirror the bedroom distribution of the market-rate units. If 40% of the market-rate units are two-bedroom units, then 40% of the affordable units must also be two-bedroom units. This ensures a comparable mix of household sizes throughout the development.

Square Footage: While affordable units can be somewhat smaller than market-rate units, they must maintain a comparable size. Specifically, the average square footage of affordable units must be at least 85% of the average square footage of market-rate units for each bedroom type. For example, if market-rate 2-bedroom units average 1,000 square feet, then affordable 2-bedroom units must average at least 850 square feet.

Design and Quality Standards

- The exterior appearance of affordable units must be indistinguishable from market-rate units, maintaining the same architectural style, quality of materials, and level of detail. This ensures visual consistency throughout the development and prevents any stigmatization of affordable units.

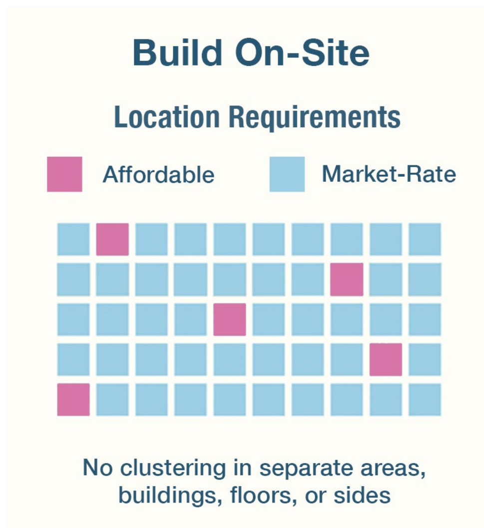
- Interior finishes and features may differ between affordable and market-rate units, provided they remain functionally equivalent. While market-rate units might have granite countertops, affordable units could have laminate countertops - if they are durable, of good quality, and serve the same purpose. The key principle is that all finishes must be appropriate for long-term residential use.

Aspect	Requirement	Examples
Exterior	Must match market-rate units	Same siding, roofing, windows, architectural details
Interior	Functionally equivalent	Different but durable finishes, same appliance types, similar layouts

Location Requirements

Affordable units must be dispersed throughout the development rather than concentrated in any one area. This integration promotes economic diversity and ensures equal access to all development amenities.

What IS Required: For attached housing such as townhouses, row houses, or multi-family buildings, affordable units should be distributed across multiple buildings, multiple floors, and both sides of buildings. The goal is to create a natural mix where affordable and market-rate units are genuine neighbors.



What's NOT Allowed: The regulations specifically prohibit geographic concentration of affordable units. This means developers cannot:

- Group all affordable units in one section or corner of the development
- Place all affordable units in a separate building
- Concentrate affordable units on particular floors (such as lower floors only)
- Cluster affordable units on one side of a building

Ongoing Compliance and Monitoring

Monitoring Requirements

- Owners must submit compliance reports to the City at least every two years
- The City will conduct periodic on-site audits to ensure compliance
- Monitoring fees may be charged to cover City costs of administration

Recapture and Resale Provisions

For for-sale Inclusionary Units, the City uses subordinate shared appreciation documents to capture the difference between market value and Affordable Housing Cost at resale. This ensures resources are available to replace the affordable unit and maintain long-term affordability. All repayments are deposited in the City's Inclusionary Fee Fund.

Income Verification and Continued Eligibility

- Initial household income must be verified for all occupants except in limited waiver situations
- Rental units must continue to be rented to income-eligible households at Affordable Housing Cost for the entire 55-year term
- The City maintains standards for determining household income, maximum occupancy, and continued tenant eligibility

Option Two

Build Off-Site

This guide provides comprehensive information on how developers may satisfy their inclusionary housing obligation by building Inclusionary Units off-site and transferring or renting those units to eligible households.

The Build Off-Site option allows construction of affordable units on a separate site from the market-rate development while meeting increased affordability requirements.

Key requirements include:

- 25% of all units must be designated as affordable (compared to 15% on-site)
- Mixed-income distribution for rental projects
- Off-site location must meet specific siting requirements
- Comparable size, quality, and design to market-rate units
- Concurrent construction with market-rate units

Relevant SJMC Section 5.08.510

2.2 Build Off-Site

Duration of Affordability

All Inclusionary Units must remain affordable to the targeted income group for no less than fifty-five (55) years. This long-term affordability ensures the community benefit extends to future generations. The City will use shared appreciation documents and deed restrictions to maintain affordability over time.

Basic Obligation

Developers that select the Build Off-Site compliance option must provide a higher percentage of dwelling units as restricted affordable units than the on-site requirement, reflecting the reduced integration with the market-rate development. These units must meet the standards outlined in SJMC Section 5.08.470, as well as the requirements listed below.

- **For-sale projects** may fulfill this requirement by providing either for-sale or rental inclusionary units
- **Rental projects** must provide inclusionary rental units when selecting the Build Off-Site option

For-Sale Residential Development

For-sale projects may fulfill this requirement by providing either for-sale or rental inclusionary units. Developers must sell at least 20% of the total units to income-qualified buyers at affordable sales prices (rather than 15% if built on-site).

Requirement	Details
Minimum Units	25% of total development
Sales Price	Affordable Sales Price based on 110% AMI (adjusted for family size)
Eligible Buyers	Households earning up to 110% AMI
Price Calculation	• Based on 25 Cal. Code Reg. 6932 • Updated annually on City website

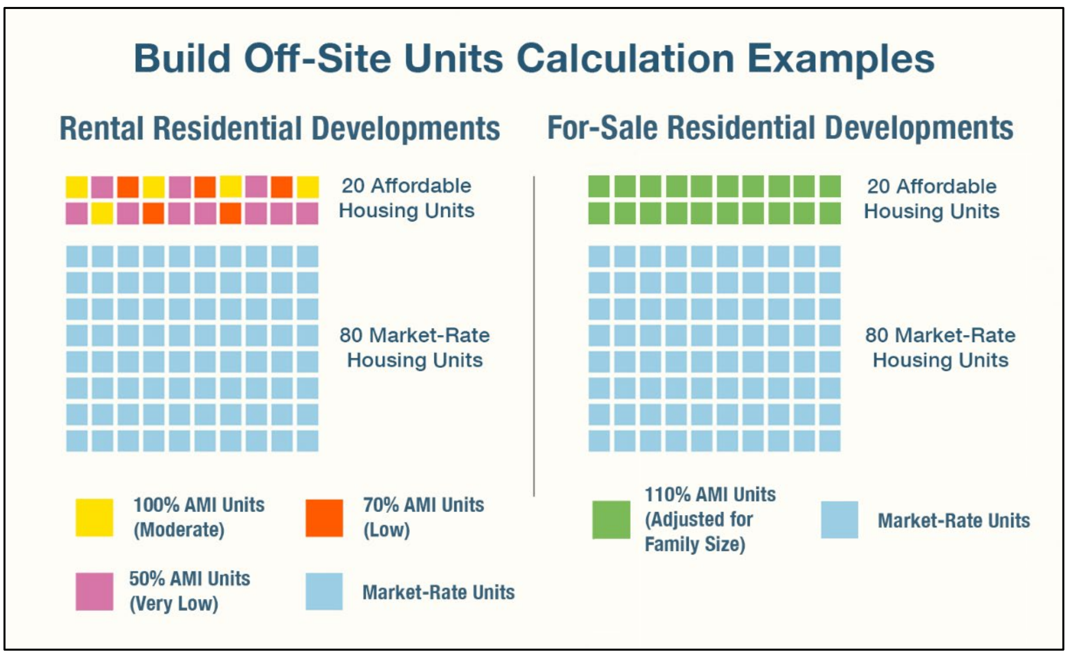
Income Verification	Based on actual family size at time of sale

Rental Residential Developments

Rental projects must provide inclusionary rental units when selecting the Build On-Site option. Inclusionary Rental Units must be consistent with the following standard:

Income Level	Percentage of Units	Maximum Household Income	Maximum Rents
Very Low-Income	At least 10%	50% AMI	50% AMI
Low-Income	At least 10%	70% AMI	70% AMI
Moderate-Income	At least 10%	100% AMI	100% AMI
Total	**At least 30%**	**Mixed-income**	

All maximum rents must be at or below the applicable Affordable Rental Rate, and Area Median Income (AMI) levels are adjusted based on household size.



Rounding Rule

When calculating the number of units required to meet the on-site inclusionary housing obligation, any fractional unit of one-half (½) or greater shall be rounded up to the next whole unit, while any fraction less than one-half (½) shall be rounded down to the nearest whole unit.

3.5 → 4

If the fractional part is 0.5 or greater, round up.

3.49 → 3

If the fractional part is less than 0.5, round down.

Location Requirements for Off-Site Units

The location of off-site affordable units is critical to ensuring they contribute to inclusive communities. The following requirements must be met:

Site Eligibility

The off-site location must:

- Have a General Plan designation allowing residential uses
- Be zoned for residential development at adequate density by the time of market-rate project entitlement
- Complete environmental and geological review with hazards mitigated before acceptance in the Compliance Plan

Geographic Requirements

The off-site Inclusionary Units must be located:

- Within the same Opportunity Area as the market-rate development
- Consistent with the City's Affordable Housing Siting Policy

For purposes of this Section, consistency means the City will favorably consider sites in Affordable Housing Expansion Areas, and sites requiring further review as defined must satisfy the Siting Policy's listed criteria.

Alternative Locations

If insufficient land is available in the same Opportunity Area:

- Developer must petition the City Manager in writing with credible documentation
- City Manager may approve a site in another Opportunity Area

> **Note:** Until the Council designates Opportunity Areas, off-site units must be in the same Market Area as the market-rate units, with similar petition process for exceptions.

Concentration Limits

The Housing Department encourages affordable housing throughout San José to achieve socio-economic integration. The Department discourages concentration of Extremely Low-Income units in Census tracts where the poverty rate is 20% or greater.

Affordable Housing Compliance Plan Application

Developers who elect the Build Off-Site Compliance Option must provide comprehensive documentation demonstrating project feasibility and compliance.

Required Documentation Checklist

Project Details

- Location of both market-rate project and proposed off-site land
- Affirmation that off-site location meets standards in Section 3.2 above
- Confirmation of General Plan designation allowing residential use at adequate density

Site Information

- Current Phase I environmental review (Phase II if required, with evidence of hazard mitigation)
- Title report dated within 30 days of submittal
- Comparison of fixtures and amenities between market-rate and off-site units

Development Timeline

- Construction and completion schedule for all units
- Documentation showing ownership/control of off-site land by market-rate project entitlement

- Identification of any anticipated public funding

Confirmation Statements

- Affirmation that off-site units have not been sold or rented
- Other information reasonably required to evaluate the proposal

Inclusionary Housing Agreement

The Inclusionary Housing Agreement shall incorporate and include the approved Affordable Housing Compliance Plan, containing all information relating to the proposed off-site Inclusionary Units.

Implementation and Compliance

Rule

Off-site affordable units must be developed and made available for occupancy either prior to or concurrent with the market-rate units.

Phasing Requirements

The City controls development pace through permit limitations to ensure concurrent delivery:

For New Construction Projects

Development Stage	Permit Limits
Building Permits	Maximum 6 market-rate building permits can be issued for each 1 inclusionary unit building permit
Inspections/Occupancy	Cannot approve ANY final inspections or certificates of occupancy for market-rate units unless inclusionary units comprise at least 15% of ALL such approvals in the development
Final Phase	Cannot issue building permits for more than 90% of market-rate units until ALL

	inclusionary unit building permits are issued (or units authorized for occupancy) Cannot approve final inspections/certificates of occupancy for more than 90% of market-rate units until ALL inclusionary units have received their approvals

For Projects Not Requiring New Construction

Development Stage	Permit Limits
Building Permits	Maximum 5 market-rate building permits for each 1 inclusionary unit authorized for occupancy
Inspections/Occupancy	Cannot approve ANY final inspections or certificates of occupancy for market-rate units unless at least 20% of ALL inclusionary units for the development have been authorized for occupancy
Final Phase	Cannot issue building permits for more than 90% of market-rate units until ALL inclusionary unit building permits are issued (or units authorized for occupancy) Cannot approve final inspections/certificates of occupancy for more than 90% of market-rate units until ALL inclusionary units have received their approvals

How Phasing Works in Practice

Example for a 100-unit development with 20 off-site affordable units:

Stage	New Construction	Conversions, Rehabilitations
Initial Permits	For every affordable unit permit issued, up to 6 market-rate permits allowed	For every affordable unit authorized, up to 5 market-rate permits allowed

Mid-Development	Before any market-rate COs, must have at least 3 affordable units (15% of 20) completed	Before any market-rate occupancies, must have at least 4 affordable units (20% of 20) authorized
Final Phase	Last 10% of market-rate units can't get permits until all 20 affordable units have permits	Last 10% of market-rate units can't get permits until all 20 affordable units are authorized

These rules ensure affordable units are built throughout the development process, not left until the end.

Marketing Plan Requirements

The marketing plan must demonstrate either:

1. How units will be offered in a nondiscriminatory and equitable manner, OR
2. How marketing furthers fair housing goals with an anti-displacement policy

Plans must ensure concurrent marketing of both affordable and market-rate units.

Alternative Construction Timing

Developers may request alternative timing by contracting with a City-approved Affordable Housing Developer. This requires:

Documentation Package:

- Market Area information for off-site land
- Current proof of ownership/control of off-site land
- Executed contract with City-approved Affordable Housing Developer
- Pro forma showing gap financing or tax credit needs
- All planning entitlements
- Other information as reasonably required

Financial Assurances:

- Agreement to close construction financing before first market-rate Certificate of Occupancy, OR
- Letter of credit/escrow account equal to projected In-Lieu Fee
- Payment of City's monitoring and administrative costs

Standards for Off-Site Inclusionary Units

Off-site affordable units must maintain comparable quality and size standards to ensure equity across locations.

Size Requirements

Bedroom Mix: The affordable units must mirror the bedroom distribution of the market-rate units exactly. If 40% of the market-rate units are two-bedroom units, then 40% of the affordable units must also be two-bedroom units. This ensures a comparable mix of household sizes throughout the development.

Square Footage: While affordable units can be somewhat smaller than market-rate units, they must maintain a comparable size. Specifically, the average square footage of affordable units must be at least 85% of the average square footage of market-rate units for each bedroom type. For example, if market-rate 2-bedroom units average 1,000 square feet, then affordable 2-bedroom units must average at least 850 square feet.

Design and Quality Standards

The exterior appearance of affordable units must be indistinguishable from market-rate units, maintaining the same architectural style, quality of materials, and level of detail. This ensures visual consistency throughout the development and prevents any stigmatization of affordable units.

Interior finishes and features may differ between affordable and market-rate units, provided they remain functionally equivalent. While market-rate units might have granite countertops, affordable units could have laminate countertops - if they are durable, of good quality, and serve the same purpose. The key principle is that all finishes must be appropriate for long-term residential use.

Aspect	Requirement	Examples
Exterior	Must match market-rate units	Same siding, roofing, windows, architectural details
Interior	Functionally equivalent	Different but durable finishes, same appliance types, similar layouts

Option Three

Payment of an In Lieu Fee

This option allows developers to satisfy their Inclusionary Housing obligation by paying a fee to the City in lieu of constructing affordable housing units.

The In Lieu Fee option provides flexibility to developers who may not be able to include affordable units within or near their development. The funds collected through this option are used by the City to support affordable housing production across San José, helping to meet the City's broader housing goals.

Key requirements include:

- Developers must pay the In Lieu Fee before the first Certificate of Occupancy is issued for any market-rate unit
- Fee rates are based on project characteristics such as development type, density, location, and building height
- Fee amounts are calculated based on the project's net residential square footage and the current fee schedule adopted by the City Council
- Projects in designated Moderate Market Areas or meeting specific criteria (e.g., small projects, high-rise buildings) may qualify for reduced rates
- Developers must submit an Affordable Housing Compliance Plan and execute an Inclusionary Housing Agreement outlining their fee obligation
- In Lieu Fees are adjusted annually for inflation using the San Francisco Construction Cost Index

Relevant SJMC Sections: 5.08.520

2.3 Utilizing the In Lieu Fee Option

Introduction

The Payment of an In Lieu Fee compliance option allows developers to fully satisfy their Residential Development's Inclusionary Housing Obligation (IHO) requirements by paying a fee to the City rather than constructing affordable housing units. This option provides flexibility for developers while generating funds that the City uses to support affordable housing development throughout San Jose.

Fee Schedule and Rates

Current Fee Schedule

The In Lieu fees are included as part of the annual "Schedule of Fees and Charges" adopted by Council during the annual budget process. The current In Lieu Fee Schedule is available online at Fees & Charges page 102, including separate rates for For-Sale and Rental Developments.

Fee Rate Structure

In Lieu fees vary based on several factors that reflect local market conditions and development characteristics:

Factor	Details
Development Type	Separate rates for For-Sale and Rental developments
Market Area	Reduced rates in Moderate Market Areas compared to Strong Market Areas
Project Size	Small projects (up to 19 units) may qualify for reduced rates
Density	Projects providing at least 90% of maximum General Plan density qualify for reductions
Building Type	Special rates for qualifying high-rise developments

Market Area Designations

The City has designated market areas based on residential building activity levels. As of March 2021 (Resolution 79904), the West Valley Market Area and Central Market Area are classified as Strong Market Areas, while all other areas are designated as Moderate Market Areas. Current market area boundaries are shown on the IHO Market map.

Fee Calculation Requirements

Square Footage Assessment

For each Residential Development, the total In Lieu Fee equals the project size (measured in net residential square feet) multiplied by the appropriate In Lieu Fee rate. The City calculates the amount due at the time the developer provides payment based on the adopted In Lieu Fee Schedule in place at that time.

- **For-Sale Developments:** Fee calculation uses net square footage of the development as calculated by the City
- **Rental Developments:** Fee calculation uses rentable square footage as calculated by the City

Measurement Standards

Square footage measurement extends from the outside surface of exterior stud walls and includes all finished living space. The following areas are excluded from fee calculations:

- Vehicular parking areas (automobile, motorcycle, bicycle) that are separate from units
- Common hallways accessing front doors of multiple units
- Common rooms/lounges with supporting facilities (kitchens, restrooms)
- Building lobbies
- Balconies (private or common)
- Common stairwells serving multiple units

- Elevator shafts and utility shafts
- Custodial/janitorial closets
- Common recreation areas (fitness centers, community rooms, roof spaces)
- Storage lockers not located within residential units
- Other qualifying non-residential areas (subject to Housing Director approval)

Special Development Types

For developments with shared common facilities (co-living, single room occupancy, suite-style student or senior housing), square footage assessment reflects the design for separate rental of bedrooms or suites with shared facilities. For these developments, community rooms, common rooms/lounges with supporting facilities, and other heated interior residential areas associated with dwelling units or suites are not excluded from square footage calculations.

Eligibility Requirements and Reductions

For-Sale Development Qualification

Residential developments with attached units are presumed to be rental developments. To qualify as a For-Sale Residential Development, projects must provide evidence of Subdivided Lands Act compliance prior to Certificate of Occupancy issuance, including:

Requirement	Details
Covenants and Restrictions	Recordation of covenants, conditions, and restrictions
Homeowner's Association	Formation including executed governing documents and completed incorporation
Subdivision Approval	California Bureau of Real Estate approval of final subdivision report
Marketing Evidence	Documentation of marketing as a For-Sale Development

Small Project Reduction

Residential developments with up to 19 dwelling units that provide 90% or more of the maximum residential density permitted by the San Jose General Plan pay half the otherwise applicable In Lieu fee. The Department of Planning, Building and Code Enforcement calculates allowable density based on net developable acreage, excluding rights-of-way, internal private streets or drives, and riparian area setbacks.

High-Rise Development Reduction Program

The City may adopt reduced In Lieu fees for residential developments of 10 or more floors in specified areas through City Council resolution or policy. Reductions apply to all qualifying developments in the designated area, not individual projects.

Application Process

Affordable Housing Compliance Plan Requirements

Developers selecting the In Lieu Fee compliance option must submit the following information:

- Net residential square footage of the project
- Eligibility claims for Small Project or High-Rise fees rather than standard In Lieu fees
- Market Area location of the project

Inclusionary Housing Agreement

The Inclusionary Housing Agreement must incorporate the approved Affordable Housing Compliance Plan containing all In Lieu Fee obligation information. The agreement will state the total estimated In Lieu Fee amount based on adopted fees at execution time, with the actual fee due based on adopted fees as of payment date.

Payment Timing and Process

Payment Deadline

In Lieu fees are due before the Certificate of Occupancy issuance for a Residential Development's first market-rate unit. The City will not issue any certificate of occupancy for market-rate units prior to full payment of all In Lieu fees.

Fee Calculation at Payment

The final In Lieu fee is calculated when the developer provides payment, based on the adopted In Lieu Fee Schedule in place at that time. This accounts for annual fee adjustments and ensures current rates apply.

Fee Adjustments

To account for inflation in affordable housing development costs, the In Lieu fee increases annually on July 1 by the Engineering News Record (ENR) Construction Cost Index for the San Francisco area published by McGraw Hill, or its successor publication, for the preceding 12 months.

Agreement Modification and Completion

Recalculation Requirements

The City may require In Lieu Fee obligation recalculation if the Residential Development is modified such that:

- Residential square footage increases
- Tenure type changes (rental to for-sale or vice versa)
- A permit expires and must be reprocessed

Agreement Removal

Once the developer has paid the In Lieu Fee in full for the Residential Development, the City will remove the recorded Inclusionary Housing Agreement from the property.

Purchaser Notification Requirements

For For-Sale developments, developers must provide both recorded notice against the Residential Development and specific written notice to each dwelling unit purchaser prior to accepting any purchase offer. The notice must inform purchasers that they have no right to occupy the dwelling unit until all In Lieu fees for the Residential Development are paid to the City. Developers must obtain executed acknowledgment of receipt of such notice.

Fee Fund Usage

All in lieu fees collected under this Section shall be deposited in the Inclusionary Fee Fund established pursuant to this Chapter. These funds are used to:

- Support affordable housing production throughout San José
- Provide gap financing for affordable housing developments
- Preserve existing affordable housing
- Support other affordable housing programs and initiatives

Fee Updates

An updated determination of the in-lieu fees for this option shall be commenced no later than five (5) years after the prior determination was adopted in the City Council's resolution establishing the Schedule of Fees and Charges. The Council may adopt in lieu fee amounts that are less than those determined under this Section.

Option Four
Mixed Compliance Option and Adjusted In Lieu Fee

This option allows developers to satisfy their Inclusionary Housing obligation through a combination of providing some affordable units on-site while paying a reduced In Lieu Fee for the remainder.

The Mixed Compliance Option offers flexibility for rental developers who want to include affordable units in their projects but may face financial or design constraints that make providing the full 15% challenging. By providing at least 5% affordable units on-site, developers can pay a reduced fee rate that reflects their partial contribution to integrated affordable housing.

Key requirements include:

- Minimum of 5% of units must be provided on-site as affordable rental units
- Affordable units can be targeted at 100%, 60%, or 50% AMI levels
- Developers pay an Adjusted In Lieu Fee on the entire project square footage
- Fee rates are reduced based on the percentage and affordability level of units provided
- Deeper affordability levels result in lower fee rates
- Units must meet all on-site standards for size, quality, and location
- Construction timing follows the same phasing requirements as Build On-Site option
- Projects in Strong Market Areas pay higher fees than those in Moderate Market Areas

SJMC Code Section: 5.08.525

2.4 Mixed Compliance

Introduction

This section provides comprehensive information on how developers of rental residential projects may satisfy their inclusionary housing obligation through a mixed approach - building some inclusionary units on-site while paying a reduced In Lieu Fee. This option recognizes that partial on-site integration of affordable units provides community benefits while offering developers flexibility when full on-site compliance may be challenging.

Mixed Compliance Requirements

To qualify for the Mixed Compliance option, developers must:

A. On-Site Unit Provision

- Build and make available at least 5% of the units in the Residential Development for rent at Affordable Rental Rates
- Target these units to income-qualified renters at any of the following maximum income levels:
  - 100% AMI (Moderate-Income)
  - 60% AMI (Low-Income)
  - 50% AMI (Very Low-Income)

B. Adjusted In Lieu Fee Payment

- Pay an Adjusted In Lieu Fee calculated based on the project's rentable square footage
- Fee rates are reduced from standard In Lieu Fees to reflect the on-site units provided

When computing the number of on-site units required, fractions of 0.5 or greater round up to the next whole number, while fractions less than 0.5 round down.

Mixed Compliance Requirements

Developers using the Mixed Compliance option who provide inclusionary units on the same site as market-rate units may request density bonuses, waivers, or incentives under California Government Code Section 65915 et seq. and SJMC Chapter 20.190, if the on-site units meet minimum thresholds for density bonus eligibility.

The request must be submitted concurrently with the Affordable Housing Compliance Plan and the earliest of the zoning or Planning Permit applications.

Adjusted In Lieu Fee Calculation

Fee Determination

The adjusted In Lieu fee obligation is calculated by the City at payment time based on the adopted adjusted In Lieu fee Schedule then in effect. The total fee equals the project size (measured in net residential square feet) multiplied by the appropriate adjusted In Lieu fee rate.

To account for inflation in affordable housing development costs, the adjusted In Lieu fee increases annually on July 1 by the Engineering News Record (ENR) Construction Cost Index for the San Francisco area published by McGraw Hill, or its successor publication, for the preceding 12 months.

Applicable Square Footage

The adjusted In Lieu fee for each Rental Residential Development is based on rentable square footage as calculated by the City.

Measurement extends from the outside surface of exterior stud walls and includes all finished living space. The following areas are excluded:

- Vehicular parking areas (automobile, motorcycle, bicycle) separate from units
- Common hallways accessing two or more unit front doors
- Common rooms/lounges with supporting facilities (kitchens, restrooms)
- Building lobbies
- Balconies (private or common)
- Common stairwells serving two or more units
- Elevator shafts
- Utility shafts
- Custodial or janitorial closets
- Common recreation areas (fitness centers, community rooms, roof spaces)
- Storage lockers not within residential units
- Other qualifying non-residential areas (upon Housing Director approval)

For developments with shared common facilities (co-living, single room occupancy, suite-style student or senior housing), square footage assessment reflects the design for separate rental of bedrooms/suites with shared facilities. For these developments, community rooms, common rooms/lounges with supporting facilities, and other heated interior residential areas associated with dwelling units are not excluded.

Adjusted In Lieu Fee Rate

The current adjusted In Lieu Fee Schedule is available online at Fees & Charges page 104. The adjusted In Lieu fees are included in the annual "Schedule of Fees and Charges" adopted by Council during the annual budget process or by separate Council resolution.

The adjusted In Lieu fee schedule applies only to rental developments.

On-Site In Lieu Fee Adjuster

Developers providing between 5% and 10% on-site Inclusionary Rental Units may pay reduced In Lieu fees based on the percentage of affordable units and their income categories. The In Lieu Fee Schedule includes reduced rates for projects in both Strong and Moderate Market Areas for these combinations:

5% On-Site Inclusionary	10% On-Site Inclusionary
• 5% at 100% AMI • 5% at 60% AMI • 5% at 50% AMI	• 5% at 100% AMI, plus 5% at 60% AMI • 5% at 100% AMI, plus 5% at 50% AMI • 5% at 60% AMI, plus 5% at 50% AMI

Market Area Designations

Developers providing between 5% and 10% on-site Inclusionary Rental Units may pay reduced In Lieu fees based on the percentage of affordable units and their income categories. The In Lieu Fee Schedule includes reduced rates for projects in both Strong and Moderate Market Areas for these combinations:

The Fee Schedule includes per square foot adjusted In Lieu fee rates for rental developments in both Strong Market Areas and Moderate Market Areas. These designations are based on residential building activity levels for market-rate housing.

Resolution 79904 (adopted March 9, 2021) identified:

- **Strong Market Areas:** West Valley Market Area and Central Market Area
- **Moderate Market Areas: All other Market Areas**

Council may revise these Market Area Designations based on changing market conditions. A map and detailed descriptions of Market Area boundaries are available on the Housing Department website at IHO Market map.

Small Project Reduction

The adjusted In Lieu fee for Residential Developments with up to 19 dwelling units that provide 90% or more of the maximum residential density permitted by the City's General Plan is half the amount otherwise due. Density calculations are based on net developable acreage, excluding rights-of-way, internal private streets/drives, and riparian area setbacks.

Affordable Housing Compliance Plan Application

Developers electing the Mixed Compliance Option must provide the following information:

A. **On-Site Unit Details**
   - Specific combination of percentages and income levels of on-site Rental Inclusionary Units
   - Unit numbers, locations, and bedroom mix
   - Compliance with dispersal requirements

B. **Project Calculations**
   - Net Residential Square footage of the project
   - Calculation methodology and measurements

C. **Fee Eligibility**
   - Whether claiming eligibility for Small Project or High-rise fees
   - Documentation supporting any reduction claims

D. **Location Information**
   - Market Area designation (Strong or Moderate)

- Map showing project location relative to Market Area boundaries

Affordable Housing Compliance Plan Application

The Inclusionary Housing Agreement must incorporate and include:

- The approved Affordable Housing Compliance Plan
- All information relating to on-site Inclusionary Units
- The Adjusted In Lieu Fee obligation

The agreement will state:

- Estimated adjusted In Lieu Fee based on current adopted fees
- Actual fee due will be based on adopted fees at payment date
- Payment must occur before any Certificate of Occupancy issuance
- Fee may be recalculated if the project is modified (increased square footage, tenure change, or permit expiration)

Option Five

Land Dedication

This option allows developers to satisfy their Inclusionary Housing obligation by dedicating land to the City in lieu of constructing affordable units.

The Land Dedication option provides flexibility for developers who have suitable land that can be used for affordable housing development. The dedicated land must be immediately available, suitable for construction, and have sufficient value to offset the inclusionary housing obligation.

Key requirements include:

- The land must have marketable fee title and be free from hazardous materials.
- The site must be zoned for residential development at adequate density to accommodate at least 20% of the total dwelling units.
- The land value must equal or exceed the In Lieu Fee amount otherwise due.
- Infrastructure must be available at the property line with adequate capacity.
- The site must comply with the City's Affordable Housing Siting Policy.
- Alternatively, developers may dedicate land that meets SB 35 permit streamlining criteria.
- All conditions must be satisfied before building permits are issued for the market-rate development.

SJMC Section: 5.08.530

2.5 Land Dedication

Introduction

This section provides comprehensive information on how developers may satisfy their inclusionary housing obligation by dedicating land to the City in lieu of constructing the requisite inclusionary units within the residential development.

Criteria for Land Dedication

To satisfy the requirements under this compliance option, the City Manager or their designee must determine that acquisition of the site is in the best interests of the City. The following criteria must be met:

a. **Title Requirements**
   - Developer must have marketable fee title on the site proposed for transfer or dedication

b. **Zoning and Density**
   - General Plan designation must authorize residential uses
   - Zoned for residential development at density to accommodate at least 20% of total dwelling units
   - Must conform to City development standards

c. **Site Suitability**

   The site must be suitable for development in terms of:
   - Configuration and physical characteristics
   - Location and access
   - Adjacent uses
   - Other relevant planning criteria
   - Cost factors arising from site conditions

   Specific requirements:
   - Not located in special hazard flood area
   - Vacant with no demolition needed

d. Infrastructure

- Streets and public utilities must be available at property line
- Infrastructure must have adequate capacity for maximum allowable residential development

e. Environmental and Geological Review

- Environmental review completed for hazardous materials
- Geological review completed for geological hazards
- All hazards must be mitigated to City's satisfaction prior to acceptance

f. Valuation

- Site value (determined by California Licensed Residential Appraiser using Comparable Approach Method) must equal or exceed the In Lieu Fee amount in effect at date of land dedication agreement

g. Location Requirements

- Must comply with City's Affordable Housing Siting Policy
- Should meet General Plan policies such as proximity to transit

Agreement Process

If approved, the developer and City will enter into an agreement to transfer/dedicate the site to the City (or at City Manager's discretion, to a City-approved Affordable Housing Developer) prior to building permit issuance. The developer must transfer/dedicate the site prior to the first Certificate of Occupancy.

SB 35 Land Dedication Alternative

Developers may propose dedicating land that:

- Meets all criteria in Section II above except zoning or density standards
- Is located within the City
- Meets all criteria under GC Section 65913.4 for SB 35 permit streamlining
- Is zoned for Residential Use or Residential Mixed-Use development

SB 35 Land Disposition Timeline

If the City accepts SB 35 eligible land but:

- Cannot secure construction contract with qualified Affordable Housing Developer within 2 years, OR
- Construction has not begun within 5 years

The City may sell, transfer, lease or otherwise dispose of the land. Funds collected through disposition shall be deposited in the City's Inclusionary Fee Fund for affordable housing.

Affordable Housing Compliance Plan Application

Developers electing this option must provide the following information:

A. Affordable Housing Developer Information (if applicable)

- Name and contact information
- Prior project experience
- Intentions for the site

B. Detailed Site Information

1. **Property Identification**
    - Parcel APN(s)
    - Site size
    - General Plan designation
    - Zoning designation
2. **Title Documentation**
    - Preliminary Title Report showing developer as owner
    - Dated within 30 days of submittal
3. **Site Studies**
    - Recent land/site surveys
    - Geotechnical report
    - Current Phase I Environmental Report (for City's benefit)

- Phase II Environmental Report if Phase I indicates hazardous materials
- Any reliance letters requested by City

4. **Cost Estimates**
    - Mitigation costs for any hazardous materials (mitigation required before dedication)
    - Infrastructure provision costs if adequate infrastructure not present
5. **Capacity Assessment**
    - Analysis of site's capacity with existing zoning and restrictions
    - Must accommodate at least 20% of residential development's units
    - Same bedroom mix and substantially same size as market-rate units
6. **Valuation**
    - Fair Market Value Appraisal meeting USPAP Standards
    - By California Certified General Appraisal License holder
    - Preferably MAI designated
    - Experience valuing similar Bay Area properties
    - Provision for updating at dedication agreement execution
7. **Infrastructure Study**
    - By licensed professional
    - Assess availability and capacity of:
        - Sewer
        - Utilities
        - Water
        - Light
        - Street access and sidewalks
    - Third-party cost estimate if infrastructure inadequate

8. **Transfer Schedule**
    - Timeline for site transfer
    - Estimated dates for:
        - Site clearance
        - Lot division
        - Other criteria per Section II
9. **Policy Compliance**
    - Description of consistency with Affordable Housing Siting Policy
    - Percentage of low-income residents in Census tract
    - Compliance with General Plan policies (e.g., transit proximity)

Conditions of Approval

The City Manager must determine that:

- The site is acceptable per IHO and Regulations
- Dedication is in City's best interest

The City may identify Conditions of Approval in the Compliance Plan or by letter at any point when conditions become known. At City Manager's discretion:

- Inclusionary Housing Agreement and Land Dedication Agreement may be executed before conditions are satisfied
- All conditions must be satisfied before:
    - Agreement recordation
    - Building permit issuance for residential development

Inclusionary Housing Agreement

The agreement must:

- Incorporate approved Affordable Housing Compliance Plan

- Include all Land Dedication Agreement information
- Document developer's intent to dedicate land
- Include land dedication process and grant deed recording requirements

Note: City Council approval may be required for the City to accept the grant deed.

Land Dedication Agreement and Timing

A. Agreement Format

- City and developer enter into Land Dedication Agreement
- Form prepared by City Attorney
- Subject to City Manager determination of IHO and Regulations compliance

B. Timing Requirements

- Land conveyance required before first Certificate of Occupancy
- All conditions in agreements must be satisfied or waived

C. Failure to Complete

If conditions are not satisfied and not waived (regardless of reason):

- Developer cannot use land dedication for IHO compliance
- Must satisfy requirements through another compliance option

D. Transfer of Documentation

Concurrent with site conveyance, the following must be transferred to the City:

- All entitlements
- Permits
- Preliminary engineering
- Architectural reports/studies
- Any other pertinent site documentation

Option Six

Option to Purchase Land

This option allows developers to satisfy their Inclusionary Housing obligation by providing the City with an Option to Purchase land suitable for affordable housing development.

The Option to Purchase Land compliance option provides flexibility for developers who have land that could be used for affordable housing but prefer to give the City the option to acquire it rather than dedicating it outright. This approach allows the City to secure potential affordable housing sites while giving developers an alternative to constructing affordable units.

Key requirements include:

- The Option Agreement must have a minimum term of 5 years from the effective date.
- The option land must meet specific criteria including proper zoning, infrastructure availability, and freedom from environmental hazards.
- The land value must equal or exceed the In Lieu Fee amount that would otherwise be due.
- A memorandum of option must be recorded on the property senior to all liens.
- The City may exercise the option at any time during the term by paying $1.00.
- If the City terminates the option before construction begins, the developer must choose an alternative compliance option.
- All conditions must be satisfied before building permits are issued for the market-rate development.

SJMC Sections: 5.08.580

2.6 Option to Purchase Land

Introduction

This section provides comprehensive information on how developers may satisfy their inclusionary housing obligation by providing the City with an Option to Purchase land in lieu of constructing Inclusionary Units within the Residential Development. The option provides the City with the right, but not the obligation, to purchase suitable land for affordable housing development.

Criteria for Option to Purchase Land

To qualify for this compliance option, the following criteria must be met:

A. Option Agreement Terms

- Must have a term of at least five (5) years from the Option's effective date
- Must include a City-approved purchase and sale agreement form
- Purchase price set at one dollar ($1.00 USD)
- City may execute at any time during the Option Agreement term

B. Title and Recording Requirements

- Developer must have marketable fee title on the proposed Option Site
- A memorandum of option must be recorded on the Option Site
- Recording must be senior to all liens with a power of foreclosure

C. Zoning and Density

- General Plan designation must authorize residential uses
- Must be zoned for residential development at adequate density
- Must accommodate at least 20% of total dwelling units from the Residential Development
- Must conform to City development standards

D. Site Suitability

The Option Site must be suitable for affordable housing development considering:

- Configuration and physical characteristics
- Location and access
- Adjacent uses
- Other relevant planning and development criteria
- Cost factors arising from site conditions
- Specific requirements:
  - Not located in special hazard flood area
  - Vacant with no demolition of structures needed

E. Infrastructure Requirements

- Streets and public utilities must be available at property line
- Infrastructure must have adequate capacity for maximum allowable residential development
- Based on current zoning regulations

F. Environmental and Geological Standards

- Environmental review completed for hazardous materials
- Geological review completed for geological hazards
- Site must be clear of all hazards, OR
- Hazards must be remediable to City's satisfaction
- Must not present undue risk or liability as determined by City Manager

G. Valuation Requirements

- Option Site value must equal or exceed the In Lieu Fee amount
- Value determined by California Licensed Residential Appraiser
- Using Comparable Approach Method
- Valuation date: execution of Option Agreement

H. Location Policy Compliance

- Must comply with City's Affordable Housing Siting Policy, OR
- Meet other General Plan policies (e.g., transit proximity)

Option Agreement Provisions

The Compliance Plan, Option Agreement, and Affordable Housing Agreement must specify that:

- City may terminate the option prior to commencement of Residential Development construction
- If terminated, Developer must comply with a specified alternative compliance option under Part 5 of the Ordinance

Affordable Housing Compliance Plan Application

Developers electing this option must provide the following information:

A. Developer Commitment

- Affirmation of intent to transfer title upon option execution
- Transfer to City or City-approved Affordable Housing Developer
- Transfer required prior to commencement of Residential Development construction

B. Detailed Site Information

1. **Property Identification**
    - Parcel APN(s)
    - Site size
    - General Plan designation
    - Zoning designation
2. **Title Documentation**
    - Preliminary Title Report
    - Must show Developer as owner
    - Dated within 30 days of submittal
3. **Site Studies**
    - Recent land/site surveys

- Geotechnical report
- Current Phase I Environmental Report (for City's benefit)
- Phase II Environmental Report if Phase I indicates hazardous materials
- Cost estimate for hazardous material mitigation

4. **Capacity Assessment**
   - Analysis of site's ability with existing restrictions
   - Must accommodate at least 20% of Residential Development units
   - Same bedroom mix as market-rate units
   - Substantially same unit sizes
5. **Valuation Documentation**
   - Fair Market Value Appraisal of Option Site
   - Completed to USPAP Standards
   - By California Certified General Appraisal License holder
   - Preferably MAI designated
   - Experience valuing similar Bay Area properties
   - Provision for update at dedication agreement execution
6. **Infrastructure Study**
   - By licensed professional
   - Assess availability and capacity of:
     - Sewer
     - Utilities
     - Water
     - Light
     - Street access and sidewalks
   - Third-party cost estimate if infrastructure inadequate
   - Infrastructure work must be completed prior to option acceptance

7. **Policy Compliance Description**
    - How Option Site meets Affordable Housing Siting Policy
    - Compliance with General Plan policies
    - Transit proximity analysis if applicable

Satisfaction of Conditions of Approval

The City Manager must determine that:

- The Option Site is acceptable per IHO and Revised Regulations
- The dedication is in City's best interest

Conditions Process:

- City may identify Conditions of Approval at any point
- Including after approval letter issuance if new information discovered
- May execute agreements before conditions satisfied (at City Manager's discretion)
- All conditions must be satisfied before:
    - Finalization of Inclusionary Housing Agreement
    - Issuance of building permits for Residential Development

Inclusionary Housing Agreement

The agreement must:

- Incorporate approved Affordable Housing Compliance Plan
- Include all Option to Purchase Agreement information
- Document Developer's intent to transfer/sell if City exercises option
- Include standard purchase and sale process (unless alternative approved)

Option to Purchase Agreement and Timing

Agreement Format

- City and Developer enter into Option to Purchase Agreement
- Form prepared by City Attorney
- Subject to City Manager determination of compliance

Exercise of Option

If City decides to exercise option:

- All conditions must be satisfied or waived
- Site conveyance required before building permits issued
- Subject to Option Agreement terms

Option Termination

If conditions not satisfied OR City terminates during term:

- Must occur prior to construction commencement
- Developer cannot use Option Agreement for IHO compliance
- Must satisfy obligation through another compliance option

Transfer of Documentation

If City exercises option, concurrent with site conveyance, Developer must transfer:

- All entitlements
- Permits
- Preliminary engineering
- Architectural reports/studies
- Any other pertinent site documentation

Option Seven

Partnership for Clustered Units

This option allows developers to satisfy their Inclusionary Housing obligation by partnering with an Affordable Housing Developer to construct clustered rental affordable housing units.

The Partnership for Clustered Units option addresses the reality that many affordable housing financing mechanisms, particularly Low-Income Housing Tax Credits (LIHTC), require affordable units to be located on a separate legal parcel from market-rate units. This option enables developers to meet their inclusionary obligations while allowing affordable housing developers to access critical financing tools that make deeper affordability levels feasible.

Key requirements include:

- Clustered units must be in close proximity to the market-rate development, either on the same building envelope site or contiguous property.
- Developers must contribute at least 75% of the In Lieu Fee that would otherwise be due.
- All units in the clustered development must be affordable (100% affordable housing development) with recorded restrictions.
- If separated by a wide road (>60 feet), market-rate units must also be built on the same side of the road as the clustered affordable units to ensure neighborhood integration.
- The affordable housing must be developed by a qualified Affordable Housing Developer with proven experience.
- Construction of clustered units must begin before the first Certificate of Occupancy for market-rate units or within 5 years.
- Units must meet the same percentages and affordability levels as on-site units (15% mixed-income or 10% deeply affordable).
- The site must be suitable for affordable housing development with proper zoning and infrastructure.

SJMC Section: 5.08.590

2.7 Partnership for Clustered Units

Introduction

This section provides comprehensive information on how developers may satisfy their inclusionary housing obligation by partnering with qualified Affordable Housing Developers to construct clustered affordable units on a separate legal parcel. This option recognizes that affordable housing often requires specialized financing mechanisms, such as Low-Income Housing Tax Credits, that necessitate 100% affordable developments on distinct parcels. By allowing clustering, the City enables developers to meet their obligations while facilitating the creation of financially viable affordable housing projects.

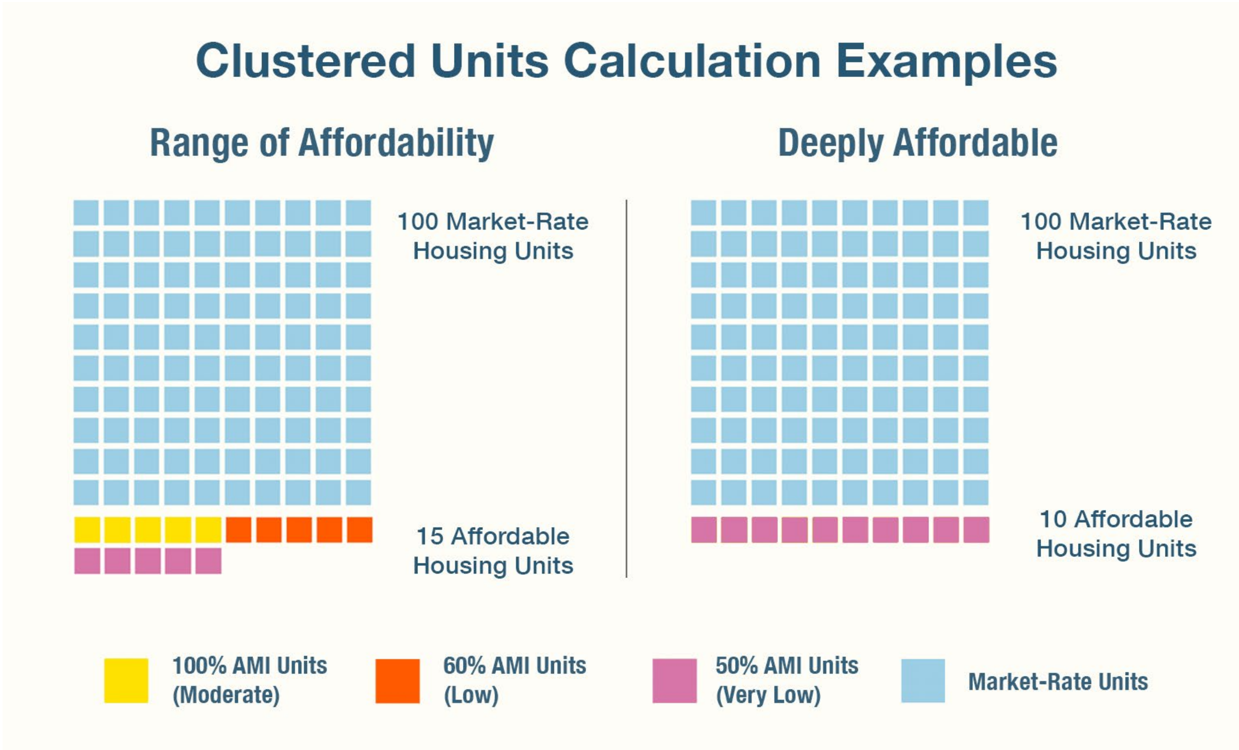
Percentage of Clustered Units Required

Developers must provide clustered inclusionary units consistent with the same percentages and standards required for On-site Rental units. The calculation method differs from integrated units because the clustered affordable development satisfies the entire IHO obligation for both its own site and the market-rate project.

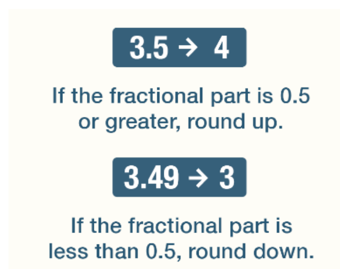
Calculation Method: The number of required affordable units equals 15% (or 10% for deeply affordable) of the market-rate units only, excluding the clustered affordable development from the calculation base.

Developers must follow the affordability standard:

Income Level	Percentage of Units	Maximum Household Income
Moderate	At least 5%	110% AMI
Low	At least 5%	80% AMI
Very Low	At least 5%	60% AMI
Total	**At least 15%**	**Mixed-income**



Rounding Rule: When calculating the number of units required to meet the on-site inclusionary housing obligation, any fractional unit of one-half (½) or greater shall be rounded up to the next whole unit, while any fraction less than one-half (½) shall be rounded down to the nearest whole unit.



Criteria for Partnership for Clustered Units

To satisfy requirements under this option, the City Manager must determine the partnership is in the City's best interests. The following criteria must be met:

A. Title Requirements

- Developer must have marketable fee title on the site for clustered units

B. Project Structure

The clustered affordable development must:

- Be 100% affordable housing (except managers' units)
- Be subject to recorded affordability restrictions enforceable by City, County, State, Federal or other public agency

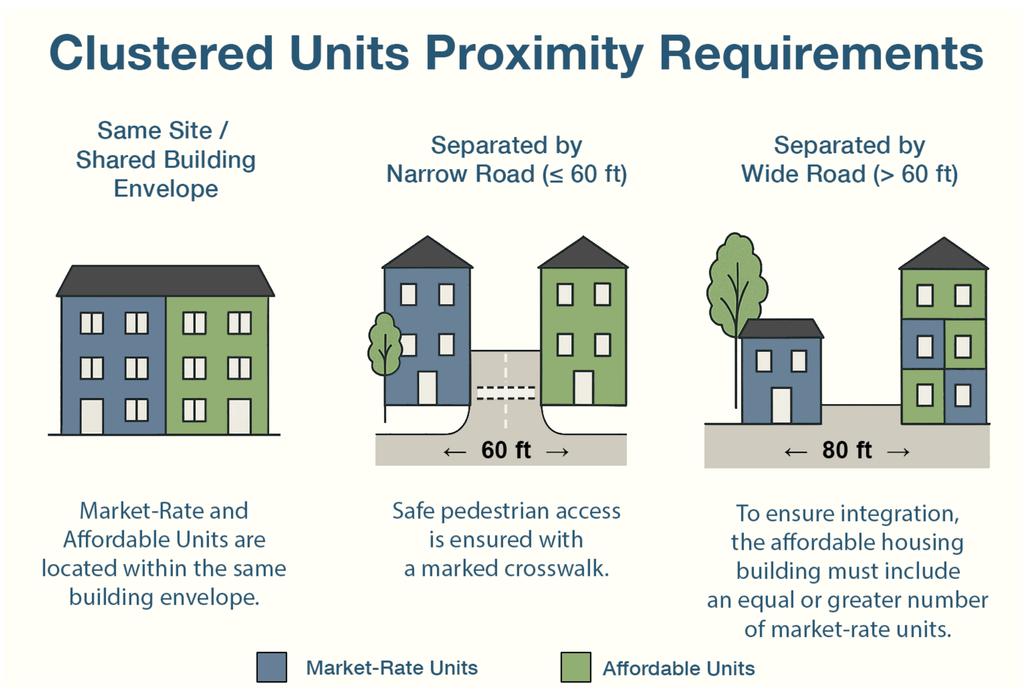
- All units (except managers' units) must be income-restricted at or below 60% of Area Median Income or with an average of 60% of AMI
- Exclude mixed-income buildings (no 80/20 or 60/40 developments)

C. Financing Requirements
Project financing must require clustered units on a separate legal parcel (such as tax credit financing).

D. Calculation Method
Inclusionary obligations are based on market-rate units only. The clustered affordable development does not count toward the total unit count for calculating requirements.

E. Proximity Requirements
Clustered units must be located within the same building envelope, on the same site, or on a contiguous property. For sites separated by streets:

- Roads 60 feet or narrower: Must include crosswalk for safe pedestrian access
- Roads wider than 60 feet: Must include market-rate units on the same side as clustered units in equal or greater number to ensure neighborhood integration



F. Partnership Agreement

Developer must enter agreement with City and qualified Affordable Housing Developer for the clustered development.

G. Minimum Financial Contribution

Developer must contribute at least 75% of the otherwise applicable In Lieu Fee, calculated on the market-rate development's square footage only.

H. Construction Timeline

Construction of the affordable units must begin before the first market-rate Certificate of Occupancy or within 5 years of the Minimum Contribution Agreement execution. Alternative timelines require security be posted, by letter of credit or escrow account satisfactory to the City, equal to the full In Lieu Fee amount.

I. Site Suitability

Site must have appropriate General Plan designation, be zoned for required density, and conform to City development standards.

J. Amenities

Clustered units on a contiguous property may provide equivalent amenities rather than accessing market-rate development amenities to the extent allowed by law.

Qualified Affordable Housing Developer

To qualify, an Affordable Housing Developer must have successfully completed:

- At least one 100% affordable housing development
- In San José
- Within the past 10 years.

For-profit or nonprofit developers may qualify. Affiliates of qualified developers may also qualify. Sponsors must meet California tax credit experience requirements (see state TCAC Regulations Section 10325) and have a track record of obtaining tax credits in California. Developers who have only completed mixed-income projects do not qualify unless they have also developed 100% affordable projects.

Affordable Housing Compliance Plan Application

Developers electing this option must provide Section 4 requirements **plus**:

1. **Draft Minimum Contribution Agreement,** including:
    - Proposed contribution amount (minimum 75% of In Lieu Fee)
    - Payment methods and schedule (cash and/or in-kind)
    - Valuation method for any in-kind contributions
    - Construction timeline for both developments
    - Security provisions if clustered units won't begin first

2. **Detailed Site Information** (if contiguous property)
    a. **Property Identification**
        i. Parcel APN(s), site size, General Plan and zoning designations
        ii. Preliminary Title Report (dated within 30 days)

    b. **Site Studies**
        i. Land surveys and geotechnical report
        ii. Phase I Environmental Report for City's benefit
        iii. Phase II Environmental if Phase I indicates concerns
        iv. Cost estimates for any required remediation

    c. **Capacity Analysis**
    Demonstrate site can accommodate required number of units with same bedroom mix and substantially same size as market-rate units.

    d. **Valuation (if land contributed)**
    Fair Market Value Appraisal by California Certified General Appraiser (preferably MAI) with provision for update at agreement execution.

    e. **Infrastructure Study**
    Licensed professional must assess whether the site has adequate:
        - Sewer, water, and utility capacity
        - Street access and sidewalks
        - Other necessary infrastructure

    If inadequate, provide third-party cost estimate for improvements. Complete all improvements before executing Minimum Contribution Agreement.

3. **Developer Qualifications**
   - Proposed Affordable Housing Developer qualifications
   - Expected financing sources (public and private)
   - Any prior relationship between developers

4. **Long-term Operations Plan**
   - Long-term ownership, asset management and property management entities
   - Asset management approach
   - Property management arrangements

Inclusionary Housing Agreement

See Section 5 requirements. Process includes:

Pre-Agreement Steps:

1. Execute Minimum Contribution Agreement first
   - Submit final agreement 30 days before Inclusionary Housing Agreement execution
2. Document all in-kind contribution values
3. City Manager verifies fair value of contributions

The agreement must incorporate the approved Compliance Plan and all Minimum Contribution Agreement details.

Standards for Clustered Units

Size Requirements

- Match bedroom mix of market-rate units exactly
- Average square footage must be at least 85% of market-rate units by bedroom type

Design Standards

- Exterior design consistent with market-rate units
- Overall construction quality must match
- Interior finishes may differ if functionally equivalent

- Must be durable and good quality

Minimum Contribution Standards

The developer's minimum contribution of 75% of the otherwise applicable In Lieu Fee recognizes that while clustered units provide the same number of affordable homes, they offer less economic integration than dispersed units. This contribution ensures meaningful financial participation in the affordable housing development.

The contribution calculation uses the total square footage of the market-rate development only, excluding the clustered affordable units. Developers may satisfy this contribution through various means, providing flexibility while ensuring substantial support for the affordable development.

Contributions may include any combination of the following, with all values subject to City verification:

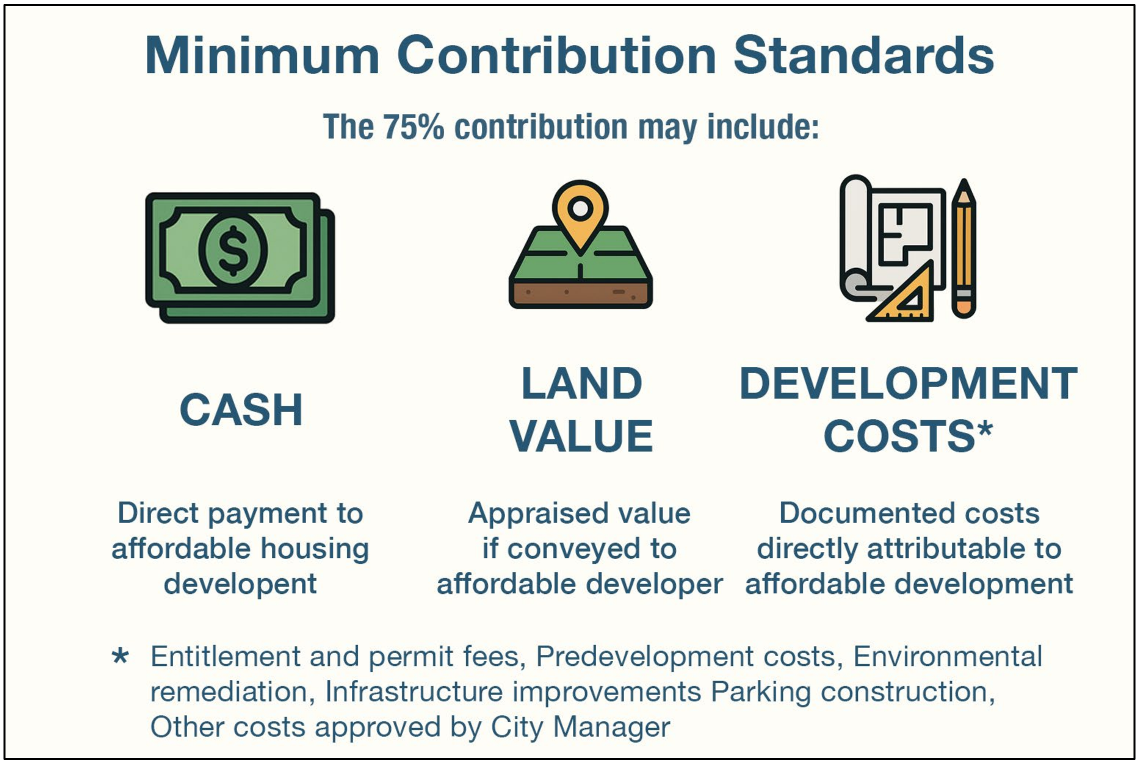
Cash Contributions: Direct monetary payment to the affordable housing development, providing immediate liquidity for project financing.

Land Value: When the developer conveys land for the clustered units, the appraised fair market value counts toward the minimum contribution, subject to current appraisal requirements.

Development Costs: Documented expenses directly attributable to the affordable development may be credited, including:

- Entitlement and permit fees paid on behalf of the affordable development
- Predevelopment costs such as architectural plans, engineering studies, and environmental assessments
- Environmental remediation costs necessary for site development
- Infrastructure improvements benefiting the affordable development
- Parking construction costs proportional to affordable unit requirements

All in-kind contributions require documentation through receipts, invoices, appraisals, or other evidence acceptable to the City Manager. Only contributions from the developer or its affiliates qualify; third-party contributions cannot be counted toward the minimum requirement.



Timing and Security Requirements

Standard Timeline

Construction of clustered affordable units must commence before the earlier of two milestones: issuance of the first Certificate of Occupancy for any market-rate unit, or five years from execution of the Minimum Contribution Agreement. This dual trigger ensures that affordable housing development proceeds regardless of market-rate project timing.

The five-year outside deadline recognizes that affordable housing development often requires assembling multiple funding sources, including competitive tax credit allocations that may take several application cycles to secure. However, it also ensures that developers cannot indefinitely delay their affordable housing obligations.

Alternative Timeline with Security

When project circumstances require different timing, developers may propose alternative schedules provided they secure their obligations through financial instruments. The security must equal the full In Lieu Fee that would otherwise apply to the development, not just the 75% minimum contribution. This higher security amount reflects the increased risk associated with delayed performance.

Acceptable forms of security include irrevocable letters of credit from institutions approved by the City, or escrow accounts with terms acceptable to the City Attorney. The security remains in place until the affordable development secures construction financing and commences construction, at which point it may be released or applied toward the minimum contribution as specified in the agreements.

Option Eight

Surplus Inclusionary Unit Credits

This option allows developers to satisfy all or part of their Inclusionary Housing Ordinance (IHO) requirement by purchasing Surplus Credits from another development that built more affordable Inclusionary Units than it was required to provide.

This option is intended to:

- Support production of more deed-restricted affordable housing in the near term
- Improve overall housing project feasibility in challenging financing environments
- Allow housing sites to be used more efficiently (higher total delivery of income-restricted units)
- Facilitate both rental and for-sale affordability across different income levels throughout the City.

Key requirements include:

- The compliance plans for the Generating Development and Receiving Development must be approved before Surplus Credits can be issued or used.
- The City, not the private parties, determines and issues Surplus Unit Credits
- Generating Developments that create Surplus Credits generally may not rely on major public subsidy programs to produce those surplus units.
- Surplus Credits can only be used within a limited window (five years).

SJMC Section: 5.08.540

2.8 Surplus Inclusionary Unit Credits

Program Structure

This section explains how:

- Surplus Credits are created,
- Which developments are eligible to generate and receive them,
- How Credits are matched and transferred, and
- How timing, documentation, and monitoring work.

The City's role is to verify eligibility, issue credits, track transfers, and ensure that both the seller and the buyer are actually satisfying their IHO obligations - not just exchanging paper. Developers negotiate financial terms between themselves, but all Surplus Credits remain subject to City approval, tracking, and expiration.

Generating Developments

A Generating Development is a Residential Development that produces more qualifying Inclusionary Units than required under the IHO. Those "extra" deed-restricted units become Surplus Inclusionary Units, and each Surplus Inclusionary Unit may result in issuance of a Surplus Credit.

To be approved by the City as a Generating Development, the Residential Development must:

1. **Satisfy its own IHO obligation through Build On-Site.**
   The development must first meet its minimum on-site Inclusionary Housing obligation consistent with the Build On-Site option. Only additional restricted affordable units above that minimum are eligible to become Surplus Inclusionary Units.

2. **Record long-term affordability restrictions.**
   The developer agrees to income- and price-restrict all Surplus Inclusionary Units through recorded City affordability documents that are consistent with IHO requirements for affordability term, monitoring, and tenant/buyer eligibility.

3. **Deliver a meaningful level of affordability.**
   The development must be either:
   - A 100% restricted affordable development (excluding manager units), or

- A mixed-income development where more than 15% of total units are deed-restricted affordable.

4. **Avoid prohibited subsidy sources.**
   Surplus Credits are intended to reflect privately financed surplus production. The surplus units may not be financed with:
   - City loans or any other form of City financial assistance.
   - Time-limited City incentive programs such as the Multifamily Housing Incentive Program or Downtown High-Rise Incentive Program.
   - Projects are generally expected to rely on private capital rather than public or quasi-public subsidies, credit enhancements, or similar forms of assistance. The City reserves the discretion to determine whether any such funding sources are inconsistent with the intent of this program.

   Notes:

   - Developments may still benefit from generally available fee reductions and similar ongoing regulatory benefits (for example, parks fee reductions or the state welfare tax exemption).
   - Developments may still make use of streamlined or ministerial approvals (such as state or City streamlining that shortens approval timelines).

5. **Build and complete the surplus units.**
   The Surplus Inclusionary Units must be constructed and must receive Certificates of Occupancy before any Surplus Credits are issued. To ensure delivery of the Surplus Inclusionary Units, the City may require recordation of affordability restrictions, covenants, or other collateralized security instruments against the property, which may be released or modified upon verified completion of the required units.

6. **Obtain City approval.**
   The development must be approved by the City as a Generating Development for purposes of issuing Surplus Credits.

Receiving Developments

A Receiving Development is a Residential Development that is allowed to apply Surplus Credits to satisfy part of its own Inclusionary Housing obligation.

To be approved as a Receiving Development, the Residential Development must:

1. **Have remaining unmet obligation.**
   The Residential Development must be subject to an Inclusionary Housing requirement under the Inclusionary Housing Ordinance.

2. **Not already have satisfied that obligation in full through another option.**
   A Residential Development that has already fully met its Inclusionary Housing obligation through another compliance method is not eligible to apply Surplus Credits.

3. **Use Surplus Credits to satisfy up to 100% of its obligation.**
   An eligible Receiving Development may purchase and apply Surplus Credits to satisfy some or all (up to 100%) of its Inclusionary Housing obligation.

4. **Meet minimum density / siting standards.**
   The Receiving Development must comply with City minimum density requirements to ensure that credits are not used to avoid building feasible densities in high-opportunity locations.

5. **Match tenure.**
   The tenure (rental or for-sale) of the Surplus Credits must match the tenure of the obligation being satisfied. A for-sale development cannot use rental credits to cover a for-sale obligation, and vice versa.

6. **Provide rationale.**
   The developer must submit a written statement, in the form of a cover letter, explaining why providing the required Inclusionary Housing units on-site is not feasible for the project and why the project should be allowed to satisfy its Inclusionary Housing obligation through the purchase of Surplus Credits. The determination of feasibility, and whether use of Surplus Credits is appropriate, is subject to the Housing Director's discretion.

7. **Obtain City approval (and satisfy performance requirements).**
   The City must approve the project as a Receiving Development and must approve the proposed Surplus Credits for use in that project. As a condition of approval, the City may require the developer to execute agreements, provide security, or record other performance guarantees to ensure that the Inclusionary Housing obligation will in fact be satisfied through the approved Surplus Credits.

Units Eligible to Generate Surplus Credits

Not every affordable unit qualifies as a Surplus Inclusionary Unit. To generate a Surplus Credit, a unit must:

- Meet all IHO standards for Inclusionary Units, including:
  - Location and siting standards,
  - Size, quality, and amenity comparability requirements for Inclusionary Units (SJMC § 5.08.470),
  - Long-term affordability and monitoring requirements (SJMC § 5.08.600).

- Expiration of Surplus Credits.
  - Surplus Credits expire three (3) years after City approval/issuance if they have not been applied to an approved Receiving Development.

- Execution window once a Receiving Development is identified.
  - After a Receiving Development has been identified and preliminarily approved by the City to use specific Surplus Credits, the parties will have two (2) years to execute the transfer and apply those Surplus Credits to that Receiving Development. If the transfer is not executed within that two-year period, the City may deem the Surplus Credits to have lapsed and may require re-approval.

Each qualifying Surplus Inclusionary Unit results in issuance of a Surplus Credit with attributes that identify:

- Bedroom count (e.g. studio, 1-BR, 2-BR, 3-BR),
- Income/AMI restriction level,
- Tenure (rental or for-sale).

These attributes determine how and where that Surplus Credit can be used.

Matching Requirements

Surplus Credits are not interchangeable. In order for a Receiving Development to apply a Surplus Credit toward its IHO obligation, the following matching standards apply:

Tenure Match

- Rental Surplus Credits may be used only to satisfy rental inclusionary obligations.

- For-sale Surplus Credits may be used only to satisfy for-sale inclusionary obligations. Cross-tenure substitution is not allowed.

Bedroom Mix Match

- The bedroom count of the Surplus Credit must match the bedroom type being satisfied.
- For example, a two-bedroom Surplus Credit counts toward a two-bedroom affordable unit requirement.
- This preserves access to family-sized units and prevents substituting only studios for required larger-bedroom affordable units.

AMI / Affordability Level Match

- Surplus Credits may satisfy an obligation at the same income level or at a higher (i.e. less restrictive) AMI level.
    - Example: A 60% AMI Surplus Credit can satisfy an 80% AMI requirement.

- A Surplus Credit cannot be used to satisfy a deeper affordability obligation than it represents.
    - Example: An 80% AMI Surplus Credit cannot be used to satisfy a 50% AMI requirement.

Note: The Housing Director may, in their sole discretion, approve limited deviations in bedroom mix, tenure, or AMI match if the overall affordability outcome for the Receiving Development is equal or better than required.

City and Developer Responsibilities

City Responsibilities

The City will:

- Accept Affordable Housing Compliance Plan applications from developments seeking designation as Generating Developments or Receiving Developments.
- Verify eligibility for both designations.
- Determine the Surplus Credits associated with a Generating Development's Surplus Inclusionary Units by applying a standardized methodology.

- Track the origin and destination of each Surplus Credit, including timing and expiration.
- Maintain a list of available Surplus Credits and make this information available (such as on the City's website) to help match buyers and sellers.
- Periodically report to City Council (for example, through the Director's Delegation of Authority report) regarding Surplus Credit activity.

Developer Responsibilities

Developers of both Generating and Receiving Developments must:

- Apply for City designation (Generating or Receiving).
- Submit an Affordable Housing Compliance Plan consistent with these Revised Regulations.
- Enter into agreements to transfer Surplus Credits at a mutually negotiated price and terms, consistent with City requirements.
- Provide all information the City needs to confirm eligibility, record restrictions, and track the transfer and use of credits.

Approval of Transfers

8. The City must approve each transfer of Surplus Credits, confirm that the Surplus Credits are valid, and verify that after the transfer both projects (the Generating Development and the Receiving Development) satisfy their respective IHO obligations.
9. A developer may request to transfer Surplus Credits between two projects under common control, but City approval is still required.
10. The City will record:
    - Affordability restrictions for all Inclusionary Units in the Generating Development (both its required on-site Inclusionary Units and its Surplus Inclusionary Units), and
    - A Notice of Surplus Credits Transfer on both the Generating Development and the Receiving Development to memorialize the transaction.

Affordable Housing Compliance Plan Requirements

Developers using Surplus Credits must still submit an Affordable Housing Compliance Plan. The required disclosures differ for Generating and Receiving Developments.

Generating Developments must:

- Select the Build On-Site option in the Compliance Plan and indicate intent to generate Surplus Credits.
- Provide unit mix, AMI levels, and tenure for both the required Inclusionary Units and the proposed Surplus Inclusionary Units.
- Commit to record affordability restrictions for all Inclusionary Units (required + surplus) before the transfer of surplus units to the Generating developer.

Receiving Developments must:

- Select the Surplus Credits option in the Compliance Plan.
- Provide all standard Compliance Plan information plus:
  - Submit a written statement, in the form of a cover letter, explaining why providing the required Inclusionary Housing units on-site is not feasible for the project and why the project should be allowed to satisfy its Inclusionary Housing obligation through the purchase of Surplus Credits.

Developers are strongly encouraged to consult with the Housing Department before filing to confirm they understand timing limits and documentation requirements.

Summary

The Surplus Inclusionary Unit Credits option creates a City-supervised inventory where surplus, deed-restricted Inclusionary Units from one project can help another project comply - with safeguards:

- **For Generating Developments (Sellers)**
  - Ability to monetize surplus deed-restricted units beyond the minimum IHO requirement
  - Predictable, City-administered credit recognition
  - No reliance on major public subsidy to generate tradable credits
- **For Receiving Developments (Buyers)**
  - Additional pathway where full on-site delivery is not feasible or not in the City's best interest.
  - City approval of credit eligibility, match, and timing

- **For the City and the Public**
    - Faster delivery of deed-restricted affordable homes
    - Transparent tracking and recorded restrictions
    - Guardrails on tenure, AMI level, bedroom size, timing, and geography
    - A clear five-year expiration window to prevent speculation or hoarding of credits

By combining strict eligibility, transparent valuation, mandatory timing, and recorded affordability, this option is intended to increase affordable housing production citywide while keeping compliance feasible for more projects.

Option Nine

Acquisition and Rehabilitation of Existing Units

This option allows developers to satisfy their Inclusionary Housing obligation by acquiring and rehabilitating existing market-rate units and converting them to affordable housing.

The Acquisition and Rehabilitation option recognizes that preserving and improving existing housing stock can be an effective strategy for creating affordable units. This option requires developers to provide a higher number of units than other compliance methods, reflecting the value of converting existing market-rate housing to long-term affordable housing while improving housing conditions.

Key requirements include:

- Developers must provide 2 rehabilitated units for each 1 inclusionary unit otherwise required (resulting in 40% of the total development units if using this option exclusively).
- At least 50% of rehabilitated units must be affordable to Very Low-Income households.
- Rehabilitation costs must equal or exceed 25% of the property's pre-rehabilitation value, including land.
- Units must comply with all current building and housing codes after rehabilitation.
- Properties cannot already be restricted as affordable housing.
- A Physical Needs Assessment must identify all necessary repairs, which must be completed before acceptance.
- Developers must handle all tenant relocation requirements and costs in compliance with state and local laws.
- The bedroom mix must match the market-rate development, and tenure type must align (rental for rental, for-sale for for-sale).

SJMC Section: 5.08.550

2.9 Acquisition and Rehabilitation

Introduction

This section provides comprehensive information on how developers may satisfy their inclusionary housing obligation through the acquisition and rehabilitation of existing market-rate units and their conversion to inclusionary units affordable to Low or Very Low-Income households only.

Qualifying Criteria for Rehabilitated Units

To be eligible as a "Rehabilitated Unit," the City Manager or their designee must determine that the proposed unit meets all of the following criteria:

1. **Rehabilitation Value Requirement**

The value of rehabilitation work must equal or exceed 25% of the dwelling unit's value prior to rehabilitation, inclusive of land value. Developers must submit:

- Property appraisal (including land) prior to rehabilitation by a California Licensed Residential Appraiser using the Comparable Approach Method
- Property appraisal (including land) that assumes the rehabilitation cost by a California Licensed Residential Appraiser
- Project rehabilitation cost estimate and description submitted by a licensed contractor or architect

2. **Site Requirements**

- The site must be zoned for residential development at a density to accommodate at least the number of rehabilitated units
- Must have a General Plan designation that authorizes residential uses
- The use shall not constitute a nonconforming use

- A geological hazards review must be completed to the City's satisfaction, indicating the site is free of all such hazards

3. Property Standards

- Units must comply with all current applicable Building and Housing Codes
- Property must not be currently restricted for affordable housing
- A Physical Needs Assessment must be performed on each dwelling unit, the property, and any associated common areas
- All items identified in the Physical Needs Assessment needing repair, replacement, or maintenance at the time of assessment or likely within 3 years must be completed prior to acceptance as Rehabilitated Units

4. Unit Mix and Tenure Requirements

- The bedroom mix of rehabilitated units must be substantially the same as the bedroom mix of market-rate units in the residential development
- For-Sale rehabilitated units must be provided for For-Sale residential developments
- Rental rehabilitated units must be provided for Rental residential developments

5. Acquisition Timing

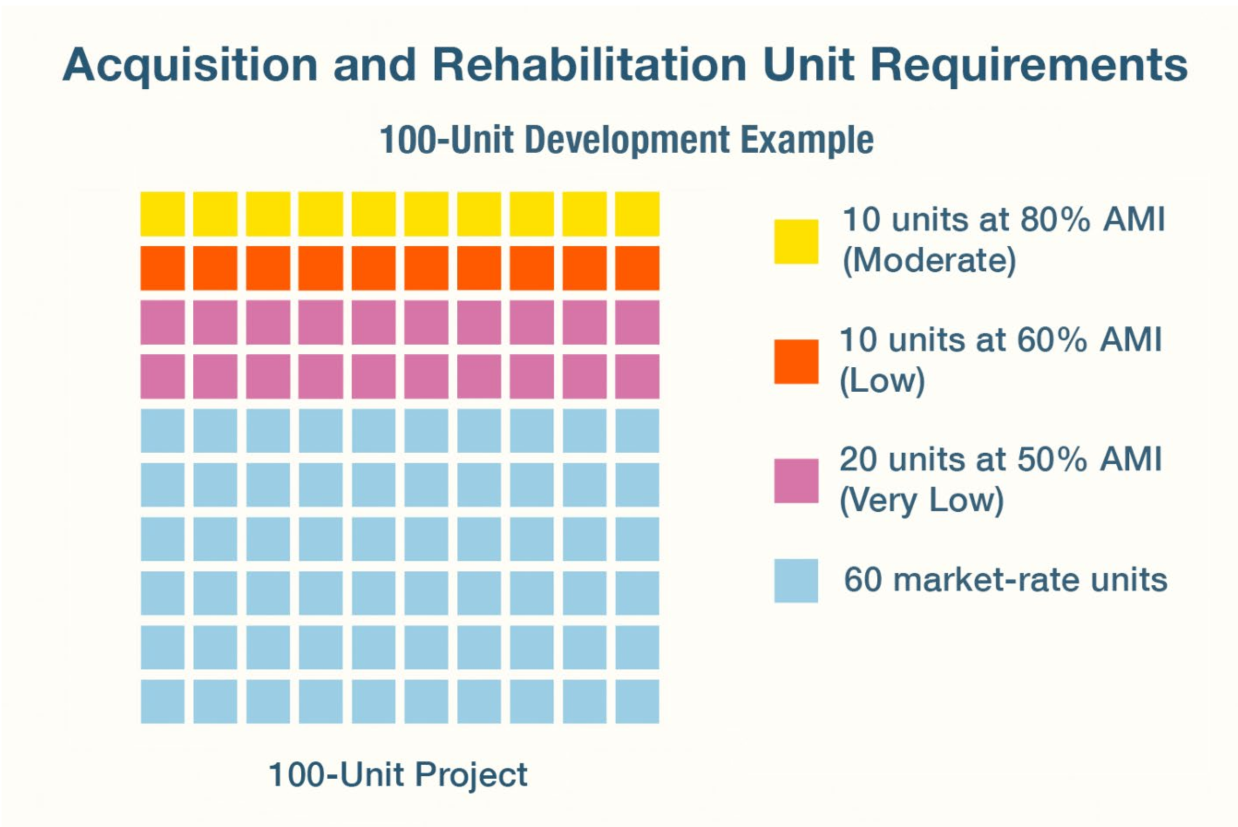
- Site acquisition must be completed prior to acceptance of the dwelling units as rehabilitated units

Number of Rehabilitated Units Required

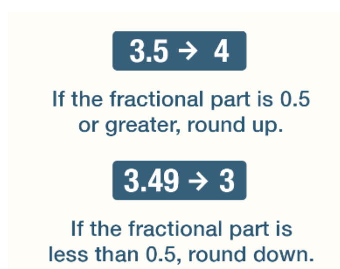
Developers must provide **two (2) rehabilitated units for each one (1) inclusionary unit** required by the IHO. Therefore, a developer using only rehabilitated units to satisfy their obligation must provide rehabilitated units equal to **40% of the total dwelling units** in the residential development.

Affordability Distribution

At least 50% of rehabilitated units must be affordable to Very Low-Income households. For example:



Rounding Rule: When calculating the number of units required to meet the on-site inclusionary housing obligation, any fractional unit of one-half (½) or greater shall be rounded up to the next whole unit, while any fraction less than one-half (½) shall be rounded down to the nearest whole unit.



Rehabilitated units must comply with all requirements for off-site inclusionary units per the Build Off-Site regulations.

Affordable Housing Compliance Plan Application

Developers who elect this compliance option must provide the following information:

A. Affirmation Statement

- Intent to acquire and rehabilitate existing units consistent with standards
- Commitment to provide and pay for notice to and relocation of existing residents

B. Detailed Unit Information

1. Year built
2. Total number of units
3. Identification of specific units proposed for rehabilitation
4. Unit type (e.g., townhouse, detached single-family) and tenure
5. Number of bedrooms and bathrooms
6. Site plans before and after rehabilitation (if different)
7. Acquisition schedule
8. Rehabilitation schedule
9. Documentation demonstrating qualification as Rehabilitated Units:
    - Appraisals
    - Construction plans and estimates
    - Physical Needs Assessment

C. Project Timeline

- Schedule for site transfer
- Estimated dates for commencement and completion of rehabilitation

D. Relocation Plan

- Draft relocation plan for existing residents

- Compliance with Tenant Protection Ordinance requirements
- Compliance with California Relocation Assistance Law (GC Section 7260 et seq.)

E. Financial Planning

- Reliable financing mechanism for ongoing administration, management, and monitoring
- Capital reserve plan for repair, replacement, and maintenance
- Provision for sufficient initial capitalization and periodic contributions

F. Development Coordination

- Information on planned financing and timing for both the residential development and rehabilitation
- Documentation showing rehabilitated units likely to be completed concurrently with residential development

G. Professional Support

- Contact information for qualified relocation consultant engaged by developer

Inclusionary Housing Agreement

The agreement must:

- Incorporate the approved Affordable Housing Compliance Plan
- Include all information relating to rehabilitated units
- Stipulate compliance with all applicable laws regarding notice and relocation
- Confirm developer responsibility for all relocation costs
- Be recorded against both the residential development and rehabilitated unit properties

Timing Requirements

Rehabilitation of dwelling units must be completed prior to or concurrently with the market-rate residential development pursuant to SJMC Section 5.08.460. The same phasing requirements that apply to other compliance options apply here.

Tenant Noticing and Relocation

Developer Responsibilities

- Comply with all state and local laws regarding resident relocation
- Engage a qualified relocation consultant prior to compliance plan submittal
- Cover all costs associated with relocation

Tenant Protection Ordinance Requirements

Under SJMC Section 17.23.1250, property owners intending to rehabilitate units must follow procedures for substantial rehabilitation including:

- Proper noticing to tenants
- Relocation benefits
- Right to return provisions

Resources

A summary of the City's Tenant Protection Ordinance, including noticing and relocation requirements, is available at:

- Website: http://www.sjhousing.org/rent
- Email: RSP@sanjoseca.gov

Option Ten

Providing HUD-Restricted Units

This option allows developers to satisfy their Inclusionary Housing obligation by providing units that are restricted as affordable housing through an existing agreement with the U.S. Department of Housing and Urban Development (HUD).

The HUD-Restricted Units option enables developers who already have properties with HUD affordability restrictions to use those units to meet their inclusionary housing requirements. This option recognizes existing federally-restricted affordable housing while requiring additional affordability commitments and extending the restriction period.

Key requirements include:

- Units must be rental units restricted to households earning no more than 60% AMI through an existing unexpired HUD agreement.
- Developers must provide HUD-Restricted Units equal to 40% of the total development units (double the standard off-site requirement).
- At least 50% of the HUD-Restricted Units must be affordable to Very Low-Income households (50% AMI).
- A 40-year inclusionary housing restriction must be recorded on the units with lender consent.
- Units must comply with all current building and housing codes.
- A Physical Needs Assessment must be performed and all identified repairs completed.
- The use must not be nonconforming, and environmental and geological reviews must be satisfactory.

SJMC Section: 5.08.560

2.10 HUD-Restricted Units

Introduction

This section provides comprehensive information on how developers may satisfy their inclusionary housing obligation by providing units that are restricted as affordable housing for Lower or Very Low-Income households through an agreement between the Developer and the U.S. Department of Housing and Urban Development (HUD).

Qualifying Criteria for HUD-Restricted Units

To be eligible as HUD-Restricted Units, the City Manager or their designee must determine that all the following criteria are met:

A. Affordability Requirements
- Units must be rental units restricted to Affordable Rental Rates
- For households earning no more than 60% of Area Median Income (AMI) adjusted for family size
- Pursuant to an existing unexpired agreement between Developer and HUD

B. Use Compliance
- The use of the site must not be a nonconforming use

C. Building Standards
- Units must comply with all current applicable Building and Housing Codes

D. Environmental Review
- Phase I Environmental Report must be completed to City's satisfaction
- Phase II Environmental Report if needed
- Any deficiencies must be corrected

E. Geological Review
- Geological hazards review completed to City's satisfaction
- Site must be free of all such hazards

F. Physical Needs Assessment
- Assessment required for units, property, and common areas

- Must determine items needing repair, replacement, or maintenance
- All repairs must be completed prior to acceptance as HUD-Restricted Units

G. Lender Consent

- Current lenders must consent to recording of 40-year inclusionary housing restriction on units

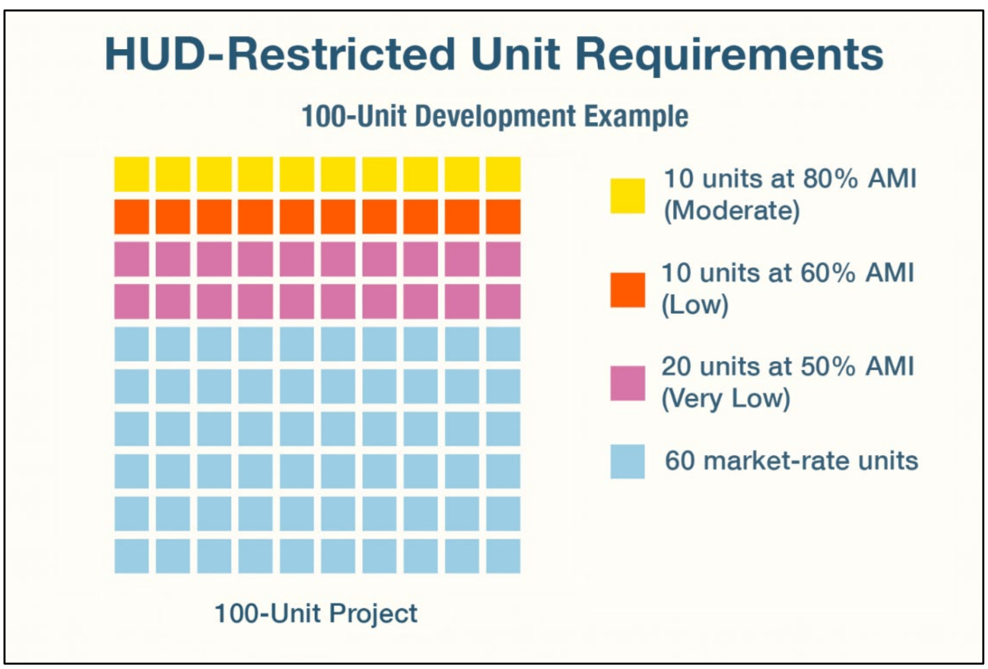
If the City determines units qualify as HUD-Restricted Units, they are eligible to satisfy the inclusionary housing obligation consistent with IHO requirements. These units may not be used for credits or transfers.

Number of HUD-Restricted Units Required

Developers must provide HUD-Restricted Units equal to **40% of total dwelling units** in the Residential Development.

Affordability Distribution

At least 50% of HUD-Restricted Units must be affordable to Very Low-Income households.



Rounding Rule: When calculating the number of units required to meet the on-site inclusionary housing obligation, any fractional unit of one-half (½) or greater shall be rounded up to the next whole unit, while any fraction less than one-half (½) shall be rounded down to the nearest whole unit.

3.5 → 4

If the fractional part is 0.5 or greater, round up.

3.49 → 3

If the fractional part is less than 0.5, round down.

HUD-Restricted Units must comply with all requirements for off-site Inclusionary Units per the Build Off-Site regulations.

Affordable Housing Compliance Plan Application

Developers who elect this compliance option must provide the following information:

A. Developer Affirmation

1) Intent to use HUD-Restricted Units consistent with standards
2) Commitment to maintain affordability restrictions

B. Detailed Unit Information

i) Property Details

- Year built
- Total number of units
- Identification of specific units proposed as HUD-Restricted Units
- Unit type (e.g., townhouse, detached single-family) and tenure
- Number of bedrooms and bathrooms
- Current income restrictions on units
- Site plan(s)

ii) Compliance Documentation

- Information demonstrating units qualify as HUD-Restricted Units
- Evidence meeting all criteria in Section II

C. HUD Agreement Documentation

- Copy of current agreement between Developer and HUD
- Terms and expiration date of existing restrictions

D. Physical Needs Assessment Commitment

- Statement of intent to perform Physical Needs Assessment
- Assessment must occur no more than 6 months prior to HUD agreement termination

E. Repair and Maintenance Plan

- Statement of intent to complete all work identified in Physical Needs Assessment
- Including items needing repair at time of assessment
- Including items likely to require repair within 3 years

F. Financial Planning

- Reliable financing mechanism for ongoing administration and monitoring
- Plan for HUD-Restricted Units management

G. Capital Reserve Requirements

- Description of capital reserve maintenance for affordability restriction term
- Provision for sufficient initial capitalization
- Plan for periodic contributions to capital reserve

Inclusionary Housing Agreement

The agreement must:

- Incorporate approved Affordable Housing Compliance Plan
- Include all information relating to HUD-Restricted Units
- Include agreement between Developer and HUD
- Document Developer's intent to use HUD-Restricted Units for compliance
- Be recorded against both:
    - The Residential Development property
    - The property containing HUD-Restricted Units

Restriction Period and Timing

The inclusionary housing restrictions on HUD-Restricted Units:

- Shall be for **40 years**
- Begin upon initial sale or rental of the first market-rate unit in the new development
- Run concurrently with the existing HUD agreement
- Extend affordability requirements if the existing HUD agreement expires before the 40-year period ends

Option Eleven

Combination of Methods

A Developer may propose any combination of basic inclusionary options under Section 5.08.400 and/or in-lieu options under Part 5 of this Chapter to satisfy the Inclusionary Housing Ordinance. The combined proposal must be included in the Affordable Housing Plan and will be reviewed in accordance with this Chapter and the Inclusionary Housing Guidelines. The City will approve the proposal if:

- the combined in-lieu methods provide substantially the same or greater level of affordability; and
- the total amount of affordable housing meets the requirement in Section 5.08.400 where all affordable housing is provided on-site, or meets the requirements of Part 5 where affordable housing is provided partially or entirely off-site.

SJMC Section: 5.08.570