



**CITY OF SALINAS**  
**INCLUSIONARY HOUSING GUIDELINES**

Adopted June 6, 2017  
City Council Resolution No. 21175

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## **INTRODUCTION**

### **A. PURPOSE**

Since 1992, the City of Salinas has had an Inclusionary Housing Ordinance (Ordinance) to ensure that new development in the City would provide housing affordable to a range of income levels consistent with the City's General Plan Housing Element (Housing Element) goals and policies. As part of the City's 2015-23 Housing Element update, the City Council authorized direction under "*Action H-8: Inclusionary Housing*" to update the Ordinance along with a nexus study. These Inclusionary Housing Guidelines (Guidelines) incorporate provisions of the most recently adopted 2017 Ordinance.

The Ordinance prescribes City policy for affordable housing. However, it does not include fully detailed instructions for administration, which allows more flexibility in implementing the Ordinance. Instead, the Ordinance called for the City Council to adopt updated Guidelines.

These Guidelines implement the Ordinance adopted by the Salinas City Council (Article 3 of Chapter 17 of the Salinas Municipal Code (Sections 17-6 through 17-19). They constitute the Guidelines referred to from time to time in the Ordinance.

All of the terms of the Ordinance are not repeated in these Guidelines, which supplement but do not reiterate the entire Ordinance. Applicants must also refer to the Ordinance when submitting an application. If there is any conflict between these Guidelines and the Ordinance, the Ordinance shall control.

These Guidelines are not adopted as an Ordinance. While they give direction, administration of the Ordinance will necessarily need to occur in a reasonably flexible fashion consistent with the Ordinance's purpose and provisions. The Guidelines provide this flexibility while assuring conformance to the City's vision and goals for affordable housing.

### **B. RELATION TO OTHER AFFORDABLE HOUSING PROGRAMS**

The Ordinance is designed to work together with other programs that provide affordable housing in the City of Salinas. Numerous developers since the inception of the first Ordinance, which was adopted in 1992, have created affordable housing when they have obtained federal, state, and local government grants and other assistance. Developers may also provide affordable housing to obtain a density bonus. As required by state density bonus law, developers may receive a density bonus for providing affordable units required by the Ordinance.

When the City implements other affordable housing programs, it will attempt to utilize the same administrative procedures as specified in these Guidelines, to the extent reasonable and consistent with the legal requirements of the other programs. It may also modify the practices authorized in these Guidelines when inclusionary units receive other sources of assistance subject to different regulations and statutes.

**C. DEFINITIONS**

The terms used in these Guidelines have the same meaning as in the Ordinance.

**D. RESPONSIBLE CITY STAFF**

The Ordinance is administered by the City of Salinas Community Development Department Housing Division, located at:

City of Salinas Permit Center  
65 W. Alisal Street, 2<sup>nd</sup> Floor  
Salinas, CA. 93901

Phone: (831) 758-7334  
Fax: (831) 775-4258  
E-mail: [housingwebmail@ci.salinas.ca.us](mailto:housingwebmail@ci.salinas.ca.us)

## **SECTION ONE PROVIDING INCLUSIONARY HOUSING IN RESIDENTIAL PROJECTS**

This section of the Guidelines describes how developers and applicants comply with the Ordinance. Part A describes the projects subject to the Ordinance. Part B describes the basic requirements. The Ordinance is implemented primarily through two documents: the Affordable Housing Plan and the Inclusionary Housing Agreement. The Affordable Housing Plan, described in Part C, is submitted with a planning application and describes how the project will comply with the Ordinance. The Inclusionary Housing Agreement, described in Part D, is a contract between the City and the developer that is recorded against the property to ensure that the inclusionary housing is built as proposed in the Affordable Housing Plan. Part E describes how the City will ensure that the inclusionary housing is built.

### **A. PROJECTS SUBJECT TO THE INCLUSIONARY HOUSING ORDINANCE**

The Ordinance applies to any project that requires any development permit and will create ten or more dwelling units or lots through either new construction or additions or alterations to existing structures. This includes:

- (1) New construction of at least ten units of for-sale housing;
- (2) Subdivision of property into ten or more lots; and
- (3) Additions or alterations to existing structures to create ten or more new dwelling units.

A "dwelling unit" for purposes of the Ordinance includes a "dwelling unit" and "single room occupancy housing" as defined in the Salinas Zoning Ordinance (Chapter 37 of the Salinas Municipal Code).<sup>1</sup> If buildings that are not considered to be "dwelling units," such as motels and hotels, are remodeled to create ten or more dwelling units, then they are subject to the Ordinance. However, the Ordinance only applies to newly created units or lots. For example, if five units are added to an existing five-unit building, for a total of ten units, the Ordinance will not apply, because only five units are being newly created.

The City considers concurrent applications on contiguous parcels under the same ownership or submitted by the same applicant (or controlled by the same applicant or owner) to be one residential development for purposes of the Ordinance.

#### **Exemptions**

The following projects are exempt from the Ordinance:

- Projects creating fewer than ten additional dwelling units or lots.

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Note: "Dwelling unit" means a room or suite of two or more rooms with internal circulation, designed for use by one family for living or sleeping purposes, and having only one kitchen or kitchenette. (Salinas Municipal Code Section 37-10.280).

"Single room occupancy housing" means a residential facility with individual secure rooms, of a smaller size than normally found in multi-family dwellings, which may have kitchen and bathroom facilities, and which are rented to a one- or two-person household on a long-term basis. (Salinas Municipal Code Section 37-10.430).

- Residential developments located in the Downtown Area, unless the City Council by Resolution determines that, based on market conditions, the provisions of this article will be applied in the Downtown Area. Downtown Area means the area within the boundaries of the Central City Overlay District as defined per Zoning Code 37-40.300. The Downtown Area exemption applies to adaptive reuse and new construction developments.
- Projects exempt under provisions of the Subdivision Map Act, except that those projects must comply with the Ordinance in effect on the date that they were deemed complete.
- One-hundred percent (100%) affordable low-income housing projects with either a deed restriction, restrictive covenant or regulatory agreement no less than 30 years.
- Proposed developments that have met certain milestones and comply with the requirements of the predecessor Ordinance. See the Ordinance for more information. These include:
  - Projects exempt under the terms of a development agreement
  - Residential developments exempted by Government Code section 66474.2 or 66498.1
  - Residential developments that have submitted a complete planning or building permit application along with full payment of required application fees to the City prior to the effective date of the Ordinance.

**B. OPTIONS FOR PROVIDING INCLUSIONARY UNITS**

On-site inclusionary housing requirements apply only to ownership (for-sale) housing developments of ten units or greater. Rental developments instead pay an affordable rental housing impact fee. A developer of rental housing may opt to voluntarily provide affordable rental housing in exchange for a City-provided benefit, as described in the Ordinance, and a developer of for-sale housing may opt to pay in-lieu fees.

**Basic Options**

The Ordinance in Section 17-9 and 17-10 provides three standard on-site inclusionary options for developers who elect to provide housing on site. A key part of any application for a residential development is for the applicant to select the appropriate inclusionary option. The table below summarizes the three standard on-site options.

Applicants may also choose alternatives to the standard on-site options as described in Section 17-13 of the Ordinance. These alternatives must be reviewed and approved by the City Council.

**TABLE 1: SUMMARY OF STANDARD ON-SITE INCLUSIONARY OPTIONS**

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
	<b>20%</b>	<b>15%</b>	<b>12%</b>
<b>Very low Income (50% of median)</b>	4% Ownership or rental	Not Required	8% Rental
<b>Lower Income (80% of median)</b>	8% Ownership or rental	Not Required	4% Rental
<b>Median Income (100% of median)</b>	Not Required	6% All must be ownership	Not Required
<b>Moderate Income (120% of median)</b>	4% All must be ownership	6% All must be ownership	Not Required
<b>Workforce Income (160% of median)</b>	4% All must be ownership	3% All must be ownership	Not Required

To use one of the options that has a rental housing component, developers must meet certain conditions, as described in Section C describing the Affordable Housing Plan.

**Number of Units Required**

In computing the total number of inclusionary units required on-site in a residential development, fractions of one-half (1/2) or greater are rounded up to the next highest whole number, and fractions of less than one-half (1/2) are rounded down. For example, a 53-unit development choosing option three would provide 47 market-rate units and 6 affordable units ( $53 \times .12 = 6.36$ , rounded down to 6). A 55-unit development would provide 48 market-rate units and 7 affordable units ( $55 \times .12 = 6.60$ , rounded up to 7).

**In-Lieu Fees and Rental Housing Impact Fees**

Developers of rental housing are required to pay a rental housing impact fee unless they voluntarily elect to mitigate the impact by providing affordable rental housing. If an applicant chooses to pay rental housing impact fees, the applicant will also make twelve percent (12%) of the units within the development available to Section 8 Housing Choice Voucher (Section 8) Program participants so long as the Section 8 Program is in effect. Units within the development that are offered to Section 8 Program participants should represent a unit and bedroom mix and be properly disbursed throughout the development. The applicant will include the proposed placement of the Section 8 Program units within the development as part of the Affordable Housing Plan which is to be reviewed and approved by the City. Developers of for-sale housing may elect to satisfy their affordable housing obligation by paying an in-lieu fee. All housing fees are deposited into the City’s inclusionary housing trust fund. The City Council from time to time will adopt in-lieu fees and rental housing impact fees, which may be increased annually based on

increases of an established index. Full details regarding the dollar amounts and calculation of the in-lieu fees and rental housing impact fees are included in the City's adopted fee resolution. The fee is charged per square foot of residential development. In-lieu fees are due when building permits are issued.

Generally, the fee is based on the square footage of the buildings, not counting parking. For apartments, hallways, elevators and stairs are excluded from the calculations.

Specifically, for Single-Family Detached Homes, Townhomes, and Condominiums, Residential Floor Area includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for parking. For Apartments, Residential Floor Area includes all horizontal areas of the several floors of such buildings measured from the exterior faces of exterior walls or from the center line of party walls separating two (2) buildings, minus the horizontal areas of such buildings used exclusively for covered porches, patios, or other outdoor space, amenities and common space, parking, elevators, stairwells or stairs between floors, hallways, and between- unit circulation.

### **Other Alternatives**

There are a number of alternatives available for developers that require City Council review and approval. These alternatives are described in the Ordinance in Section 17-13. Below is a list of alternatives:

1. Land Dedication
2. Partnerships
3. Off-Site Construction
4. Transfers of Surplus Inclusionary Units
5. Other Options

#### *Land Dedication*

Developers may dedicate land instead of providing affordable units. Among other conditions, the land must be appropriate for and zoned to allow development of the required inclusionary units. The land must have the infrastructure to serve the development and no unmitigated environmental hazards. The site must also comply with the City's fair housing goals by not tending to cause racial segregation.

Additionally, if the land is transferred to the City rather than to an affordable housing developer, the City must be allowed to sell or lease the property with the proceeds from the sale of the land deposited into the affordable housing trust fund. (The City's preference is not to sell the land, but rather to see affordable housing built on it.)

#### *Off Site Production*

Within the Future Growth Area, the affordable units may be built on a site different from the site of the Residential Development. Among other conditions, the alternative site must be located in the Future Growth Area and zoned appropriately for the proposed number of units. The units

must be completed prior to or concurrently with the market-rate development. The land must have the infrastructure to serve the development and no unmitigated environmental hazards. The site must also comply with the City's fair housing goals and not increase racial segregation.

#### *Partnerships*

Developers may contract with an experienced affordable developer to construct all or part of the inclusionary units. Per the Ordinance, the City Council must be assured that the required inclusionary units will be built in a timely fashion, that the affordable housing developer has the capability to develop the project, that the construction and permanent financing will be secured for the construction of the units within a reasonable time, and that the proposal otherwise meets the conditions described in Section 17-11 of the Ordinance.

#### *Surplus Unit Transfers*

Developers within the Future Growth Area may elect to produce more affordable housing than otherwise required and generate credits that can be used to offset future affordable housing obligations within the Future Growth Area. The credits may be used by the developer that produced them or sold to other developers. Credits expire after five years, but developers may request one five-year extension. All the affordable units must be located in the Future Growth Area.

Affordable units used for credits must match the tenure, affordability level and bedroom count of the units that would otherwise be required. However, deeper affordability or larger units are permitted. For example, if a developer produced four surplus for-sale, affordable housing units at 120% of the Area Median Income, the credits could not be used to meet a rental obligation nor could they be used to satisfy an obligation for units at a lower affordability level (e.g. 100% of AMI). However, they could be used to satisfy an obligation for units at a higher affordability level (e.g. 160% of AMI).

Developers must notify the City using the appropriate City-supplied form when selling Credits.

#### *Other Options*

A developer may propose an option not listed in the Ordinance as part of the Affordable Housing Plan. It may be approved by the City Council if it provides substantially the same or a greater level of affordability and the same number of units as required by the basic options. Alternatively, a developer may propose to provide fewer units with deeper affordability.

#### *Nondiscrimination*

The City of Salinas, through its Inclusionary Housing Ordinance upholds the purposes and policies of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968. The City adheres to HUD's program requirements to take steps to proactively overcome historic patterns of segregation, promote fair housing choice and foster inclusive communities for all. The City is purposefully incorporating the same policies within its Inclusionary Housing Ordinance. Inclusionary Housing will meet the goals, wherever possible, to reduce segregation and increase integration; deter racially and ethnically concentrated areas of poverty; increase access to education, employment, low-poverty, transportation, and environmental health, among other critical assets.

## **Standards for Inclusionary Units**

Section 17-12 of the Ordinance describes the standards for the inclusionary housing units. In addition, the following standards apply.

*Interior Design Standards* – Inclusionary units may have different interior finishes (i.e. the finishes do not need to be like-for-like) and features than market-rate units in the same residential development, as long as the finishes and features are functionally equivalent to the market-rate units and are durable and of good quality. For example, if the market units include a refrigerator and dishwasher, similarly sized appliances must be provided in the affordable units. All material and appliances must be new.

*Exterior Design Standards* - The exterior finishes of the inclusionary units must be consistent with the exterior design of all market-rate units. An observer should not be able to differentiate the inclusionary units from market-rate units by looking at the exterior of the building. Affordable units must meet the same parking standards as market-rate units, unless a parking incentive is requested under state density bonus law.

The inclusionary units must have the same amenities as the market-rate units, including the same access to and enjoyment of common open space and facilities in the residential development.

Generally, inclusionary units should be of the same construction type and have the same proportion of units with each number of bedrooms as the market-rate units. For example, if the market-rate units are single-family, three-bedroom homes, the affordable units must be three-bedroom, single-family homes. However, the Ordinance provides some flexibility. Developers may satisfy their obligation for moderate income units through duplexes, townhomes, or small (12 unit or less) multifamily buildings, so long as at least 50 percent of the units in the multifamily development must be market-rate. Developers may satisfy their workforce housing obligation through small lot single-family homes, even if the market-rate units are on large lots.

The City Council may allow rental units to be grouped as necessary so that state and federal financing sources, including low income housing tax credits, may be used, so long as the Affordable Housing Plan contains a management plan that ensures to the satisfaction of the City that the units will be well managed.

The City Manager or designee may choose to develop more detailed interior finish or exterior design standards.

All inclusionary units must also meet the standards in Table 2.

**TABLE 2: Minimum Standards for All Inclusionary Units**

	<b>Single-Room Occupancy</b>	<b>Studio</b>	<b>One Bedroom</b>	<b>Two Bedrooms</b>	<b>Three Bedrooms</b>	<b>Four Bedrooms</b>
<b>Minimum Size (sq. ft.)</b>	250	500	650	900	1,100	1,275
<b>Minimum No. Bathrooms*</b>	$\frac{3}{4}$	1	1	1	1 $\frac{3}{4}$	1 $\frac{3}{4}$

\*A full bathroom includes sink, toilet, and tub with shower. A  $\frac{3}{4}$  bath includes a sink, toilet, and tub or shower.

## **C. AFFORDABLE HOUSING PLAN**

Preparation of an Affordable Housing Plan is the first step in complying with the Ordinance.

### **Timing of Submittal of Affordable Housing Plan**

The City's goal is to ensure that inclusionary housing is considered early in the planning process and included as part of any master planning. An Affordable Housing Plan must be submitted with the first application for a planning approval of any residential development with ten or more units or lots. The first application may include an application for a specific plan, general plan amendment, zoning, rezoning, development agreement, planned unit development permit, tentative map or minor subdivision, conditional use permit, site plan review, or building permit.

No application for a residential development will be deemed complete unless accompanied by an Affordable Housing Plan, or unless an Affordable Housing Plan has been previously approved for the development. The application for an Affordable Housing Plan must be accompanied by any processing fee adopted by resolution of the City Council. If a project requires no planning approval, the Affordable Housing Plan must be submitted with an application for a building permit.

No Affordable Housing Plan is required if the applicant, as part of its first application, states that it has opted to pay rental housing impact fees or for-sale housing in-lieu fees to meet the requirements of the Ordinance

### **Contents of Affordable Housing Plan**

The required contents of the Affordable Housing Plan are specified in Exhibit A and in the Ordinance Section 17-16. The City Manager or designee is authorized to make changes in Exhibit A from time to time when necessary to ensure that residential developments comply with the Ordinance. When the City accepts a proposal from a developer to build affordable rental units, the Plan must include certain provisions, as described in Exhibit A, to ensure compliance with the Costa-Hawkins Act. The Affordable Housing Plan need be only at the same level of detail as the application for a residential development. For instance, an Affordable Housing Plan that is submitted as part of a specific plan application would generally describe the construction phases for the specific plan, describe the City's inclusionary requirements, and explain how the requirements would be met in each phase of design and construction. An Affordable Housing Plan for a tentative map would indicate which inclusionary option (Option 1, 2, 3 or alternative) the developer is selecting, the location and type of the affordable units, tenure and level of affordability, and phasing, but might not include design details or specify number of bedrooms and unit size if they had not yet been determined for the rest of the development. Where the initial Affordable Housing Plan is not at sufficient detail to determine compliance with the Ordinance, the City may require additions to the Plan as part of later planning approvals, or as part of the Inclusionary Housing Agreement.

If the residential development includes fewer than 10 units, the Affordable Housing Plan must include all contiguous property under common ownership or control. "Common ownership or control" means that the contiguous property is owned or controlled (including by an option to purchase or a purchase agreement) by the same person, persons, or entity, or by separate entities in which any shareholder, partner, member, or family member of an investor of the entity owns

ten percent (10%) or more of the interest in the property, as the property that is proposed for the residential development.

One of the most critical parts of the Affordable Housing Plan is the phasing of the inclusionary units in relation to the construction of market-rate units. Normally, each construction phase designated by the developer will contain the required inclusionary units for that construction phase, although different phasing may be approved if there is adequate security to ensure that the required inclusionary units will be built. For instance, a developer may choose to build extra inclusionary units in an early phase so that there may be a smaller number of inclusionary units for the other phases of construction.

### **Approval of Affordable Housing Plan**

The Affordable Housing Plan is usually reviewed along with the required planning application and approved at the same time and by the same approval body that has authority to approve the planning application. For instance, if the project can be approved by the Planning Commission, the Affordable Housing Plan can also be approved by the Planning Commission. The Affordable Housing Plan will be approved if it conforms to the provisions of the Ordinance.

City Council approval is required if the applicant requests approval of any alternative listed in Section 17-13, including any of the following:

1. Land Dedication
2. Partnerships
3. Off-Site Construction
4. Transfers of Surplus Inclusionary Units
5. Other Options

After an applicant submits an Affordable Housing Plan to the City, the City will review it and notify the applicant within 30 days whether or not it is complete. The Department's decision regarding completeness and conformance may be appealed directly to the City Council within 10 days of the Department's decision by following the procedures for notice and hearing of an appeal specified in Sections 37-60.1270 – 37.60.1310 of the City's Zoning Ordinance.

Minor modifications to an approved Affordable Housing Plan may be approved by the City manager as provided in Section 17-16(d), if the modification is consistent with the original Affordable Housing Plan and conditions of approval. Other modifications must be processed as an amendment to the project approval.

## **D. INCLUSIONARY HOUSING AGREEMENT**

The City will attach a condition of approval to all projects subject to the Ordinance requiring that an Inclusionary Housing Agreement be recorded prior to the approval of any final or parcel map, or issuance of any building permit (see Ordinance Section 17-16).

The Inclusionary Housing Agreement is a recorded contract between the City and the property owner describing the inclusionary units and income categories and explaining in detail how the units will be marketed and sold or rented. Its purposes are to ensure that the developer is aware of the implementation requirements and that the requirements are enforceable. The Inclusionary

Housing Agreement is recorded against all of the property that is part of the residential development and provides notice of the Agreement to future owners of the property.

### **Contents**

Exhibit B lists the items that will be included in an Inclusionary Housing Agreement. The City Council, by resolution, will approve standard forms to be used. The City Manager or designee is authorized to vary the form of the Agreement to ensure that it is consistent with the Affordable Housing Plan approved by the City for the residential development. All property included in the project and, for projects with fewer than 10 units, all contiguous property under common ownership or control must be included in the Plan.

In some cases, where a project consists of rental units that are to be built in a single phase, the City and the developer may be able to agree on the terms of a rent regulatory agreement (discussed in Section Five) applying to the inclusionary rental units before any building permit is issued or a final or parcel map is recorded. In those cases, a rent regulatory agreement may be recorded in place of an Inclusionary Housing Agreement, so long as the rent regulatory agreement includes provisions for the timing of construction of the inclusionary units in relation to the construction of the market-rate units.

### **Covenant Running With the Land; Superior Position**

The Inclusionary Housing Agreement must be executed and recorded against the entire residential property included in the project and, if included in the Affordable Housing Plan, any contiguous property under common ownership or control prior to or concurrently with the approval of any final or parcel map or issuance of any building permit for the residential development. The Agreement shall be recorded as a covenant running with the land and shall be recorded in first position, superior to other liens and encumbrances, except for:

- (1) Liens to secure payment of real estate taxes and assessment, not delinquent;
- (2) Non-monetary matters affecting the title which do not unreasonably impact the security of the Inclusionary Housing Agreement;
- (3) A lien or regulatory agreement of a local, federal, or state governmental agency, provided that both of the following conditions are met:
  - a. The public agency is providing financing or other assistance for the housing development; and
  - b. The statute or regulation governing the financing or assistance from that agency does not permit the City's Inclusionary Housing Agreement to be senior to the agency's agreements; and
- (4) Short-term financing (such as construction loans) when approved on a case-by-case basis by the City Manager and provided that subordination of the Inclusionary Housing Agreement serves the City's interest in creating affordable housing.

By City Council resolution, the City Manager or designee is authorized to implement this section and to execute Inclusionary Housing Agreements on behalf of the City.

## **Termination**

The Inclusionary Housing Agreement may only be terminated as follows:

- (1) *For-sale units:* The Inclusionary Housing Agreement may be terminated against the market-rate units as the inclusionary units in the construction phase are completed, or as otherwise approved by the City in the Affordable Housing Plan.

The Agreement will not be terminated against an individual inclusionary unit until close of escrow, when the City's equity-sharing agreement and deed of trust are recorded against the individual unit.

- (2) *Rentals (for developments that choose to provide units):* Normally the Inclusionary Housing Agreement is replaced by a rent regulatory agreement when the property is ready for occupancy, and the Agreement is terminated after the rent regulatory agreement is recorded against the property. The rent regulatory agreement applies to the entire property, because the location of the inclusionary units within the complex may change over time. Where specific apartments are designated as inclusionary rental units, however, the appropriate conditions for termination of the Agreement will be determined as part of the approval of the Affordable Housing Plan for the project.

If, before construction begins, a rent regulatory agreement is recorded in place of an Inclusionary Housing Agreement, the rent regulatory agreement will not be terminated after construction is completed and will continue to restrict the property for the term of the agreement.

The City will record a release of the Inclusionary Housing Agreement at the time it is terminated.

## **E. COORDINATION WITH PERMIT CENTER FOR ISSUANCE OF BUILDING PERMITS AND APPROVAL OF FINAL INSPECTIONS**

The Ordinance includes "concurrency requirements." These specify that a certain number of building permits must be issued for inclusionary units before the developer can be issued building permits or final inspection approvals for market-rate units.

Based upon the inclusionary option selected by the developer and the terms of the Inclusionary Housing Agreement, City Building Permit Center staff will maintain records sufficient to monitor both building permit issuance and final inspection approvals to ensure compliance with the Ordinance. Following receipt by the developer of required land use entitlements, the City Planning Division will advise the City's Permit Center staff of the pending project and work with them to coordinate the issuance of building permits.

### **Payment of Rental Housing Impact Fees and In-Lieu Fees**

Where the developer has elected to pay rental housing impact fees or in-lieu fees rather than construct affordable units, the fees will be collected by the Building Permit Center staff prior to issuance of each building permit for the project based on the fees in effect at the time the building permit is issued.

## **Building Permits and Occupancy – Concurrent Construction Requirements**

A Building Permit Specialist will track the issuance of building permits by construction phase, noting the number of both inclusionary and market-rate unit permits. Building permits will only be issued for market-rate units according to the terms of the recorded Inclusionary Housing Agreement. However, the City may issue permits for inclusionary units earlier than specified in the plan.

The concurrency requirements are as follows:

The City may issue building permits for 70 percent of the market-rate units within a residential development before issuing any building permits for inclusionary units, and may approve certificates of occupancy or final inspections for 70 percent of market-rate units before approving any final inspections for inclusionary units. After this point, a developer may be issued building permits and receive final inspections for market-rate units after a proportional number of inclusionary units have been issued building permits or have received a final inspection.

For example, if a developer proposes a 100-unit development, and uses option 1, they are obligated to provide 20 inclusionary units, which means there will be 80 market-rate units. The City may issue building permits for 56 market-rate units (70% x 80) before issuing any building permits for inclusionary units, and may approve occupancy of 56 market-rate units before approving occupancy of any inclusionary units.

The City has the option to grant additional flexibility for timing when developers partner with an experienced non-profit affordable housing provider. At its sole discretion, the City may issue building permits for 100 percent of market rate units within a residential development before issuing building permits for any inclusionary units if the developer is partnering with an experienced non-profit affordable housing provider.

At times, the required affordable housing units may not be equally divisible into the income categories as specified in the Ordinance. In this case, the affordability levels are described in the following table.

<b>Option 1 (20% mixed ownership and rental)</b>	<b>Option 2 (15% all ownership)</b>	<b>Option 3 (12% all rental)</b>
The first two required inclusionary units shall be affordable to lower income households.	The first required inclusionary units shall be affordable to median income households.	The first required inclusionary units shall be affordable to very low income households.
The third required inclusionary unit shall be affordable to very low income households.	The second and third required inclusionary unit shall be affordable to moderate income households.	The second required inclusionary unit shall be affordable to low income households.
The fourth required inclusionary unit shall be affordable to moderate income households.	The fourth required inclusionary unit shall be affordable to median income households.	The third required inclusionary unit shall be affordable to very low income households.
The fifth inclusionary unit shall be affordable to workforce income households.	The fifth required inclusionary unit shall be affordable to workforce income households.	All additional required inclusionary units shall be provided in the same order as above.
All additional required inclusionary units shall be provided in the same order as above.	All additional required inclusionary units shall be provided in the same order as above.	

This table refers to the overall obligation, but not the timing of unit production, which will be specified in the affordable housing plan. Additionally, developers may substitute a lower income unit for a higher income unit requirement at any time.

**Development in Phases**

The City shall not be obligated to issue building permits or approve final building inspections requested by a developer if inclusionary units are not being issued building permits or final inspections in accordance with the recorded Inclusionary Housing Agreement.

## **SECTION TWO ESTABLISHING AFFORDABLE PRICES AND RENTS**

This section describes how to calculate affordable prices and rents (for rental developments that choose to participate).

### **A. AFFORDABLE PRICES AND AFFORDABLE RENTS**

The City uses the State Department of Housing and Community Development (HCD) income limits as published annual for Monterey County based on household size for its inclusionary housing units. In calculating affordable rents, the City uses Section 8 Housing Voucher utility allowances as published by the Housing Authority of the County of Monterey (HACM).

Affordable sales prices for inclusionary units in residential projects will be determined by the City when the marketing plan is submitted for the inclusionary units in a construction phase. The City will determine property taxes, homeowner's insurance, and other factors using available market information. The interest rate used will be the rate published by the Federal National Mortgage Association (FNMA) for a 30-year fixed rate first mortgage, unless the developer has obtained a commitment for permanent financing for the inclusionary units at another rate. The permanent financing must meet the standards for purchase money loans included in Section Three.

Exhibit C shows the methodology that will be used by the City to calculate affordable sales prices. Exhibit D shows the methodology that will be used by the City to calculate affordable rents. Exhibits C and D are designed to be consistent with the Ordinance.

### **SECTION THREE MARKETING AND SELECTION OF BUYERS AND RENTERS**

This section describes which households are eligible for inclusionary housing, explains City preferences for homebuyers and renters, and contains standards for marketing inclusionary units and for selecting eligible households to purchase or rent the inclusionary units.

#### **A. ELIGIBLE HOMEBUYERS AND RENTERS**

Inclusionary units are reserved for very low, low, median, moderate, or workforce-income households who meet the eligibility criteria in this section when the inclusionary units are rented or sold. Applicants for inclusionary ownership and rental units shall be solicited as necessary to maintain an adequate number of applications in each of the following applicant pools:

Very low income and lower income households occupy for-sale or rental inclusionary units, while for-sale inclusionary units are occupied by median income, moderate income, and workforce income households.

#### **Definition of a Household or Family**

A household, or family, is a group of individuals living together based on personal relationships. A person is not eligible to buy or rent an inclusionary unit if they are listed as a dependent on the tax return of a person who is not part of the household occupying the inclusionary unit. For instance, students claimed as dependents by their parents cannot purchase or rent an inclusionary unit.

#### **Calculating Household Size**

A household is comprised of one or more persons who may or may not be related based on personal relationships. An unborn child can be counted in family size once there is medical confirmation of pregnancy. An adoption process will be counted in family size with verification of the adoption process being underway. A child will be considered part of the household when the child lives with a single parent at least 75 percent of the time or, where there is joint custody, at least 50 percent of the time. The applicant will need to submit a copy of the divorce decree or child custody agreement as verifiable documentation. If a divorce is in process, it may not be possible to qualify an applicant because family size and financial status are unclear.

If a family member is permanently absent from the household (for instance, a spouse who is in a nursing home or legally separated), that the person is no longer a member of the household for purposes of the Ordinance.

Documentation acceptable to the City's Planning Manager will be required to substantiate that the household member is no longer residing with the rest of the household.

## **Income Limits**

Income limits for very low, lower, median and moderate-income households, adjusted for household size, are as shown for Monterey County and published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision. In the event that these income limits are no longer published periodically in the California Code of Regulations, the City Manager or designee will determine an alternate method of computing income limits for very low, lower, median, and moderate-income households.

Income limits for workforce-income households are computed by multiplying by two the income limits for lower income households in Monterey County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as determined by the City if income limits are no longer published periodically.

## **Determining Household Income**

Applicants' household annual gross income shall be calculated in accordance with the Technical Guide for Determining Income and Allowances for the HOME Program published by the U.S. Department of Housing and Urban Development (HUD), as it may be amended (the HOME Guide), and 24 CFR 5.609.

A copy of the HOME Guide is available for download here:

[http://portal.hud.gov/hudportal/documents/huddoc?id=19754\\_1780.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=19754_1780.pdf)

24 CFR 5.609 is available to be viewed here:

<https://www.gpo.gov/fdsys/pkg/CFR-2016-title24-vol1/xml/CFR-2016-title24-vol1-sec5-609.xml>

Exhibit E provides the definitions of what is included and excluded from the determination of annual gross income in accordance with the U.S. Code of Regulations. In summary, gross household income is the sum of all the income for every adult, 18 years or older, living in the unit. Sources of income include all wages, salaries, overtime pay, commissions, fees, tips, bonuses and other compensation, net income from a business or profession or from the rental of real or personal property, interest and dividends, payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, payments in lieu of earnings, public assistance, alimony and child support received, and any other sources of income.

## **Documentation to Verify Sources of Income**

The gross annual incomes of all household members age 18 or older are considered when determining eligibility. The types of income to be verified and the type of documentation that will be requested will include:

- 2 months most recent pay stubs

- Signed copies of federal tax returns for the three most recent years
- W2 forms for the most recent year
- 1099 forms for the most recent year 2 mos. most recent pay stubs
- Self-employed, the net income from the operation of the business
- 3<sup>rd</sup> party verification of employment
- Bank statements for the last two consecutive months (used to verify that the applicant has enough assets for the down payment and closing costs, but does not exceed the maximum asset limit of \$75,000)
- Other sources of earnings such as child support, alimony, social security, etc.

All income documentations is based primarily on the applicant’s income for the past year as evidenced by the documents listed above and additional verification, if requested, as listed below. Income calculations will not factor in any speculative or uncertain projection of lower or higher future earnings, such as calculations of bonuses and overtime, than was earned in the previous year. Where major changes have occurred in life circumstances since the applicant’s last year of employment, including only such major changes as retirement, job loss, or disability or death of a wage earner, the City may deduct the projected income losses from the applicant’s income for the past year.

Additional income verification may also be requested as follows:

<b>Source of Income</b>	<b>Documentation</b>
Salaries and wages	Verification from employer
Business income	Verification of income by a certified public accountant or bookkeeper including most recent quarterly profit/loss statement. For self-employed individuals or sole proprietor’s, the City may use the most recent 1099 and tax returns.
Interest and dividend income	Current bank statements or dividend statements
Retirement and insurance income	Verification from source
Unemployment and disability income	Verification from source
Welfare assistance	Verification from source
Alimony, child support, gift income	Verification from source
Armed forces income	Verification from source
Other	Verification from source

Household income includes all payments from all sources received by all adult members of the household. The income of minors (household members less than 18 years old) and live-in aides is excluded.

For self-employed persons, the *net* income from the operation of the business is considered as the annual income, excluding deductions for capital expenditures and depreciation. Similarly, *net* income from property rental is considered as annual income, also excluding deductions for capital expenditures and depreciation.

**Assets**

There are limits to the amount of net assets that are used for eligibility for inclusionary for-sale and rental units. For households applying for inclusionary rental units, the limit is equal to the maximum household income limit adjusted for household size. For households applying to be an owner of an inclusionary unit, the maximum household asset limit is \$75,000. Net assets only include liquid assets that do not incur a drawdown fee or penalty. Retirement accounts such as 401K and IRA accounts are not included as part of net assets.

The following chart contains the types of assets to be verified and the type of documentation that will be requested.

<b>Assets</b>	<b>Documentation</b>
Checking account, savings account, mutual fund, money market fund, certificates of deposit (C.D.)	Copies of two most recent statements
Stocks, including options	Copy of most recent stock certificate or proof of purchase and statement of current value; for stock prices attach a copy of recent dated newspaper or online source that shows the value of each company's stocks
Bonds, including savings bonds	Copies of most recent document
Trust	Copies of most recent document
Gift	Signed gift letter by all parties
Personal Loan	Letter or loan agreement
Down payment assistance	Copy of agreement
Other	Verification from source

**Co-Applicants**

The City or its designee will accept one application per household. A co-applicant is defined as an adult member of the household whether related or unrelated who intends to be a co-owner of the inclusionary unit. The combined income and assets of all adult members of the household (including co-applicants) to purchase or rent an inclusionary unit must not exceed the maximum income limits per household size and asset limitation for the program. All co-applicants must go

through the same process as the applicant and must agree to comply with the program requirements.

### **Lender Preapproval**

All prospective purchasers of inclusionary units must receive a preapproval letter from a residential lender for a loan that meets the City's standards for purchase money loans, which are described in Part E (Process for Sale of Inclusionary Units).

### **Homebuyer Education**

Before purchasing an inclusionary home, all homebuyers must attend a City-approved homebuyer education class. These classes must cover the home buying process, terms of the City agreements, property maintenance, good neighbor practices, available financing, occupancy standards, loan closing, refinancing, predatory lending, credit and budgeting, and homeowner responsibilities. Prospective homebuyers may be found eligible before attending a homebuyer education class, but must present proof of attendance before closing escrow on their home.

### **Purchase of Inclusionary Units by Nonprofit Sponsors**

In some instances, a nonprofit affordable housing sponsor may wish to purchase an inclusionary unit for occupancy by eligible persons who may require enhanced services. Examples may include use of a home for disabled persons or persons transitioning from homelessness. At any time prior to the marketing of the inclusionary units for sale, a nonprofit sponsor may request approval from the developer to purchase an inclusionary unit for affordable housing purposes. If the request is approved by the developer, at the developer's sole discretion, the nonprofit sponsor shall provide to the City Manager or designee written approval from the developer and information as may be required by the City to ensure that the unit will be used for affordable housing purposes, such as evidence of the sponsor's 501(c)(3) status, residents to be served, funding of operations, and similar information. Appropriate recorded agreements will be applied to the property at the time of sale to ensure that the occupants are income-eligible and that the home continues to be used for affordable housing purposes. No more than two inclusionary units may be purchased by nonprofit sponsors per development phase. The City will not subsidize the purchase of these units with federal or other funds unless specifically authorized by action of the City Council.

### **Ineligible Applicants - Conflicts of Interest**

The following individuals are not eligible to purchase or rent inclusionary housing units in Salinas.

*Planning Commissioners, City Councilmembers, and Certain City Staff*

- Any member of the Salinas Planning Commission or City Council.
- Employees, other officials (not including City Council Members or Planning Commissioners), consultants and employees of consultants who have policy making authority or influence regarding City housing programs, administer City housing programs, or whose salary is paid in any part from a City housing program.

- Any person having any equity interest in a project that includes inclusionary units, or who is the applicant, including but not limited to a developer, partner, landowner, investor, or applicant (together the "Developer"). Officers and employees of the Developer are also ineligible.
- Any person considered to have a conflict of interest by the California Government Code, the regulations of the Fair Political Practices Commission, or Chapter 2A of the Salinas Municipal Code is ineligible to rent or purchase an inclusionary unit.
- Relatives of Planning Commissioners, City Council Members, Certain City Staff and Persons with an Equity Interest are also ineligible. For the purposes of eligibility, relatives are defined as spouses, children, parents, grandparents, brother, or sister, or a person in an equivalent position due to marriage (for instance, son-in-law and daughter-in-law), or anyone who may be claimed as a dependent.

Ineligible individuals shall not be added to any wait lists for affordable housing maintained by the City.

**B. OCCUPANCY STANDARDS**

To ensure the City’s limited inclusionary units are used efficiently, a household must be of a size equal to the number of bedrooms in the inclusionary unit. Any household found eligible to purchase or rent an inclusionary unit must have the following minimum household size:

<u>Number of Bedrooms</u>	<u>Minimum Household Size</u>
SRO	1
One	1
Two	2
Three	3
Four	4

Disabled persons who require additional bedrooms may submit a request to the City for a larger home as a reasonable accommodation from these occupancy standards. (Disabled persons may also be entitled to other accommodations unrelated to the City's inclusionary housing policies.)

**C. PREFERENCES FOR SALE AND RENTAL OF INCLUSIONARY UNITS**

The City of Salinas has established preferences for rental or purchase of inclusionary units. First priority is given to those displaced by City actions. Second priority is given to those displaced by private market actions, while third priority is given to those who live or work in Salinas when they submit an application. Any other eligible household may purchase or rent an inclusionary unit if there are no households with priority.

If a residential development is receiving governmental financial assistance that does not permit these preferences, or requires different preferences, then the City's preferences will be modified as needed to conform to the terms of the other program.

The City will periodically review its preferences to ensure they are compliant with fair housing laws.

### **Households Displaced by City of Salinas Actions**

First priority for an inclusionary unit must be given to a household displaced from a residence in the City by action of the City of Salinas. Proof of this priority can be established by submittal of a letter from the City of Salinas stating that the household will be or has been displaced due to the actions of the City. Owner-occupants displaced by the City through the enforcement of health and safety or other codes shall not qualify for this priority. This priority expires 12 months from the date of the displacement.

### **Renter Households Displaced by Private Sector Actions**

Second priority for an inclusionary unit must be given to a renter household displaced from a residence in the City of Salinas due to either:

- a. Conversion of renter-occupied units to condominiums; or
- b. Demolition of an existing dwelling.

Proof of this priority can be established by a letter from the City of Salinas stating either that the City has approved conversion of the residence to a condominium; or that the City has approved a demolition permit for the residence. This priority expires 12 months from the date the tenant is required to move out of the dwelling unit.

### **Salinas Residents and Employees**

Third priority is given to households that reside in, or are employed within, the City of Salinas when they submit an application.

Residency in the City may be established by a driver's license, utility bill showing residency in the City, income tax returns, voter registration, or other written documentation of residency.

Employment in the City requires paid labor in the City of Salinas or work for an employer located in the City of Salinas of at least 20 hours/week. Employment may be part time, seasonal, contractual, self-employment, temporary, or household employment. Employment may be established by a W-2 form from a business located in the City; income tax returns; 2 mos. pay stubs; cancelled check from employer; or employment verification form.

### **First-Time Homebuyers**

For ownership units, within each of the above three preference categories, preference will be given to households that qualify as first-time homebuyers. A first-time homebuyer is a person who has not owned a home during the three-year period prior to the purchase of the inclusionary unit. A mobile home not on a permanent foundation is not considered a "home" for the purpose of this subsection.

A first-time homebuyer also includes a displaced homemaker. A displaced homemaker is an adult who has been legally separated from his or her spouse or domestic partner in the last three years, has no current ownership interest in a home, and has not had an ownership interest in his or her primary residence during the past three (3) years, except with his or her spouse or domestic partner. First-time homebuyer status is verified by a review of three years of federal income tax returns.

## **D.     MARKETING OF INCLUSIONARY UNITS**

All developers of inclusionary units must undertake a marketing effort targeted at eligible households.

### **Nondiscrimination**

All inclusionary units must be marketed in a manner consistent with the federal Fair Housing Act, the California Fair Employment and Housing Act, the Unruh Act, and the Equal Credit Opportunity Act, and all materials must have a fair housing statement or logo. No person may be excluded from participation in, or denied the benefit of, or be subject to discrimination under any activity related to the sale or rental of the inclusionary units on the basis of his or her religion, age, race, color, creed, gender, sexual orientation, marital status, familial status, physical or mental disability, national origin, ancestry, source of income, or participation in Section 8.

### **Marketing Plan**

The City must approve a marketing plan before it will issue any occupancy permits for either the inclusionary units or the market-rate units subject to the concurrency requirement in a building phase. Developers are urged to submit a marketing plan at least 90 days prior to their estimated completion date for their first phase of development and at least 60 days prior to their estimated completion date for subsequent phases. All marketing plans must contain the following:

- (1) A description of the marketing that will be done for the inclusionary units, such as press releases, direct mailing, and advertising (including internet advertising). The City requires that all inclusionary units be advertised in *The Californian* and *El Sol*. The City will provide a list of organizations that must be notified and informational flyers must be available at City Hall and at the offices of the Housing Authority of the County of Monterey (or of a similar organization acceptable to City). The Fair Housing logo must be used on all marketing material.
- (2) A one-page informational flyer in both English and Spanish suitable for advertising the availability of the inclusionary units, including a telephone number, fax number and e-mail address for interested applicants to contact for additional information.
- (3) A copy of all marketing materials and materials to be given applicants (see list below). The City encourages the preparation of Spanish-language materials where appropriate.
- (4) The process for accepting applications, including the number of phases and deadline for applications in the current phase of the project. Developers should allow a generous amount of time (at least 45 days) for applicants to submit complete applications, given the complexity of the process.
- (5) For projects with more than 10 inclusionary ownership units in the current phase, the developer must arrange for at least two informational workshops for potential applicants, one in the evening during the week and one on a weekend. At least

one workshop must be conducted in Spanish, or in both Spanish and English.

For projects with fewer than 10 inclusionary ownership units in the current phase, the developer must arrange for information to be distributed in an appropriate forum, based on the developer's agreement with the City.

- (6) The method to be used to verify City preferences (unless the preferences are modified by the developer's use of another source of financing) and to determine applicant eligibility (income and, for ownership units, lender preapproval letter).
- (7) For projects with rental inclusionary units, a copy of the proposed lease or rental agreement and an explanation of any other criteria to be used by the manager to select tenants. For instance, the manager may require a minimum credit score. The marketing plan also describes the utilities to be paid by the tenant so that the maximum affordable rent can be determined. (See further description in Part F below).
- (8) For projects with for-sale inclusionary units, a description of any financing to be made available to applicants, down payment assistance programs available, information needed to calculate the maximum sales price, and the unrestricted fair market value of the inclusionary units. (See further description in Part E below).
- (9) A requirement that the developer's sales staff meet with the City's Housing Staff to receive training on the selection process and, for ownership units, the City homebuyer documents.

It is important that the developer's sales or management staff understand the application process and the restrictions placed on the inclusionary units by the City. In the case of for-sale inclusionary units, before entering into any purchase and sale agreement for the units, the developer's sales staff must receive training so that they understand and can explain the City's equity-sharing program, option to purchase, and other City restrictions such as the owner-occupancy requirement (further described in Section Four).

In the case of rental inclusionary units, it is important that the developer's management staff understand the consequences of future increases in income. Before entering into any lease or rental agreement for the inclusionary units, the developer's rental staff must receive training so that they can understand and explain the City's requirements and the consequences of future increases in income (further described in Section Five).

Each applicant for an inclusionary unit will receive a packet of information that includes:

- Developer application form approved by the City. The form will include such information as residency or employment certification; household composition; household income and assets; and, for homebuyers, form pre-approval lender letter;

- Explanation of the process used to select homebuyers or renters, as applicable;
- Eligibility requirements;
- The income level(s) and occupancy standards for the various units;
- Description of City preferences;
- Description of inclusionary units available, including number of bedrooms and general location;
- Price or rent of inclusionary units;
- Contact information for sales or rental office; and
- (For homebuyer units) the borrower's disclosure supplied by the City.

## **E. PROCESS FOR INITIAL SALE OF INCLUSIONARY UNITS**

**Step 1.** The developer submits a marketing plan with the information described in Part D above to the City for approval either 90 days prior to completion of the first inclusionary unit, in the first phase of a project, or 60 days before completion of the first inclusionary unit, in subsequent project phases. In addition to the information described in Part D, the marketing plan includes the following:

- (1) A description of the financing terms to be made available to applicants for inclusionary units. If applicable, the developer identifies a lender or lenders willing to provide competitively priced purchase money mortgages meeting the City's standards explained below. However, the developer cannot require prospective buyers of inclusionary units to use the identified lender for permanent financing.
- (2) A request that the City calculate the maximum initial sales prices for the for sale inclusionary units. To enable the City to calculate the prices, the developer must describe expected homeowners' association fees plus any special assessments, such as Mello-Roos payments. The developer may also provide additional information on costs that may affect the purchase price, such as the cost of private mortgage insurance or homeowners' insurance.

If all of the inclusionary units within a phase of the project are not sold within one year, the developer may request that the City re-calculate the permitted sales prices.

- (3) The process for establishing the unrestricted fair market value of the inclusionary units, in order to determine the value of the initial subsidy to the buyer. The plan should indicate when appraisals of unrestricted fair market value will be completed for the inclusionary units. Individual appraisals may not be needed where inclusionary units are reasonably similar and the appraisal to be used was completed within six months of the initial sale of the reasonably similar unit. The City may elect to complete its own appraisal of the units' unrestricted fair market value. If the City and the developer cannot agree on the property's unrestricted fair market value, the parties will select a third appraiser to determine the unrestricted fair market value, with the City and the developer sharing equally in the cost of the appraisal.

**Step 2.** After approval of the marketing plan and determination of the sales prices by the City, the developer markets the inclusionary units consistent with the marketing plan and makes application packets available to all who request them.

**Step 3.** After the deadline for submitting applications, the developer reviews all applications and determines if the applicant is eligible to purchase a unit, based on income and preapproval letter. The developer must verify income as described in the developer's marketing plan. The developer then groups all apparently eligible applicants by the City's preference categories (residents displaced by public action, renters displaced by private action, those who live or work in the City, all others, and within each category, first-time homebuyers), unless another financing source requires changes in these preferences.

**Step 4.** The developer submits to the City: a) a complete listing of developer pre-screened applicants, sorted by preference group, and indicating the developer's determination of eligibility (in hard copy and in an electronic format, either in Excel or Word and also in PDF format); b) the complete file for each applicant, numbered to correspond to the list of applicants; c) the form of purchase and sale agreement; and d) preliminary DRE public report, if applicable.

**Step 5.** The City reviews and either approves or requests changes in the developer's submittals within 30 business days. Once the list of eligible applicants is approved, the City ranks all eligible applicants by preference group on a random basis, such as by a lottery. The developer must send written notice to applicants determined to be ineligible by the City.

**Step 6.** The developer offers units to applicants beginning at the top of the list established by the City. The developer may not pass over an applicant higher on a list in favor of another because of a higher income. Applicants are to be taken in the order ranked and given a reasonable period of time to close escrow, normally 60 days after the unit's final inspection is approved, or after the applicant is selected to purchase a unit, whichever is later. The developer may only exclude ranked applicants because the applicants were not successful in obtaining financing, were not able to demonstrate the qualifying household income included in their application, or otherwise were not eligible. The developer must send written notice to any excluded applicant within 15 days of the decision to exclude the applicant; copies of such correspondence must be provided to the City. However, developers may close escrow on inclusionary units in any order as homebuyers are able to do so.

**Step 7.** If the applicant enters into a purchase agreement for the unit, the developer provides to the City for review: a) the copy of the loan underwriting form (Form 1008); b) estimated HUD-1 Settlement Statement; c) legal description of the inclusionary unit; and d) appraised value of the inclusionary unit at unrestricted fair market value. Provided that the documents are consistent with previous representations, the City will provide to escrow, within fourteen working days of receipt of the required documentation, executed copies of its homebuyer documents, an executed release of the Affordable Housing Agreement to be recorded with the sale of the unit, and standard escrow instructions. The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to acceptable purchase money loans listed after Step 8.

However, if the market price of the unit is equal to or below the affordable housing cost for a median, moderate, or workforce income household, no documents will need be recorded against the inclusionary units in the relevant income category. For example, if a developer is required to build two workforce housing units and the fair market value of the units is equal to or lower than

the affordable price, the developer may sell the two units for fair market value and at resale, the owners will not be required to share any equity with the City. The City will, however, require verification that the unit was, in fact, sold at the affordable price.

The City may require more than fourteen working days to review the application if the documents provided show a significant change in the homebuyer's situation since the City's initial review of the file or if the City desires to obtain its own appraisal of unrestricted fair market value. **IF THE PACKET IS INCOMPLETE, THE SALE CANNOT PROCEED UNTIL ALL NEEDED DOCUMENTS ARE PROVIDED.**

**Step 8.** If required to be recorded, the title company returns to the City a copy of the executed and recorded option to purchase and equity-sharing agreement, deed of trust, and request(s) for notice of default and the original executed copy of the City's promissory note and buyer's disclosure.

**Step 9.** Within 21 days of completing the sale or rent of all inclusionary units, the developer shall notify all remaining applicants on the waiting list that they were not selected. Applicants shall be informed that they are welcome to reapply for later phases of development or for other projects. The developer shall notify the City once completing the notification.

**Acceptable Purchase Money Loans.** The following are acceptable purchase money loans for inclusionary units.

- (1) Fully documented 30-year fixed rate fully amortized loans.
- (2) Down payment/closing cost assistance programs provided by the state, federal or other community programs may be allowed upon review and approval by the City.
- (3) Fees and charges to the borrower for the purchase money loan(s) must be reasonable and consistent with industry standards.

Homebuyers may have one or more purchase money loans, but each loan must meet the standards listed in (1) – (3).

**Not Acceptable Purchase Money Loans.** The following loans are *not* acceptable purchase money loans for inclusionary units:

- (1) Loans permitting negative amortization (such as so-called "option ARM" loans).
- (2) Loans requiring a balloon payment.
- (3) Interest only loans.
- (4) So-called "no documentation" loans.
- (5) Loans otherwise not meeting the standards specified under "Acceptable Purchase Money Loans."

## **F. PROCESS FOR INITIAL RENT-UP OF INCLUSIONARY UNITS**

In rental developments, the management firm is the entity that is responsible for occupant selection and documentation.

**Step 1.** The developer submits a marketing plan with the information described in Part D above to the City for approval either 90 days prior to completion of the first inclusionary unit, in the first phase of a project, or 60 days before completion of the first inclusionary unit, in subsequent project phases.

In addition to the information described in Part D, the marketing plan includes the form of the rental agreement or lease to be used for the inclusionary units. The rental agreement or lease must incorporate provisions conforming with Section Five regarding periodic recertification of tenant incomes and the effect of increased income on the tenant's rent and ability to remain in the unit.

The marketing plan also includes proposed maximum rents for the inclusionary units; lists all utilities to be paid by the tenant; and explains any other criteria to be used by the manager to select tenants. For instance, the manager may require a minimum credit score.

**Step 2.** After approval of the marketing plan and rents by the City, the developer markets the inclusionary units consistent with the marketing plan and makes application packets available to all who request them.

**Step 3.** After the deadline for submitting applications, the developer reviews all applications and determines if the applicant is eligible to rent a unit, based on income, household size, and any other criteria approved by the City as part of the project's marketing plan. The developer must verify income as described in the developer's marketing plan. The developer then groups all apparently eligible applicants by the City's preference categories (residents displaced by public action, renters displaced by private action, those who live or work in the City, all others), unless the preferences are modified by the developer's use of another source of financing.

**Step 4.** The developer submits to the City: a) a complete listing of all pre-screened applicants, sorted by preference group (if applicable), and indicating the developer's determination of eligibility (in hard copy and in an electronic format, either in Excel or Word); and b) the complete file for each applicant, numbered to correspond to the list of applicants.

**Step 5.** The City reviews and either approves or requests changes in the developer's submittals within 30 business days.

**Step 6.** The developer offers units to eligible applicants beginning with the first preference group, unless the City's preferences have been modified by the developer's use of another source of financing. Within each preference group, the developer may determine the order in which units are offered to eligible applicants. Applicants selected to rent an inclusionary unit must agree to sign the rental agreement or lease. Should the initial lease-up progress slowly, the developer may suggest alternate methods for consideration by City to avoid protracted vacancies in the inclusionary units.

**Step 7.** After all of the inclusionary units are initially rented, or within 120 days of occupancy approval, whichever is earlier, the owner submits a monitoring report to the City as described in Section Five. If all of the inclusionary units have not been rented when the first report is

submitted to the City, an additional monitoring report shall be submitted after all of the inclusionary units have been rented.

***Exception for Projects with Other Financing.*** If a rental project is financed through a program that has occupant selection and income verification requirements stricter than those of the City, the developer may ask the City to defer to those requirements and not require additional documentation. If approved by the City, the developer may send to the City copies of documentation required for other monitoring agencies in place of the documentation required by these Guidelines.

## **SECTION FOUR HOMEBUYER POLICIES**

This section discusses the obligations of the buyers of the inclusionary units.

### **A. HOMEBUYER REQUIREMENTS**

Unless the fair market value of the home is equal to or below the affordable ownership cost for a median, moderate, or workforce income household, the City will require all buyers of inclusionary homes to sign the following when they purchase their home:

- (1) An option to purchase and equity-sharing agreement that will place certain restrictions on the homebuyers' use of their property and provide an option to purchase to the City in the event of default or desire to sell.
- (2) A promissory note in favor of the City, secured by a deed of trust, to ensure repayment at the time of resale of the initial subsidy, which is equal to the difference between the affordable price and the unrestricted fair market value of the home at the time of initial sale. On resale, the homeowner must also pay the City interest on the initial subsidy and a share of any appreciation.
- (3) A disclosure to the borrower.

At the time of the sale of the home, the City will also record a request for notice of default for all other financing recorded against the property at the time of sale.

The City keeps approved standard homebuyer documents to implement the City's policies on file. The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to acceptable purchase money loans listed in Section Three (E) of these Guidelines.

Documents not in substantial conformance with the standard documents, including those designed for special situations, must be submitted to the City Council for review and approval. Minor modifications to the standard documents may be approved by the City Manager or designee if the City Manager or designee finds that the modifications are consistent with the Ordinance, Guidelines, and the Affordable Housing Plan and substantially in conformance with the standard documents.

#### **Minimum Cash Available**

The applicant(s) should have sufficient readily available assets for a minimum of 5% of the purchase price for down payment, plus closing costs and other associated fees. Gift funds can be applied toward the applicants 5% down payment assistance, a signed gift letter is required by all parties.

### **B. EQUITY SHARING AND INTEREST PAYMENT AT RESALE**

If the documents listed in Section A above are recorded against the home, then, rather than restricting the price of homes on resale, the City allows homebuyers to sell their homes at unrestricted fair market value, but to repay the City the initial subsidy, plus interest on the initial subsidy, and a share of the home's appreciation. The repayments to the City are summarized in

this section and described in detail in the option to purchase/equity-sharing agreement and borrower's disclosure. The term of the equity-sharing agreement is 30 years. At the end of the thirty-year term, the homeowner will owe the City only the difference between the initial affordable price and the unrestricted fair market value of the unit at the time of initial sale, plus interest on that amount.

**Equity-Sharing Formula and Interest Payment**

Upon resale, the home is sold at unrestricted fair market value, and the homeowner pays the City the following:

- (1) Initial subsidy (difference between the initial unrestricted fair market value and the purchase price paid by the homebuyer);
- (2) 3% simple interest on initial subsidy; and
- (3) Share of appreciation (the difference between the initial unrestricted fair market value and the sales price of the home upon resale). The share of the appreciation retained by the homeowner is 3% times the number of years of occupancy. At 30 years, a homeowner will receive 100% of the share of appreciation.

**TABLE 3: SHARING OF APPRECIATION AT RESALE EXAMPLES**

Share of Appreciation	Year 1	Year 5	Year 10	Year 15	Year 20	Year 25	Year 30+
City Share	97%	85%	70%	55%	40%	25%	0%
Homeowner Share	3%	15%	30%	45%	60%	75%	100%

If the sales price of the home at resale is less than its unrestricted fair market value when it was initially purchased, then the initial subsidy to be repaid to the City will be equal to the difference between the purchase price paid by the homebuyer and the home's actual sales price. However, the City may conduct its own appraisal to verify that the home is actually being sold at unrestricted fair market value.

**Valuation of Improvements**

The homeowner is entitled up to a maximum of \$14,000 for rehabilitation and other capital improvements that have an initial cost of \$2,000 or more. The credit will be based on the valuation shown on the building permit issued for the capital improvements and will be added to the homeowner's share of appreciation at resale.

To be eligible for the credit, the capital improvements must be constructed with a building permit and be pre-approved by the City as an eligible capital expense. At resale, the building permit valuation of all pre-approved capital improvements will be added together to determine the homeowner's credit (up to the \$14,000 maximum).

### **C. OCCUPANCY AS PRINCIPAL RESIDENCE**

The inclusionary home must be the homebuyer's principal place of residence, and each homeowner must live in the home for at least ten months out of each calendar year. Annually, all homebuyers must certify to the City in writing that they are meeting this requirement.

However, if the homebuyer is required to relocate for employment or medical reasons for less than six months, the homebuyer may rent or lease the home with the approval of the City. The tenant's income cannot exceed the affordability level established for the home (very low, lower, median, moderate, or workforce), and the maximum rent that can be charged is the **lower** of: (i) rent affordable to a household at the income level of the home; or (ii) actual costs to the homeowner of principal, interest, homeowners' dues, property taxes, and insurance. The City may charge a fee for monitoring any rentals.

If a home is rented without permission, the City may sue to prevent the owner from renting out the home, and the homeowner will owe excess rents, if any, equal to the difference between the permitted rent and that charged the tenant. In addition, rental without permission or failure to occupy the home for at least 10 months out of every year constitutes a default, and the City may exercise its option to purchase the home or take any other enforcement action authorized by its agreement with the homeowner.

### **D. REFINANCE OF FIRST MORTGAGE**

The City will subordinate its deed of trust and option to purchase/equity-sharing agreement to a refinanced first mortgage under the following conditions:

- (1) Following the refinance, the principal amount of all debt secured by the home, including the principal, accrued interest, and appreciation share on the City's note, cannot exceed either (a) 90 percent of the unrestricted fair market value of the property, or (b) the existing balance of the original first lender loan, whichever is greater.
- (2) The refinanced first lender loan must meet the same standards established in Section Three for a purchase money loan.
- (3) If the existing balance of the original first lender loan plus the principal, accrued interest, and appreciation share on the City's note exceeds 90 percent of the unrestricted fair market value of the property, then the new first lender loan must reduce the owner's principal and interest payments.
- (4) Borrower(s) pay the City a \$500 refinance fee in escrow.

So that the City may verify compliance with the conditions listed above, a request for subordination should be accompanied by the following:

- (1) Preliminary title report.
- (2) Signed loan application for new loan.
- (3) Preliminary loan approval document from new lender that describes new loan terms and conditions.

- (4) Lender's appraisal.
- (5) Estimated HUD-1 Settlement Statement.
- (6) Prepared subordination agreement, in a form acceptable to the City Attorney.
- (7) Prepared Request for Notice of Default, in a form acceptable to the City Attorney.

The City may require that an appraisal be completed at the homebuyer's expense by an appraiser approved by the City to verify the loan-to-value ratio.

## **E. SUBORDINATE FINANCING**

The City will not allow owners of inclusionary homes to borrow additional funds in a position junior to the City's loan (which means a third or fourth mortgage, or an equity line of credit).

## **F. CITY OPTION TO PURCHASE; PROPERTY TRANSFERS**

The City's agreement with buyers of inclusionary homes grants the City an option to purchase the home at unrestricted fair market value if it is sold during the 30-year term of the agreement. The City may assign its option to purchase the home to another public agency, a nonprofit organization, or a household meeting income and other requirements. If the City chooses not to exercise its option, it will normally use any funds it receives from the sale (repayment of initial subsidy, equity share, and interest payments) to subsidize a resale of the home to another eligible homebuyer at an affordable price, but may choose to use the proceeds for other affordable housing purposes.

### **Resale Procedures**

The owner of an inclusionary unit must give the City thirty days notice of the owner's intent to sell or transfer the property. The owner must complete a pest control report and allow the City to inspect the property. The City will complete an appraisal to determine the unrestricted fair market value and decide within that 30-day period whether or not to exercise its option to purchase the property at unrestricted fair market value. If the City decides to exercise its option, or to assign the option to another person, it will close escrow within 45 days after deciding to exercise its option (assuming that the seller has met the terms of the purchase agreement). The seller will pay two and half percent (2.5%) of the sales price to the City rather than a real estate commission if the City exercises its option.

If the City exercises its option, and the seller desires to dispute the property's unrestricted fair market value, the seller must complete an appraisal at the seller's expense. If the City and the seller cannot agree on the property's unrestricted fair market value, the parties will select a third appraiser to determine the purchase price, with the City and seller sharing equally in the cost of the appraisal.

If the City decides not to exercise its option, then the homeowner may sell the property on the open market at unrestricted fair market value. The seller will pay a one percent (1%) sales price to the City at close of escrow to offset the administrative expenses relating to the inclusionary program. At least 15 days but not more than 45 days before the close of escrow, the seller must

give the City the following documentation to ensure that the unit is being sold at unrestricted fair market value:

- (1) Final sales contract.
- (2) A declaration from the seller and buyer stating that the sales contract represents all consideration for the home.
- (3) Name of title company and escrow holder.

If the City's appraisal was completed more than six months before the close of escrow or if the sales price is less than 95% of the City's appraisal of unrestricted fair market value, the City may complete another appraisal to verify that unit is being sold at unrestricted fair market value.

After close of escrow, the seller must give the City a copy of the HUD-1 settlement statement showing all payments made from escrow.

On any sale of the property, whether through exercise of the City's option or sale on the open market, the homeowner must repay the initial subsidy, accrued interest, and the City's share of appreciation.

### **Permitted Transfers**

No permission from the City is required for the following transfers, but all owners of the inclusionary unit remain bound by the resale agreement and City note:

- (1) a good faith transfer by an owner to a spouse or domestic partner where the spouse or domestic partner becomes the co-owner of the property;
- (2) a transfer between spouses as part of a dissolution proceeding, or between domestic partners as part of the dissolution of a domestic partnership;
- (3) a transfer by an owner into an inter vivos trust in which owner is the beneficiary;
- (4) transfers by will or inheritance to an existing spouse, child, or domestic partner of the owner following the death of owner, providing that any inheriting child executes a new option to purchase and equity-sharing agreement, promissory note, and deed of trust with a 30-year term; and
- (5) a transfer by operation of law on the death of a joint tenant.

A "domestic partner" is defined in Section 297 of the California Family Code. An individual is considered a domestic partner of the owner by presenting the Declaration of Domestic Partnership filed with the California Secretary of State.

The homeowner must provide the City with notice of these permitted transfers at least fifteen days before they occur, except that if a transfer occurs due to inheritance or to the death of an owner, the City must be notified within 30 days.

### **G. DEFAULT**

The City's option to purchase the inclusionary unit may also be exercised if the homebuyer is in default for any reason. The most common reasons for default include:

- (1) Failure to occupy the property as the principal residence of the owner, or renting the property without the City's permission.
- (2) Non-permitted transfer of the property without notification to the City.
- (3) Foreclosure on another deed of trust or mortgage.
- (4) Bankruptcy.
- (5) Misrepresentation when acquiring the home.
- (6) Placing an additional encumbrance on the property without City approval.

If the homeowner is in default, the City will normally give the homeowner the opportunity to cure the default, unless there is a need to act immediately, such as in the case of foreclosure. The City may exercise its option to buy the home at an affordable price, or may choose to cure the default or utilize other legal remedies. These include foreclosure, injunction, or any other available legal action to enforce the affordability agreements.

**SECTION FIVE**  
**RENTAL POLICIES**  
*(FOR DEVELOPMENTS THAT CHOOSE TO PARTICIPATE IN THE INCLUSIONARY PROGRAM)*

This section discusses the continuing obligations of the developer and property manager in renting, monitoring and managing the inclusionary units.

**A. RENT REGULATORY AGREEMENT**

After the inclusionary rental units are built, the owner and the City enter into a Rent Regulatory Agreement, which is recorded against the property in place of the Inclusionary Housing Agreement. A deed of trust may also be recorded to secure the Rent Regulatory Agreement. A Rent Regulatory Agreement will have a term of 30 years and includes the following:

- (1) Identification of inclusionary units.
- (2) Occupancy requirements for inclusionary units.
- (3) Allowable rents; procedure for setting initial rents, annual monitoring, and increasing rents.
- (4) Provisions for initial verification and annual monitoring of tenant incomes.
- (5) Procedures for initial marketing and rental of vacant inclusionary units.
- (6) Management and maintenance procedures.
- (7) Definitions of default and remedies for default, including default for inadequate maintenance and nuisances on the property.
- (8) Provisions for a monitoring fee to be paid to the City.

The Rent Regulatory Agreement may be subordinated *only* to:

- (1) Liens to secure payment of real estate taxes and assessments, not delinquent;
- (2) Non-monetary matters affecting the title which, at the discretion of the City Manager or designee, do not unreasonably impact the security of the Rent Regulatory Agreement; and
- (3) A lien or regulatory agreement of a local, federal, or state governmental agency, provided that both of the following conditions are met:
  - a. The public agency is providing financing or other assistance for the housing development; and
  - b. The statute or regulation governing the financing or assistance from that agency does not permit the City's Rent Regulatory Agreement to be senior to the agency's agreements.

## **B. MANAGEMENT PLAN**

In addition to the Rent Regulatory Agreement, each project that has inclusionary units must prepare a Management Plan. While the Rent Regulatory Agreement is recorded against the property, the Management Plan is not and is intended to provide a greater level of detail than the Rent Regulatory Agreement. It must include the information specified for the rental marketing plan described in Section Three above, plus the following information:

- (1) A brief history of the management entity and its previous experience managing other affordable rental complexes.
- (2) Plan for maintaining occupancy of and marketing vacant inclusionary units.
- (3) Means to select and verify the eligibility of applicants for vacant inclusionary units and to verify the City's preference categories (unless another government subsidy program modifies the preferences).
- (4) Means to recertify annually the incomes of tenants in inclusionary units.
- (5) Means to maintain a waiting list for vacancies.
- (6) Provisions for annual reporting to the City of rents and tenant incomes.
- (7) Non-discrimination and fair housing/non-discrimination provisions.
- (8) Maintenance standards and house rules to be included in tenant leases.
- (9) Contact information for use by the City, including a telephone number, e-mail address, and list of persons responsible for communication with the City.
- (10) Form of the rental agreement or lease to be used for the inclusionary units. The owner shall apply the same rental terms and conditions to tenants of inclusionary units as are applied to all other tenants, except as otherwise required by the inclusionary Ordinance and these guidelines and/or other government subsidy programs. In particular, the rental agreement or lease must incorporate provisions required by this Section Five regarding periodic recertification of tenant incomes, the effect of increased income on the tenant's rent and ability to remain in the unit, and the tenant's obligation to comply with all monitoring requirements. A rental agreement or lease for inclusionary units will normally have at least a 12-month term.

The Management Plan must also provide that apartments be leased or rented in compliance with all federal, state, and City fair housing laws and regulations. Eligible applicants for inclusionary units shall not be discriminated against based on participation in rent subsidy programs, such as Section 8, or based on source of income.

If a project is financed through a program that requires a management plan that includes the above information, the City may elect to receive a copy of that management plan and not require an additional plan. If the other management plan contains some but not all of the above information, the City may limit its requirements to the information it needs.

### **C. RENTAL OF VACANT INCLUSIONARY UNITS**

Whenever an inclusionary unit becomes available, the manager shall immediately notify the City. The owner of rental inclusionary units may fill vacant units in one of two ways:

- (1) Selecting households that are qualified based on income and household size, so long as the owner complies with the marketing requirements included in the project's approved Management Plan, if any; or
- (2) Selecting income-eligible households from the Section 8 voucher waiting list available from the Housing Authority of the County of Monterey.

### **D. CHANGES AND ADJUSTMENTS TO RENTS**

Rents may be raised only once every twelve months based on increases in area median income, adjusted for assumed household size, as published periodically by the California Housing and Community Development Department in the California Code of Regulations, Title 25, Section 6932, or successor provision. Notices of rent increases must be provided to the City and to the tenants of the rental inclusionary units at least 30 days before the effective date of the rent increase, or as otherwise required by any law or subsidy program.

#### **Rental Rate Determination**

The City or its agent will determine the rental rate for inclusionary units by income level and household size. The rents will be determined based on the annual HCD published income limits and section 50053 of the California Health and Safety Code.

Annual rent (inclusive of fees and utilities) for very low-income units cannot exceed 30% of 50% of the area median income adjusted for the size of the household appropriate for the unit. Annual rent (inclusive of fees and utilities) for low-income units cannot exceed 30% of 60% of the area median income adjusted for household size appropriate for the unit.

Rent includes all charges related to occupancy of the unit including utilities, parking fees, fees for use of common facilities and other fees and charges. If utilities are not paid by the property owner, the rent for the inclusionary units must be adjusted downward to allow for a utility allowance calculated in accordance with the utility allowances published by the Housing Authority of the County of Monterey.

### **E. ON-GOING MONITORING**

The manager of all inclusionary rental units must provide an annual report to the City by March 1 of each year. The annual report includes the following information:

- (1) Income and household size of all households residing in inclusionary units;
- (2) Identification of all inclusionary units by income category (very low, low, or moderate) and number of bedrooms within the development;
- (3) Monthly rent charged for each inclusionary unit and any additional charges, including utilities, parking, and any other costs; and

- (4) Percentage vacancy of inclusionary units during the previous year.

If a project is financed through an affordable housing program requiring annual reports that include the above information, the City may elect to defer to those requirements and not require additional monitoring reports. If approved by the City, the management firm may send to the City copies of the annual report required for other monitoring agencies.

The City may at its option perform additional monitoring of the inclusionary rental units, including review of management records, performance of an audit, contacts with tenants, and other reasonable monitoring to ensure compliance with the Inclusionary Housing Ordinance. For residential multi-family projects that include inclusionary rental units in their development the City will charge the owners an annual monitoring fee of \$200/per unit for the duration of their regulatory term.

### **Occupancy Conditions**

The approved tenant(s) must occupy the inclusionary rental unit during the entire term of the lease. If an additional occupant (roommate, family member, etc.) moves into the inclusionary unit, he/she will be considered part of the existing household. In such cases, the inclusionary tenant must notify the City or its agent prior to the move in date, and the entire household (including the new occupant) will be reevaluated to determine eligibility, include household income requirements. If the tenant(s) fail to receive approval from the City for any changes in occupancy or if the tenant(s) subleases the property, the tenant household will no longer be eligible to occupy the inclusionary unit.

### **Owning Property**

The applicant(s) cannot own a home and/or be on title of a property in order to qualify for a inclusionary rental unit.

### **Annual Re-Certification of Income**

At least once a year, the property owner shall requalify BMR tenants to verify that they are eligible to remain in inclusionary rental units. On an annual basis, requalification shall be based upon the inclusionary tenant's household income, as determined by HOME Part 5 income standards.

## **F. EFFECT OF INCREASED TENANT INCOMES**

The manager must annually monitor the income of tenants in inclusionary units.

If annual monitoring shows that the income of a tenant household occupying a very low income inclusionary unit exceeds fifty percent (50%) of area median income, but not eighty percent (80%) of area median income, as adjusted for household size, the tenant household may remain in the unit at a rent that is affordable to lower income households. After that tenant household vacates the unit, it must again be rented to an eligible very low income tenant household at a rent that is affordable to very low income households.

If the income of a tenant household occupying either a very low income or a lower income inclusionary unit exceeds eighty percent (80%) of area median income, but does not exceed one hundred percent (100%) of area median income, adjusted for household size, then the tenant's rent may be raised to an affordable rent based on thirty percent (30%) of the household's actual income.

If the income of a tenant household occupying either a very low income or a lower income inclusionary unit exceeds one hundred percent (100%) of area median income, then the tenant household must be given six months' notice to vacate the unit. To avoid displacing these households, the owner may, at the owner's option and with the City's approval, allow the tenant to remain in the original unit at a market rent and designate the next newly vacated unit as the replacement inclusionary unit within the appropriate income category.

If the terms of another governmental subsidy restrict the owner's ability to raise the tenant's rent or to require the tenant to vacate the unit (for instance, for a tax credit project), then the City will modify its rent regulatory agreement so that these provisions are consistent among the various programs.

<b>Unit Affordability</b>	<b>Homeowner Income</b>	<b>Pricing</b>
Very Low Income	Below 50% of the area median income	Very Low Income pricing
Very Low Income	Between 50 and 80% of the area median income	Low Income pricing
Very Low Income	Between 80% and 100% of the area median income	30% of actual income
Very Low Income	Above 100% of area median income	Must vacate unit within 6 months or pay market prices
Low Income	Below 80% of the area median income	Low Income pricing
Low Income	Between 80% and 100% of the area median income	30% of actual income
Low Income	Above 100% of the area median income	Must vacate unit within 6 months or pay market prices

**G. SALE OF INCLUSIONARY RENTAL UNITS AND CONVERSION TO CONDOMINIUMS**

Any inclusionary rental units to be converted to condominiums, or which are initially rented despite a recorded condominium map, must be sold to households within the same affordability range as required for the inclusionary rental unit. In other words, a lower income rental unit must be sold at a price affordable to lower income households. Homebuyer documents ensuring the continued affordability of the unit must be recorded at the time of sale, and converted units must otherwise comply with all requirements applicable to owner-occupied inclusionary units.

Approval of Marketing Plans and sales are required prior to the sale of any rental inclusionary unit in the same manner as specified in Section Three above for sales of new inclusionary units to homebuyers.

State law (Government Code Section 66427.1) and Article VII, Chapter 31, of the Salinas City Code require that existing tenants be given the right of first refusal to purchase their apartment on the terms available to other tenants if it is converted to a condominium. An existing tenant in an inclusionary unit should be given the choice of purchasing their apartment at the restricted price, subject to all the requirements of the homebuyer program; or purchasing a market-rate unit in the condominium on the same market-rate terms available to other buyers. All condominium conversions and sales must comply with all other applicable State statutes and City Ordinances and policies.

**SECTION SIX**  
**SALINAS INCLUSIONARY HOUSING TRUST FUND**

The Inclusionary Housing Trust Fund is a separate City fund established for the specific purpose of providing the City with funds to assist in the development, rehabilitation, or preservation of housing that is affordable to very low income, lower income, median-income, moderate income, and workforce income households in the City of Salinas. All in lieu fees, rental housing impact fees, promissory note repayments, shared appreciation payments, monitoring fees, penalties, and interest generated by inclusionary units or by monies in the Fund shall remain in the Fund. Monies in the Fund may be used for property acquisition, development assistance, construction, financing, rent subsidies, and other uses, and for other activities required to provide affordable housing, such as homebuyer education and the costs of administering programs to develop, rehabilitate, or preserve affordable housing.

In expending monies from the Fund, priority shall be given to affordable housing that is of a type, or made affordable at a cost or rent, for which there is a need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance.

**EXHIBIT A**  
**AFFORDABLE HOUSING PLAN CONTENTS**

The Affordable Housing Plan need be only at the same level of detail as the application for a residential development. However, in every case except Specific Plans, the Affordable Housing Plan must indicate which inclusionary option (either Option 1, 2, 3 or alternative) the developer is selecting. No Affordable Housing Plan is required if the developer indicates in the initial application the developer’s intent to pay rental housing impact fees or in-lieu fees.

Where the initial Affordable Housing Plan is not at sufficient detail to determine compliance with the Ordinance, the City may require additions to the Affordable Housing Plan as part of later planning approvals, or as part of the Affordable Housing Agreement. The Affordable Housing Plan must include:

1. Total number of dwelling units in the residential development: \_\_\_\_\_
2. Inclusionary option selected (One, Two, Three or Alternative): \_\_\_\_\_
3. Total number of inclusionary units provided: \_\_\_\_\_
4. Preliminary financial pro forma or other feasibility analysis, if an alternative is selected
5. Project Schedule and Timelines; phasing of construction of inclusionary units in relation to market-rate units
6. For each unit type or model home type, show the number of units, number of bedrooms, square footage, and tenure. This table may be expanded and duplicated for large and/or complex projects. If the project will be phased, complete a separate table for each phase of the project.
7. Site plan showing location of inclusionary units in the development. If the project will be phased, show the location of each phase. If the project consists of a multifamily building or buildings, provide a floor plan showing the location of the units in the structure, or, provide a narrative description sufficient for City to evaluate compliance with dispersal and other requirements.
8. If the project will be phased, describe the construction and completion schedule for the inclusionary units in relation to the market-rate units.
9. Describe the proposed design of the inclusionary units. (If designs are not being provided for the market-rate units as part of this planning application, designs for the inclusionary units may be submitted when they are submitted for the market-rate units.)
10. List any public subsidies or public financing that will be used for the inclusionary units. If public subsidies or public financing will be used, please provide a description of the financing type, the required length of affordability, and means to keep units affordable if different from the standard City affordability provisions.
11. If rental inclusionary units are proposed, complete the attached form.
12. For rental inclusionary units, describe:
  - a. Means to be used to verify tenant incomes both at occupancy and annually.

- b. Financing mechanism for on-going administration and monitoring.
13. Is the project requesting a density bonus, incentives, concessions or waivers? If so, please provide information as required by section 37-50.060 of the Zoning Ordinance.
  14. If the project is requesting an alternative, provide a description of the alternative explaining how the alternative complies with each of the requirements for that alternative contained in Section 17-13.

**SAMPLE AFFORDABLE HOUSING PLAN UNIT SUMMARY TABLE**

<b>INCOME LEVEL OF BUYERS</b>	<b>TYPE OF UNIT (single-family detached, townhouse or other attached, multifamily)</b>	<b>TENURE (rental or for-sale)</b>	<b>NUMBER OF UNITS</b>	<b>NUMBER OF BEDROOMS</b>	<b>SQUARE FOOTAGE</b>	<b>NUMBER OF BATHROOMS (Describe fixtures)</b>	<b>LAUNDRY FACILITIES (Unit hookups, or total number on-site)</b>
<b>Market-Rate Units</b>							
<b>Workforce Income</b>							
<b>Moderate Income</b>							
<b>Lower Income</b>							
<b>Very Low Income</b>							

**REQUEST TO PROVIDE AFFORDABLE RENTAL HOUSING**

\_\_\_\_\_  
*Date*

(a) I have proposed a project for \_\_\_\_\_ residential units located at (address and assessor's parcel number):

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Assessor's Parcel Number*

(b) The proposed project at the above address is subject Article 3, Chapter 17 of the Salinas Municipal Code related to affordable housing.

(c) To comply with Chapter 17, the project proposes to provide \_\_\_\_ units of rental housing affordable to \_\_\_\_ very low \_\_\_\_ lower income households by providing:

\_\_\_\_ Affordable rental units in a rental residential development in conformance with Section 17-10.

\_\_\_\_ Affordable rental units in a for-sale residential development in conformance with Section 17-9.

\_\_\_\_ Affordable rental units in off-site affordable housing in conformance with Section 17-13(a).

(d) To comply with Chapter 17, the development proposes that each rental affordable unit will be subject to a rent regulatory agreement with a term of 30 years and will be rented to very low or low income households, as proposed in item (c) above, at affordable rents consistent with Health and Safety Code Section 50053 and regulations adopted by the California Department of Housing and Community Development (California Code of Regulations Title 25, Sections 6910 through 6924) or successor provisions.

(e) All proposed rental affordable units will not be subject to Civil Code Section 1954.52(a) nor any other provision of the Costa Hawkins Rental Housing Act (Civil Code Sections 1954.51 et seq.) inconsistent with controls on rents, because, pursuant to Civil Code Sections 1954.52(b) and 1954.53(a)(2), I hereby agree to the limitations on rents contained in subsection (d) above of this affidavit in consideration for the following direct financial contribution or any form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code):

\_\_\_\_ Waiver of Salinas rental housing impact fee in the amount of \$\_\_\_\_\_;

\_\_\_\_ Other direct financial contribution (please specify amount and source of funds: \_\_\_\_\_);

\_\_\_ Density bonus, incentive, waiver, or other regulatory incentive of a form specified in Government Code §65915 *et, seq.* (please specify: \_\_\_\_\_);

\_\_\_ Development agreement with City.

- (f) I will enter into an agreement with the City to be recorded against the affordable rental property providing for the limitations on rents contained in subsection (d) above of this affidavit.
- (g) I am a duly authorized officer, agent, or owner of the subject property.

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name (Print), Title*

**EXHIBIT B**  
**INCLUSIONARY HOUSING AGREEMENT CONTENTS**

All Inclusionary Housing Agreements should include the following:

- A. Legal description of the entire property
- B. Location of the inclusionary units
- C. Development schedule in relation to the market-rate units; implementation of concurrency requirements
- D. Type and tenure of units (single-family, condominium, townhouse, etc.; rental or ownership)
- E. Number of bedrooms, bathrooms, and square footage of inclusionary units
- F. Unit design and appearance
- G. Level of affordability and length of affordability
- H. Procedures for marketing the units
- I. If for-sale units:
  - 1. Provisions for recording restrictions against individual units as the inclusionary units are sold, if required
  - 2. Use of City Council resolution to set initial affordable sales prices when units are ready for occupancy
  - 3. Procedures for selecting initial buyers and verifying incomes and preferences, including first-time homebuyer status.
  - 4. Mechanism for terminating the Inclusionary Housing Agreement once homebuyer restrictions are recorded against title.
- J. If rentals:
  - 1. Provisions for recording permanent rent regulatory agreement
  - 2. Use of City Council resolution to set initial affordable rentals when units are ready for occupancy
  - 3. Procedures for selecting initial renters and verifying incomes and preferences
  - 4. Mechanism for terminating the Inclusionary Housing Agreement once the rent regulatory agreement is recorded against title
  - 5. Provisions for ongoing monitoring.
- K. If approved as part of Option 3, timing of payment of in-lieu fees, dedication of land, or construction by a non-profit sponsor. Mechanism for terminating or modifying the Inclusionary Housing Agreement once the fees have been paid and the land has been dedicated; or inclusionary units constructed by the non-profit sponsor.
- L. Provisions for payment of City fees

- M. Provisions for minor and substantive amendments
- N. Remedies in the event of default.

**EXHIBIT C  
CALCULATION OF AFFORDABLE RENTS**

**ASSUMED HOUSEHOLD SIZE:**

	<u>0-BR</u>	<u>1-BR</u>	<u>2-BR</u>	<u>3-BR</u>	<u>4-BR</u>	<u>5-BR +</u>
Number of Persons	1	2	3	4	5	1 additional person for each additional bedroom

**AFFORDABLE RENTAL HOUSING COSTS:**

Very Low Income:      30% times 50% of the monthly area median income adjusted for family size appropriate to the unit

Lower Income:            30% times 60% of the monthly area median income adjusted for family size appropriate to the unit

**UTILITY ALLOWANCES:**

Utility allowances will be the Section 8 utility allowances published annually by the Housing Authority of the County of Monterey. To determine the rent that may be charged to tenants of inclusionary units, the monthly utility allowance is deducted from the affordable rent if the tenant pays for utilities. Any mandatory fees charged for use of the property must also be deducted from the affordable rent.

**EXHIBIT D**  
**CALCULATION OF AFFORDABLE SALES PRICES**

**ASSUMED HOUSEHOLD SIZE:**

	<u>0-BR</u>	<u>1-BR</u>	<u>2-BR</u>	<u>3-BR</u>	<u>4-BR</u>	<u>5-BR +</u>
Number of Persons	1	2	3	4	5	1 additional person for each additional bedroom

**AFFORDABLE OWNERSHIP HOUSING COSTS:**

- Median Income: 30% of 90% of the area median income, adjusted for family size appropriate to the unit.
- Moderate Income: 30% of 110% of the area median income, adjusted for family size appropriate to the unit.
- Workforce Income: 30% of 150% of the area median income, adjusted for family size appropriate to the unit.

**AFFORDABLE OWNERSHIP SALES PRICE ASSUMPTIONS:**

- |   |   |
|---|---|
| Homeowners' Insurance                   | 0.25% of Appraised Value  |
| Homeowners' Association Fees            | Project Specific (if required)                                    |
| Private Mortgage Insurance (PMI)        | 0.5% of Mortgage (if required)                                    |
| Property Taxes and Property Assessments | 1.25% of Sales Price  |
| Loan Terms                              | 30 yr. Fully Amortized Principal + Interest, FNMA Interest Rate % |
| Downpayment                             | 5.0% of Sales Price   |

**EXHIBIT E**  
**HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS**

**Part 5 Inclusions**

This table presents the Part 5 income inclusions as stated in the Code of Federal Regulations

General Category	Statement from 24 CFR 5.609 paragraph (b) (April 1, 2004)
1. Income from wages, salaries, tips, etc.	The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services.
2. Business Income	The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.
3. Interest & Dividend Income	Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in number 2 (above). Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD.
4. Retirement & Insurance Income	The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in number 14 of Income Exclusions).
5. Unemployment & Disability Income	Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay (except as provided in number 3 of Income Exclusions).
6. Welfare Assistance	<p>Welfare Assistance. Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income:</p> <ul style="list-style-type: none"> <li>Qualify as assistance under the TANF program definition at 45 CFR 260.31; and</li> <li>Are otherwise excluded from the calculation of annual income per 24 CFR 5.609(c).</li> </ul> <p>If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:</p> <ul style="list-style-type: none"> <li>▶ the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; <i>plus</i></li> <li>the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is reduced from the standard of need by applying a percentage, the amount calculated under 24 CFR 5.609 shall be the amount resulting from one application of the percentage.</li> </ul>
7. Alimony, Child Support, & Gift Income	Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling.
8. Armed Forces Income	All regular pay, special day and allowances of a member of the Armed Forces (except as provided in number 7 of Income Exclusions).

## EXHIBIT E HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS

### Part 5 Exclusions

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations

General Category	Statement from 24 CFR 5.609 paragraph (c) (April 1, 2004)
1. Income of Children	Income from employment of children (including foster children) under the age of 18 years.
2. Foster Care Payments	Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone).
3. Inheritance and Insurance Income	Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in number 5 of Income Inclusions).
4. Medical Expense Reimbursements	Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.
5. Income of Live-in Aides	Income of a live-in aide (as defined in 24 CFR 5.403).
6. Disabled Persons	Certain increases in income of a disabled member of qualified families residing in HOME-assisted housing or receiving HOME tenant-based rental assistance (24 CFR 5.671(a)).
7. Student Financial Aid	The full amount of student financial assistance paid directly to the student or to the educational institution.
8. Armed Forces Hostile Fire Pay	The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
9. Self-Sufficiency Program Income	<ul style="list-style-type: none"> <li>a. Amounts received under training programs funded by HUD.</li> <li>b. Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS).</li> <li>c. Amounts received by a participant in other publicly assisted programs that are specifically for, or in reimbursement of, out-of-pocket expenses incurred (special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program.</li> <li>d. Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time.</li> <li>e. Incremental earnings and benefits resulting to any family member from participation in qualifying state or local employment training programs (including training not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.</li> </ul>
10. Gifts	Temporary, nonrecurring, or sporadic income (including gifts).
11. Reparations	Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era.
12. Income from Full-time Students	Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household or spouse).
13. Adoption Assistance Payments	Adoption assistance payments in excess of \$480 per adopted child.
14. Social Security & SSI Income	Deferred periodic amounts from SSI and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts.
15. Property Tax Refunds	Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit.
16. Home Care Assistance	Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep this developmentally disabled family member at home.

**EXHIBIT E**  
**HOME PART 5 INCOME INCLUSIONS AND EXCLUSIONS**

**Part 5 Exclusions**

This table presents the Part 5 income exclusions as stated in the Code of Federal Regulations

17. Federal Exclusions	Other	<p>Amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions of 24 CFR 5.609(c) apply, including:</p> <ul style="list-style-type: none"> <li>• The value of the allotment made under the Food Stamp Act of 1977;</li> <li>• Payments received under the Domestic Volunteer Service Act of 1973 (employment through VISTA, Retired Senior Volunteer Program, Foster Grandparents Program, youthful offender incarceration alternatives, senior companions);</li> <li>• Payments received under the Alaskan Native Claims Settlement Act;</li> <li>• Income derived from the disposition of funds to the Grand River Band of Ottawa Indians;</li> <li>• Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes;</li> <li>• Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;</li> <li>• Payments received under the Maine Indian Claims Settlement Act of 1980 ( 25 U.S.C. 1721);</li> <li>• The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U.S. Claims Court and the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands;</li> <li>• Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under the Federal workstudy program or under the Bureau of Indian Affairs student assistance programs;</li> <li>• Payments received from programs funded under Title V of the Older Americans Act of 1985 (Green Thumb, Senior Aides, OlderAmerican Community Service Employment Program);</li> <li>• Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);</li> <li>• Earned income tax credit refund payments received on or after January 1, 1991, including advanced earned income credit payments;</li> <li>• The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990;</li> <li>• Payments received under programs funded in whole or in part under the Job Training Partnership Act (employment and training programs for Native Americans and migrant and seasonal farm workers, Job Corps, state job training programs and career intern programs, AmeriCorps);</li> <li>• Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation;</li> <li>• Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990;</li> <li>• Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran;</li> <li>• Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act; and</li> <li>• Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998.</li> </ul>
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