



## Chapter 4 Rental of Inclusionary Units - Section 18.37.100

### I. Inclusionary Renter Household Income Limits

The Developer is responsible for verifying the income eligibility of rental Inclusionary Unit tenants, based on the following methodology and definitions, and for incorporating any applicable Local Preference guidelines for the selection of households into the screening process. Local Preference guidelines shall be provided in a separate document.

#### 1. Household Composition Definition

The Household is comprised of all eligible individuals who are currently living together at the same address and will continue to be living together in the Inclusionary Unit.

New household members cannot be added to the application to income qualify for an Inclusionary Unit after initial submission of an application. In addition, the following individuals are not counted as part of the household: foster children, unborn children, children who are subject to a shared-custody agreement, in which the child resides with the household less than 50% of the time, children being pursued for legal custody or adoption who are not yet living with the household at the time of application, and non-related live-in care-takers.

To be considered an Eligible Household Member, an individual must comply with the above criteria and meet one of the following criteria:

- i. Individuals 18 years of age or more (adult household members). Adult household members must be included for income qualification purposes and must appear on the application for rental of an Inclusionary Unit; or
- ii. Any minor individual who is a dependent listed on the most recent year's tax returns of an adult household member. All household members who are under 18 years of age must be the legal dependent of an adult household member.

#### 2. Household Income Limits for Renters

To establish the eligibility of households who intend to occupy the Inclusionary Unit, limits are set on the amount of income households (which includes all Eligible Household Members) can earn. These limits are based on the area median income (AMI) and the number of Eligible Household Members.

The Ordinance requires that rental Inclusionary Units be rented to 35% AMI, Very Low Income, and Low Income households, as defined below:



- 1.) 35% AMI: households whose income does not exceed 35 percent of the area median income, adjusted for family size and as published annually by the City;
- 2.) Very-Low Income: households whose income does not exceed 50 percent of the area median income, adjusted for family size and as published annually by the City;
- 3.) Low-Income: households whose income does not exceed 60 percent of the area median income, adjusted for family size and as published annually by the City.

The City of East Palo Alto will annually provide this information on its website.

### 3. Household Income Definition

Households shall not have an income in excess of 35%, 50% or 60% AMI, depending on the Inclusionary Unit (Household Income Limit). The family size to be used for determining the Household Income Limit is the number of Eligible Household Members.

For income eligibility purposes, the gross annual income (income before deductions or exemptions) received by all Eligible Household Members 18 years of age or older will be considered. The gross annual income is determined by calculating the Household's total current monthly income and then multiplying that total by 12. In the event that current monthly income deviates by more than 15% from the preceding 12-month average, the gross annual income will be determined by combining the preceding half year's gross income with one-half year's gross income at the current level.

### 4. Types of Income

- i. All wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensation for personal services, before payroll deductions;
- ii. The net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness, or any allowance for depreciation of capital assets);
- iii. Interest and dividends (including income from assets – see Excluded Income section below)
- iv. The full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including any lump sum payment for the delayed start of a periodic payment;



- v. Payments in lieu of earnings, such as unemployment, disability compensation, and severance pay;
- vi. The maximum amount of public assistance available to household members, other than the amount of assistance specifically designated for shelter and utilities;
- vii. Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the home;
- viii. All regular pay, special pay, and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of household or spouse; and
- ix. Any earned income tax credit to the extent that it exceeds income tax liability.

5. Excluded Income

- i. Casual, sporadic or irregular gifts;
- ii. Amounts that are specifically for, or in reimbursement of, medical expenses;
- iii. Lump sum additions to household assets (as defined in the Assets section below), such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains, and settlement for personal losses;
- iv. Monies received for educational scholarships paid either directly to students, or to the educational institution, as well as amounts paid by the Government to a Veteran of the U.S. Armed Forces for use in meeting the costs of tuition, fees, books, and equipment. Any money received over and above the associated educational costs listed are not exempt and considered income;
- v. Special pay to a person in the U.S. Armed Forces who is head of household who is deployed and exposed to hostile fire;
- vi. Foster child care payments;
- vii. The value of benefits received from the Supplemental Nutrition Assistance Program;
- viii. Payments to volunteers under the Domestic Volunteer Service Act of 1973;
- ix. Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes;



- x. Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program;
- xi. Payments received from the Job Training Partnership Act.

## 6. Determination of Income from Assets

To determine a Household's income eligibility for rental of an Inclusionary Unit, a percentage of the Household's assets (as defined in the Assets section below) shall be added to the Household income only when the total of the Household's assets exceeds the annual Household Income Limit. The amount of income attributed to these assets shall be computed as the higher of:

- a) The actual annual income generated from the assets; or
- b) 2.5% of all assets in excess of the Household Income Limit.

## 7. Assets

Assets are defined as:

- i. Cash savings, including but not limited to bank accounts, credit union accounts, certificates of deposit, and money market funds;
- ii. Marketable securities, stocks, bonds, and other forms of capital investment;
- iii. Inheritance and lump sum insurance payments already received;
- iv. Settlements for personal or property damage already received;
- v. Equity in non-residential real estate such as commercial property and unimproved land, except as described as "not considered asset" below; and
- vi. Other personal property that is readily convertible into cash.

The following are not considered Assets:

- i. Ordinary household effects including furniture, fixtures, and personal property;
- ii. Automobiles used for personal use; and



- iii. Cash, securities, stocks, bonds, and other forms of capital held in a tax deferred retirement plan recognized by the Federal Internal Revenue Service.

## **II. Affordable Rental Rates for Inclusionary Units**

Affordable rental rates shall be calculated based on the most recent Household Income Limits published on the City's website and shall not exceed the following:

1. 35% AMI income households: one-twelfth of 30 percent of 35 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.
2. Very low-income households: one-twelfth of 30 percent of 50 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.
3. Low-income households: one-twelfth of 30 percent of 60 percent of area median income adjusted for family size appropriate for the unit or market rent, whichever is less.

As defined in Health and Safety Code Section 50052.5 (h), the family size appropriate for the rental Inclusionary Unit is determined by the number of bedrooms. The "family size" is equal to one person greater than the number of bedrooms in the unit. For the purpose of determining the Affordable Rental Rate, each rental Inclusionary Unit shall be adjusted for family size appropriate for the unit based on the number of bedrooms as follows: a studio = one person, one bedroom = two persons, two bedrooms = three persons, three bedrooms = four persons, and four bedrooms = five persons. These apply when there are no other pertinent federal statutes applicable to the rental Inclusionary Units.

However, if federal statutes apply (e.g. Tax Credit Allocation Committee - TCAC), the following occupancy guidelines may be used: 1.5 persons per bedroom. Owners may make an election to use the TCAC occupancy guidelines for an entire property.

The Affordable Rental Rate 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 paid by tenants of the rental Inclusionary Units, the rent for the rental Inclusionary Units must be adjusted downward for tenant utility expenses, calculated in accordance with the utility allowances published by the San Mateo County Housing Authority annually. In situations where there are multiple affordability restrictions/income or rent limits set by different funding requirements or jurisdictions, the Residential Development must adhere to the strictest requirement so it can meet all of the layering restrictions.

## **III. Occupancy Conditions**



The approved tenant(s) must occupy the rental Inclusionary Unit as their principal residence during the entire term of the lease. If an additional occupant (roommate, family member, etc.) moves into the rental Inclusionary Unit, he/she will be considered part of the existing Household. As a condition for lease or occupancy of a rental Inclusionary Unit, the tenant must be required to provide notice to the owner/property manager, prior to the move in date of a new Household member, and the entire Household (including the new occupant) will be reevaluated to determine eligibility, including Household income requirements.

#### **IV. Minimum Household Size**

To be eligible for a rental Inclusionary Unit, a household must be of a size at least equal to the number of bedrooms in the rental Inclusionary Unit. For example, in order to rent a two bedroom unit, a Household must have at least two Eligible Household Members. Minimum household sizes for rental Inclusionary Units are as follows: one bedroom unit = one person, two bedroom unit = two persons, three bedroom unit = three persons, four bedroom unit = four persons.

#### **V. Annual Rent Adjustment**

The maximum Affordable Rental Rates will be adjusted annually based on the most recently published Household Income Limits by the City of East Palo Alto, which are derived from the figures published by the Department of Housing and Community Development and San Mateo County. The City or its agent will notify the property owner/property manager of the new rental rates. If the owner chooses to raise rents, the tenant must be given a sixty (60) day notice before any rent increase.

#### **VI. Ongoing Compliance with Affordability Restrictions**

Each Residential Development containing rental Inclusionary Units shall be subject to an annual compliance process, including certification of rent rolls and payment of any City monitoring fees.

#### **VII. Terms of Tenancy**

Rental Inclusionary Unit tenants will be subject to the same conditions of tenancy as other tenants occupying the same property, except for terms provided by the City relating to occupancy, income eligibility, annual recertification, and limits on rents. The initial lease term for the rental Inclusionary Unit will be for one year.

#### **VIII. Availability of New Inclusionary Units for Lease**

A rental Inclusionary Unit may not be leased until the City has approved the unit for occupancy.

#### **IX. Marketing/Leasing of Inclusionary Units**



The Developer (or designee) is responsible for marketing the rental Inclusionary Units and identifying qualified tenants that meet the income eligibility requirements of the rental Inclusionary Units. The Developer (or designee) shall post the available rental Inclusionary Units on the county-wide listing service site located at <http://www.smchousingsearch.org/> or such other site as may be requested by the City.

In reviewing each candidate, the owner or property manager (or designee) may apply the same tenant selection criteria, such as past performance in meeting financial obligations and credit references, as those applied to applicants for non-inclusionary units on the property, except for those standards relating to income eligibility.

The rental Inclusionary Units within a Residential Development shall not be operated at less than ninety percent (90%) occupancy for more than six consecutive months unless market conditions otherwise dictate. The Developer (or designee) shall post each vacant rental Inclusionary Unit as soon as possible but not later than ten (10) days after notice of an impending vacancy and provide advanced notice of the opening of any wait list on the county-wide listing service site located at <http://www.smchousingsearch.org/> or such other site as may be requested by the City.

#### **X. Owner/Manager Certification**

Prior to the rental of the first rental Inclusionary Unit on a property, the owner/property manager shall sign a certification of receipt of these Guidelines with a statement of intent to manage the rental Inclusionary Units according to these procedures. Developers shall also submit to the City for approval a management plan consistent with the City's standards for management of affordable units. Subsequent apartment owners/property manager may be asked to sign certifications of receipt of these Guidelines.

#### **XI. Terms of Affordability Covenants**

The deed restrictions applicable to rental Inclusionary Units shall remain in effect in perpetuity. Note that a shorter time period may be required if the Residential Development is required by the program's financing (i.e. Low Income Housing Tax Credits).