



# **Homeownership Loan Programs General Underwriting Guidelines**

**Updated 7/30/2011**

## Table of Contents

	Mission and Goals of the City of San Jose Programs.....	4-5
I.	Homebuyer Education .....	5
II.	Application Process .....	5-6
III.	Exceptions .....	6
IV.	One-Time Benefit.....	6
V.	Loan Layering & Needs Test Rules.....	6-7
VI.	First-time Homebuyer Requirement.....	7-8
VII.	Ownership of Rental Property.....	8
VIII.	Income Eligibility.....	8
IX.	Definition of Household Size & Members .....	9-10
X.	Income Calculation & Definition of Income .....	10-13
XI.	Definition of Income for Self-Employed Homebuyers .....	14
XII.	Assets.....	13-14
XIII.	Credit-worthiness.....	14
XIV.	Location of Property.....	14
XV.	Eligible Housing Units.....	14-15
XVI.	Property Condition & City Inspections.....	15
XVII.	Maximum Home Size.....	15-16
XVIII.	Maximum Sales Price .....	16-17
XIX.	First Mortgage Loan Requirements .....	17-18
XX.	Qualifying Loan to Value Program Ratios.....	18-19
XXI.	Co-Signors.....	19
XXII.	Loan Programs and Maximum City Loan Amounts.....	19-20
XXIII.	Rates and Term for City Loan Programs .....	20-21
XXIV.	Public Records Act .....	21
XXV.	AB 987 Affordable Housing Database Listing.....	22
XXVI.	Use of Funds .....	22
XXVII.	Security through Deed of Trust.....	22
XXVIII.	Program Loan Repayment.....	22-23
XXIX.	Documents from Primary Lender.....	23
XXX.	Escrow Procedures.....	23

## Table of Contents (cont.)

XXXI. Funding Process.....	23
XXXII. Subordinate Financing.....	23
XXXIII. Insurance Requirements.....	24
XXXIV. Refinance of First Loan.....	24
XXXV. Assumption Policies.....	24
XXXVI. Loan Monitoring.....	24
XXXVII. Conditions of City Loan Repayment/Security/Default.....	25
Appendix 1 (Current Limits).....	26
Appendix 2 (Application Review/Funding Process).....	27
Appendix 3 (Disclaimer).....	28

## **Mission and Goals of the City of San Jose's Programs**

The mission of the City of San José's Homebuyer Program is to assist low and moderate-income households attain homeownership in San Jose's neighborhoods through down-payment assistance loans provided by the City. The City's Homeownership funds are targeted to applicants that would not be able to purchase a home without City financing. The City strives to assist as many homebuyers as possible by limiting the subsidy levels to the amount needed by the applicant to purchase a modest home that is appropriately sized for the household.

The City's Homeownership Programs are comprised of four main programs:

- ❖ Loans to education professionals through the Teacher Homebuyer Program (for teachers and credentialed staff)
- ❖ Neighborhood Stabilization Program (NSP)
- ❖ New construction (project based) and Inclusionary second mortgage programs, including BEGIN
- ❖ The WelcomeHOME Program for lower-income first-time homebuyers.

**Programs for Educators:** The primary goals of the THP and SJSU programs are to attract and retain public school educators and staff in support of San José's public school students. Through these programs, homebuyers may purchase new or existing homes in the City of San José.

**Neighborhood Stabilization Program (NSP):** The primary mission of the program is to mitigate blight, enhance neighborhoods, incorporate Green-building features, and assist low and moderate income homebuyers purchase previously foreclosed and abandoned homes.

**Project Based Mortgage Assistance Programs in Targeted Developments:** The primary goal of these programs are to assist homebuyers purchase homes in new construction for-sale developments in the City.

**WelcomeHOME Program:** The goal of this program is to assist lower- income first-time homebuyers to purchase new or resale homes in the City of San José.

## **Funding Limits and Criteria**

Maximum per-unit downpayment amounts may be adjusted by the City from time to time to reflect City budgeting concerns, reductions in funding sources, and market conditions. The City of San José reserves the right to provide less than the maximum amount of downpayment assistance offered based on its evaluation of an

applicant's demonstrated need, the overall subsidy amount, and adherence to the City's general underwriting guidelines.

Under these guidelines, a household may receive assistance from multiple funding sources within each program to obtain the appropriate subsidy, however the total amount of City-funded downpayment assistance may not exceed \$100,000 per unit—except when the assistance includes BEGIN and Inclusionary Loans. In the event that an applicant wishes to apply for more than one separate city loan programs, the household will also need to comply with the City's multiple loan layering policy and needs testing criteria. In addition, each applicant must meet the underwriting criteria and statutory guidelines of each separate program and funding source.

**Unless otherwise noted, the City's downpayment assistance guidelines apply to the Teacher Homebuyer Program (THP), Inclusionary, City-assisted, Building Equity and Growth in Neighborhoods (BEGIN), CalHOME, American Dream Downpayment Initiative (ADDI), and the federal Home Investment Partnership Program (HOME) funded downpayment assistance programs.**

## **I. Homebuyer Education**

All applicants must complete a HUD-certified pre-purchase homebuyer education seminar through one of the HUD certified organizations prior to City loan approval. Applicants will be required to submit a certificate of completion, valid for three years from the date of completion, as a part of their loan application. **Pre-purchase homebuyer education seminars offered through non-HUD certified entities, which were allowed under the previous guidelines, no longer meet this requirement.** Pre-purchase homebuyer education seminars offered through private lenders, organizations, or online providers are not eligible. The following HUD-certified organizations are located in San Jose: Project Sentinel-408.720.9888 x12, or Neighborhood Housing Services Silicon Valley (NHSSV)-408.279.2600, The Unity Council-510.535.6943, Asian Inc.- 415.292.8525 or 415.928.5910.

**Exception:** The City will only accept homebuyer education certificates from Project Sentinel, or other agencies under current contract with the City, when utilizing CalHOME funds.

## **II. Application Process**

- A. An applicant may apply through any lender of their choice. The City maintains a list of active lenders on its website. The lender will submit an application, on the applicant's behalf, to the City of San José.
- B. All lenders must disclose all layers of subordinate financing, including the loan amount and program source, on the loan application (1003) (page 3, Details of the Transaction) and in the comment section located at the bottom of the Uniform Underwriting and Transmittal Summary (1008). The processed loan must match the liabilities on the credit report.
- C. Prior to submission, all lenders are required to provide **ALL** items listed on the application checklist (in correct order), two-hole punched, and fastened in a file

folder. If these guidelines are not adhered to, processing and approval of the loan file may be delayed.

- D. If a loan application remains in the homebuyer program for more than 90 days with no activity (e.g. conditions have not been received, no response from lender, file has not moved forward), the loan may be cancelled by City staff without advance notice.
- E. All letters of explanation, signed and dated by the applicant, must be signed under penalty and perjury of the law.
- F. All material misrepresentations, alterations, and/or omissions from the initial City Loan Application; including but not limited to household size, income and asset information, loan details, etc., is not permissible and will render all future re-submissions ineligible for review and approval for a period of one year. The Homebuyer Manager may make an exception for re-submission of a loan application only for a significant life event such as a job/career change, marriage, or the birth of a child.

### **III. Exceptions**

These guidelines allow for some exceptions to City policies, and the reasons for exceptions are contained in these guidelines. Once a decision to approve or deny a loan is made by the City, the decision shall be final.

### **IV. One-Time Benefit**

The City's homebuyer programs are a "one-time" benefit per household. An applicant cannot have previously received assistance from the City's homebuyer programs.

**Exception:** The THP allows a household to receive assistance when one member of a new two-teacher household has previously received assistance under the THP, and the other new household member, who now qualifies for the THP, has not benefited from the previous THP loan.

### **V. Loan Layering Policy and Needs Test Rules**

While the Housing Department encourages homebuyers to layer and leverage City downpayment assistance with other outside sources of funding, the City places limits on the total City-funded loan amount that will be provided to any one household. City loan applicants may receive assistance from multiple City programs; however, the total amount of City-funded downpayment assistance may not exceed \$100,000 per unit. If an applicant wishes to utilize two or more City loan programs, the households must demonstrate a 35% minimum housing payment ratio when calculating debt-to-income ratios. In addition, each applicant must meet the underwriting criteria and statutory guidelines of each separate program.

**Exception:** City downpayment assistance programs cannot be combined with the Housing Trust of Santa Clara County's Equity Share Co-Investment (ESCO) program.

**Exception:** The cap of \$100,000 in aggregate per household does not apply to funding applications that include BEGIN or Inclusionary Program loan funds.

## **VI. First-time Homebuyer Requirement**

All City loan applicants are required to be first-time homebuyers (excluding NSP). A first-time homebuyer is an applicant whose household members have not owned a primary residence during the prior three calendar years. Applicants with previous ownership of a primary residence (e.g. previously married and **presently** separated or divorced thereby changing the marital status of the applicant to a displaced person) will be required to submit a Final HUD-1 from the sale of a previously owned home to verify eligibility as a first-time homebuyer. If a previously occupied home has not been sold, the applicant will need to provide documentation regarding his/her rental status in a different property. The City may utilize any reasonable method of documenting first-time homebuyer status including, but not limited to a review of the applicants' tax returns and credit report. For example, if an applicant has received tax benefits through Schedule A on their itemized deductions within the last three years or if the applicant has a real estate loan appear on their credit report and ownership on the grant deed within the last three years, the applicant may not qualify as a first-time homebuyer.

**Exception:** The first-time homebuyer requirement may be waived for applicants in the THP, Inclusionary, and other project based programs, excluding BEGIN and WelcomeHOME -- provided they do not currently own a home as a primary residence and the applicant has recently experienced a financial hardship related to the ownership of another real estate asset. Any applicant seeking an exception to the first-time homebuyer requirement based on financial hardship reasons is required to submit a letter of explanation and other financial documents related to his/her need for continuous ownership of other property.

**Exception:** A displaced homemaker is considered a first-time homebuyer. A displaced homemaker is someone who, while a homemaker, owned a home with his or her spouse/domestic partner or resided in a home owned by the spouse/domestic partner. A displaced homemaker may have not worked on a full-time basis as a member of the labor force for a consecutive twelve-month period and who has been unemployed or underemployed, experienced difficulty in obtaining or upgrading employment, and worked primarily without remuneration to care for his or her home and family. A displaced homemaker may not occupy a previously owned residence and cannot be obligated to make mortgage payments and maintain a property. A displaced homemaker may not occupy the previously owned residence and can provide verifiable documentation that the applicant is renting and occupying another

property. Note: If a previously owned home is currently occupied by the spouse/domestic partner of an applicant, then the City will require the applicant to provide verifiable documentation that the applicant is not required to contribute to the housing costs from the previous home.

A displaced homemaker may also be a single parent (example: a divorced person) who, while married, owned a home with his or her spouse/domestic partner or resided in a home owned by the spouse/domestic partner. A single parent is an individual who is unmarried or legally separated from a spouse and has one or more minor children for whom the individual has custody or joint custody.

## **VII. Ownership of Rental Property**

City-assisted homebuyers may not own real property at the time of application to the City.

**Exception:** The City may grant an exception to the prohibition against the ownership of investment property if both of the following criteria are met:

A- The investment property is not located in any of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, San Benito, or Santa Cruz; and

B- The applicant owns no more than one (1) unit of income-producing investment property at the time their loan application is submitted to the City, and the reason for continuous ownership of rental property is necessary and the sale of the investment property would cause serious financial hardship to the applicant, as documented by the submission of a letter of explanation and other financial documents related to the need for concurrent ownership of other property.

C- Income received from rental property will be included in the gross income calculation.

## **VIII. Income Eligibility**

The City limits downpayment assistance programs to applicants earning no more than 120% of Area Median Income, as published by the California Department of Housing and Community Development, or 80% of Area Median Income when using federal HOME, ADDI, or CalHOME funds in the WelcomeHOME program (see appendix 1). Household income may not exceed the income limit in effect at the time of application to the homebuyer program. **Note:** the City uses the Part 5 (Section 8) definition of income for federally funded (HOME & NSP) loans.

## **IX. Definition of Household Size and Members**

The Household is comprised of ALL individuals who will be occupying the home over the next or upcoming twelve months. The following individuals are not counted as part of the household: foster children, unborn children, children who live with the applicant (parent) **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-family care-takers. A child who resides with the household at least 50 percent of the time and receives over 50% of the care from the applicant, can be counted as a household member.

**Note:** The income of family caretakers (e.g. relatives) who live with the applicant will be included in CalHOME funded loans.

A--Co-signers: Any individual listed on the loan application, except for defined co-signers, must occupy the City-assisted unit as their primary residence. Co-signers are allowed for first loan qualifying purposes provided they do not appear on the City's Deed of Trust or the Grant Deed; co-signers can only appear on the first lender's Deed of Trust. Co-signers are used when the household qualifies for the City loan, but need to meet first lender underwriting requirements.

B--Household members are people who will occupy the residence full-time. All household members aged 18 or older are required to submit income and asset documentation. Non-income dependents who will be living with the applicant over the coming twelve months and receive over 50% in support from the applicant are eligible household members. If the household member is new to the residence or if they are not claimed on the previous year's tax return; the applicant will be required to submit verifiable evidence that the household member will live with the applicant over the coming twelve months. All letters of explanation provided by the applicant must be signed by the applicant under penalty of perjury.

C--Full-time college students over the age of 18, living away from home, and who continue to receive over half of their support from the applicant, may be considered a household member. Student's income must be counted in the applicant's total income calculation. If the student is unable to produce income documentation, the City will add \$480 to the applicant's annual household income. However, if the student is a head of household or a spouse/domestic partner of the applicant, the student will be required to produce verifiable income documentation. Each adult household member who does not receive income from any source shall be required to submit an Income Affidavit, Letter of Explanation, Social Security Administration Consent for Release of Information, Request for Verification of Benefits, and an Authorization for Release of Records from the Employment Development Department.

**D-- Welfare Reform Act and Immigration Status:** The City uses federal HOME funds to fund the THP, Welcome HOME, and other project specific loans as necessary. As such, all federally funded loans are subject to verification requirements of the Welfare Reform Act (WRA). To be eligible for benefits under the WRA, all household members must be either a U.S. Citizen, a U.S. non-citizen national, or a "qualified alien". A "qualified alien" is:

1. An alien lawfully admitted for permanent residence under the immigration and Nationality Act (INA);
2. An alien granted asylum under section 208 of INA;
3. An refugee admitted into the U.S. under section 207 of the INA;
4. An alien paroled into the U.S. under section 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under section 243(h) of the INA as in effect prior to April 1, 1997 or whose removal is being withheld under section 241(b)(3) of the INA;
6. An alien granted conditional entry pursuant to section 203(a)(7) of the INA as in effect prior to April 1, 1980;
7. An alien who is Cuban or Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980; or
8. An alien who (for whose child or parent) has been battered or subjected to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431 (c) of the Act.

An applicant whose household does not meet the eligibility requirements under the Welfare Reform Act is ineligible for a federally funded City loan program.

After closing, the City will not modify its loan documents to reflect changes in family status, including the addition of a new household member, to the Deed of Trust.

## **X. Income Calculations/ Definition of Income**

Household income may not exceed the income limit in effect at the time of application to the homebuyer program. In general, Income is defined as income earned from all household members age 18 years and above and projected forward at the same level for the next twelve months. Income includes earnings from employment, government benefits, investments, interest income, and other cash-generating activities. All loan applicants must submit three of their most recent paycheck stubs as part of their loan application. The following methods will be used by City staff to calculate income:

1. Income from full-time employees will be calculated as follows:
  - a. Hourly Employees- Income documentation and information will be obtained from the applicant's three most recent paystubs. Base pay income will be calculated by taking the gross year-to-date (YTD) earnings and averaging the income over the number of months employed during the year to obtain the gross monthly income. The gross monthly income will be projected forward at the same level of earnings for 12 consecutive months. Paystubs are considered outdated after 90 days. For these purposes, months will be pro-rated using a 30 day month.
  - b. Salaried Employees- Income will be calculated and projected forward by multiplying the bi-weekly gross salary by 26 weeks or the bi-monthly gross

salary by 24 pay-periods and adding in the amount earned from annual bonuses, commissions, in-lieu payments, etc...

- c. Third party verification-The City may also verify the income statements for salary or hourly employees based on information provided on a Verification of Employment and/or an Employment Acceptance Offer signed and dated from the employer on letterhead. The Employment Acceptance Offer must state the date in which employment shall commence, the salary, and it must be signed by the employer and employee.
2. Income from part-time or variable income employees will be calculated as follows: If the applicant has been employed for more than a year, the City will calculate the gross year-to-date income from the most recent paystub and averaging the income over the number of months employed during the year to obtain the gross monthly income. The gross monthly income will be projected forward at the same level of earnings for 12 consecutive months. If the year-to-date income covers less than three months in the current year, the City may include the average year-to-date earnings from the prior calendar year in addition to the current year if the employee's work schedule has not significantly changed. Any income discrepancies can be verified by multiplying the hourly rate by the average number of hours worked provided on a formal Verification of Employment form from the applicant's employer.
  3. Income from overtime, commissions, ongoing stipends, shift differential pay, and other sources will be averaged (using year-to-date earnings) and included in the applicant's gross monthly income. Income that is received in lieu of earnings, despite the temporary nature of such pay (i.e. unemployment, worker's compensation, and severance pay) will also be included as income. Income received from one-time non-recurring bonuses, non-recurring lump-sum payments from the sale of stocks or bonds, stock options, lump-sum inheritances, retro-pay, insurance payments, or relocation benefits can be excluded. The non-recurring nature of such income must be documented by a Verification of Employment (e.g. VOE) and/or from alternate source documentation acceptable to the City.
  4. Interest income from investment and capital accounts, such as checking, savings, money market, certificate of deposit accounts, dividend income from mutual fund accounts, stocks, and other income-generating assets must be included in the applicant's income. The income earned from such assets will be calculated at the greater of the actual interest earned or 10% per annum. The 10% per annum is calculated only on the balance remaining post close of escrow. These amounts will be included in the applicant's household income only when the interest income meets the following criteria:
    - a. The account is considered liquid, and the applicant can withdraw the funds without tax penalty.
    - b. The interest rate earned on the account is variable, and subject to change based on market conditions.

**Exception:** For WelcomeHOME and other federally funded or CalHOME funded loans, the City will include the interest income earned from retirement accounts, even when the interest income is fully reinvested into the retirement account, and the applicant is not eligible to withdraw the account, in part or in full, without tax penalties. The interest income earned will be calculated at the greater of the actual annual earnings, or 2.5% on all capital and retirement account balances, when the applicant has over \$5,000 in total assets.

**Exception:** The fund balance of transactional checking accounts, used primarily for earnings deposits and payment of recurring expenses, will be averaged and included in the asset and income calculations.

5. Current monthly income and annuity payments from retirement accounts, (including social security and pensions), alimony, child-support, and other steady, ongoing sources will be included in the applicant's gross monthly household income calculation. Non-taxable incomes will not "be grossed up" by the City, regardless of the lender's determination of such income.
6. All forms of income from non-applicant spouses and other household members over the age of 18 will be included in the gross monthly income calculation, regardless of the taxability of such income. Annual income from full-time college students as described in Section IX(C) will be included.
7. Income from seasonal and part-time jobs such as coaching, lecturing, test proctoring, etc., will be included only when the applicant can reasonably be expected to continue to be employed in the same line of work over the coming twelve months.
8. Income from Real Estate and Investment Property will be included as income. An applicant may receive rental payments from tenants living in the property. Net rental income from the property will be included in the applicant's total household income. Net income shall be calculated by annualizing the monthly rental rates, less the ongoing and routine costs of owning and operating the property. A vacancy assumption of up to 25% will be allowed in the determination of net rental income if the rental property is not rented by a tenant at the time a loan application is submitted to the City. Unrealized equity in real property will not be included as income.

To evaluate rental Income, the City may require one or more of the following items from the applicant to verify the rental income and operating costs for an investment property:

- 1) Operating statements, if the management of the property is being handled by a third party;
- 2) Copies of current tenant leases;

- 3) Three most recent years of tax returns. These may be utilized to substantiate net rental income.

Net Rental Income is calculated by deducting the principal, interest, taxes and insurance, maintenance, and special assessments from the gross monthly rental income. Any negative cash flow will not be deducted from the City's determination of an applicant's annual income.

## **XI. Definition of Income for Self-Employed Homebuyers**

For self-employed applicants, the following documents may be required by City staff to determine income eligibility and applicants should be prepared to document their projected annual earnings using any or all of the following methods:

- A. Applicants must provide the most recent 3 years of W-2's or 1099's. If the applicant has W-2's or 1099's, deducting business expenses or losses is not allowed. Positive net income from a business will be added to the applicant's gross income.
- B. A year-to date profit/loss and income statements prepared and signed by a Certified Public Accountant, with information covered through the last quarter and a letter of explanation, signed and certified by the applicant, stating the anticipated net household income (after deducting business expenses) over the next 12 months; or
- C. A year-to-date-balance sheet, prepared and signed by a Certified Public Accountant, reflecting the financial position of the business at a specific point in time and a signed letter of explanation regarding the applicant's anticipated net household income (after deducting business expenses) signed and certified by the applicant; or
- D. Current owner salary documentation and three year's of profit/loss statements from partnerships and S Corporations prepared and signed by a Certified Public Accountant; and a signed letter of explanation regarding the applicant's anticipated gross household income over the next 12 months, signed and certified by the applicant.
- E. In addition to the methods above, the applicant must provide the previous three year's of tax returns to verify the consistency of the information being provided, including a Schedule C. For the purpose of self employed individuals, net income from the operation of a business may be used only if the net income is derived by deducting expenses solely associated with the operation of the business.

## **XII. Assets**

- A. The applicant is required to provide a minimum of two months of current bank statements for all asset accounts.
- B. Statements may not be older than ninety days upon the Housing Department's receipt of the application package. If the statements are 90 days or older, the City may require the applicant to provide the two most recent months of bank statements.
- C. The applicant is required to liquidate a portion of their assets when the value of such liquid assets will exceed \$60,000 after the close of escrow. However, liquid assets do not include the value of equity in real property, cash-value of life insurance plans, furniture, jewelry, automobiles, pensions, and/or individual retirement accounts for persons under the age of sixty,
- D. For federally funded loans, the value of net equity in real property.
- E. Liquid assets may not exceed \$60,000 per household upon close of escrow.
- F. Acceptable sources of downpayments include, but are not limited to the following sources:
  - 1. checking accounts
  - 2. savings accounts
  - 3. investment or capital accounts
  - 4. retirement accounts
  - 5. Gift letters, however, a copy of the gift letter must be included with the City's loan application.
  - 6. Seller Financing, provided that Seller credit/concessions do not exceed 3% of the purchase price for CLTV's over 90% and 6% for CLTV's below 90%.

### **XIII. Credit-worthiness**

The Lender must provide a credit report and the report will be analyzed for consistency with the loan application as well as for complete credit account information from the credit reporting agency, and

All applicants shall have a minimum of at least one 620 FICO credit score on a merged credit report, no exceptions.

### **XIV. Location of Property**

The home must be located within the municipal boundaries of the City of San José (cannot be located in county pockets). If the home is located in a FEMA designated Special Flood Hazard Area, the applicant will be required to obtain flood insurance.

### **XV. Eligible Housing Units**

Eligible types of City-assisted housing units include single-family detached and attached homes including townhomes and condominiums.

The seller of the home must occupy the property, as a primary residence, or the home must be vacant at the time the property is listed for sale on the market. The Property Owner must certify that no third party was required to move out at any time before or after the listing date in connection with the sale of the Property or to facilitate the sale of the Property. Properties still being occupied by tenants, at the time the property is listed for-sale, are not eligible. The Housing Department requires the legal owner of the proposed assisted home to sign an occupancy affidavit. Owners of a new construction unit, with no previous occupancy, are not required to sign the seller's occupancy affidavit.

**Exception:** The exclusive selling agent of a bank owned property may sign the occupancy affidavit on behalf of the seller.

## **XVI. Property Conditions and City Inspections**

All City-assisted units must be in good condition, meet local federal housing quality standards, and comply with local building codes. The City may elect to perform its own site inspection of the property to ensure adherence to funding source guidelines and property condition requirements. If the City elects to perform an inspection the buyer's agent should be prepared to make arrangements to allow a City inspector into the property in his/her presence prior to obtaining a loan approval from the City.

In general, all ordered inspections occur within seven to ten business days from the date the loan application was submitted to the City. However, if the City determines that a formal Lead Based Paint Test should be ordered, the inspection time may take up to fourteen business days. Buyer's and seller's agents, lenders, and the prospective homebuyer should consider the City's physical inspection timelines when scheduling escrow closing dates and removal of contingencies.

During an onsite inspection, housing staff will perform a visual assessment of the condition of the paint of the unit. All units built prior to 1978 with signs of chipping, cracking, or other deteriorated paint will be formally tested for the existence of lead based paint at no cost to the buyer or seller. However, a copy of the Lead Hazard Evaluation Report will be automatically sent to the California Department of Public Health and become available to the public. **The City may deny a loan based on the condition of the property.** Property conditions that may result in denial of the loan include:

- A. The existence of chipping, cracking, or other signs of deteriorating lead-based paint in either the interior or exterior of the unit.
- B. Violations of local building codes, or the presence of illegal or unpermitted structures, additions, or alterations.

The City requires all City loan applicants order their own home inspection reports from a licensed home inspection company for his/her own protection. The City will not review the applicant's home inspection report, however, the City may elect to perform an inspection of the property and a copy of the inspection report will be

shared with Housing staff. The City's inspection report should not be used by the buyer as a substitute for a buyer's own inspection. Further, a buyer's home inspection may not be used in-lieu of a City inspection completed by a Housing Department inspector.

### **XVII. Maximum Home Size**

City-assisted households may not purchase a larger home than is actually required to meet the needs of the household. Maximum unit size is calculated at total household size plus one bedroom. This guideline applies to all City-administered and City-funded loan programs.

<b>Household Size</b>	<b>Maximum Number of Bedrooms</b>
<b>1</b>	<b>2</b>
<b>2</b>	<b>3</b>
<b>3</b>	<b>4</b>
<b>4</b>	<b>5</b>

**Exception:** Applicants who wish to purchase larger homes than these guidelines allow should send a written request, and an explanation of need, included in the applicant's loan application, to the City. The Homebuyer Program Manager may make an exception for expecting parents, applicant's who run a verifiable home based business, or an applicant who is in the process of applying for legal guardianship of a dependent. Applicants seeking exceptions under this policy should submit verifiable evidence of their projected increase in household size.

**Exception:** Developers of new construction Inclusionary units may sell a home to a household outside of this policy provided that the home has been listed for sale on the market and the builder has actively tried to sell the home to a household in accordance with this guideline for a minimum of sixty days prior to offering the home to an applicant seeking an exception under this policy. To verify the time the unit has been on the market, the City may require the builder to provide supporting documentation reflecting the release date of the unit.

### **XVIII. Maximum Sales Price**

All Lenders must provide an appraisal, from a state licensed certified appraiser, of the fair market value of the home using the sales comparison method. The sales price of the home may not exceed the appraised value. The City's loan-to-value (LTV), combined-loan-to-value (CLTV), and other qualifying ratios will be based on the lesser of the sales price or appraised value. The City of San José will use the following method(s), when applicable, for determining and/or approving the maximum sales prices of assisted units to low- and/or moderate-income households:

1. For ADDI, HOME, CalHome, and BEGIN program funded loans, the maximum sales price may not exceed 95% (ADDI & HOME), and 100% (CalHome & BEGIN), of the Area Median Sales Price, determined by the Department of Housing and Urban Development using its most recent approval of maximum sales price limits. (see Appendix 1)
2. For THP, Inclusionary, and all other City loans; the City will apply the Affordable Housing Cost Limit (AHCL) for moderate-income homebuyers (Health and Safety Code 50052.5). Under this standard, the maximum sales price is not capped at any particular price, however, the assisted buyer's monthly housing payment cannot exceed 35% of 110% of area median income for a given sized family for a given sized unit (see Appendix 1). The AHCL shall include the cost of principal and interest mortgage payments, property tax payments, hazard insurance, homeowner association fees (if any), mortgage insurance (if any), utilities (other than phone), an allowance for maintenance and repair costs, and mandatory parking fees (if any).

**Exception:** The household may qualify for a higher AHCL if the household earns between 110% -120% of the Area Median Income, adjusted for household size. In these cases, the maximum AHCL would be adjusted up to 35% of the actual income of the household.

## **XIX. First Mortgage Loan Requirements**

Prior to obtaining a loan from the City, the applicant must provide evidence of senior lender approval for the maximum first mortgage loan amount. If the primary lender is CalHFA, then the City of San José soft second mortgages must be submitted as the following: Inclusionary loans must be submitted under the Inclusionary Program, and other project based equity share loans must be submitted under the First-Time Homebuyer Program (FTHB). Lenders should not submit any City soft second mortgages under the equity share program name at CalHFA.

City staff will review the term, interest rate, and conditions of the first mortgage loan to ensure that program requirements are met. All applicants are required to have a first mortgage. For the first mortgage loan, the interest rate must be no more than one percent higher than other widely available mortgage loan rates readily available in the current market. The interest rate must be reasonable in relation to the current market. A below-market-rate or buy-down of interest and flexible underwriting terms as found in some community lending products are acceptable. The maximum number of points a lender can charge is two percent.

First mortgages may not include provisions for potential negative amortization, balloon payments, or principal increases on deferred interest. Thirty year fixed-rate mortgages are preferred, however an applicant may receive an adjustable rate first mortgage loan that contains an initial fixed period of at least one year provided that the interest rate change date must be aligned with the payment adjustment date. Limited rate buy-downs are acceptable.

**Exception:** Adjustable rate mortgages and temporary rate buydowns may not be combined with CalHOME funded loans.

City loans may only be used for downpayment assistance, and not used to pay for closing costs, buydowns, or prepaid mortgage insurance premiums. The total loan-to-value of all loans, including City, other junior and senior loans, cannot exceed one hundred percent of the CLTV.

**Lenders:**

In general, the City's homebuyer programs are open to use from all lenders, with the exception of certain NHSSV/City programs. The City maintains a list of active lenders, but does not provide referrals to any particular lender. The mortgage lender or broker will assist the applicant complete the City loan application and submit it to the City for review and approval on behalf of their client. Lenders who have successfully submitted a minimum of three City loan applications in the prior 12-month period may request to be added to the City's active lender list. The City reserves the right to remove inactive and/or non-compliant lenders from the list of lenders without notice.

**XX. Qualifying Loan to Value Program Ratios**

A. Front-end Ratio: The front-end ratio (i.e. monthly housing payment) or the debt-to-income ratio as it is commonly called, is calculated by dividing the total monthly housing payment by the applicant's gross monthly income. The front-end ratio shall not be less than 28%, or exceed 43%. The front-end ratio includes:

- a. Principal and interest payment on the first mortgage;
- b. Principal and interest payments, if any, on subordinate non-deferred loans;
- c. Real estate taxes;
- d. Hazard insurance premium;
- e. Flood insurance premium, if applicable;
- f. Private mortgage insurance premium, if applicable;
- g. Monthly Homeowners' Association dues for condominiums and for homes located in planned unit developments (PUD).

**Exception:** The minimum housing payment ratio for a City loan applicant applying to utilize more than one City loan program shall be required to have a minimum housing debt ratio of at least 35%. This exception does not include loans made through the BEGIN or Inclusionary programs.

B. Back-end Ratio: The back-end ratio or the total debt-to-income ratio is calculated by adding together the total monthly payments of all existing long-term debt (debt

with a remaining term of 10 or more months) and the total monthly housing payment and dividing that sum by the applicant's gross monthly income, as defined in Section III. The Back-end ratio should not exceed 48% of the applicant's gross monthly income. The back-end ratio includes:

- a. The monthly housing payment as defined above;
- b. Long-term installment debt beyond 10 months remaining to be paid;
- c. Revolving accounts and lines of credit;
- d. Alimony, child support or maintenance, if applicable.

**Exception:** Some applicants may qualify for first-mortgage financing at higher ratios than those cited above. Recognizing that the financial circumstances of each homebuyer are unique and that there may be other factors besides debt-to-income ratios that reflect the applicant's ability and willingness to repay mortgage loans, the City may consider the following indicators in approving higher ratios:

- a) The applicant's proven ability to devote a larger amount of income to housing expenses. The applicant has successfully demonstrated an ability to make mortgage or lease payments for twelve consecutive months that are equal to or greater than the proposed monthly payments for the housing being purchased;
- b) The applicant's substantial net worth as demonstrated through non-liquid assets and retirement accounts;
- c) The applicant has at least one FICO credit score greater than 720;
- d) The applicant's demonstrated potential for increasing his/her earnings;
- e) The applicant's downpayment on the purchase of the property is at least five percent of the sales price and is made from his/her own funds;
- f) The applicant's substantial non-taxable income such as child support, disability payments, retirement payments, *etc.*;
- g) The applicant's housing expense will not increase more than five percent over previous housing payments.

Lenders and applicants seeking City approval of higher debt ratios should submit a written request and a letter of explanation seeking higher ratios to the Homebuyer Program Manager as part of the applicant's loan application. The decision to approve or deny higher ratios will be made in accordance with the above stated compensating factors; however, the maximum back end ratio may not exceed 50%.

## **XXI. Co-Signors**

The City allows non-occupant co-signers to the City loans. However, non-occupant co-signers may not be on the City's Deed of Trust. The City will not use the income, assets or debts of non-occupant co-signers to qualify for the downpayment assistance programs.

## **XXII. Loan Programs and Maximum City Loan Amounts**

The maximum second mortgage amounts for City-assisted for-sale projects will be determined by City staff, and will not exceed per-unit funding source maximums.

Each applicant shall receive only the amount of subsidy needed to allow them to become homeowners while keeping their housing costs affordable. The primary lender should use the ratios in these guidelines (43/48) to determine the maximum amount of the primary loan and ultimately the City subsidy amount needed to bridge the gap between the purchase price (less the buyer's downpayment) and the amount of the primary loan. The applicant's total housing debt may not be less than 35% of the applicant's gross household income for all homebuyer programs when combining one or more City programs. The applicant's total housing debt may not be less than twenty-eight percent of the applicant's gross household income when the applicant is applying for only one City loan program.

**Exception:** The 28% housing debt ratio may be utilized when combining the Inclusionary and BEGIN program loans.

The City allows layering with other sources of downpayment assistance programs, if less than 50% of the property value is secured City funding. All City funds are available on a first-come, first-serve-basis, until funds are exhausted. The maximum loan amounts for THP, WelcomeHOME, etc..., are subject to change without advance notice.

The City will use the following method(s) for determining and/or approving the maximum downpayment assistance amounts:

- A. Inclusionary Housing Units: The maximum second mortgage amounts, in market-rate for-sale developments subject to the City's Inclusionary Housing Program, will be calculated in accordance with the City's Inclusionary Policy and Procedures Guide Implementing Health and Safety Code Section 33413(b)(2).
- B. THP: The maximum second mortgage amounts in the THP are \$35,000 or \$50,000, depending on household income.
- C. BEGIN: Downpayment Assistance loans will not exceed 20% of the sales price for a BEGIN assisted unit, in accordance with BEGIN guidelines for the year in which the BEGIN funds were awarded to the City. These amounts may change depending on State and City budgeting constraints or statutory requirements.
- D. ADDI: The maximum ADDI funded loan program may not exceed the greater of \$10,000 or 6% of the sales price.
- E. WelcomeHOME: The City's maximum WelcomeHome second mortgage amount may not exceed \$25,000 per household, however; City staff may approve a lower amount.
- F. Neighborhood Stabilization Program (NSP): The maximum loan amount available to the buyer(s) will be based on the buyer(s) household income. Lower-income households will qualify for loans up to 20% of the final purchase price and moderate-income households will qualify for loans up to 10% of the purchase price.

### **XXIII. Rates and Terms for City Loan Programs**

All City homebuyer program loan programs are deferred for the life of the loan. City assistance loans are not forgivable over time and they do not convert to grants. All City loans are expected to be repaid on or before their maturity dates. If the value of the home decreases after the home is purchased, the homebuyer is still required to repay the City loan in full at maturity. Loan repayment terms and interest rates vary by program. The term and rate for each program is listed as follows.

Equity Share/Shared Appreciation Loans (Inclusionary, THP, and other Project Based Loans)—The City’s loan is subject to a 45-year affordability restriction that is recorded against the home. If a City-assisted homeowner chooses to sell the home prior to the end of his/her 45-year term, the owner should contact the City’s Department of Housing. The City assumes that City-assisted homebuyers will sell the home on the open market and repay the City the loan principal plus a portion of the accrued appreciation in the property since the time of purchase (option #1). City-assisted homebuyers who wish to resell the home to an eligible household at a restricted sales price must notify the City in advance of their intent to find an eligible buyer to assume the City loan. (option #2)

1. Resell the home at market, repay City loan **and** pay the City an equity share. The equity share is the City’s proportionate share of the difference between the original purchase price and the resale price (less City approved selling costs and improvements). NOTE: The equity share payment is capped at 8% simple interest.
2. Resell to someone who has a household income that the City reviews and verifies that they earn less than 120% of area median income (AMI). The resale price will be restricted because it is based upon the Affordable Housing Cost limit. The seller can allow the new buyer to assume the City loan and not be required to pay the City an “equity share” on the increase in value. NOTE: The new buyer, and the new buyer’s lender, must accept the terms and conditions of the City’s affordability restriction.

Prepayment of the loan principal and a portion of the appreciation in the property while a homeowner continues to occupy the residence will not release a City-assisted homebuyer from the affordability restriction. Further, if the home’s value decreases between the time of purchase and time of sale, *no equity-share payment will be due to the City. However, the City-assisted homebuyer will be required to repay the principal balance of the City loan.*

BEGIN, ADDI, and WelcomeHOME loans are structured as deferred repayment loans with an interest rate of 3% simple interest and a term of 30 years. There is no prepayment penalty on any of these loans.

**NOTE: HOME funds may be used to fund the THP, Project Based or WelcomeHOME loans, and therefore may be structured as either a shared appreciation/equity-share loan or a simple interest loan.**

#### **XXIV. Public Records Act**

The City is subject to the requirements of California Public Records Act, Government Code Section 6250, *et seq.* The Public Records Act provides that virtually all documents held or used by the City in the course of conducting the public's business are public records which the City, subject to certain limited exemptions, must make available for inspection and copying by the public. Applications for loans or grants from the City are public records as are the completed loan and grant documents.

#### **XXV. Notice Regarding AB 987 Affordable Housing Database Listing**

Applicants should be aware that under Health and Safety Code Section 33334.3(f)(3), subject to an exception for certain domestic violence shelters, the City is required to make available on the internet a database of all housing assisted with moneys from the Low and Moderate Income Housing Fund or made affordable pursuant to inclusionary housing policies adopted under Health and Safety Code Section 33413.

The database will include all of the following information for each owner-occupied unit or rental unit, or for each group of units, if more than one unit is subject to the same affordability covenant:

- A. the street address and assessor's parcel number of the property;
- B. the size of each unit, measured by the number of bedrooms;
- C. the year in which the construction or substantial rehabilitation of the unit was completed;
- D. the date of recordation and document number of the affordability covenants or restrictions required under subdivision (f) of Section 33334.3;
- E. the date on which the covenants or restrictions expire; and,
- F. for owner-occupied units that have changed ownership during the reporting year, the date and document number of the new affordability covenants or other documents recorded to assure that the affordability restriction is enforceable and continues to run with the land.

#### **XXVI. Use of City funds**

The City's funds can only be used for downpayment assistance. The use of City funds for closing costs, buydowns, or prepaid points are not eligible. While the transaction may be 100% financed, the City does require a minimum buyer contribution of 1% of the sales price, of his/her own funds, to close the transaction.

#### **XXVII. Security through Deed of Trust**

All City loans will be secured by the property through a deed of trust no more junior than second position.

**Exceptions:** the City will subordinate its loan to a performing second mortgage or a seller financed second mortgage that requires the applicant to repay the loan in

monthly installments; and the City may subordinate its loan to State-funded downpayment assistance loans with a requirement to be in second position. If additional individuals are added to the senior deed of trust after the close of escrow, the loan will be called due and payable.

### **XXVIII. Program Loan Repayment**

In general, an applicant may pay a portion or the entire deferred-payment loan principal without penalty. The equity-share portion of the second mortgage may not be prepaid and is due in full at the time of property transfer if the home is sold within 45 years from the date of purchase.

### **XXIX. Documents from the Primary Lender**

The City reserves the right to request additional documents, if needed, from the primary lender, in order to document compliance with any statutory funding source regulation or these guidelines.

### **XXX. Escrow Procedures**

The City requires proof of Hazard Insurance, or a Master Insurance policy, to be provided at close of the escrow. The City requires an ALTA title insurance that includes the amount of each City loan, at close of escrow. Any funds required to close escrow must be deposited into an escrow account. For multiple City loans, the City will require multiple title insurance policies on each of the subordinate second mortgages. The City requires signed documents, and any required documentation, to be returned to the City, in accordance with the escrow instructions, prior to funding. Cash out of escrow, to applicants, is limited to the amount deposited into escrow and not needed for any lender-required minimum downpayment. The City will not wire any funds into private lender or broker accounts.

### **XXXI. Funding Process**

The Lender Instructions submitted with loan documents are “Master Instructions” mandated by the City of San José regarding the Recording and Closing procedure for all City loans. Contribution of future City funds may be suspended if escrow fails to comply with the Master Instructions. All documents must be recorded in sequential order as indicated in Section A-1/Recording of Documents as stated in the Lender Instructions. The escrow officer must sign and return a copy of the Lender Instructions, along with the complete funding package, to the City prior to funding the City's loan(s). Escrow must provide the Funding Package of all executed documents 48 hours prior to Release of City Funds - (further details located at C-1/Funding Package Compliance). If additional escrow conditions are required and once compliance of the Lenders Instructions has been adhered to, funds will be

wired 72 hours from the date and time of receipt and review of the last funding condition required to fund all City loans.

### **XXXII. Subordinate Financing**

No financing subordinate to the City's loan may have a balloon, deferred, or negative amortization payment prior to 30 years. Fees and/or charges for subordinate financing shall be consistent with industry standards.

### **XXXIII. Insurance Requirements**

The City will require the applicant to obtain title insurance for each City loan, which includes the amount of the City loan, at close of escrow. Fire Insurance (and flood insurance if the property is located in a FEMA designated Special Flood Hazard Area) requirements are as follows:

1. Applicants must maintain insurance on the property in an amount at least equal to the replacement value of the improvements; and
2. The City must be named as an additional loss payee on the policy.

### **XXXIV. Refinance of First Loan**

All homes must be "owner occupied" for the life of the loan and "cash-out" refinances of your first mortgage are allowed only when the total combined liens are less than or equal to 90% of the fair market value at the time of proposed refinance. In addition, the City will subordinate its loan to "cash-out" refinances no more than once every five years. The City may impose a processing fee for subordinating City second mortgages to a new first mortgage. Applicant's experiencing a hardship or seeking an amendment to any portion of the terms of their loan must contact the Housing Department and obtain prior approval.

**Note:**, Borrowers seeking a refinance of their first loan must obtain the City's prior written approval to subordinate a WelcomeHOME program loan to a new senior mortgage.

### **XXXV. Assumption Policies**

City loans are assumable by another income-qualifying homebuyer.

**Exception:** WelcomeHOME second mortgages are not assumable.

### **XXXVI. Loan Monitoring**

The City will monitor homebuyers and their homes to ensure adherence to the program requirements including, but not limited to, the following:

1. Owner-occupancy: annual certification
2. Property tax payment
3. Insurance coverage
4. Good standing on first mortgage loan

### **XXXVII. Conditions of All City Loan Repayment/Security/Default**

All City loans are separately secured by a junior deed of trust and the interest and principal payments are deferred for the terms of the loans. All City loans are due payable at the earlier of the following events:

1. Transfer of title (exceptions in certain hardship cases) and sale of residence
2. Property ceases to be continuously occupied by the homeowner.
3. Upon formal filing and recording of Notice of Default (unless rescinded)
4. Thirty (30) or forty-five (45) years from the date of the Note depending on the loan's maturity date.
5. The CalHOME & BEGIN Program loan maturity dates.

**NOTE:** Extending/modifying the loan may be possible if the payment causes hardship to the applicant.

## Appendix 1-Current Limits

### 2010 Income Limits for Santa Clara County

California Department of Housing and Community Development Income Limits can be found at: <http://www.hcd.ca.gov/hpd/hrc/rep/state/inc2k10.pdf>

#### **120% (Moderate-Income) of Area Median Income is:**

1 person	\$ 87,000
2 persons	\$ 99,450
3 persons	\$ 111,850
4 persons	\$ 124,300
5 persons	\$ 134,250
6 persons	\$ 144,200

#### **80% (Low-Income) of Area Median Income is:**

1 person	\$ 55,550
2 persons	\$ 63,500
3 persons	\$ 71,450
4 persons	\$ 79,350
5 persons	\$ 85,700
6 persons	\$ 92,050

#### **Affordable Housing Cost Limit: (Moderate-Income Programs)**

Studio	\$ 2,326
1 bdrm	\$ 2,657
2 bdrm	\$ 2,990
3 bdrm	\$ 3,321
4 bdrm	\$ 3,587

#### **95% of Average Area Purchase Price:**

Condominiums:	\$641,250
Townhomes:	\$641,250
Single-Family Detached	\$641,250

#### **100% of Average Area Purchase Price:**

Condominiums:	\$675,000
Townhomes:	\$675,000
Single-Family Detached	\$675,000

## Appendix 2

### City of San José Loan Application Review/Funding Process

#### Method of Delivery:

City staff will accept and review completed applications that are submitted by regular postal and overnight mail, dropped off in-person, and, with prior approval, via fax from the lender. All required attachments noted on the loan application checklist are necessary for City staff to fully review and determine program eligibility.

#### City Review Timelines:

All City loan applications are processed on a first-come, first-serve basis. In general, City staff will complete a file review and determine eligibility within eight to ten business days from the date a completed application is received. In the event that an applicant chooses to change lenders or properties, after the initial submittal, a new application package must be resubmitted to the City and the applicant must allow up to ten business days for City review. Incomplete applications, including any missing attachments, will not be processed.

If a City loan application is cancelled or denied for any reason, the lender will be notified within forty-eight hours, of the decision, by City staff. A formal notification letter will be sent to the applicant within 30 days.

Upon City loan approval, the City may require up to an additional six business days for preparation of loan documents and funding.

For additional or current information, please refer to the Housing Department's website.

If the City exhausts its funds for either the THP or FSHP programs, City staff will advise the participating lenders via email and post a message on the [www.sjhousing.org](http://www.sjhousing.org) website. The availability of the equity-share and BEGIN programs is monitored by developers' sales offices and City staff. Furthermore, developers' sales offices are responsible for treating City assisted buyers in the same manner as they serve other homebuyers.

#### Escrow:

Within three days of receipt of the City loan documents, the escrow officer must acknowledge and sign the City instructions and return the signed identified loan documents back to the City prior to closing.

Upon receipt of the executed City loan documents, staff will review for completeness and accuracy. If discrepancies are noted, City staff will request the escrow officer or lender to correct any deficiencies prior to funding and/or closing.

## **Appendix 3**

### **Disclaimer**

These General Underwriting Guidelines are designed to provide lenders and prospective City loan applicants with a general overview of City loan processes, procedures, and loan qualification guidelines. Each City of San José loan program is unique and the specific guidelines for each program and funding source are described in the City's Program handbooks and/or project loan summary sheets. In the absence of additional materials, specific project eligibility requirements, or in the event of a conflict or discrepancy, the provisions contained in these Guidelines shall prevail.

Each program is funded by a distinct funding source, and each source of funds is regulated by either State, Local, and/or Federal housing laws. In instances of discrepancies or conflicts between these Guidelines and any applicable law, the applicable law shall prevail.