

**DRAFT**

ORDINANCE NO.

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JOSE AMENDING VARIOUS SECTIONS OF CHAPTER 14.33 OF TITLE 14 OF THE SAN JOSE MUNICIPAL CODE TO LIMIT THE APPLICATION OF THE EVERGREEN-EAST HILLS TRAFFIC IMPACT FEE TO PROJECTS THAT RECEIVED AN APPROVED ENTITLEMENT (GENERAL PLAN AMENDMENT AND/OR ZONING AMENDMENT) AND/OR A LAND USE PERMIT FROM THE EFFECTIVE DATE OF CHAPTER 14.33 TO THE EFFECTIVE DATE OF THIS ORDINANCE, MAKING THE TRAFFIC IMPACT FEE INAPPLICABLE TO EVERGREEN-EAST HILLS DEVELOPMENT PROJECTS AFTER THE EFFECTIVE DATE OF THIS ORDINANCE, AND ACCEPTING THE SEPTEMBER 2023 REVISED TRAFFIC IMPACT STUDY**

**WHEREAS**, on December 16, 2008, the Council adopted Ordinance No. 28473 establishing a mitigation fee to offset the impacts on traffic from new residential development within the boundaries of and subject to the Evergreen-East Hills Development Policy (hereinafter “Fee Ordinance”), as identified in the Evergreen-East Hills Development Policy adopted by the City Council on December 16, 2008, by Resolution No. 74741 (hereinafter “Policy”); and

**WHEREAS**, the City prepared a study entitled “Nexus Study for the Evergreen East Hills Vision Strategy” dated November 2006, and accepted by the City Council on December 5, 2006 (hereinafter “Evergreen Traffic Impact Fee Plan”), which specifies the traffic improvements required to serve future development subject to and consistent with the Policy, and recommends the amount of the impact fee on residential pool units subject to the Policy; and

**WHEREAS**, the Evergreen Traffic Impact Fee Plan and the Fee Ordinance have been amended from time to time; and

**WHEREAS**, the environmental impacts of this project were addressed by the following Final Environmental Impact Reports: Envision San José 2040 General Plan Final EIR, adopted by City Council Resolution No. 76041 on November 1, 2011, and addenda thereto; Evergreen-East Hills Vision Strategy Project Final Environmental Impact Report adopted by City Council Resolution No. 73570 on December 12, 2006; and the Final Supplemental Environmental Impact Report (“SEIR”) for the Updated Evergreen-East Hills Area Development Policy, adopted by City Council Resolution No. 74742 on December 16, 2008, and addenda thereto; and

**WHEREAS**, prior to making its determination on this ordinance, the Council adopted Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 2023, adopting an addendum to the SEIR or this amendment of the Fee Ordinance; and

**WHEREAS**, the Council found that the Project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that a lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but there are no substantial changes in the project or new information of substantial importance which would require major revisions of the previous EIRs due to the occurrence of new significant impacts and/or a substantial increase in the severity of previously identified significant effects; and

**WHEREAS**, the Evergreen Traffic Impact Fee established in the Fee Ordinance is subject to the applicable provisions of California Government Code section 66000 *et seq.*, commonly referred to as the “Mitigation Fee Act;” and

**WHEREAS**, the amendments to the Fee Ordinance herein make no change to the amount of the impact fee; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, this Council finds this ordinance consistent with actions described as part of the General Plan Four-Year Review in the Addendum to the Envision San Jose 2040 General Plan Final Environmental Impact Report and Supplemental Environmental Impact Report, as addended, adopted by the City Council on November 16, 2021 (Resolution No. 80300);

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The Council hereby accepts the September 2023 traffic impact nexus study entitled “Revised Evergreen-East Hills Development Policy Nexus Study Update” as the basis for the update and changes to the transportation improvements funded by the traffic impact fee in San Jose Municipal Code Chapter 14.33.

SECTION 2. Chapter 14.30 of Title 14 of the San José Municipal Code is hereby amended as follows:

**Chapter 14.33**  
**EVERGREEN-EAST HILLS DEVELOPMENT POLICY**  
**TRAFFIC IMPACT FEE REQUIREMENT**

**14.33.010 Purpose and findings**

On December 16, 2008, the city council adopted the November 2008 Evergreen-East Hills Development Policy accommodating the intensification of office, residential, and commercial development in the Evergreen-East Hills Development Policy area boundaries. The potential intensification of residential, commercial, and office development in the policy area will allow for the development of up to an additional five hundred residential units, five hundred thousand square feet of commercial retail, and seventy-five thousand square feet of office development in the Evergreen-East Hills

Development Policy area. The Evergreen-East Hills Development Policy specifies required transportation improvements to mitigate the impacts from the intensification of residential, commercial, and office development in the policy area. It is the intent and purpose of the city council in adopting this chapter by Ordinance No. 28473 to provide in part for the traffic improvements required as a result of the adoption of the November 2008 Evergreen-East Hills Development Policy through the adoption of an Evergreen-East Hills Traffic Impact Fee to be charged to all new residential, commercial, and office development subject to the policy in the manner specified in the November 2008 Evergreen-East Hills Traffic Impact Fee Analysis accepted by the city council on December 16, 2008.

Since the adoption of the Traffic Impact Fee, development in the Policy area has reached full or near full capacity of the Evergreen-East Hills Development Policy and the development capacity evaluated in the EIR and the November 2008 Evergreen-East Hills Traffic Impact Fee Analysis. On [REDACTED], the council adopted Resolution No. [REDACTED] amending the Evergreen Development Policy further to limit the application of the Policy to only those projects in the Policy area that received approved land use entitlements and/or land use permits prior to the effective date of Resolution No. [REDACTED]. The intent and purpose of the City Council in adopting amendments to this Chapter is to also limit the application of this Chapter to those projects in the Evergreen Development Policy area that received approved land use entitlements and/or land use permits prior to the effective date of Resolution No. [REDACTED].

#### **14.33.020 Definitions**

The definitions set forth in this section shall govern the application and interpretation of this chapter:

- A. "Commercial" means any use of land specified as a commercial use in Title 20 of this code.
- B. "Evergreen-East Hills Development Policy area" means the land within the city's urban service area boundary, south of Story Road, east of U.S. Highway 101, and the area generally north of the intersection of U.S. Highway 101 and Hellyer Avenue where the northern boundary of the Edenvale Development Policy Area ends, as specified and depicted in the Evergreen-East Hills Development Policy adopted by the city council on December 16, 2008, and as amended on [REDACTED], 2023, and in the supplement to the environmental impact certified by the planning commission on December 3, 2008, and the Addendum to the Envision San Jose 2040 General Plan Final Environmental Impact Report and Supplemental Environmental Impact Report, and addenda thereto, adopted by City Council on November 16, 2021, by Resolution No. 80300, and on [REDACTED], 2023, by Resolution No. [REDACTED]. The Evergreen-East Hills Development Policy and amendments thereto, the final environmental impact report certified on December 12, 2006, by Resolution No. 73570, ~~and~~ the supplement to the environmental impact report, and the Addenda to the Envision San Jose 2040 General Plan Final Environmental Impact Report and Supplemental Environmental Impact Report, are maintained for public review in the office of the planning division of the department of planning, building and code enforcement.
- C. "Evergreen-East Hills Development Policy" is the policy adopted by Resolution No. 74741 of the council on December 16, 2008, entitled the "December 2008 Evergreen-East Hills Development Policy" in order to accommodate the intensification of office, residential, and commercial development within the Evergreen- East Hills area, including amendments thereto.

- D. "Evergreen-East Hills Traffic Impact Fee" means the fee adopted by the city council pursuant to this chapter.
- E. "Evergreen-East Hills Traffic Impact Fee Analysis" is the fee study entitled, Evergreen- East Hills Traffic Impact Fee Analysis, dated November 2008, as revised in December 2020, and further revised in September 2023, by the Revised Evergreen-East Hills Development Policy Nexus Study Update and accepted by the city council on [REDACTED], 2023, to support the amendment to the Evergreen-East Hills Development Policy to limit the application of both the Policy and this chapter to those projects in the Evergreen-East Hills Development Policy area that received approved land use entitlements and/or land use permits prior to the effective date of Resolution No. [REDACTED] and to change the schedule of transportation improvements to which the fee will apply while providing substantially similar transportation mitigation. The Evergreen-East Hills Traffic Impact Fee Impact Analysis and—is maintained for public review in the transportation, planning and project delivery division of the department of transportation.
- F. "Office" means any use of land specified as an office use in Title 20 of this code.
- G. "Residential" means any use of land specified as a residential use in Title 20 of this code.

#### **14.33.030 Application of chapter**

- A. This chapter establishes the requirements for the Evergreen-East Hills traffic impact fee for all residential, commercial, and office development that contributes trips within the Evergreen-East Hills area and draws from either the residential, commercial, or office development pool approved through the Evergreen-East

Hills Development Policy occurring after the effective date of this chapter, March 15, 2009, that:

1. Received approved land use entitlements, including any general plan amendment and zoning amendment, and/or land use permits on or after the effective date of this chapter, February 13, 2009, and prior to the effective date of Resolution No. 805050 on May 17, 2022, limiting the application of this Chapter to such projects; and
2. Any subsequent amendment or adjustments to the entitlements and/or land use permits specified in Section 14.33.030.A.

B. The Evergreen-East Hills Traffic Impact Fee is limited to providing funding in the amounts and for those improvements specified in the Evergreen-East Hills Traffic Impact Fee Aanalysis as revised.

C. Nothing in this chapter shall restrict the ability of the city to require dedication of land, payment of fees, or construction of improvements for needs other than, or in addition to, the improvements specified in the Evergreen-East Hills Traffic Impact Fee Aanalysis.

#### **14.33.040 Traffic impact fee requirement**

A. Prior to the issuance of building permit for office, commercial, or residential development within the Evergreen-East Hills Development Policy area that draws from the residential, commercial, or office development pool approved through the Evergreen-East Hills Development Policy, the Evergreen-East Hills traffic impact fee shall be paid subject to section 14.33.030 herein in the following amount based upon the use of land:

<i>Land Use</i>	<i>Fee</i>
Residential:	\$13,214 per dwelling unit
Commercial:	\$11.49 per square foot
Office:	\$11.49 per square foot

The Evergreen-East Hills traffic impact fee specified in Subsection B. above shall be increased by the Engineering News-Record (ENR) Construction Cost Index for San Francisco urban area, published by the McGraw Hill, on January 1 of every year.

- C. No building permit shall be issued for office, commercial, or residential development in the Evergreen-East Hills Development Policy area where development draws from the residential, commercial, or office development pool approved through the Evergreen-East Hills Development Policy, unless and until the Evergreen-East Hills traffic impact fee has been paid in full.

#### **14.33.050 Accounting of Evergreen-East Hills traffic impact fees**

All Evergreen-East Hills traffic impact fees shall be deposited into the designated Evergreen-East Hills traffic impact fee fund. The Evergreen-East Hills impact fee fund, including accrued interest, shall be subject to all the applicable provisions of Government Code Section 66000 et seq., including but not limited to the requirements for accounting, reporting and expenditure of the fund for the improvements specified in the Evergreen-East Hills traffic impact fee analysis.

#### **14.33.060 Expiration of Evergreen-East Hills traffic impact fees**

All Evergreen-East Hills traffic impact fees shall be collected until the improvements specified in the Evergreen-East Hills traffic impact fee analysis are fully funded and



constructed and/or all development subject to the fee has paid the traffic impact fee. In the event that public funds are advanced to accelerate the construction of the improvements specified in the Evergreen-East Hills traffic impact fee analysis, the Evergreen-East Hills traffic impact fees shall be collected until all advanced city funding is fully reimbursed to the city.

PASSED FOR PUBLICATION of title this \_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk