



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Rosalynn Hughey

SUBJECT: SEE BELOW

DATE: November 20, 2023

Approved

Date

11/30/23

SUBJECT: AFFORDABLE HOUSING IMPACT FEE AND COMMERCIAL LINKAGE FEE FISCAL YEAR 2022-2023 ANNUAL REPORT

RECOMMENDATION

Accept the Fiscal Year 2022-2023 Annual Report prepared in accordance with the Mitigation Fee Act (California Government Code section 66000 et seq.) on the status and expenditure plans for the City's Affordable Housing Impact Fee and Commercial Linkage Fee.

SUMMARY AND OUTCOME

Accepting staff recommendation with the Annual Report of required information will allow the City of San José to continue to use Affordable Housing Impact Fees (AHIF) and Commercial Linkage Fees (CLF) to fund affordable housing developments.

BACKGROUND

The Mitigation Fee Act

California's Mitigation Fee Act requires public agencies to account for and make specific findings regarding mitigation fees collected by an agency as a condition of development approval. The Mitigation Fee Act regulates how public agencies may establish, collect, maintain, and spend impact fees imposed on developers. The Mitigation Fee Act also requires that the local or lead agency review and make available to the public an annual report that accounts for the mitigation fees held by the agency. The City is required to make available to the public an annual report within 180 days after the last day of each fiscal year.¹ In accordance with this requirement, staff presents the Annual Impact Fee Report for the fiscal year ending June 30,

¹ California Government Code Section 66006(b)(1).

2023 for the AHIF and CLF. See **Attachment A** - Affordable Housing Impact Fee 2022-2023 Annual Report and **Attachment B** - Commercial Linkage Fee 2022-2023 Annual Report.

AHIF

On November 18, 2014, the City Council adopted a AHIF resolution establishing the AHIF program. Under AHIF, developers of new rental housing developments of three to 19² apartments with applications for first approval completed before June 29, 2021 were required to pay an impact fee per net rentable square foot. Revenue from AHIF must be used to increase the supply of affordable housing for extremely low-, very low-, low-, and moderate-income households. This included acquisition, financing, construction, and development of residential units and any necessary and reasonable costs for administering the AHIF fund. The AHIF resolution included an expenditure plan that plan provided a list of proposed affordable housing projects as examples of the types of rental housing developments that could be funded with AHIF revenues. The City's 2014 expenditure plan suggested that the City would focus on funding moderate-income affordable for-sale units (households earning 80% to 120% of the area median income). The plan has been updated in the subsequent annual reports to include projects with **both** moderate-income rental and for-sale units, as moderate-income rental units are increasingly common in affordable projects due to changes in the federal tax credit rules.

As required by law, the AHIF is segregated from the General Fund and accounted for in special revenue funds that earn interest. These funds, including interest, must be held for the purpose for which the fees are collected (Section 66001).³ Through fiscal year 2020-2021, the revenues from the AHIF were held in a reserve in an internal tracking fund within the Multi-Source Housing Fund. Starting in fiscal year 2021-2022, the AHIF fund is a separate individual fund.

On February 23, 2021, the Inclusionary Housing Ordinance was amended to lower the minimum threshold for the ordinance to apply to new residential developments of 10 or more units, which was lowered from the previous threshold of 20 or more units (Ordinance No. 30538). As part of City Council action, the direction included having staff return to City Council with a resolution to sunset the AHIF program. These amendments included the same provision as the AHIF, which applies to new developments of 10 or more units. On June 29, 2021, City Council passed Resolution No. 80149 suspending AHIF for new projects. Pursuant to this resolution, AHIF was suspended for new residential development projects that submitted applications for first approval on or after June 29, 2021.

² <https://www.sanjoseca.gov/home/showpublisheddocument/69450/637491533154630000>

³ Unless otherwise specified, all references are to the California Government Code.

CLF

The CLF was adopted on September 22, 2020. A nexus study by Keyser Marston Associates was published in July 2020 that set forth the nexus, or link, between new non-residential development and the need for affordable housing generated by that new development and also determined the maximum fee amounts per square foot of new non-residential development that could be charged by the City. A feasibility study was also performed in connection with the CLF adoption, to inform the City Council if the fee would be viable in various areas of the City and at what amounts.

The City Council established the CLF through adoption of Ordinance No. 30475 on September 22, 2020,⁴ and was further amended by Ordinance No. 30744⁵ on April 12, 2022. The CLF is a one-time impact fee that applies to new non-residential developments in the City. This fee is paid by developers and is collected by the City to fund the development of affordable housing for households with extremely low-, very low-, low-, and moderate-incomes. The collected funds are used to supplement other public funding sources to facilitate the development of affordable housing units within the City. The ordinance can be found in Chapter 5.11 of the San José Municipal Code, which contains all the relevant information and guidelines related to the CLF.

On March 29, 2022, City Council adopted Resolution No. 80439, which replaced the original CLF fee resolution adopted in 2020. This new resolution establishes a schedule of fees and credits that apply when affordable housing units are provided. The resolution also set out the fee amounts for different types of non-residential developments and provided a credit system for developers who provide affordable housing units in their projects. The City is committed to utilizing these funds to provide affordable housing opportunities for residents with extremely low-, very low-, low-, and moderate-incomes.

ANALYSIS

The City's AHIF and CLF programs are consistent with the State's Mitigation Fee Act.

AHIF

The AHIF program has collected \$26,165,155 in fee revenue and interest for the duration of the program. A total of \$13,373,101 in AHIF fees have been committed to the development of new affordable housing and \$8,104,000 has been dispersed. The \$4,688,054 balance is available for committing to future affordable housing projects.

⁴<https://records.sanjoseca.gov/Ordinances/ORD30744.pdf>

⁵ <https://records.sanjoseca.gov/Ordinances/ORD30744.pdf>

CLF

The CLF program has collected \$920,000 in fee revenue for the duration of the program. Over the past 12 months, \$250,000 has been collected. None of the funds have been allocated towards financing new residential developments. The City has been working towards improving the program's implementation and ensuring that the collected fees are used towards the intended purposes.

EVALUATION AND FOLLOW-UP

This item will be reported annually to the City Council. The next report (fiscal year 2023-2024) will be presented to City Council in fall 2024.

COORDINATION

This report has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

PUBLIC OUTREACH

California Government Code Section 66006 includes a minimum 15-day requirement to make the information in the report available to the public before a public meeting is held. This report will be made available to the public at the following location: Housing Department lobby, 200 E. Santa Clara Street, 12th floor, during business hours from November 28, 2023 until December 12, 2023 This memorandum and attached reports will be posted on the City's Council Agenda website for the December 12, 2023 City Council meeting.

COMMISSION RECOMMENDATION AND INPUT

No commission recommendation or input is associated with this action.

CEQA

Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action.

HONORABLE MAYOR AND CITY COUNCIL

November 20, 2023

Subject: Affordable Housing Impact Fee and Commercial Linkage Fee Fiscal Year 2022-2023 Annual Report

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PUBLIC SUBSIDY REPORTING

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

/s/

ROSALYNN HUGHEY
Deputy City Manager and
Acting Housing Director

The principal author of this memorandum is Darius Brown, Senior Development Officer. For questions, please contact Ragan Henninger, Deputy Director at ragan.henninger@sanjoseca.gov.

ATTACHMENTS:

- **Attachment A:** Affordable Housing Impact Fee 2022-2023 Annual Report
- **Attachment B:** Commercial Linkage Fee 2022-2023 Annual Report

Attachment A
Affordable Housing Impact Fee 2022-2023 Annual Report

Annual Report

In accordance with California Government Code Section 66006(b)(1), the requirements for Fiscal Year (FY) 2022-2023 Annual Report are as follows:

A. A Brief Description of the Type of Fee in the Account or Fund

The City adopted the Affordable Housing Impact Fee (AHIF) to address the increased need for affordable housing connected with the development of new market-rate residential rental units. A nexus study prepared by Keyser Marston Associates established a reasonable relationship between the need for affordable housing and new, market-rate rental residential development. New market-rate residential rental development leads to a net increase in new residents, and the increase in goods and services required by these new residents leads to an increase in job creation in the City. These jobs include service and retail sector jobs (e.g., teachers, restaurant workers, pet care workers, maintenance workers, etc.) Workers employed in these lower wage jobs find it challenging to obtain market-rate housing. This results in an increase in the need for new housing affordable to extremely low-, very low-, low-, and moderate-income households, which the AHIF will be used to provide. Additionally, the City's General Plan includes goals and the provision of affordable moderate-income housing. This may include either moderate-income rental housing or purchase assistance programs for first-time homebuyers.

B. The Amount of the Fee

The initial fee at its adoption was \$17 per each livable square foot of rentable space built within the residential development. Each year the AHIF per square foot increased by 2.4% on July 1. The AHIF, during the fiscal 2021-2022 reporting period, was \$19.15 per square foot. The FY 2022-2023 fee was \$19.61 per square foot. The AHIF was not increased for the 2023-2024 FY due to the suspension of the AHIF program on June 29, 2021¹. Table 1 summarizes the AHIF rate schedule since its adoption.

Table 1 – AHIF Rate Schedule

| AHIF | Fiscal Year | AHIF per Sq. Ft |
|-----------------------------|------------------------------|------------------------|
| Initial fee | July 1, 2016 - June 30, 2017 | \$17.00 |
| Fee from prior period | July 1, 2021 - June 30, 2022 | \$19.15 |
| Fee during reporting period | July 1, 2022 - June 30, 2023 | \$19.61 |
| Final fee | July 1, 2022 - June 30, 2023 | \$19.61 |

C. The beginning and ending balance of the account or fund

On July 1, 2022, the AHIF fund balance totaled: \$14,358,756. On June 30, 2023, the AHIF fund balance totaled: \$13,215,392.

¹ AHIF was active until the end of the COVID-19 emergency proclamation.

D. The amount of the fees collected and interest earned

Table 2 summarizes the projects that have made AHIF payments and/or were subject to the AHIF ordinance since its adoption. A full accounting of fees collected is included in **Exhibit A**– City’s Affordable Housing Impact Fee Account Summary.

Table 2 – AHIF Payment

| Fiscal Year | Project | Date of payment received | Impact Fee Paid | Interest Earned | Monitoring/ Processing Fee | Total |
|------------------------------|------------------------------------|---------------------------------|------------------------|------------------------|-----------------------------------|---------------------|
| 2016-2017 | Ohlone Block B | December 2017 | \$0 | \$0 | \$3,200 | \$3,200 |
| 2017-2018 | Holden SJ | August 2018 | \$229,586 | \$2,260 | \$203,160 | \$435,006 |
| 2018-2019 | Holden SJ | August 2018 | \$1,410,406 | \$34,845 | \$33,800 | \$1,479,051 |
| 2019-2020 | 7th & Empire | July 2019 | \$1,522,318 | \$88,029 | \$10,266 | \$9,732,725 |
| | 2898 Joseph Ave | December 2019 | \$113,942 | | | |
| | Hanover Diridon | December 2019 | \$3,606,112 | | | |
| | Sparta Student | February 2020 | \$1,177,587 | | | |
| | Firestone 477 Market St | March 2020 | \$1,392,069 | | | |
| | Holden of SJ II 1015 Bascom | June 2020 | \$736,462 | | | |
| | Belmont Village 1015 Bascom | June 2020 | \$1,085,940 | | | |
| 2020-2021 | Morningstar | June 2021 | \$789,869 | \$162,977 | \$3,042 | \$1,063,376 |
| | 4094 Hamilton Ave | May 2021 | \$107,488 | | | |
| 2021-2022 | Gateway Station | April 2022 | \$8,830,505 | \$128,967 | \$0 | \$8,959,472 |
| 2022-2023 | Oakmont of Evergreen | September 2022 | \$801,313 | \$255,340 | \$0 | \$4,492,325 |
| | Santana Row Lot 12 | January 2023 | \$3,435,672 | | | |
| Current Total Balance | | | \$25,239,269 | \$672,418 | \$253,468 | \$26,165,155 |

E. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees

Table 3 lists the developments that received an allocation or commitment of AHIF funds for the acquisition, financing, construction, and development of new affordable housing. The Gallup Mesa affordable housing development received a funding commitment of \$500,000 in FY 2019-2020. In FY 2021-2022, the City approved a loan commitment allocating \$2,200,000 in AHIF funds for 101 South Jackson. 4th and Reed development received a funding commitment of \$250,000 in FY 2020-2021. The Kelsey Ayer Station received a funding commitment of \$5,400,000 in AHIF funds in FY 2021-2022. Additionally, on January 31, 2023, the City Council made a funding commitment to the Parkmoor Community Apartments for \$5,023,101 of AHIF funds. **Table C** provides additional details related to these affordable developments.

Table 3 – AHIF Disbursements

| Development | Amount Committed | Total Development Cost | Percentage of Development Funded | Date of City Council Commitment |
|------------------------------------|-------------------------|-------------------------------|---|--|
| Gallup Mesa | \$500,000 | \$34,589,840 | 1.4% | June 16, 2020 |
| 101 S Jackson For-Sale Development | \$2,200,000 | \$12,692,818 | 17.3% | June 18, 2020 |
| 4 th & Reed | \$250,000 | \$2,975,483 | 8.4% | March 21, 2021 |
| The Kelsey Ayer Station | \$5,400,000 | \$72,848,435 | 7.4% | May 4, 2021 |
| Parkmoor Community Apartments | \$5,023,101 | \$78,945,193 | 6.3% | January 31, 2023 |
| Total Committed | \$13,373,101 | \$202,051,769 | | |

F. An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

Table 4 summarizes construction timelines. Gallup Mesa is constructed and currently occupied. Parkmoor Community Apartments closed construction financing on November 9, 2023 and plans to begin construction in December 2023. Habitat for Humanity expects to begin construction on the 101 South Jackson for-sale development in the coming months and plans to complete construction in summer 2024. The Kelsey Ayer Station started construction in summer 2022 and anticipates completing construction by spring 2024.

Table 4 – AHIF Construction Timelines

| Development | Amount Disbursed | Last Disbursement Date | Construction Start | Estimated Construction Completion |
|---|-------------------------|-------------------------------|---------------------------|--|
| Gallup Mesa | \$500,000 | August 30, 2023 | Spring 2021 | Complete (Fall 2023) |
| Parkmoor Community Apartments | \$0 | TBD | December 2023 | Summer 2026 |
| 101 S Jackson For-Sale Development | \$2,200,000 | September 22, 2020 | Summer 2024 | Spring 2026 |
| The Kelsey Ayer Station | \$5,400,000 | March 29, 2023 | Summer 2022 | Spring 2024 |

G. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

In FY 2022-2023, no fees were transferred, and no loans have been made from the AHIF fund.

H. The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

In FY 2022-2023, no refunds were made from the AHIF fund.

Exhibit A
City's Affordable Housing Impact Fee Account Summary

Table 1 – Payments Received

| AHIF Account | FY17 | FY18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | Total |
|-----------------------------------|----------------|------------------|--------------------|--------------------|------------------|--------------------|--------------------|---------------------|
| AHIF Pipeline Annual Fee | | \$59,160 | \$17,000 | \$10,266 | -- | -- | -- | \$86,426 |
| AHIF Pipeline Application Fee | | \$144,000 | \$16,000 | -- | -- | -- | -- | \$160,000 |
| Affordable Housing Compliance Fee | \$3,200 | | -- | -- | \$3,042 | -- | -- | \$6,242 |
| AHIF | | \$229,586 | \$1,410,406 | \$9,634,433 | \$ 897,357 | \$8,830,505 | \$4,236,986 | \$25,239,273 |
| AHIF Admin Fee | | | \$800 | -- | -- | -- | -- | \$800 |
| Total | \$3,200 | \$432,746 | \$1,444,206 | \$9,644,699 | \$900,399 | \$8,830,505 | \$4,236,986 | \$25,492,741 |

Table 2 – Interest and Expenditures

| | FY 17 | FY 18 | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 |
|--------------------------|--------------|--------------|--------------|--------------|--------------|---------------|---------------|
| Beginning Balance | | \$3,200 | \$438,206 | \$1,813,643 | \$11,373,941 | \$12,426,974 | \$14,358,756 |
| Revenue | \$3,200 | \$432,746 | \$1,444,206 | \$9,644,698 | \$900,398 | \$8,830,505 | \$4,236,985 |
| Interest Earned | | \$2,260 | \$38,844 | \$88,029 | \$162,978 | \$128,968 | \$255,340 |
| Expenditures | | | (\$103,613) | (\$172,430) | (\$10,345) | (\$7,027,692) | (\$5,635,690) |
| Ending Balance | \$3,200 | \$438,206 | \$1,813,643 | \$11,373,941 | \$12,426,974 | \$14,358,756 | \$13,215,392 |

**Attachment B
Commercial Linkage Fee 2022-2023 Annual Report**

Annual Report

In accordance with California Government Code Section 66006(b)(1), the requirements for Fiscal Year (FY) 2022-2023 Annual Report are as follows:

A. A brief description of the type of fee in the account or fund

The Commercial Linkage Fee (CLF) is an impact fee levied on commercial development for the provision of affordable housing. The City adopted the CLF to address the increased need for affordable housing connected with the development of new market-rate residential rental units. CLF funds are used to facilitate development of affordable housing for extremely low-, very low-, low-, and moderate-income households within the City of San José by supplementing other public funding sources.

B. The amount of the fee

The initial fee at its adoption was \$15.79 per each square foot of office space, \$5.26 per each square foot of hotel space, \$3.16 per each square foot of industrial/research and development space, \$5.26 per each square foot of warehouse space, and \$6.32 per each square foot of residential care space. Table 1 summarizes the CLF rate schedule since its adoption.

Table 1 – CLF Rate Schedule

| CLF | Fiscal Year | CLF per Sq. Ft |
|-----------------------------|------------------------------|--|
| Initial fee | July 1, 2022 - June 30, 2023 | \$15.79 (office) \$5.26 (hotel) \$3.16 (I&R/ \$5.26(warehouse) \$6.32 (residential care) |
| Fee from prior period | July 1, 2021 - June 30, 2022 | N/A |
| Fee during reporting period | July 1, 2022 - June 30, 2023 | \$15.79 (office) \$5.26 (hotel) \$3.16 (I&R) \$5.26(warehouse) \$6.32 (residential care) |
| Current fee | July 1, 2023 - June 30, 2024 | \$17.44 (office) \$5.81 (hotel) \$3.49 (I&R) \$5.81(warehouse) \$6.98 (residential care) |

C. The beginning and ending balance of the account or fund

On July 1, 2022, the CLF account balance totaled \$680,515. On June 30, 2023, the CLF account balance totaled \$921,540.

D. The amount of the fees collected, and interest earned

Table 2 summarizes the projects that have made CLF payments and/or are subject to the CLF ordinance since its adoption. One project that made a CLF payment in FY 2021-2022 and one project that made its CLF payment in FY 2022-2023. A full accounting of fees collected is included in **Exhibit B – City’s Commercial Linkage Fee Account Summary**.

Table 2 – CLF Payment

| Fiscal Year | Project | Date of payment received | Impact Fee Paid | Interest Earned | Monitoring/ Processing Fee | Total |
|--------------------|-----------------------------------|---------------------------------|------------------------|------------------------|-----------------------------------|--------------|
| 2021-2022 | SRM SAN JOSE Senior Living | May 31, 2022 | \$679,852 | \$663 | -- | \$680,515 |
| 2022-2023 | KEYSTONE HOTEL | March 24, 2023 | \$218,853 | \$549 | -- | \$219,402 |
| | | | \$898,705 | \$1,212 | | \$899,917 |

E. An identification of each public improvement on which fees were expended and the amount of the expenditures on each improvement, including the total percentage of the cost of the public improvement that was funded with fees

In FY 2022-2023, the City did not approve any disbursements of CLF funds. There were no developments that received an allocation of CLF funds for the acquisition, financing, construction, or development of new affordable housing.

F. An identification of an approximate date by which the construction of the public improvement will commence if the local agency determines that sufficient funds have been collected to complete financing on an incomplete public improvement, as identified in paragraph (2) of subdivision (a) of Section 66001, and the public improvement remains incomplete.

No developments have been funded with CLF funds. There are currently no construction timelines to report.

G. A description of each interfund transfer or loan made from the account or fund, including the public improvement on which the transferred or loaned fees will be expended, and, in

the case of an interfund loan, the date on which the loan will be repaid, and the rate of interest that the account or fund will receive on the loan.

In FY 2022-2023, no fees were transferred and no loans have been made from the CLF account.

H. The amount of refunds made pursuant to subdivision (e) of Section 66001 and any allocations pursuant to subdivision (f) of Section 66001.

In FY 2022-2023, no refunds were made from the CLF account.

Exhibit B
City's Commercial Linkage Fee Account Summary

Table 1 – CLF Payments Received

| CLF Account | FY 22 | FY 23 | Total |
|--|------------------|------------------|------------------|
| Commercial Linkage Fee | \$679,852 | \$218,853 | \$898,705 |
| Commercial Linkage Fee Application Fee | -- | \$21,623 | \$21,623 |
| | | | |
| | | | |
| | | | |
| Total | \$679,852 | \$240,476 | \$920,328 |

Table 2 – Interest and Expenditures

| | FY 22 | FY 23 |
|-----------------------|------------------|------------------|
| Beginning Balance | \$0 | \$680,515 |
| Revenue | \$679,852 | \$240,476 |
| Interest Earned | \$663 | \$549 |
| Total Source | -- | -- |
| Expenditures | -- | -- |
| Ending Balance | \$680,515 | \$921,540 |