

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE AUTHORIZING A REDUCTION IN THE  
INCLUSIONARY HOUSING ORDINANCE IN LIEU FEES TO  
\$0 FOR SPECIFIED ELIGIBLE MULTIFAMILY PROJECTS  
THAT INCLUDE AT LEAST 5% OF UNITS ON THE  
DEVELOPMENT SITE MADE AVAILABLE AT AN  
AFFORDABLE RENT TO HOUSEHOLDS EARNING NO  
MORE THAN 100% OF AREA MEDIAN INCOME,  
PURSUANT TO THE TEMPORARY MULTIFAMILY  
HOUSING INCENTIVE PROGRAM**

**WHEREAS**, the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code (IHO) requires residential development projects (“Projects”), as defined therein, to provide for a period of ninety-nine (99) years 15% of the housing units on-site offered to income qualified buyers or renters at an Affordable Housing Cost or Affordable Rent as defined under Health and Safety Code sections 50052.5 and 50053; and

**WHEREAS**, the IHO additionally requires the execution and recording of a deed-restricted Inclusionary Housing Agreement memorializing a Project’s inclusionary housing obligations and regular monitoring to ensure compliance during the affordability term; and

**WHEREAS**, Section 5.08.520 of the IHO provides that a Residential Development can meet its inclusionary housing requirement by the payment of an in lieu fee calculated based on the rentable square footage that must be received before certificate of occupancy for the first market rate unit; and

**WHEREAS**, Subsection I. of 5.08.520 of the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code, authorizes the City to adopt a resolution reducing the in lieu fees; and

**WHEREAS**, on October 26, 2023, the City Council held a study session and received the latest report on the Cost of Residential Development (“Report”), which concluded that current economic conditions remain a significant barrier to the construction of new market rates and affordable housing within Downtown and citywide; and

**WHEREAS**, following the Report, Century Urban, the City’s consultant, provided a current high-level feasibility analysis, noting there has been no material improvement in key drivers of economic feasibility since publishing the Report and therefore no indication or evidence that the challenging residential development economics observed in the 2023 analysis have improved; and

**WHEREAS**, Chapter 14.10 of the San José Municipal Code sets “Minimum Labor Standards for a Private Construction Project Accepting a City Subsidy”, defining a subsidy to include any “reduction, permanent suspension or exemption of any fee or tax” that applies to single or multiple projects; and

**WHEREAS**, construction projects receiving a City subsidy are required to pay all workers employed on the construction prevailing wage rates, and are subject to other provisions such as requiring apprenticeships and local hire, among others; and

**WHEREAS**, there are exemptions to the definition of a subsidy that include the reduction of a fee or tax that is applied uniformly across all private construction projects within a specific subcategory of use, e.g., high-rise residential, when City Council determines, based on specified criteria, that construction of the projects is not financially feasible; and

**WHEREAS**, the City recognizes the importance of supporting multifamily residential development to complement job growth, catalyze transit usage, and foster vibrant retail environments; and

**WHEREAS**, based on the results of the analysis in the Report and the updated analysis regarding the lack of financial feasibility, Council desires to establish the Multifamily Housing Incentive Program to allow specified eligible multifamily residential projects listed under Attachment A, attached hereto, to meet its inclusionary housing obligation by the payment of \$0 in lieu fee if the eligible project provides at least 5% onsite residential units made available at an affordable rent to households earning no more than 100% of Area Median Income and otherwise meets the requirements of the IHO; and

**WHEREAS**, the Multifamily Housing Incentive Program excludes projects otherwise eligible under the Program that have approvals under Title 20 of the San José Municipal Code (“Zoning Code”), unless the Project obtains an amendment pursuant to the provisions of the Multifamily Housing Incentive Program, Zoning Code, Inclusionary Housing Ordinance, and other applicable laws and guidelines; and

**WHEREAS**, eligible Projects may be amended and remain eligible under the Program if the complete the following: 1) submit a complete application(s) to the City to amend the Project approvals by December 31, 2025; 2) maintains a density of at least 50 density units per acre; 2) subsequently obtain a building permit eighteen (18) months after planning approval of the amended project; and 4) pass a first building inspection six (6) months after building permit issuance; and

**WHEREAS**, the Housing Director may approve an amendment to an existing Inclusionary Housing Ordinance Compliance Plan for projects listed in Attachment A consistent with the requirements of the Multifamily Housing Incentive Program; and

**WHEREAS**, the reductions of the in lieu fee are made based on the findings of the Memorandum, the Report, and the documents linked to the Memorandum;

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

- A. The above recitals are true and correct.
- B. The City Council hereby authorizes a reduction of the Inclusionary Housing Ordinance in lieu fee to \$0 to specified eligible multifamily residential projects under the Multifamily Housing Incentive Program listed under Attachment A to meet their inclusionary housing requirement if the eligible project provides at least 5% onsite residential units made available at an affordable rent to households earning no more than 100% of Area Median Income, and otherwise meets the requirements of the Inclusionary Housing Ordinance.
- C. The Housing Director may approve an amendment to an existing Inclusionary Housing Ordinance Compliance Plan for projects listed in Attachment A consistent with the requirements of the Multifamily Housing Incentive Program.
- D. The reduction of the Inclusionary Housing Ordinance in lieu fee to \$0 is excluded for Projects otherwise eligible under the Multifamily Housing Incentive Program that have existing approvals under Title 20 of the San José Municipal Code (“Zoning Code”), unless the Project obtains an amendment consistent with B. and C. above pursuant to the provisions of the Multifamily Housing Incentive Program, Zoning Code, Inclusionary Housing Ordinance, and other applicable laws and guidelines, and satisfies all the following:
  - 1. The Project maintains a density of at least 50 density units per acre;

2. The complete application(s) to amend the Project is submitted to the City by December 31, 2025;
3. The Project obtains a building permit eighteen (18) months after planning approval of the amended Project; and
4. The Project passes its first building inspection six (6) months after building permit issuance.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, MMC  
City Clerk

## ATTACHMENT A

### LIST OF ELIGIBLE MULTIFAMILY HOUSING PROJECTS

#### Market-Rate Projects

	Project Address	Developer	Last Entitlement Expiration	Units
1	498 West San Carlos	Urban Catalyst	12/14/2028	<del>278</del> 272
2	4300-4360 Stevens Creek	Fortbay/Perry Hariri	8/30/2028	407
3	14200 Union	Weingarten Investors	11/2/2028	305
4	1312 El Paseo de Saratoga/1177 Saratoga	Sand Hill Property	11/29/2029	772*
5	205 Dupont	Miramar Capital/Perry Hariri	5/4/2028	689
6	700 Saratoga	Avalon Bay Communities	3/17/2027	247
7	905 North Capitol	Hanover	6/29/2028	<del>345</del> 350
8	1298 Tripp; 1325/1347 E. Julian	ROYGBIV	11/29/2029	913
9	70 N. 27th	HC Investment LLC	5/31/2029	198
10	1530 W. San Carlos	Urban Villas LLC	6/28/2029	237
11	1520 W. San Carlos	Vivji Mani	7/12/2029	256
12	1050 Saint Elizabeth	Evershine XVII LP	4/19/2029	206
13	West San Carlos and Sunol	Republic Urban	5/4/2028	263
14	1065 S. Winchester	A&Z Development	10/25/2028	70
15	1073 S. Winchester	A&Z Development	8/25/2027	61
16	605 Blossom Hill	Republic Urban	8/9/2028	239
17	1197 Lick/Tamien Station	Republic Urban	12/9/2026	434
18	681 E. Trimble	Hannover Company	8/14/2028	<del>1318</del> 1146
19	210 Baypointe	Summerhill Homes	10/22/2028	292

\*Revised number of project units pending City Council approval.

**Total**     **~~7530~~7357**

#### Affordable Projects

	Project Address	Developer	Last Entitlement Expiration	Units
1	802 S. First	Maracor/Pacific West	10/12/2028	166
2	<del>124 N. 15<sup>th</sup></del> 2080 Almaden	<del>Santa Clara Housing Authority</del> Affirmed Housing Group	<del>9/2/2027</del> 10/6/2029	<del>403</del> 80
3	1371 Kooser	Affirmed Housing Group	8/24/2028	191
4	525 N. Capitol	Community Development Partners	9/1/2028	160
5	771-797 Almaden	Resources for Community Development	1/28/2028	99
6	675 E. Santa Clara St.	Housing Authority/Eden/Core	4/20/2028	<del>559</del> 178

7	<del>1135 E. Santa Clara</del> <u>605 Blossom Hill</u>	Green Republic Blossom Hill LLC	8/9/2028	89
8	70 Kentucky Place	Charities Housing	11/9/2029	55
9	501 Almaden	Satellite Housing	9/1/2028	53
10	1135 E. Santa Clara	Allied Housing	10/9/2026	91
11	2315 Canoas Garden	Sand Hill Property Co	1/10/2028	237
12	995 E. Santa Clara	First Community Housing	9/23/2028	74
13	2920/2928 Alum Rock	Charities Housing	9/1/2028	83
14	934-948 E. Santa Clara	Milestone Housing Group	8/8/2029	103
15	71 Vista Montana	Charities Housing	3/21/2029	446
<u>16</u>	<u>178 E. Trimble</u>	<u>Pacific Companies</u>	<u>8/14/2028</u>	<u>172</u>

**Total** **25092276**