



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Erik L. Soliván  
John Ristow  
Chris Burton

**SUBJECT:** See Below

**DATE:** April 29, 2025

Approved

Date:

5/1/2025

**COUNCIL DISTRICT:** Citywide

**SUBJECT:** Public Hearing for Amendments to the Multifamily Housing Incentive Program

## RECOMMENDATION

(a) Adopt a resolution:

- (1) Adding to the Multifamily Housing Incentive Program as adopted under Resolution No. RES2024-420 and further defined under Resolution No. RES2024-421, the specified multifamily housing projects formerly subject to the Affordable Housing Impact Fee Program.
- (2) Adding Santana Row Lot 12, a proposed multifamily housing development located at 358 Hatton Street.
- (3) Increasing the number of eligible units under the Multifamily Housing Incentive Program from 1,500 to 1,800 that may qualify for the period ending December 31, 2025.

(b) Approve an ordinance amending Sections 4.46.039.13 and 4.47.098 of the San José Municipal Code to increase the number of units from 1,500 to 1,800 that may qualify for a 50% reduction to the Commercial, Residential, Mobile Home Park tax and Building and Structure tax for developments that obtain a building permit before December 31, 2025, under the Multifamily Housing Incentive Program.

(c) Subject to a public subsidy hearing under the City of San José's Sunshine Policy and California Government Code Section 53083, authorize the Housing Director to refund the unused \$3,435,672 of previously paid Affordable Housing Impact Fees to Federal Realty, the developer of Santana Row Lot 12, located at 358 Hatton Street.

## **SUMMARY AND OUTCOME**

The Santana Row Lot 12 development at 358 Hatton Street (Development) holds an active entitlement that should have been included on the list of eligible projects in December 2024 as it meets the Multifamily Housing Incentive Program (MHIP) parameters.

If this Development is added to the MHIP eligible projects list, it would qualify for MHIP program benefits upon meeting the density, geography, and planning conditions set forth under MHIP. These benefits would include a refund of the previously paid Affordable Housing Impact Fee (AHIF) and a reduction in certain construction taxes. These incentives are intended to spur the Development's ability to obtain a building permit and begin construction.

Approval of the staff recommendation would also allow the Housing Director to initiate the process to refund of \$3,435,672 in unused AHIF payments to the developer, Federal Realty, which will catalyze the Development into construction. This process requires a public subsidy hearing currently scheduled for June 17, 2025. The proposed updated list of eligible projects under MHIP, including the aforementioned development, is provided in the Attachment to this memorandum.

## **BACKGROUND**

On December 10, 2024, City Council adopted the MHIP to incentivize housing development by reducing certain construction taxes and waiving the Inclusionary Housing Ordinance (IHO) in-lieu fee for qualifying projects. Specifically, MHIP provides, upon meeting eligibility criteria:

- A 50% reduction in the Commercial, Residential, Mobile Home Park tax and Building and Structure tax for the first 1,500 units permitted before December 31, 2025;
- A 25% reduction in the Building and Structure tax for projects permitted after the first 1,500 units or on/after January 1, 2026;
- An extension of the \$0 IHO in-lieu fee, which was previously limited to downtown high-rise developments; and
- A realignment of the park fees in North San José.

The Development submitted its planned development permit application in 2015 and was initially subject to the AHIF program requirements, which preceded the City's IHO program. Due to permit amendments, the Development received an entitlement extension and intends to obtain a building permit and break ground in 2025.

As part of City Council action in 2021, City Council directed staff to sunset the AHIF program,<sup>1</sup> replacing it with the IHO program. Subsequently, on June 29, 2021, City Council suspended AHIF requirements for new projects that submitted first approval applications on or after that date (June 29, 2021).<sup>2</sup>

### ***AHIF Program Overview***

The AHIF program was adopted through Resolution No. 77218 in November 2014 to create a funding mechanism for affordable housing in San José. The AHIF program applied to rental developments under the following conditions:

- 1) Developments that obtained a building permit before June 30, 2018; or
- 2) Developments that:
  - a) Received entitlements and paid planning applications fees before June 30, 2018;
  - b) Executed an Affordable Housing Compliance Plan with the Housing Department and paid administrative fees before June 30, 2018; and
  - c) Were issued a building permit before January 31, 2020.

The AHIF program history provides the basis for evaluating the Santana Row Lot 12 development's eligibility under MHIP.

### **ANALYSIS**

The City received an allocation of 62,200 units in its 6th Cycle Housing Element for the planning period from January 31, 2023, to January 31, 2031. While San José has seen some modest progress in producing affordable housing in recent years, overall housing production continues to fall short, particularly for multifamily market-rate units (i.e., above moderate income levels). In the calendar year 2024, no market-rate multifamily project over 20 units began construction.

### ***Application of AHIF and IHO to the Santana Row Lot 12 Development***

In December 2022, under the AHIF program requirements, Federal Realty, the Santana Row Lot 12 developer, paid \$3,435,672 in AHIF fees to the Housing Department. Although the Development was entitled before June 30, 2018 (the AHIF program cutoff date), the AHIF program was phased out and replaced by IHO beginning in 2018, with a transition period ending January 31, 2020. Because Federal Realty is seeking a refund of AHIF fees previously paid under a now-sunset program, the Development would no longer be subject to AHIF requirements. Instead, the Development would become

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<sup>1</sup> City San José Ordinance No. 30538: <https://records.sanjoseca.gov/Ordinances/ORD30538.pdf>

<sup>2</sup> City of San José Council Resolution 80149: <https://records.sanjoseca.gov/Resolutions/RES80149.pdf>

subject to the IHO requirements (which currently apply to residential developments with more than 10 units).

Based on approval of the staff recommendation, this Development would meet MHIP requirements and qualify as eligible to participate in the MHIP, subject to a second and subsequent City Council action. Refunding the AHIF fees to the Development, combined with MHIP benefits, is expected to help the project move forward with construction. This action supports the City's broader objective of increasing housing production in strategic growth areas.

### ***Reasoning for Inclusion of MHIP***

The Development meets the eligibility criteria outlined in the City Council-approved MHIP framework from December 2024. Specifically:

- 1) The project application was deemed completed by the Planning, Building, and Code Enforcement Department by the end of December 2022;
- 2) Meets the density requirements by exceeding 50 dwelling units per acre; and
- 3) It is located within a growth area under the MHIP, specifically the Valley Fair/Santana Row Urban Village Growth Area, as defined in the Envision San José 2040 General Plan.

The Development was initially excluded from MHIP because it was subject to the AHIF program (rather than the IHO) at the time of entitlement.

### ***Development Overview***

The Development is a five-and-a-half-story building with 258 residential units and 355 parking spaces (above- and below-grade) on an approximately 29.4-gross-acre site. The Development was entitled in August 2016 with an initial term of four years. The entitlement permit was extended, including extensions related to the COVID-19 pandemic. Most recently, in April 2024, the permit was amended to extend its expiration to April 2026.

If this Development is added to the updated list of eligible projects under the MHIP, the Development would be required to designate a minimum of 13 units (5% of the total) for households earning at or below 100% of the area median income. Under the AHIF program requirements, the Development did not include on-site affordable units, as the AHIF program only included an option for developers to pay a fee in lieu of offering affordable units on site.

In November 2022, Federal Realty obtained a foundation permit and paid the applicable AHIF fee of \$3,435,672. However, due to economic challenges, they could not proceed with construction. Staff applied the same comprehensive impact analysis methodology used for the MHIP and determined that including the Development in the updated list of

eligible projects under the MHIP would help facilitate project readiness and support near-term construction activity if the future recommended subsidy is approved by City Council, subject to a second and subsequent City Council action.

### **EVALUATION AND FOLLOW-UP**

If the staff recommendation in this memorandum is approved, staff will return to City Council to hold a public hearing to approve an MHIP residential tax and fee waiver for the Santana Row Lot 12 Development. The Development would also be required to enter into an IHO Affordable Housing Compliance Plan to comply with the IHO program requirements, whereby 5% of the units would be for households earning at or below 100% of the area median income for 99 years.

### **COST SUMMARY/IMPLICATIONS**

If the staff recommendation in this memorandum is approved, staff will return to City Council to hold a public hearing and include recommended budget actions to process a refund to Federal Realty of \$3,435,672 from the Affordable Housing Impact Fee Fund.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, and the City Manager's Office of Economic Development and Cultural Affairs.

### **PUBLIC OUTREACH**

This memorandum will be posted on the City's Council Agenda website for the May 13, 2025 City Council meeting.

### **COMMISSION RECOMMENDATION AND INPUT**

No commission recommendation or input is associated with this action.

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## **CEQA**

Determination of Consistency with the Santana Row Expansion Project Environmental Impact Report (Resolution No. 77532, File No. PD15-066) certified September 22, 2015, for the Santana Row Lot 12 Permit Extension File Nos. PDA15-066-02 and ER24-047.

## **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/

Erik L Soliván  
Housing Director

/s/

John Ristow  
Director, Department of  
Transportation

/s/

Chris Burton  
Director, Planning, Building  
and Code Enforcement

The principal author of this memorandum is Shelsy Bass, Interim Housing Policy and Planning Administrator, Housing Department. For questions, please contact Banu San, Deputy Director, Housing Department [Banu.San@sanjoseca.gov](mailto:Banu.San@sanjoseca.gov).

**Attachment:** Proposed Updated List of Eligible Projects for the Multifamily Housing Incentive Program

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**Market-Rate Projects:**

	<b>Project Address</b>	<b>Developer</b>	<b>Last Entitlement Expiration</b>	<b>Units</b>
1	498 W. San Carlos St.	Urban Catalyst	12/14/2028	272
2	4300-4360 Stevens Creek Blvd	Fortbay/Perry Hariri	8/30/2028	407
3	14200 Union	Weingarten Investors	11/2/2028	305
4	1312 El Paseo de Saratoga/1177 Saratoga Ave	Sand Hill Property	11/29/2029	772*
5	205 Dupont	Miramar Capital/ Perry Hariri	5/4/2028	689
6	700 Saratoga Ave	Avalon Bay Communities	3/17/2027	247
7	905 N. Capitol Ave	Hanover	6/29/2028	350
8	1298 Tripp; 1325/1347 E. Julian St.	ROYGBIV	11/29/2029	913
9	70 N 27 <sup>th</sup> St.	HC Investment LLC	5/31/2029	198
10	1530 W. San Carlos St.	Urban Villa LLC	6/28/2029	237
11	1520 W. San Carlos St.	Vivji Mani	7/12/2029	256
12	1050 Saint Elizabeth	Evershine XVII LP	4/19/2029	206
13	West San Carlos St. and Sunol St.	Republic Urban	5/4/2028	263
14	1065 S. Winchester Blvd	A&Z Development	10/25/2028	70
15	1073 S. Winchester Blvd	A&Z Development	8/25/2027	61
16	605 Blossom Hill Rd	Republic Urban	8/9/2028	239
17	1197 Lick Ave/Tamien Station	Republic Urban	12/9/2026	434
18	681 E Trimble Rd	Hannover Company	8/14/2028	1146
19	210 Baypointe	Summerhill Homes	10/22/2018	292
<b>20</b>	<b>358 Hatton St.* (NEW)</b>	<b>Federal Realty</b>	<b>4/24/2026</b>	<b>258</b>
<b>*Revised number of project units pending City Council approval</b>			<b>Total</b>	<b>7615*</b>

**Affordable Projects:**

	<b>Project Address</b>	<b>Developer</b>	<b>Last Entitlement Expiration</b>	<b>Units</b>
1	802 S First St.	Maracor/Pacific West	10/12/2028	166
2	124 N 15th St.	Santa Clara Housing Authority	9/2/2027	103
3	1371 Kooser Rd	Affirmed Housing Group	8/24/2028	191
4	525 N Capitol Ave	Community Development Partners	9/1/2028	160
5	771-797 Almaden Expy	Resources for Community Development	1/28/2028	99
6	2315 Canoas Garden	Santa Clara Housing Authority	4/20/2028	559
7	1135 E Santa Clara St.	Green Republic Blossom Hill LLC	8/9/2028	89
8	70 Kentucky Place	Charities Housing	11/9/2029	55
9	501 Almaden Ave	Satellite Housing	9/1/2028	53
10	1135 E Santa Clara St.	Allied Housing	10/9/2026	91
11	2315 Canoas Garden	Sand Hill Property Co.	1/10/2028	237
12	995 E Santa Clara St.	First Community Housing	9/23/2028	74
13	2920/2928 Alum Rock Ave	Charities Housing	9/1/2028	83
14	934-948 E Santa Clara St.	Milestone Housing Group	8/8/2029	103
15	71 Vista Montana	Charities Housing	3/21/2029	446
			<b>Total</b>	<b>2509</b>