

**DRAFT**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF SAN JOSE ADDING CHAPTER 14.35 TO TITLE 14 OF THE SAN JOSE MUNICIPAL CODE IN ORDER TO ADOPT A NEW DIRIDON STATION AREA BASIC INFRASTRUCTURE IMPACT FEE ASSOCIATED WITH IMPLEMENTATION OF THE DIRIDON STATION AREA PLAN**

**WHEREAS**, the City Council desires to adopt a Diridon Station Area Basic Infrastructure Impact Fee to offset the impacts on streets, plazas, sanitary sewer, and storm drain and flood control from new development within the boundary of the Diridon Station Area Plan and immediate surrounding area; and

**WHEREAS**, the City has prepared a study entitled “Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure” dated May 2019 that was presented to the City Council on August 20, 2019 (hereinafter “Nexus Study”), which specifies basic public infrastructure improvements required to serve future development subject to and consistent with the Diridon Station Area Plan and immediate surrounding area (hereinafter “DSAP”), adopted by City Council on June 17, 2014 by Resolution No. 77098, and consistent with the Downtown Strategy 2040 adopted by City Council on December 18, 2018 by Resolution No. 78944, and recommends the amount of the impact fee on new development subject to the Diridon Station Area Basic Infrastructure Impact Fee; and

**WHEREAS**, the Diridon Station Area Basic Infrastructure Impact Fee is subject to the applicable provisions of California Government Code section 66000 *et seq.*, commonly referred to as the “Mitigation Fee Act;” and

**WHEREAS**, pursuant to Section 15168(c)(2) of the CEQA Guidelines, the City of San José has determined that the proposed ordinance is pursuant to, in furtherance of and within the scope of the previously approved program evaluated in the Final Diridon Station Area Plan Final Environmental Impact Report (the “Diridon FEIR”), for which findings were adopted by City Council through its Resolution No. 77096 on June 17, 2014, and Downtown Strategy 2040 Final Environmental Impact Report (the “Downtown 2040 FEIR”), through Resolution No. 78942, adopted by City Council on December 18, 2018, and does not involve new significant effects beyond those analyzed in the Diridon FEIR and Downtown 2040 FEIR; and

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

**WHEREAS**, this Council of the City of San José has considered and approves the information contained in the Diridon FEIR and related City Council Resolution No. 77096 and the Downtown 2040 FEIR and related City Council Resolution No. 78942, and the determination of consistency therewith prior to acting upon or approving the subject ordinance;

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

SECTION 1. Chapter 14.35 is hereby added to Title 14 of the San José Municipal Code to read as follows:

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## **“Chapter 14.35**

### **DIRIDON STATION AREA BASIC INFRASTRUCTURE FEE REQUIREMENTS**

#### **14.35.010 Purpose and Findings**

On June 17, 2014, the City Council adopted the Diridon Station Area Plan (Resolution No. 77098) establishing long-term goals for the Diridon Station Area, including a land use plan, urban design guidelines, a framework for station expansion, transportation and parking strategies, housing strategies, and an art master plan. The plan integrates open space, transportation and land uses to create an expansion of Downtown San José. Implementation of the Diridon Station Area Plan requires the construction of vital basic infrastructure systems to support private development.

On December 18, 2018, the City Council adopted the Downtown Strategy 2040 Plan (Resolution No. 78944) to guide the development and redevelopment of the Downtown area through the year 2040, including the Diridon Station Plan area and Downtown Growth Areas consistent with the General Plan Major Strategies, Goals, and Policies. In implementing the Downtown Strategy 2040, the City will continue to intensify Downtown with mixed uses and public infrastructure, strengthening it as a regional employment center, entertainment destination, and significant hub for public life.

The City completed a Nexus Study in May 2019 for a new Diridon Station Basic Infrastructure Impact Fee to facilitate development in the Diridon Station Area and create a funding mechanism to help fund the future construction of vital public infrastructure. The Nexus Study provided the City with the technical analysis that established a reasonable relationship between: 1) new development in the Diridon Station Area and the need for and use of impact fees; and 2) the cost of new infrastructure and facilities and the amount of the fee charged to each development project. The Nexus Study quantified the connection between planned development in

and around the Diridon Station Area and needed infrastructure or facilities in the categories of transportation (streets), plaza/non-park open space, sanitary sewer, and storm drainage and flood control.

It is the intent and purpose of the City Council in adopting this Chapter to provide in part for the basic Diridon Station Area public infrastructures through the adoption of a Diridon Station Area Basic Infrastructure Impact Fee to be charged to all new development in the manner specified herein.

#### **14.35.020 Definitions**

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

- A. “Diridon Station Area Basic Infrastructure Impact Fee” means the fee adopted by the City Council pursuant to this Chapter.
  
- B. “Diridon Station Area Impact Fee Zone” means that project area of approximately 250 acres within the corporate limits of the City of San José generally bounded by the Guadalupe River and Delmas Avenue to the east, Interstate 280 to the south, Sunol Avenue and the Caltrain railroad right-of-way to the west and Lenzen Avenue and the Union Pacific railroad right-of-way to the north, as specified and depicted in the Nexus Study including the additional area bounded by the Guadalupe River on the east, West Santa Clara Street on the north, West San Fernando Street on the south and South Autumn Street on the west, as may be amended.
  
- C. “Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure” or “Nexus Study” is the fee study dated May 2019 as presented to the City Council on

August 20, 2019, as may be amended. The Nexus Study calculates the maximum fee the City may charge on new development to fund certain basic infrastructure and facilities in the Diridon Station Area Impact Fee Zone. The Nexus Study established a reasonable relationship or connection between the development project, the fee that is charged, and the infrastructure or facilities funded by the fee. The Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure is maintained for public review in the Departments of Public Works.

**14.35.030. Application of Chapter.**

This Chapter establishes the requirements for the Diridon Station Area Basic Infrastructure Impact Fee for all new development and infrastructure in the Diridon Station Area Impact Fee Zone. The Diridon Station Area Basic Infrastructure Impact Fee is to provide funding in the amounts and for those improvements specified in the Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure. 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 Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure.

**14.35.040. Infrastructure Impact Fee Requirement.**

- A. Prior to the issuance of any building permit for new development in the Diridon Station Area Impact Fee Zone, the Diridon Station Area Basic Infrastructure Impact Fee shall be paid pursuant to the prototype and infrastructure category, as calculated in the Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure, or as amended by City Council resolution.
- B. The Diridon Station Area Basic Infrastructure Impact Fee specified in subsection A above shall be increased by the Engineering News-Record (ENR) Construction

Cost Index for San Francisco Urban area published by McGraw Hill on January 1 of every year.

- C. No building permit shall be issued for construction within the Diridon Station Area Impact Fee Zone unless and until the Diridon Station Area Basic Infrastructure Impact Fee has been paid in full.

**14.35.050. Accounting of Diridon Station Area Basic Infrastructure Impact Fee.**

All Diridon Station Area Basic Infrastructure Impact Fee shall be deposited into the designated Diridon Station Area Impact Fee Fund or its equivalent. The Diridon Station Area Impact Fee Fund, including accrued interest, shall be subject to the all of 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 Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure.

**14.35.060. Expiration of Diridon Station Area Basic Infrastructure Impact Fee.**

All Diridon Station Area Basic Infrastructure Impact Fees shall be collected until the improvements specified in the Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure are fully funded and constructed. In the event that public or private funds are advanced to accelerate the construction of the improvements specified in the Diridon Station Area: Impact Fee Nexus Study for Basic Infrastructure, the Diridon Station Area Basic Infrastructure Impact Fees shall be collected until all advanced public or private funding is fully reimbursed or credited to entity that provided advanced funding.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk