

**DRAFT**

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

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SAN JOSE AMENDING VARIOUS SECTIONS OF  
CHAPTER 14.29 OF TITLE 14 OF THE SAN JOSE  
MUNICIPAL CODE RELATING TO THE TRAFFIC IMPACT  
FEE ON DEVELOPMENT WITHIN THE NORTH SAN JOSE  
AREA DEVELOPMENT POLICY BOUNDARIES**

**WHEREAS**, the Council adopted Ordinance No. 27453 establishing a mitigation fee to offset the impacts on traffic from new industrial and residential development within the boundaries of and subject to the North San José Area Development Policy (hereinafter “Fee Ordinance”), as identified in the North San José Area Development Policy dated June 2005 and adopted by the City Council on June 21, 2005 (hereinafter “Policy”); and

**WHEREAS**, the City prepared a study entitled “North San José Traffic Impact Fee Plan” dated June 2005, and accepted by the City Council on June 21, 2005 (hereinafter “NSJ 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 industrial and residential development subject to the Policy; and

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

**WHEREAS**, the improvements specified in the NSJ Traffic Impact Fee Plan were intended to mitigate in part those traffic impacts identified in the Environmental Impact Report prepared pursuant to the California Environmental Quality Act for the North San José Area Plan certified by the Planning Commission on June 7, 2005 and upheld on appeal by the City Council on June 21, 2005 (hereinafter “EIR”); and

**WHEREAS**, the improvements specified in the NSJ Traffic Impact Fee Plan and the traffic mitigations specified in the EIR are in addition to any future development project-specific impacts that may be identified with regard to individual development applications; and

**WHEREAS**, the Council desires to amend the Policy to eliminate all phasing of development under the Policy and limit the application of the Policy and the Fee Ordinance to only those projects and land use permittees who have received land use entitlements and permits prior to the effective date of this ordinance; and

**WHEREAS**, the North San José 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 change the priority of transportation improvements to reflect the locations and intensity at which development has actually been entitled and/or received approved land use permits and to make the Fee Ordinance inapplicable to future development occurring after the effective date of consistent and concurrent amendments to the Policy are approved by resolution of the Council; and

**WHEREAS**, the amendments to the Fee Ordinance herein make no change to the amount of the impact fee and no change to the menu of transportation improvements to be funded in part by the fee; and

**WHEREAS**, on May 3, 2022, the Council adopted a resolution adopting an Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José General Plan Final Program Environmental Impact Report

(Resolution No. 77617), and Addenda thereto in conformance with CEQA (File Nos. GPT21-003 and C21-018);

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

SECTION 1. Chapter 14.29 of Title 14 of the San José Municipal Code is hereby amended as follows:

**“Chapter 14.29  
NORTH SAN JOSE TRAFFIC IMPACT FEE REQUIREMENTS**

**14.29.010 Purpose and Findings**

On June 21, 2005, the City Council adopted the June 2005 North San José Area Development Policy authorizing the intensification of development subject to and within the boundaries of the North San José Area Development Policy. The potential intensification of development within the Policy area included ~~will allow for~~ the development of a maximum of 26.7 million square feet of new industrial office/research and development space, a maximum of 1.7 million square feet of new commercial space, and a maximum of 32,000 new residential units. On June 16, 2009, the council adopted an amended North San José Area development policy to include regional retail uses and hotel uses within the policy area. ~~It is the~~ The intent and purpose of the City Council in adopting this chapter was to provide in part for the major traffic improvements deemed necessary as a result of the adoption of the June 2005 North San José Area Development Policy through the adoption of a North San José Traffic Impact Fee to be charged to all new industrial and residential development subject to the Policy in the manner specified in the June 2005 North San José Traffic Impact Fee

Plan accepted by the City Council on June 21, 2005, and as amended in May 2009 and accepted as amended by the city council on June 16, 2009.

On [REDACTED], 2022, the City Council adopted Resolution No. [REDACTED] amending the North San José Area 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 North San José Area Development Policy area that received approved land use entitlements and/or land use permits prior to the effective date of Resolution No. [REDACTED].

#### **14.29.020. Definitions**

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

- A. “Hotel” shall have the same definition as in Section 20.200.540 of this Code.
- B. “Industrial” means any use of land specified as an industrial use in Title 20 of this Code.
- C. “Multi-Family Attached” means any residential dwelling unit that has a vertical overlap with another residential dwelling unit.
- D. “North San José Area Development Policy Boundary” means that project area within the corporate limits of the City of San José consisting of approximately 4,987 acres and generally bounded by Interstate 880 to the South and East, Route 87 and the Guadalupe River to the West, and by Highway 237 to the

North, as specified and depicted in the North San José Area Development Policy adopted by the City Council on June 21, 2005, and as amended by the city council on June 16, 2009, and [REDACTED], 2022, and in the Environmental Impact Report for the North San José Development Policies Update certified by the Planning Commission on June 7, 2005 and upheld on appeal by the City Council on June 21, 2005, and the [REDACTED] council Resolution No. [REDACTED] adopting the Addendum to the Envision San José 2040 General Plan Final Program Environmental Impact Report (Resolution No. 76041) and Supplemental Environmental Impact Report to the Envision San José General Plan Final Program Environmental Impact Report (Resolution No. 77617), and Addenda thereto. The North San José Area Development Policy and the Environmental Impact Report documents are maintained for public review in the Office of the Planning Division of the Department of Planning, Building and Code Enforcement. No changes have been made to the North San José Area Development Policy Boundary since the June 16, 2009 amendments to North San José Area Development Policy.

- E. “North San José Traffic Impact Fee” means the fee adopted by the City Council pursuant to this chapter.
- F. “North San José Traffic Impact Fee Plan” is the fee study entitled, North San José Traffic Impact Fee Plan, dated June 2005 and accepted by the city council on June 21, 2005, as revised May 2009 and accepted by the city council on June 16, 2009, and as further revised February 18, 2022 by the North San José Traffic Impact Fee Plan Update and accepted by the city council on [REDACTED], 2022, to support the amendment to the North San José Area Development Policy to limit the application of both the Policy and this chapter to those projects in the North San José Area Development Policy area that received approved land use entitlements and/or land use permits prior to the effective date of Resolution No.

\_\_\_\_\_ The North San José Traffic Impact Fee Plan is maintained for public review in the Office of the Planning Division of the Department of Planning, Building and Code Enforcement.

- G. “Regional retail/large scale commercial” means any commercial establishment or use with a single occupancy of greater than one hundred thousand square feet.
- H. “Residential” means any use of land specified as a residential use in Title 20 of this Code.
- I. “Single-Family Detached” means any residential dwelling unit that does not have a vertical overlap with another residential dwelling unit.

#### **14.29.030. Application of Chapter**

A. This chapter establishes the requirements for the North San José Traffic Impact Fee for all industrial, residential, regional retail/large scale commercial, and hotel development within the North San José Area Development Policy Boundary 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, July 28, 2005, and prior to the effective date of Resolution No. \_\_\_\_\_ on \_\_\_\_\_, limiting the application of this Chapter to such projects; and
- 2. Any subsequent amendments or adjustments to the entitlements and/or land use permits specified in section 14.29.030.A.

**B.** The North San José Traffic Impact Fee is limited to providing funding in the amounts and for those improvements specified in the North San José Traffic Impact Fee Plan.

**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 North San José Traffic Impact Fee Plan.

**14.29.040. Traffic Impact Fee Requirement**

A. Commencing July 28, 2005, the North San José Traffic Impact Fee shall be paid for development to which the North San José Traffic Impact Fee applies pursuant to section 14.29.030 herein in the following amount based upon the use of land:

<u>Land Use</u>	<u>Fee</u>
Industrial:	\$10.44 per sq. ft. of building space
Residential:	
Single-Family Detached.....	\$6,994.00 per dwelling unit
Multi-Family Attached.....	\$5,596.00 per dwelling unit
Regional retail/large scale commercial:	\$14.62 per sq. ft. of building space
Hotel:	\$3,161.00 per guest room

B. The North San José Area Traffic Impact Fee specified in subsection A above shall be increased by 3.3 percent per annum compounded on July 1 of every odd numbered year.

- C. The North San José traffic impact fee shall be paid in full prior to the issuance of a building permit for industrial, regional retail/large scale commercial, hotel, or residential construction within the North San José area development policy boundary to which the North San José Traffic Impact Fee applies pursuant to section 14.29.030 herein unless, in the case of qualified industrial development under the near-term industrial development incentive program as described in Section 4 of the North San José Area Development Policy, a different schedule for payment of the North San José traffic impact fee is expressly provided for in an agreement with the City of San José and the developer is in full compliance with the agreement. No building permit shall be issued for industrial, regional retail/large scale commercial, hotel, or residential, construction within the North San José Area Development Policy Boundary to which the North San José Traffic Impact Fee applies pursuant to section 14.29.030 herein unless and until the North San José Traffic Impact Fee has been paid in full.

**14.29.050. Accounting of North San Jose Traffic Impact Fees**

All North San José Traffic Impact Fees shall be deposited into the designated North San José Traffic Impact Fee fund. The North San José Traffic 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 North San José Traffic Impact Fee Plan.”



PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI TABER, CMC  
City Clerk