

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AUTHORIZING UPDATES TO THE DOWNTOWN HIGH RISE PROGRAM AND AN EXPANSION TO RESIDENTIAL DEVELOPMENTS LOCATED IN THE DOWNTOWN PLANNED GROWTH AREA THAT ARE TEN OR MORE FLOORS OR STORIES IN HEIGHT (NOT INCLUDING ANY NONRESIDENTIAL USES) WHERE THE HIGHEST OCCUPIED FLOOR HAS A FLOOR LEVEL ELEVATION THAT IS 150 FEET ABOVE STREET LEVEL AND: (A) REDUCING THE IN LIEU FEES DUE FOR THOSE RESIDENTIAL DEVELOPMENTS UNDER THE INCLUSIONARY HOUSING ORDINANCE TO THE AMOUNT OF \$0 FOR ALL RESIDENTIAL DEVELOPMENTS OBTAINING BUILDING PERMITS BY JUNE 30, 2025, AND OBTAINING CERTIFICATES OF OCCUPANCY BEFORE JUNE 30, 2029; AND (B) REDUCING THE ADJUSTED IN LIEU FEES REQUIRED UNDER THE INCLUSIONARY HOUSING ORDINANCE SECTION 5.08.525 TO \$0 FOR THOSE RENTAL RESIDENTIAL DEVELOPMENTS THAT INCLUDE 5% OF UNITS TO BE AFFORDABLE TO HOUSEHOLDS EARNING 100% OF AREA MEDIAN INCOME AND OBTAIN BUILDING PERMITS ON OR AFTER JULY 1, 2025, OBTAIN CERTIFICATES OF OCCUPANCY FOR THE RENTAL RESIDENTIAL DEVELOPMENTS BEFORE JUNE 30, 2033

WHEREAS, Section 5.08.520 of the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San José Municipal Code, authorizes the City of San José (“City”) Council to adopt a resolution reducing the in lieu fees for high-rise residential developments of ten (10) or more floors or stories in height not including any non-residential uses where the highest occupied floor has a floor level elevation is at least one hundred fifty (150) feet above street level (“High Rise Residential Development”) in a specified geographic area; and

WHEREAS, Section 5.08.525.D of the Inclusionary Housing Ordinance authorizes the City Council to adopt a resolution reducing the adjusted in lieu fees imposed on rental developments that are High Rise Residential Development in specified area of the City and provide 5% or more of units restricted as affordable; and

WHEREAS, a Memorandum from the Housing and Office of Economic Development Departments dated as October 24, 2022 (“Memorandum”) includes information on the lack of feasibility for high-rise residential projects based on the recently completed report on the Cost of High Rise Residential Developments (“Report”) which provides a financial feasibility analysis for High Rise Residential Developments was present to City Council on November 1, 2022 ; and

WHEREAS, Chapter 14.10 of the San José Municipal Code sets “Minimum Labor Standards for a Private Construction Project Accepting a City Subsidy”, which this Chapter defines as 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, as well as 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, based on the results of the analysis in the Report regarding the lack of financial feasibility, staff recommends an extension of the current reduction to allow payment of \$0 in lieu fee to qualifying High Rise Residential Developments that receive building permits by June 30, 2025 and certificates of occupancy before June 30, 2029, and are located in the Downtown Planned Growth Area; and

WHEREAS, based on the results of the analysis in the Report regarding the lack of financial feasibility, staff also recommends reducing the adjusted in lieu fees required under the Inclusionary Housing Ordinance Section 5.08.525 to \$0 for those qualifying rental High Rise Residential Developments located in the Downtown Planned Growth Area that include 5% of units to be restricted as affordable to households earning 100% of area median income and have obtained building permits on or after July 1, 2025, obtain certificates of occupancy for the rental development before June 30, 2033; and

WHEREAS, these reductions of the in lieu fee and adjusted in lieu fee are made based on the findings in 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 in lieu fee due under Section 5.08.520 of Chapter 5.08 of Title 5 of the San José Municipal Code shall be reduced to zero dollars and a waiver or partial waiver provided pursuant to the Inclusionary Housing Guidelines at the time such in lieu fee is due for a residential development that meets all of the following criteria:

1. The High Rise Residential Development for which the waiver or partial waiver is sought is located in the Downtown Planned Growth Area (as described in the Envision San José 2040 General Plan);
2. The Downtown High-Rise exemption/waiver is requested in the Residential Development's Affordable Housing Plan and Affordable Housing Agreement;
3. The highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential uses;
4. The High Rise Residential Development obtaining a building permit before June 30, 2025 and receiving its final Certificates of by June 30, 2029; and
5. The developer/owner of High Rise Residential Development has provided all information requested by City staff for compliance with Government Code Section 53083, and City Resolution No. 77135 for public disclosure of subsidies and any required hearing has been held.

C. The adjusted in lieu fee due under Section 5.08.520 and 5.08.525 D of Chapter 5.08 of Title 5 of the San José Municipal Code shall be reduced to zero dollars and a waiver or partial waiver provided pursuant to the Inclusionary Housing Guidelines at the time such in lieu fee is due for a rental residential development that meets all of the following criteria:

1. The High Rise Residential Development for which the waiver or partial waiver is sought is located in the Downtown Planned Growth Area (as described in the Envision San José 2040 General Plan;
2. The Downtown High-Rise exemption/waiver is requested in the Residential Development's Affordable Housing Plan and Affordable Housing Agreement;
3. The highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential uses; and
4. The High Rise Residential Development obtaining a building permit ~~before~~ on or after June 30 July 1, 2025 and receiving its final Certificates of Occupancy ~~by before~~ June 30, ~~2029~~2033; and
5. The developer/owner of High Rise Residential Development has provided all information requested by City staff for compliance with Government Code Section 53083, and City Resolution No. 77135 for public disclosure of subsidies and any required hearing has been held.

ADOPTED this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk