NVF:JAC:KML
11/17/2022

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTION 4.46.036 OF CHAPTER 4.46 AND SECTION 4.47.089 OF CHAPTER 4.47 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO EXPAND THE SUSPENSION PROGRAM FOR THE COLLECTION OF A PORTION OF CONSTRUCTION TAXES ON DOWNTOWN HIGH RISE DEVELOPMENTS

WHEREAS, on May 15, 2012, the City Council directed the City Attorney to draft an ordinance to create a temporary fifty percent (50%) reduction of the Building and Structure Construction Tax and a fifty percent (50%) reduction of the Commercial-Residential-Mobilehome Park Building Tax for qualified high rise projects located within the Downtown Planned Growth Area that obtain a City building permit for residential construction from May 15, 2012 to December 31, 2013; and

WHEREAS, on September 18, 2012, Ordinance No. 29147 was passed for publication by the City Council and became effective on November 2, 2012 amending Section 4.46.036 and Section 4.47.089 of the San José Municipal Code to temporarily suspend the collection of fifty percent (50%) of the Building and Structure Tax and Commercial-Residential-Mobilehome Park Building Tax for the first one thousand (1,000) high-rise residential units located in the Downtown Planned Growth Area that obtain a City building permit for residential construction from May 15, 2012 to December 31, 2013; and

WHEREAS, on February 26, 2013, Ordinance No. 29212 was passed for publication by the City Council and became effective on April 12, 2013, amending Section 4.46.036 and Section 4.47.089 of the San José Municipal Code to expand the suspension for the collection of a portion of Construction Taxes on Downtown High Rise developments (the "Downtown High Rise Incentive Program"); and

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
REVISED—Per Council direction on 11-15-2022.

WHEREAS, on November 30, 2016, the Joint Meeting of the Rules and Open Government Committee and Committee of the Whole forwarded the memorandum from Mayor Liccardo and Councilmember Peralez dated November 22, 2016 to the City Council for review and consideration of an ordinance amendment to extend the Downtown High Rise Incentive Program set forth in Ordinance No. 29212 for new construction of residential buildings of at least twelve (12) stories in height in the Downtown Planned Growth Area, as defined by the Planned Growth Area Diagram in the Envision 2040 San José General Plan; and

WHEREAS, on December 13, 2016, the City Council considered the first reading of the ordinance extending the Downtown High Rise Incentive Program (the "Ordinance") and determined that the Ordinance should encourage but not require that apprenticeship programs and subcontractor outreach, as described below, be utilized for Downtown High Rise developments that meet the requirements of the Downtown High Rise Incentive Program; and

WHEREAS, on November 5, 2019, Ordinance No. 30334 was passed for publication by the City Council and became effective on December 20, 2019, amending Section 4.46.036 and Section 4.47.089 of the San José Municipal Code to create a temporary fifty percent (50%) reduction of the Building and Structure Construction Tax and a fifty percent (50%) reduction of the Commercial-Residential-Mobilehome Park Building Tax for qualified residential high rise projects located within the Downtown Planned Growth Area that obtain a City certificate of occupancy on, or prior to, June 30, 2025; and

WHEREAS, on August 18, 2020, the City Council directed staff to explore options for extending the timeline of the Downtown High Rise Incentive Program and expansion of the program to high rise development outside of Downtown; and

WHEREAS, on November 1, 2022, the City Council held a study session on the Cost of Residential Development and received a report produced by the City's consultant Century | Urban ("Report") that provides a financial feasibility analysis for high-rise residential development in San José and assessed the feasibility of high rise development in the West, North, and Central submarkets; and

WHEREAS, on November 15, 2022, the City Council held a public hearing in accordance with Chapter 14.10 of the San José Municipal Code to determine whether the proposed temporary tax reduction for projects within the Subcategory of Use defined as downtown residential high rise buildings is not a Subsidy because the construction of such projects is Financially Infeasible; and

WHEREAS, on November 15, 2022, the City Council - after considering evidence presented at the public hearing including but not limited to a financial feasibility study prepared by Century | Urban that met all requirements of San José Municipal Code Section 14.10.310(c) - determined that the proposed temporary tax reduction for the defined Subcategory of Use is not a Subsidy because the construction of such projects is Financially Infeasible and that the workforce standards otherwise required by Chapter 14.10 would therefore not apply to any downtown residential high rise project(s) receiving the proposed temporary tax reduction; and

WHEREAS, based on the results of the analysis in the Report, the City recommends an extension of the reduction in the Building and Structure Construction Tax and the Commercial-Residential-Mobilehome Park Building Tax for projects located within the Downtown Planned Growth Area that receive a building permit by June 30, 2025 and a certificate of occupancy by June 30, 2029, and revisions to the definition of Downtown High Rise Residential Structure;

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

SECTION 1. Section 4.46.036 of Chapter 4.46 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.46.036 Suspension – Downtown High Rise Residential Construction

A. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended and the tax shall not be collected with respect to construction of residential units within a Downtown High Rise Residential Structure as provided in this Section. For a Downtown High Rise Residential Structure that includes both residential units and non-residential units the tax suspension shall only apply to the residential units therein.

B. "Downtown High Rise Residential Structure" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where 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.

C. The suspension shall apply to residential units located within a Downtown High Rise Residential Structure for which a certificate of occupancy has been issued in the Downtown Planned Growth Area from the date the ordinance enacting this Section becomes effective through and including June 30, 2029, provided that the Downtown High Rise Residential Structure project meets each of the following:

1. The developer of the Downtown High Rise Residential Structure shall retain contractors licensed by the State of California for the construction of the Downtown High Rise Residential Structure; and

2. The developer of the Downtown High Rise Residential Structure shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and

3. The developer of the Downtown High Rise Residential Structure enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to both the suspension of fifty percent (50%) of the amount of the tax specified in this Chapter and payment of the unsuspended portion of the tax; and

4. A building permit for the construction of the Downtown High Rise Residential Structure has been issued on or before June 30, 2025.

D. In the event that a residential unit that was eligible for the suspension provided for in this Section has not scheduled final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure on or before June 30, 2029, then the full amount of the tax shall be paid to the Building Official prior to scheduling additional inspections.

E. The suspension set forth in Subsection A shall be effective until June 30, 2029.

F. Notwithstanding Section 4.46.070, the amount of tax imposed under this Section for the construction of any Downtown High Rise Residential Structure shall be due and payable prior to the scheduling of the final inspection for eighty percent

(80%) of the residential units within the Downtown High Rise Residential Structure.

G. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Downtown High Rise Residential Structures that are consistent with the requirements of this Section.

Any person who enters into a Project Completion Agreement for the tax suspension pursuant to Subsection C.3 of this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen point seven percent (16.7%) of the hours worked on the Downtown High Rise Residential Structure must be worked by registered apprentices from approved apprenticeship training programs;

2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Downtown High Rise Residential Structure have a barrier to employment such as being homeless, a veteran or an at-risk youth; and

3. Post or cause the posting of bids for subcontracting work on the Downtown High Rise Residential Structure on websites such as the Bay Area Builders Exchange in order for subcontractors to be able to access work for workers in the nine Bay Area counties.

SECTION 2. Section 4.47.089 of Chapter 4.47 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.47.089 Suspension – Downtown High Rise Residential Construction

A. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended and the tax shall not be collected with respect to construction of residential units within a Downtown High Rise Residential Structure as provided in this Section. For a Downtown High Rise Residential Structure that includes both residential units and non-residential units the tax suspension shall only apply to the residential units therein.

B. "Downtown High Rise Residential Structure" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where 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.

C. The suspension shall apply to the residential units located within a Downtown High Rise Residential Structure for which a certificate of occupancy has been issued in the Downtown Planned Growth Area from the date the ordinance enacting this Section becomes effective through and including June 30, 2029, provided that the Downtown High Rise Residential Structure project meets each of the following:

1. The developer of the Downtown High Rise Residential Structure shall retain contractors licensed by the State of California for the construction of the Downtown High Rise Residential Structure; and

2. The developer of the Downtown High Rise Residential Structure shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and

3. The developer of the Downtown High Rise Residential Structure enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to both the suspension of fifty percent (50%) of the amount of the tax specified in this Chapter and payment of the unsuspended portion of the tax; and

4. A building permit for the construction of the Downtown High Rise Residential Structure has been issued on or before June 30, 2025.

D. In the event that a residential unit that was eligible for the suspension provided for in this Section has not received final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure on or before June 30, 2029, then the full amount of the tax shall be paid to the Building Official prior to scheduling additional inspections.

E. The suspension set forth in Subsection A shall be effective until June 30, 2029.

F. Notwithstanding Section 4.47.030, amount of tax imposed under this Section for the construction of any Downtown High Rise Residential Structure shall be due and payable prior to the scheduling of the final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure.

G. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Downtown High Rise Residential Structures that are consistent with the requirements of this Section.

H. Any person who enters into a Project Completion Agreement for the tax suspension pursuant to Subsection C.3 of this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen point seven percent (16.7%) of the hours worked on the Downtown High Rise Residential Structure must be worked by registered apprentices from approved apprenticeship training programs;

2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Downtown High Rise Residential Structure have a barrier to employment such as being homeless, a veteran or an at-risk youth; and

3. Post or cause the posting of bids for subcontracting work on the Downtown High Rise Residential Structure on websites such as the Bay Area Builders Exchange in order for subcontractors to be able to access work for workers in the nine Bay Area counties.

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.
REVISED—Per Council direction on 11-15-2022.