

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING RESOLUTION NO. 77218 TO AMEND THE DEFINITION OF DWELLING UNIT AND ADD AN ADDITIONAL FEE REDUCTION PROCESS FOR QUALIFIED PROJECTS WITH AFFORDABLE RENTAL UNITS**

**WHEREAS**, the City Council of the City of San José (“Council”) has a long established policy and practice of recognizing the need to facilitate the availability of housing products at different levels of affordability in order to address the housing needs of the entire community; and

**WHEREAS**, the Council desires to adopt a fee to help address the increased need for affordable housing connected with the development of new market rate residential rental units (“Housing Impact Fee”); and

**WHEREAS**, the Council has caused a study to be prepared that analyzes whether there is a reasonable relationship between the development of new market rate residential rental units and the need to increase the supply of new affordable housing; and

**WHEREAS**, that study, prepared by Keyser Marston and Associates, entitled “Residential Nexus Analysis” dated October 2014, (the “Nexus Study”), demonstrates that such a nexus exists, and that the use of a Housing Impact Fee for the purpose of increasing the supply of affordable housing in the City of San José (“City”), is justified; and

**WHEREAS**, the Council has determined that the Housing Impact Fee should be established consistent with the requirements applicable to fees for public facilities in California Government Code Section 66000 *et seq.*, commonly referred to as the “Mitigation Fee Act” without determining that it is required to do so; and

**WHEREAS**, the Council has, consistent with the Mitigation Fee Act, published twice in ten day period advance notice of the public hearing concerning the Housing Impact Fee and during that period made available for public review and comment data indicating the estimated cost required to provide the Housing Facilities described in this Resolution and the potential revenue sources; and

**WHEREAS**, the Council has determined that the Housing Impact Fee is consistent with and implements the goals and objectives of the City's General Plan entitled "Envision San José 2040"; and

**WHEREAS**, the Housing Impact Fee is intended to create a funding mechanism to increase the supply of affordable housing in San José without reference to a specific development or property, although exemplar affordable housing developments are described in the exhibits attached to this Resolution; and

**WHEREAS**, the City will not expend funds from the Housing Impact Fee on any specific development prior to the completion of environmental review for such specific development, thus the adoption of this Resolution is not a project under the California Environmental Quality Act guidelines found in Title 14 of the California Code of Regulations at Section 15378(b)(4); and

**WHEREAS**, the Housing Impact Fee is authorized pursuant to Section 200 of the City Charter and Section 7, Article XI of the California Constitution as a police powers measure to improve the public welfare of the City of San José; and

**WHEREAS**, consistent with the Mitigation Fee Act and the City Charter, the Housing Impact Fee may be established by resolution;

**WHEREAS**, on November 18, 2014, the City Council of the City of San José (“Council”) adopted Resolution No. 77218 (“Housing Impact Fee Resolution”) establishing the Affordable Housing Impact Fee (“AHIF”) program;

**WHEREAS**, on December 6, 2016 the Council adopted Resolution No. 78010 amending Section 11 of the Housing Impact Fee Resolution to revise the provisions exempting for-sale projects from the AHIF to make the standards consistent with the staff report, the adopted AHIF regulations and the adopted Inclusionary Housing Ordinance guidelines;

**WHEREAS**, now the Council would like to further amend Housing Impact Fee Resolution to modify Section 3 to provide additional clarification regarding the definition of the term “dwelling unit”, to renumber the existing Section 12 to Section 13 and to add a new Section 12 to provide a process to allow qualified residential housing developments that include affordable rental units to obtain partial or complete exemptions from the Housing Impact Fee;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:**

1. Section 3, Definitions, of Resolution No. 77218 is hereby amended to read as follows:

**SECTION 3. DEFINITIONS**

The definitions set forth in this Section shall govern the application and interpretation of this resolution:

- A. “Affordable Housing Development” shall mean a Rental Development where a 100% of the Rental Units are Affordable Rental Units.
- B. “Affordable Rent” means a monthly rent that does not exceed one-twelfth of 30% of 60% of the Area Median Income at a level appropriate for the Assumed Household Size.

- C. “Affordable Rental Unit” shall mean a dwelling unit restricted to Affordable Rent by a Recorded Covenant and shall be deemed to include any manager’s unit for an Affordable Housing Development which is required by State law.
- D. “Applicant” or “Developer” means a person, persons, or entity that applies for a development permit for a Residential Development and also includes the owner or owners of the property if the Applicant does not own the property on which development is proposed.
- E. “Area Median Income” or “AMI” means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provision, or as established by the City of San José in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- F. “Assumed Household Size” means, for any dwelling unit, the household size assumed for determining Affordable Rent based on a Recorded Covenant which shall be either (a) 1 person for each bedroom plus 1 person for the unit, or (b) 1.5 persons for each bedroom.
- G. “Building Permit” means a City issued building permit and includes full structural building permits as well as partial permits such as foundation-only permits.
- H. “City” means the City of San José.
- I. “Certificate of Occupancy” means the permit issued by the City Building Division authorizing the initial occupancy of one or more buildings with residential dwelling units and includes temporary certificates of occupancy permits.
- J. “Conditional Use Permit” shall have the meaning given in San José Municipal Code Chapter 20.100.
- K. “Development Permit” shall have the meaning given in Section 5.C.
- L. “Director” means the Director of Housing or such other director designated by the city manager to administer this resolution.

- M. “Dwelling Unit” means a building, or portion of a building, planned or designed for use as a residence for one family ~~only, living independently of other families or persons,~~ and having its own bathroom, a sink and the capability (i.e., power and space) for cooking and refrigeration, as may be further clarified in the regulations implementing this resolution ~~and housekeeping facilities included in said unit (e.g., each dwelling unit in a two-family dwelling, and each dwelling unit in a multiple dwelling).~~
- N. “Downtown High Rise” means a Residential Development located in the Downtown Core Area (as described in Resolution Number 73587 adopted January 9, 2007) where the highest occupied floor has a floor level elevation is at least 150 feet above street level.
- O. “Housing Facility” means (a) property acquired or proposed for acquisition by the City for affordable housing purposes and any improvements constructed thereon or (b) a recorded affordability restriction that is made for the benefit of and enforceable by the City.
- P. “Housing Impact Fee” means the fee established by the City pursuant to this resolution.
- Q. “Housing Impact Fee Fund” means the fund established in Section 9 below.
- R. “Inclusionary Housing Policy” means the policy originally adopted by the City Council on October 4, 1988, by Resolution No. 60918, as amended, implementing Section 33413 of the California Health and Safety Code’s requirement that a certain percentage of dwelling units developed in redevelopment project areas be available at affordable housing costs to persons and families of low or moderate incomes.
- S. “Market Rate Rental Unit” means a Rental Unit that is not an Affordable Rental Unit or a Reconstructed Unit.
- T. “Nexus Study” means the Nexus Study entitled, Residential Nexus Analysis, and dated October 2014, that is maintained for public review in the Department of Housing or any subsequent nexus study approved by the City Council.

- U. "Pipeline Application" means a housing impact fee pipeline application for a residential development listing the qualifying City permit, the property description, address, and the number of all Market Rate Units in the residential development.
- V. "Planned Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100
- W. "Reconstructed Unit" means a dwelling unit that replaces a dwelling unit that was located on the same parcel and was occupied no more than five (5) years prior to the building permit application.
- X. "Recorded Covenant" means a recorded affordability restriction with a term of at least 55 years that limits the rental of the dwelling units to households with an income not exceeding 60% of the Area Median Income at Affordable Rent and is made for the benefit of and enforceable by the City, Santa Clara County or a State or Federal Agency.
- Y. "Rental Development" means a Residential Development that includes a multiple dwelling as defined in San Jose Municipal Code Section 20.200.340.
- Z. "Rental Unit" means a dwelling unit in a Rental Development.
- AA. "Residential" means any use of land specified as a residential use in Title 20 of this Code, or use of land that includes dwelling units.
- BB. "Residential Development" means any development project, or portion thereof, that creates dwelling units.
- CC. "Schedule of Fees" means the schedule described in Section 4 below.
- DD. "Site Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.
- EE. "Special Use Permit" shall have the meaning given in San José Municipal Code Chapter 20.100."

2. Section 12, Miscellaneous, of Resolution No. 77218 is renumbered to Section 13, and amended to read as follows:

**SECTION 13**            **MISCELLANEOUS.**

A. The recitals above and the attached exhibits are hereby made a part of this resolution.

B. The findings and determinations made hereunder are based on the evidence in the record including the Nexus Study, the General Plan, this Resolution and the reports submitted by staff in connection with the approval of this Resolution.

C. The Director may adopt such rules and regulations as are needed to implement the intent of this Resolution.

D. The Director may amend agreements or covenants entered into under this Resolution and, notwithstanding the findings required under subsection 6.B, may record agreements authorizing deferral or partial deferral of payment until the earlier of issuance of the Certificate of Occupancy or date of the final inspection of the Applicant's Residential Development, where such amendments and agreements consistent with the purposes of this resolution and the implementing regulations.

E. If any section, subsection, sentence, clause, or phrase of any provision of this Resolution, including its attachments, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this resolution. Each and every section, subsection, sentence, clause or phrase of this resolution, including its attachments, is severable from all other sections, subsections, sentences, clauses or phrases.”

3. A new Section 12, Qualified Residential Developments with Affordable Units is hereby added to Resolution No. 77218 to read as follows:

**SECTION 12**      **QUALIFIED RESIDENTIAL DEVELOPMENTS WITH AFFORDABLE RENTAL UNITS.**

- A. This Section applies to only to the Residential Developments of Applicants that are public agencies who own property or Applicants that have long term leases of property owned by public agencies, and where the entire property is a-subject to Recorded Covenants that are approved by, and enforceable by or amended to be enforceable by the City, and where such Applicant's Residential Developments have no City subsidies, grants or loans except as provided in subsection F below.
- B. If the Applicant's Residential Development contains Affordable Rental Units, but is not an Affordable Housing Development, the Applicant may apply for a reduction of the Housing Impact Fee on a City form ("Reduction Application"), if it can provide evidence that the Residential Development contains Affordable Rental Units and meets the criteria under this Section. The Director's decisions regarding an Applicant's qualification under this Section and on any Reduction Application shall be final. The Affordable Rental Units must be of similar quality to the Market Rate Units and comply with the requirements in the regulations adopted for the implementation of this Resolution.
- C. The Residential Development must have Recorded Covenants prior to approval of the Reduction Application, and must ensure, where the Affordable Rental Units are in different location on the property than the Market Rate Units, that they are constructed at the same time.
- D. If the Reduction Application is approved by the Director, the Applicant will be notified of the amount of reduction granted, the Applicant must enter into an Agreement memorializing the requirements for obtaining the reduction.
- E. The amount of the reduction will be based on comparing (a) the Affordable Rental Units and their respective level of affordability provided by the



- covenant required by subsection A to (b) the projected impact of all of the Rental Units the residential development. The specific procedures for calculating the reduction and any additional conditions shall be described in the regulations adopted for the implementation of this Resolution.
- F. After the calculation described in subsection E has been completed and the Reduction Amount has been approved, the Applicant or public agency may use City subsidies, grants or loans to further increase the affordability of project, but no additional reduction in fees shall be available.
- G. The administration, monitoring and processing fees for the Reduction Application shall be as provided in a future amendment to the resolution adopting the City's schedule of fees and charges.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk