

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

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING RESOLUTION NO. 77218 TO PROVIDE FOR A TRANSITION TO THE INCLUSIONARY HOUSING ORDINANCE**

**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 Housing Impact Fee (“AHIF”) program based on the findings therein; and

**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; and

**WHEREAS**, on October 24 2017, the Council adopted Resolution No. 28392 amending Section 3 to provide additional clarification regarding the definition of the term “dwelling unit”; and

**WHEREAS**, the City also has an Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the San Jose Municipal Code, which includes provisions applicable to residential rental projects which provisions are to become operative “at such time as current appellate case law in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2nd Dist. 2009), is overturned, disapproved, or depublished by a court of competent jurisdiction or modified by the state legislature to authorize control of rents of inclusionary units”; and

**WHEREAS**, the state legislature has authorized control of rents of inclusionary units by Assembly Bill 1505, effective January 1, 2018; and

**WHEREAS**, the City wishes to provide for a predictable transition for new residential rental projects, so that it is clear to developers which affordable housing program will apply to their project; and

**WHEREAS**, the City also wishes to allow existing residential rental projects that have first approvals but not yet been issued building permits, and are located on property leased from public agencies, the ability to amend their compliance plans to comply with the Inclusionary Housing Ordinance instead of the AHIF since the City believes that more affordable housing will be constructed under this approach than under the AHIF;

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

Resolution No. 77218, as previously amended, is hereby further amended to add a new Section 13, Relationship to Inclusionary Housing Ordinance, read as follows:

**SECTION 13. RELATIONSHIP TO INCLUSIONARY HOUSING ORDINANCE**

A. Rental Developments with applications for first approval completed after January 31, 2018 shall be subject to the requirements of the Inclusionary Housing Ordinance, Chapter 5.08 of Title 5 of the Municipal Code, instead of the Housing Impact Fee.

B. Rental Developments that have been issued Building Permits and entered into a recorded Affordable Housing Agreement (as defined in the regulations adopted pursuant to Section 12, including agreements pursuant to Chapters 2-4 of the regulations) by January 31, 2018 shall continue to be subject to the Housing Impact Fee and the conditions of the recorded agreement.

C. Rental Developments not subject to subsection B, whose applications for first approval are completed on or before January 31, 2018, shall be subject to the

Housing Impact Fee rather than the requirements of the Inclusionary Housing Ordinance if all of the following criteria, as further detailed in the regulations, are met:

(1) the Developer of the Rental Development has submitted a complete executed application for first approval and has paid all planning application fees to the Department of Planning, Building, and Code Enforcement (PBCE) by January 31, 2018; (2) the application for first approval is for a Conditional Use Permit, Planned Development Permit, Site Development Permit, or Special Use Permit; (3) the Developer has submitted a completed Compliance Plan application (as defined in the regulations), acquired Housing Department approval, paid the associated fee of \$3,200, and entered into an agreement regarding these transition terms, all no later January 31, 2018; and (4) the Developer obtains issuance of the Rental Development's Building Permits, and pays the Housing Impact Fee, or, if eligible, records an agreement pursuant prior to part 4 of Chapter 2 of the regulations, no later than January 31, 2020."

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