



December 18, 2017
Transmitted via EMAIL

Mayor Sam Liccardo
San Jose City Council
200 E. Santa Clara St.
San José, CA 95113

RE: Actions related to the Implementation of the Affordable Housing Impact fee and inclusionary housing ordinance programs

Dear Mayor Liccardo and Councilmembers,

On behalf of BIA Bay Area, I write to urge support for the joint memo dated 12.15.17 from Mayor Liccardo, Vice Mayor Carrasco and other Councilmembers regarding this issue. The establishment of the In Lieu Fee of \$125,000 per unit for rental development (Resolution Part B) is a necessary step in the right direction on holding down the cost of impact fees and provides a more accurate assessment of affordable housing subsidies in the City.

Furthermore, BIA endorses the call for a comprehensive study session to address the rising cost of impact fees and the need to align those fees both regionally and within the City's fee structure. Projects need more certainty and predictability in proforma development. Impact fees have become a huge percentage of overall costs with often detrimental effect to the ability of the project to meet financial goals.

In addition, BIA makes the following recommendations to the actions Council will take:

- Move ahead with the transition outlined in Resolution Part A but delay the application deadline from January 31 to March 30, 2018;
- Direct Staff to return with a revised 15% inclusionary mix to equal an average of 100% of average median income;
- Direct the realignment of all housing impact fees (parks, affordable housing, traffic, etc.) from a per unit basis to a per sq. ft. basis;
- Adopt a policy provision that the Inclusionary Housing Ordinance should return to Council for reevaluation should the City enact a Commercial Linkage Fee.

BIA Bay Area is ready to work with the City to fine tune the Inclusionary Ordinance so that it is best able to work for both the City of San Jose and the building community. We hope that the City will include BIA members and representatives in the efforts outlined by the Mayor and Council in the joint memo.

Very truly yours,

Dennis Martin
BIA BAY AREA



Honorable City of San Jose Mayor and Council Members
200 E Santa Clara Street
San Jose, CA. 95113

Re: City Council Hearing December 19th 2017

Agenda Item 4.6 - Implementation of the Inclusionary Housing Ordinance (IHO)

Honorable Mayor and Members of Council,

On behalf of Fortbay Stevens Creek, LLC., we respectfully are submitting comments regarding the above referenced agenda item related to the Inclusionary Housing Ordinance (IHO).

We are proposing a mixed-use Signature Project, the Stevens Creek Promenade, that likely will become subject to the Inclusionary Housing Ordinance modifications that are being proposed.

Our mixed-use Signature Project with transformative architecture consists of an office building (up to 300,000 square feet), a parking structure for the office building, and two residential high density residential buildings of up to 588 units, and retail space along Stevens Creek Blvd. We are also proposing to construct 88 units (15% of total units) of on-site affordable housing units prior to any proposed statutory requirement (City file numbers PDC12-036, PD17-014, PT17-034).

Our comments relate to implementing our Signature Project and the Envision 2040 General Plan Village Plan concept.

As proposed, all future residential projects or mixed-use projects would be subject to the IHO. The current IHO was written many years ago to address only for-sale housing production. It did NOT contemplate the implementation of the Village Plan concept with a mixture of residential and commercial real estate uses, including rental housing.

There are various provisions of the current and proposed IHO that simply will not allow for the flexibility to finance projects that include commercial or office uses or structures.

We have discussed our concerns with staff and they have indicated that they are amenable to discussions to attempt to address some of the complex issues we have raised.



Specifically, issues related to the "Compliance Options" provisions of the IHO create Mapping (State Map Act) compliance conflicts. There are requirements related to Mapping triggers, Covenants, title encumbrances and timing restrictions that would result in mixed-use projects with affordable housing requirements to not be financeable through customary financial resources.

For instance, Section V. Inclusionary Housing Agreement of Attachment A-1, Inclusionary Housing Ordinance Compliance Options Procedure for Build On-Site provides:

"The Inclusionary Housing Agreement will then be recorded against the *entire* project, any contiguous property and any other property used for the purposes of memorializing the requirement to meet the obligations of the Ordinance."

This one provision, amongst others, would require that distinct uses, like an office complex or a commercial use in a mixed-use building, be burdened with requirements and encumbrances to comply with an affordable housing obligation for the residential portion of the project. Typically, the mixed-use types of projects, which the Village Plan contemplates, would be Mapped, financed, and even constructed by different entities, developers, and financial institutions. Encumbering the office component of a mixed-use project with an obligation to construct affordable units on the residential portion, which the office developer may not control, would render most projects infeasible to build or finance.

We are respectfully requesting that the City Council direct staff to work with the development community to amend the IHO language to address Signature Projects with a mix of real estate uses, affordable rental units, on-site development of affordable rental units, and other practical and structural implementation provisions that can allow for the development of mixed use projects.

We thank Staff and the City Council for the opportunity to work with the City of San Jose to develop IHO language which would permit the practical development and financing of Signature Projects, such as ours, with its mix of commercial and retail job creating components and of market rate and affordable housing components.

Very truly yours,



Thomas deRegt
Managing Member
Fortbay Stevens Creek, LLC



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Leslye Corsiglia
Executive Director

TRANSMITTED VIA EMAIL

December 17, 2017

Mayor Liccardo & Members of the City Council
City of San Jose
200 East Santa Clara Street, 18th Floor
San Jose, CA 95113

Dear Mayor Liccardo, Vice Mayor Carrasco, and Councilmembers Arenas, Davis, Diep, Jimenez, Jones, Khamis, Nguyen, Peralez, and Rocha:

Re: Item 4.6 – Actions Related to the Implementation of the Affordable Housing Impact Fee and Inclusionary Housing Ordinance

On behalf of our members, we write today in support of the staff recommendations and the memo signed by Mayor Liccardo, Vice Mayor Carrasco, and Councilmembers Arenas, Davis, and Ngyuen related to the implementation of the City's Inclusionary Housing Ordinance (IHO). We are excited that the IHO for rental residential development will go into effect in 2018 after years of waiting. San Jose has been a true leader in its support for inclusionary housing as an affordable housing tool.

With respect to the in-lieu fee, we do want to clarify that **this is not a fee that is imposed on construction like other development fees**. Rather, this is a developer choice, made possible because the City has adopted a progressive IHO ordinance that provides developers with several alternative compliance options.

The City's inclusionary Ordinance requires developers to incorporate 15% affordable units in any market-rate residential development. If a developer chooses not to do this, they have a number of choices, including building the units off-site, donating land, partnering with an affordable housing developer, purchasing credits, or payment of an in-lieu fee. SV@Home believes that true inclusionary housing, where affordable homes and market rate homes are incorporated in the same development, is the best public policy option. However, we recognize that some developers are more comfortable with other options.

In order to ensure the development of the highest number of affordable homes, it is important that no one particular alternative compliance option is more favorable than the others. As such, it is important that the in-lieu fee not be set so low that all developers choose to "fee out" rather than consider any of the other alternatives, including the true inclusionary option.

Re: City Council Agenda Item 4.6 – Actions Related to the Implementation of the Affordable Housing Impact Fee and Inclusionary Housing Ordinance

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The City’s IHO ordinance ties the amount of any in-lieu fee to the cost of building an affordable unit. As a result, the recommendation for a \$125,000 fee per inclusionary unit—or \$25,000 per unit-- is appropriate given recent City subsidies for affordable development. And, again, it is important to be clear that this is not a fee that is imposed, but rather is one of the choices a developer can make instead of providing affordable units on site.

While we are in agreement that it is important for the City to study the impact of the totality of fees on residential development, **we will not support a weakening of the IHO.** The City fought hard for years to ensure that inclusionary rights of all cities were protected, including fighting all the way to the US Supreme Court. Without redevelopment funding and other federal funding, the City needs all the tools it can find to address the severe housing crisis faced by its lower and moderate-income residents, and to meet the affordable housing goals set forth in the Mayor’s 15-point housing plan.

We appreciate the opportunity to provide our feedback and hope to continue supporting the City’s efforts to drive the creation of affordable homes.

Sincerely,



Leslye Corsiglia
Executive Director

