



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jacky Morales-Ferrand
Margaret McCahan

SUBJECT: SEE BELOW

DATE: June 12, 2018

Approved

Date

6/15/18

SUBJECT: REDUCTION OF INCLUSIONARY HOUSING RENTAL IN-LIEU FEE TO \$0 FOR DOWNTOWN HIGH-RISE RENTAL PROJECTS

RECOMMENDATION

- (a) Adopt a resolution to authorize a reduction in the Inclusionary In-Lieu Fee to \$0 (per In-Lieu unit) for High-Rise rental developments in the Downtown Core (as described in Resolution Number 73587 adopted January 9, 2007) that are ten (10) or more floors or stories in height not including any nonresidential uses where the highest occupied floor has a floor level elevation that is at least 150 feet above street level, if they obtain issuance of all Certificates of Occupancy on or prior to June 30, 2021.
- (b) Adopt a resolution amending the 2018-2019 Schedule of Fees and Charges (Resolution No. 72737, as amended) to reduce the Inclusionary In-Lieu fee under San Jose Municipal Code Chapter 5.08 to \$0 for qualifying Downtown High Rise Rental Developments completed by June 30, 2021.

OUTCOME

Approval of the recommended actions will implement the City Council direction made on December 2017 to allow the limited-time waiver of the Affordable Housing Impact Fee (AHIF) to remain effective after the transition to the Inclusionary Housing Ordinance by reducing the Rental In-Lieu Fee for qualifying Downtown High-Rise rental developments to \$0 per inclusionary unit, if they obtain issuance of all Certificates of Occupancy on or prior to June 30, 2021.

BACKGROUND

Inclusionary Housing Ordinance (IHO)

On January 10, 2010, the Inclusionary Housing Ordinance (IHO), Chapter 5.08 of the San José Municipal Code, was adopted. The IHO applies to for-sale and rental market rate developments of 20 or more units. The provisions of the IHO that apply to rental developments were suspended until the court decision in *Palmer v. City of Los Angeles* was superseded. On September 29, 2017, the Governor signed Assembly Bill 1505, clarifying the State Legislature's intent to supersede the court decision in *Palmer v. City of Los Angeles*, thus allowing the IHO requirements to apply to rental residential developments effective January 1, 2018.

The IHO provides several ways that a developer may meet the affordable unit requirement. This includes construction of affordable units that are evenly distributed on-site, where 15% of the on-site units are deed restricted affordable. When a developer selects an alternative compliance option to provide the units off-site, then the requirement to provide affordable units is increased from 15% to 20%. Similarly, the In-Lieu Fee is calculated based on the 20% requirement. There is also a provision that allows a reduction of the IHO In-Lieu Fee for high-rise developments that must be applied to all such developments and cannot be applied individually to a high rise project.

Affordable Housing Impact Fee (AHIF)

On November 18, 2014, the City Council adopted the Affordable Housing Impact Fee (AHIF) Resolution, establishing the AHIF Program. This requires rental developments with 3 or more units to pay the AHIF at building permit issuance. The AHIF Program includes a Downtown High-Rise limited time waiver of the fee for any rental development, which meets all of the following criteria:

- 1) The rental development is located in the Downtown Core Area (as described in Resolution No. 73587 and as shown in **Attachment A** – adopted January 9, 2007);
- 2) The rental development meets minimum height requirements where the highest occupied floor within the project must have a floor level elevation of at least 150 feet above the street level (as verified by plans submitted to the Building Division);
- 3) The developer provides evidence that the development is not a for-sale development;
- 4) The developer, prior to issuance of a building permit, records an Affordable Housing Agreement, specifying which fee shall apply in the event the developer fails to satisfy all waiver requirements; and
- 5) The developer provides evidence that its final Certificates of Occupancy are ready to issue, except for the fee waiver, on or prior to June 30, 2021.

City Council Direction

On December 19, 2017, the City Council adopted resolution 78473 amending the AHIF Resolution to provide a framework for a transition process between the AHIF and the IHO

programs for all rental developments. As a part of that approved resolution, the City Council directed staff to return with a resolution that establishes a reduction in the IHO In-Lieu Fee to \$0 (zero dollars) per applicable unit, consistent with the limited time waiver provided under the AHIF program, which meets the following criteria:

- 1) The rental development is located in the Downtown Core Area (as described in Resolution No. 73587 and as shown in **Attachment A.**);
- 2) The rental development meets minimum height requirements that are 10 (ten) or more floors or stories in height (not including any nonresidential uses) where the highest occupied floor as a floor level elevation at least 150 feet above street level (as verified by plans submitted to the Building Division); and
- 3) The developer obtains issuance of all Certificates of Occupancy on or prior to June 30, 2021.

ANALYSIS

Reduction in the IHO In-Lieu Fee for Qualifying High-Rise Rental Developments

The City Council directed the staff to provide a fee reduction for Downtown developments consistent with the AHIF program in December of 2017. Typically, staff would have returned within two months with the implementing resolution. However, due to limited staff capacity, the action was delayed.

The IHO authorizes the City Council to adopt a resolution that reduces the in-lieu fees for high-rise developments in a specific area. The City Council made findings in Resolution 77218 supporting the limited term waiver for the Downtown High-Rise projects. This includes the finding that:

“Envision San José 2040 General Plan identifies high-rise residential development in Downtown as playing a major role in the long-range revitalization of the Downtown area as the cultural and recreational hub for the City’s arts, entertainment, and sporting activities. Downtown San José contributes towards the positive identity of the City to the region, the nation, and abroad, and is the only location in the South Bay that actively promotes high-rise development.”

These findings support the limited term reduction in the IHO In-Lieu Fee as well as the limited term waiver under the AHIF. A Downtown High-Rise rental development may obtain the same reduction in fees if the project can meet the requirements as originally described in the AHIF, and meet the additional requirements imposed under the IHO.

As mentioned, an AHIF Downtown High-Rise rental development can qualify for a limited term fee waiver if the project meets the five required criteria listed in the background section of this memo. The proposed resolution authorizes an IHO In-Lieu Fee reduction for projects that would have been eligible for the AHIF In-Lieu Fee waiver had the program not been terminated. An agreement recorded prior to the project’s building permit issuance, as well as the same

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Certificate of Occupancy deadline of June 30, 2021, still must be met under the IHO program to qualify for the fee reduction of \$0.

To date, no projects have completed the required units to fully qualify for the Downtown High-rise exemption under the AHIF. However, two projects have pulled building permits and will likely obtain their final Certificates of Occupancy by June 30, 2021. **Attachment B** provides a list of current Downtown High-Rises that are eligible for the AHIF In-Lieu Fee waiver and identifies a total of twelve developments that are in the pipeline. Staff only listed Downtown High-Rise projects as eligible for the AHIF In-Lieu Fee waiver if they have submitted their Affordable Housing Compliance Plan and thus have acknowledged that the Certificate of Occupancy date may be achieved (projects #3-6). Developments listed in the bottom list (projects #7-12) are currently in the development review process but have not submitted an Affordable Housing Compliance Plan. It is uncertain if these six pipeline developments will meet the June 30, 2021 deadline. High-Rise developments that are not currently in the development review process will most likely be unable to meet the requirement to obtain a Certificate of Occupancy by the deadline and thus are not listed if an application has not been submitted to the Planning Department.

On April 3, 2018, City Council provides direction to staff to develop an ordinance to implement Private Development Workforce Standards and Community Workforce Agreements on Public Project (Workforce Standards). These standards require that private development projects receiving a public subsidy meet new workforce standards (including prevailing wage, apprentice ratios, local and targeted hire, and monitoring and compliance provisions). For new public subsidy or cost reduction programs developed after this direction, staff will consider whether to require these workforce standards or recommend that Council makes findings that financing, or construction of the entire subcategory is infeasible.

The action before the City Council should not be required to meet the Workforce Standards for the following reasons. The IHO In-lieu fee reduction is not a new public subsidy or cost reduction program. As discussed earlier, the Downtown High-Rise fee waiver existed in the AHIF (adopted in 2014). The City Council directed staff to reduce the IHO in-lieu fee for Downtown High Rise developments, consistent with the AHIF, prior to giving the direction on the Workforce Standards. Therefore, staff recommends that the City Council not unduly delay development projects, that are proceeding in good-faith based on prior direction, by requiring that staff proceed with an infeasibility study at this time.

EVALUATION AND FOLLOW-UP

The Administration will evaluate rental development projects to determine if they qualify for the reduction of the IHO In-Lieu Fee due to meeting the Downtown High-Rise criteria.

POLICY ALTERNATIVES

Alternative #1 *Do not establish an In-Lieu fee of \$0 for qualifying Downtown High-Rise Rental Developments.*

Pros: Inclusionary funds could be collected for Downtown High-Rise projects subject to the IHO.

Cons: Rental residential projects that were eligible for the Downtown High-Rise Exemption but did not meet the deadline to remain under the AHIF program would not be eligible for a fee reduction under IHO.

Reasons for not Recommending: On December 19, 2017, City Council directed staff to return with a resolution that establishes a reduction in the IHO In-Lieu Fee to \$0 (zero dollars) per applicable unit. Thus approving the actions recommended in this memorandum would be consistent with the expectations and information already provided to stakeholders and directed by City Council.

PUBLIC OUTREACH

Since July 2017, the Housing Department has hosted six outreach meetings to members of the development community and other stakeholders to discuss the implementation of the AHIF and IHO programs, totaling 114 attendees.

Meeting Date	Attendees
July 20, 2017	27
October 13, 2017	20
November 15, 2017	18
January 12, 2018	28
March 9, 2018	11
May 10, 2018	10
TOTAL	114

Additionally, on October 20, 2017 and March 16, 2018, the Housing Department attended PBCE's Developers Roundtable meeting and provided information and sought input from more than 30 attendees each time the Roundtable was convened. Housing Department staff have met in-person with an estimated 30 individual developers since October 2017 to discuss their projects and the AHIF/IHO Transition Process. Finally, this memorandum will be posted on the City's Council Agenda website for the June 26, 2018 City Council Meeting.

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COORDINATION

This item has been coordinated with the City Attorney's Office, Planning, Building and Code Enforcement, and the Office of Economic Development.

COST IMPLICATIONS

The change to the Inclusionary Rental In-Lieu Fee for qualified projects is an amendment to the 2018-2019 Schedule of Fees and Charges. There are no revenue or expense impacts in 2017-2018. Costs of assessing the reduced fee will be covered by the current resources used to assess the AHIF and IHO. The Inclusionary Rental In-Lieu Fee is assessed at the time the Certificate of Occupancy Permit is issued for new projects submitted starting January 1, 2018, and that revenue will be recognized in the year which those permits are anticipated to be issued.

The Inclusionary In-Lieu fee is currently \$125,000 per rental unit. If the IHO In-Lieu Fee is reduced to \$0 for qualified Downtown High-Rise rental developments, this would result in less in-lieu fees collected on future Downtown High-Rise rental developments that obtain their Certificate of Occupancy prior to the resolution deadline of June 30, 2021. Projects 8-13 on Attachment B may qualify under either the IHO or AHIF based on when they submit their compliance plan. If these projects qualify for the AHIF Downtown High-Rise exemption and meet the requirements, the project is exempted from paying the fee.

COMMISSION RECOMMENDATION/INPUT

The Housing Department's recommendations were presented to the Housing and Community Development Commission on August 10, 2017. The Commission accepted the staff report and unanimously supported the proposed changes to the AHIF and the IHO Programs.

CEQA

Not a Project, PP17-008, General Procedure & Policy Making resulting in no changes to the physical environment.

/s/

JACKY MORALES-FERRAND
Director, Housing Department



MARGARET MCCAHAN
Budget Director

For questions, please contact Amy Chen, Senior Development Officer at (408) 975-4489.

Attachment A – Downtown High-Rise Boundary for Affordable Housing Exemptions
Attachment B – Status of Downtown High-Rise Developments

Attachment A
Downtown High-Rise Boundary for Affordable Housing Exemptions



**Attachment B
Status of Downtown High-Rise Rental Developments**

Projects Eligible for the AHIF Downtown High-Rise Exemption and have recorded Agreements in place						
	Project Name	Address	Developer	Building Permits	# of Units	Square Footage
1	The Graduate	80 E San Carlos	AMCAL Housing	12/19/17	260	261,436
2	Miro	193 E Santa Clara St	Bay View Development	12/22/17	630	587,728
TOTALS					890	849,164

Projects Potentially Eligible for the AHIF Downtown High-Rise Exemption and submitted a Compliance Plan, but have NOT recorded an Agreement						
	Project Name	Address	Developer	Building Permits	# of Units	Square Footage
3	Gateway Towers	455 S First St	The Core Companies	Estimated: 03/31/19	300	235,330
4	Aviato	199 Bassett Ave	KT Urban	Estimated: Summer 2018	302	285,612
5	4th Street Metro Station	439 S 4th St	N/A	N/A	101	114,638
6	Post & San Pedro	171 Post St	Simeon Properties	N/A	228	179,062
7	Davidson Tower	255 W Julian St	DAL Properties	Estimated: 01/15/20	653	536,131
8	27 West	27 S 1st St	Schoennauer Co LLC	N/A	350	265,223
TOTALS					1,934	1,615,996

Projects Potentially Eligible for the Downtown High-Rise Exemption, but have NOT confirmed through a submitted Compliance Plan						
	Project Name	Address	Developer	Building Permits	# of Units	Square Footage
9	Carlisle	65 Notre Dame Ave	Insight Realty	N/A	220	TBD
10	Garden Gate Tower	600 S 1st St	KT Urban	N/A	285	TBD
11	Park & Almaden	170 Park Center Plaza	Steinberg Hart	N/A	260	TBD
12	Sobrato Block 3	150 S 2nd St	Sobrato Organization	N/A	393	TBD
TOTALS					1,158	TBD