



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Kim Welsh  
Jacky Morales-Ferrand

**SUBJECT:** SEE BELOW

**DATE:** May 27, 2020

Approved

Date

5/27/20

**SUBJECT: EXTENSION OF THE LIMITED TERM TRANSITION FOR  
QUALIFYING RENTAL DEVELOPMENTS PAYING AFFORDABLE  
HOUSING IMPACT FEE DEADLINE DUE TO COVID-19**

## **RECOMMENDATION**

- (a) Accept staff's recommendation to extend the Affordable Housing Impact Fee (AHIF) Transition deadline from June 30, 2020 until the expiration of the Proclamation of Local Emergency.
- (b) Adopt a resolution amending Resolution No. 77218 as previously amended by Resolutions No. 78010, 78392, 78473, and 78576 (collectively, the "Housing Impact Fee Resolution") by updating Section 13 regarding the transition between the Affordable Housing Impact Fee and Inclusionary Housing Ordinance Programs to extend the date on which the transition developments must submit final approved building plans and pay their AHIF from June 30, 2020 to the date that the Proclamation of Local Emergency extended by [Resolution No.79502](#), and as may be further extended by a resolution of the Council.

## **OUTCOME**

Approval of the recommendation will result in the extension of the Affordable Housing Impact Fee Transition period from June 30, 2020 to the end of the Proclamation of Local Emergency, (Resolution No. 79502) and allow qualifying rental developments more time to meet the AHIF transition program requirements.

## **BACKGROUND**

The AHIF program was established to provide an impact fee applied to market rate housing development to fund the development of affordable housing. The impact fee was established

based on the need for affordable housing connected with the development of new market-rate residential housing.

### ***Inclusionary Housing Ordinance***

The Inclusionary Housing Ordinance (IHO), was adopted on January 12, 2010. 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IHO that apply to rental developments were suspended until the court decision in *Palmer v. City of Los Angeles* was superseded.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.

On November 5, 2019, City Council approved proposed changes to the IHO to encourage more on-site development. The item is to go back to City Council to finalize the changes and adopt the ordinance at a later time.

### ***Affordable Housing Impact Fee***

On November 18, 2014, the City Council adopted the Affordable Housing Impact Fee Resolution, establishing the AHIF Program. This requires rental developments with three or more units to pay an Affordable Housing Impact Fee at Building Permit issuance. The fee is currently set at \$18.26 per square foot for Fiscal Year 2019-2020 and increases annually by 2.4%.

### ***Transition between the AHIF and IHO for Rental Developments***

On December 19, 2017, the City Council adopted resolution 78473 amending the Housing Impact Fee Resolution to provide a framework for a transition process between the AHIF and the IHO programs for all rental developments that applied by a specific date. These projects would be subject to the Inclusionary Housing Ordinance but would be allowed to satisfy that obligation by obtaining building permits and paying the AHIF. Projects in this transition program that did not meet the deadline would be subject to the standard IHO requirements. Qualifying rental developments with recorded affordable housing agreements on file would continue to be subject to the AHIF. All rental projects with first approvals after June 30, 2018 would be subject to the IHO.

On May 8, 2018, the City Council adopted resolution 78576 to amend and provide clarification to the Affordable Housing Impact Fee Transition process. This included substituting the final approved building plans requirement for the building permit requirement and extending the due date from January 31, 2020 to June 30, 2020.

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The transition program allowed qualifying rental developments that submitted a planning application paid all planning fees, submit an Affordable Housing Compliance Plan, and pay a \$3,200 Housing application fee before June 30, 2018. These transition projects may pay the AHIF instead of complying with the IHO if they:

- 1) Complete an IHO transition waiver specifying that if they did not comply they would be subject to the IHO, and
- 2) Pay the current AHIF and obtain final approved building plans for the residential development prior to June 30, 2020.

### ***COVID-19 Pandemic***

The World Health Organization, State of California, and Santa Clara County have recognized that COVID-19 virus is a life-threatening pandemic, and have issued public health declarations from January to May 2020. As a result of the public health declarations, including shelter in place and allowing only essential services, typical residential development processes have been altered.

### ***Public Health and Local Emergency Declarations***

In California, the Department of Public Health reports more than 84,057 positive cases and more than 3,436 deaths as of May 20, 2020.<sup>1</sup> In order to mitigate the impact of the disease on the public, health officials recommended shelter-in-place guidelines and appropriate social distancing across the state. The following public health declarations have been issued:

- On January 30, 2020, the World Health Organization declared COVID-19 a Public Health Emergency of International concern.
- On January 31, 2020, the United States Secretary of Health and Human Services declared a Public Health Emergency.
- On February 10, 2020, the Santa Clara County announced a local health emergency due to the spread of the novel coronavirus.
- On March 6, 2020, the City Manager proclaimed a Local Emergency in the City of San José, and it was ratified by the [City Council on March 10, 2020](#).
- On March 11, 2020, the World Health Organization declared the coronavirus outbreak a pandemic.
- On March 16, 2020, the County of Santa Clara issued a shelter in place order directing all individuals to shelter in their place of residence unless they must obtain or perform vital services. All businesses, except essential businesses, are required to cease all activities at facilities located within the County. The order is effective on March 17, 2020 and will remain in place until April 7, 2020.
- On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all Californians to stay home, subject to certain limited exemptions.

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- On March 31, 2020, the County of Santa Clara extended the shelter in place order through May 3, 2020 with stricter stay-at-home rules. The changes include prohibiting residential and commercial construction, closing dog parks and playgrounds, and requires essential businesses enact tighter social-distancing rules for workers and customers.
- On April 29, 2020, the County of Santa Clara extended shelter in place through May 31, 2020. The order also eased some restrictions for a limited number of additional essential and outdoor business activities.
- On [May 5, 2020](#), the City Council adopted Resolution No 79502 extending its Proclamation of Local Emergency by an additional 60 days.

## **ANALYSIS**

The COVID-19 Pandemic has made progress difficult for residential development projects, both in conducting business and the ability of projects to secure financing. The extension of the AHIF Transition deadline is consistent with the other administrative actions taken to date to allow developers more time to meet critical deadlines in the development process due to COVID-19.

The current deadline for residential developments to continue participation in the AHIF Transition is June 30, 2020. As a part of the City's response to the COVID-19 pandemic, staff is recommending the deadline for the AHIF Transition be extended through the duration of the Local Emergency Order. Connection of the AHIF Transition deadline to the sunset of the Local Emergency Order will reflect the impact of the health crisis on the local economy.

### ***Ten Residential Developments May Benefit from the Extension***

The extension of the AHIF Transition deadline will impact ten residential developments (**Attachment A**). These developments include the potential for 1,976 new apartments throughout San José. Once the AHIF transition deadline expires, any development does not meet the required milestones prior to the final date, will be subject to the Inclusionary Housing Ordinance. The requirements for the Inclusionary Housing Ordinance vary from the AHIF payment calculations, resulting in a change in obligations for residential developers. Providing additional time as a result of the unforeseen COVID-19 pandemic allows developers to meet the AHIF Transition deadline while maintaining financial assumptions made under the AHIF Transition. The extension would not apply to the projects that are in other programs to obtain full exemption from the AHIF (i.e. Downtown High Rise). All other requirements of the transition process will still apply.

### ***Proclamation of Local Emergency Must Be Extended 60 days at a Time***

Extension of the Director of Emergency Services' (City Manager) proclamation of a local emergency allows the City to exercise extraordinary police powers, such as evacuation; immunity for emergency actions; authorization of issuance of orders and regulations; activation

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of pre-established emergency provisions; and is a prerequisite for requesting state or federal assistance. Termination of the proclamation of local emergency when conditions warrant is required by law.

Pursuant to the San José Municipal Code and the California Government Code, the City Council must review the need to continue Proclamation of Local Emergency every 60 days until conditions warrant termination. The City Manager signed a proclamation of a Local Emergency took place on March 6, 2020. On May 5, 2020, the City Council extended the order an additional 60 days, the duration of the Proclamation of Local Emergency is now extended to July 7, 2020. As shelter in place orders are slowly lifted, the City Council will review the impact of the health orders on the local economy and determine if the Proclamation of Local Emergency must be extended.

Since the deadline of the requirement to submit approved building plans and pay the AHIF for AHIF Transition projects will be set to the end of the Proclamation of Local Emergency, the deadline will be extended whenever the City Council extends the Proclamation, and the consideration of this extension will occur at least every 60 days. It is unclear at this time what the duration of the Local Emergency Proclamation will be, however, it is anticipated the order will be extended in the months ahead.

### **CONCLUSION**

This action will encourage the existing ten residential development projects, representing 1,971 units, the opportunity to continue to move forward under the AHIF Transition and build new housing units.

### **EVALUATION AND FOLLOW-UP**

Consistent with the requirements of the Mitigation Fee Act, the City will provide an annual report on actual AHIF revenues, future revenue projections, and expenditures of those revenues once revenues have been received.

### **CLIMATE SMART SAN JOSE**

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

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## **PUBLIC OUTREACH**

This report will be made available to the public on May 27, 2020 on the City of San José website prior to the City Council meeting scheduled for June 2, 2020.

## **COORDINATION**

This memorandum was coordinated with the City Attorney's Office, Office of Emergency Management and the City Manager's Budget Office.

## **COMMISSION RECOMMENDATION**

This Housing and Community Development Commission meetings have been cancelled due to the COVID-19 pandemic.

## **COST SUMMARY/IMPLICATIONS**

The AHIF is currently \$18.26 per square foot (Fiscal Year 2019-2020). The AHIF increased by 2.4% each fiscal year (as required by the Ordinance) since it was adopted in 2014. Under the extended deadline, the AHIF

will need to be amended annually until fiscal year 2021-2022 in the Schedule of Fees and Charges. These fees were included in the budget projections and included in the Five-Year Affordable Housing Investment Plan.

## **CEQA**

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

/s/

KIM WALES

Deputy City Manager

Director of Economic Development

/s/

JACKY MORALES-FERRAND

Director, Housing Department

For questions, please contact, Deputy Director, Rachel VanderVeen (408) 535-8231 or, Housing Catalyst, Jerad Ferguson (408) 535-8176.

Attachment A – AHIF Transition Projects

**ATTACHMENT A**

<b>AHIF Transition Projects</b>								
	<b>Project Name</b>	<b>Council District</b>	<b>Project Address</b>	<b>Developer</b>	<b>Number of Units</b>	<b>Square Footage</b>	<b>FY19-20: \$18.26</b>	<b>FY20-21: \$18.70</b>
1	<b>1495 Winchester</b>	1	1495 S Winchester	Aron Developers	46	31,948	\$ 583,370.48	\$ 597,427.60
2	<b>Avalon West Valley</b>	1	700 Saratoga Ave	Avalon Bay	304	262,440	\$ 4,792,154.40	\$ 4,907,628.00
3	<b>Morning Star of San Jose</b>	1	1366 S. DeAnza Blvd	Swenson	103	54,572	\$ 996,484.72	\$ 1,020,496.40
4	<b>Little Portugal</b>	5	1665 Alum Rock Ave	Silicon Sage Builders	121	94,200	\$ 1,720,092.00	\$ 1,761,540.00
5	<b>Santana Row Lot 12</b>	6	358 Hatton St	Federal Realty	300	203,682	\$ 3,719,233.32	\$ 3,808,853.40
6	<b>Volar</b>	6	350 S Winchester	Caruso Designs	307	287,172	\$ 5,243,760.72	\$ 5,370,116.40
7	<b>Holden of San Jose II</b>	6	1015 S Bascom Ave	Alliance Residential Company	56	44,604	\$ 814,469.04	\$ 834,094.80
8	<b>Gateway Station</b>	6	1410 S Bascom Ave	Bay West Development	590	442,398	\$ 8,078,187.48	\$ 8,272,842.60
9	<b>Belmont Village Union Ave</b>	9	5175 Union Ave	Grayson Communities	122	59,471	\$ 1,085,940.46	\$ 1,112,107.70
10	<b>Vista Apartments Urban Infill</b>	6	1605 Parkmoor Ave	Vista Sack Associates	27	14,404	\$ 263,017.04	\$ 269,354.80
<b>Totals</b>					<b>1,976</b>	<b>1,494,891</b>	<b>\$ 27,296,709.66</b>	<b>\$ 27,954,461.70</b>

**Please note:** Project data may vary and may have changed since the submission of this report.