

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING RESOLUTION NO. 77218 AS PREVIOUSLY AMENDED BY RESOLUTIONS NO. 78010, 78392, 78473, 78576 AND 79294 (COLLECTIVELY, THE “HOUSING IMPACT FEE RESOLUTION”) BY UPDATING SECTION 13 REGARDING THE TRANSITION BETWEEN AFFORDABLE HOUSING IMPACT FEE AND INCLUSIONARY HOUSING ORDINANCE PROGRAMS TO EXTEND THE DATE BY WHICH RENTAL PROJECTS IN THE TRANSITION PROGRAM MUST SUBMIT FINAL APPROVED BUILDING PLANS AND PAY THE AFFORDABLE HOUSING IMPACT FEE FROM JUNE 30, 2020 TO THE END OF THE LOCAL EMERGENCY

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 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 Housing Impact Fee to make the standards consistent with the staff report, the adopted Housing Impact Fee regulations and the adopted Inclusionary Housing Ordinance guidelines; and

WHEREAS, on October 24, 2017, the Council adopted Resolution No. 78392 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 became operative on January 1, 2018; and

WHEREAS, on December 19, 2017, the Council adopted Resolution No. 78473 to add a new Section 13, to provide for a transition period that allowed projects with first approvals prior to June 30, 2018 to pay the housing impact fee, rather than comply with the Inclusionary Housing Ordinance requirements, if they met certain conditions and deadlines (“Transition Projects”), including the issuance of all building permits for the residential development prior to January 1, 2020; and

WHEREAS, on May 8, 2018, the Council adopted Resolution No. 78576 to amend Section 13 of the Housing Impact Fee Resolution, as amended, to, amongst other things allow Downtown High Rise projects that qualified as Transition Projects, but failed to obtain Certificates of Occupancy by the applicable due date to pay the housing impact fee rather than meet the Inclusionary Housing Ordinance requirements if they have obtained building permits; and

WHEREAS, on September 24, 2019, the City Council extended the applicable due dates for the Downtown High Rise projects that qualified as Transition Projects to obtain certificates of occupancy or pay the housing impact fee to June 30, 2025 and to extend the date for those projects to record a Downtown High Rise Agreement to May 30, 2025; and

WHEREAS, on September 24, 2019, the City Council - after considering evidence presented at a public hearing including but not limited to a financial feasibility study prepared by Strategic Economics that met all requirements of San Jose Municipal Code Section 14.10.310(c) - determined that the extension of the transition period due dates for the defined Subcategory of Use is not a Subsidy because the construction of such projects is Financially Infeasible and that the workforce standards otherwise required by Chapter 14.10 would therefore not apply to any downtown residential high rise project(s) receiving the proposed extension of the transition period due dates; and

WHEREAS, currently, Transition Projects that are not Downtown High Rise projects may pay the Affordable Housing Impact Fee instead of complying with the Inclusionary Housing Ordinance if they completed an Inclusionary Housing Ordinance transition waiver specifying that if they did not comply they would be subject to the Inclusionary Housing Ordinance, and pay the current Affordable Housing Impact Fee and obtain final approved building plans for the residential development prior to June 30, 2020; and

WHEREAS, 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, and as a result of the public health declarations, including shelter in place and allowing only essential services, typical residential development processes have been altered; and

WHEREAS, on March 6, 2020, the City Manager proclaimed a Local Emergency in the City of San José, ratified by the City Council on March 10, 2020; and

WHEREAS, on May 5, 2020, the City Council adopted Resolution No 79502 continuing its Proclamation of Local Emergency by an additional 60 days to July 7, 2020; and

WHEREAS, the COVID-19 Pandemic has made progress difficult for residential development projects, both in conducting and the ability of projects to secure financing, and the extension of the Affordable Housing Impact Fee Transition program 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; and

WHEREAS, the City now wishes to extend the date on which the Transition Projects that are not Downtown High Rise projects must submit final approved building plans and pay their Affordable Housing Impact Fee from June 30, 2020 to the end of the

Proclamation of Local Emergency continued by Resolution No 79502, and as may be further continued by resolutions of the City Council.

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 amend Section 13, Relationship to Inclusionary Housing Ordinance, read as follows:

SECTION 13. RELATIONSHIP TO INCLUSIONARY HOUSING ORDINANCE

A. New First Approvals. Rental Developments with 20 or more dwelling units with applications for first approval completed after June 30, 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. Existing Agreements. Rental Developments that have entered into and recorded an Affordable Housing Agreement (as defined in the regulations adopted pursuant to Section 12, including agreements pursuant to Chapters 2-4 of the regulations) prior to March 31, 2018 shall continue to be subject to the Housing Impact Fee and the conditions of the recorded agreement.

C. Transition Period Requirements. Rental Developments with 20 or more dwelling units that are not subject to subsection B, and whose applications for first approval are completed on or before June 30, 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 June 30, 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 complete 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 June 30, 2018; and

(4) the Developer either: (i) obtains building department approval of the final plans for the Rental Development and pays the Housing Impact Fee no later than the date of the end of the local emergency as determined pursuant to Subsection H below, or, (ii) if eligible, records an agreement pursuant prior to part 4 of Chapter 2 of the regulations regarding Downtown High Rise projects no later than May 30, 2025.

D. Downtown High Rise. The Developer of a Downtown High Rise Rental Development meeting all criteria in subsection C above, all criteria in part 4 of Chapter 2 of the regulations, and the terms of their recorded agreement is not required to pay a Housing Impact Fee for the covered units. If a Developer's Downtown High Rise rental project meets all criteria in subsection C above, their recorded agreement, and in part 4 of Chapter 2 of the regulations except the requirement to obtain all final Certificates of Occupancy by June 30, 2025, and the Developer has been issued all building permits for the Rental Development, the Developer may pay the Housing Impact Fee on or before June 30, 2025, instead of complying with the requirements of the Inclusionary Housing Ordinance.

E. Pipeline Projects Without Recorded Agreements. The Developer of a Rental Development meeting all criteria in subsections C.1-C.3 above, all criteria for Eligible Pipeline Projects in Section 8 of the Housing Impact Fee Resolution, all criteria in Chapter 3 of the regulations and the terms of their recorded agreement is not required to pay a Housing Impact Fee for the covered units. If a Developer's Pipeline Project meets all criteria in subsection C.1-C.3 above, Section 8 of the Housing Impact Fee Resolution, and Chapter 3 of the regulations and the terms of their recorded agreement except for the pipeline requirement to obtain final Certificates of Occupancy for 50% of the buildings by the January 31, 2020 due date, and the Developer has obtains building department approval of the final plans for the Rental Development by the due date, the Developer may pay the Housing Impact Fee on or before January 31, 2020, instead of complying with the requirements of the Inclusionary Housing Ordinance.

F. Mapped Developments. The Developer of a Residential Development that has (1) tentative map(s) or other map(s) or plan(s) approved on or before June 30, 2018 allowing the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments) and (2) an approved compliance plan indicating that the residential development is rental may proceed under subsection C above, but the Developer must also record an Affordable Housing Agreement prior to payment of the Housing Impact Fee that provides for monitoring and requires and the Developer to comply with the Inclusionary Housing Ordinance's for-sale requirements if Developer has applied to the state Bureau of Real Estate for a public report or filed a notice of intention, or otherwise taken action to change the development to a for-sale development prior to the issuance of the final Certificates of Occupancy.

G. Rental Developments with 3 to 19 dwelling units remain subject to the Housing Impact Fee.

H. End of the Local Emergency. The end of the local emergency shall occur upon the date identified in the City Council's adopted proclamation of termination of the local emergency, and if no date is identified, on the date of adoption.

ADOPTED this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

VACANT:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk