

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE TO ADOPT A RESOLUTION APPROVING THE TAX AND FEE WAIVER IN AN AMOUNT UP TO \$6,253,458 AND AUTHORIZING THE HOUSING DIRECTOR, OR HIS DESIGNEE, TO NEGOTIATE AND EXECUTE DOCUMENTS AND DOCUMENT AMENDMENTS RELATED TO IMPLEMENTING THE MULTIFAMILY HOUSING INCENTIVE PROGRAM SUCH AS CONSTRUCTION PROGRESS AGREEMENTS

WHEREAS, on December 10, 2024, the Council of the City of San José (“City”) adopted the Multifamily Housing Incentive Program (“MHIP”) under Resolution No. RES2024-420, which provides for specified projects, upon meeting conditions, a reduction of certain fee and tax requirements, including a reduction in the Inclusionary Housing Ordinance In-Lieu Fee, and a 50% reduction to the Commercial, Residential, Mobile Home Park (“CRMP”) and Building Structure (“B&S”) construction taxes (collectively, “Fee Reduction”) for the first 1,500 units that obtained City building permits by December 31, 2025, and a 25% reduction in the B&S tax to subsequent projects that obtained City building permit after the 1,500 units, or after January 1, 2026; and

WHEREAS, on May 13, 2025, the MHIP ordinance was amended to increase the number of units that obtained a building permit by December 31, 2025, and were eligible for the 50% reduction to B&S and CRMP taxes from 1,500 to 1,800 units, and became effective on June 20, 2025; and

WHEREAS, the most recent amendment to the MHIP approved by the City Council on January 27, 2026, included an increase in unit capacity to 3,600 units and extended the Phase I benefit application deadline to February 28, 2027. These changes became effective March 5, 2026; and

WHEREAS, under Resolution No. RES2024-420, the Fee Reduction permitted under MHIP is not a subsidy subject to Chapter 14.10 of the San José Municipal Code; and

WHEREAS, the MHIP requires that the qualifying projects must provide at least five percent of the residential units as deed-restricted affordable units made available at an affordable rent to households earning no more than 100% of Area Median Income, and otherwise meets the requirements of the Inclusionary Housing Ordinance (“IHO”); and

WHEREAS, the Seely Avenue Mixed-Use Development is a phased master plan development located on a 22.88-acre site at the northeast corner of Montague Expressway and Seely Avenue and, at buildout, is anticipated to include 1,430 residential units and approximately 18,965 square feet of commercial space; and

WHEREAS, the development includes Phase 1 with 154 market-rate townhomes, Phase 2 with three market-rate multifamily apartment buildings identified as Buildings A, B, and C, and Phase 3 with one 136-unit restricted affordable apartment building; and

WHEREAS, all components of Phase 2 and Phase 3 are eligible multifamily buildings under the City’s MHIP, and on May 15, 2025, the City Council approved IHO fee and construction tax reductions for Phase 2, Building A; and

WHEREAS, Phase 2, Building B is seeking to start construction in July 2026 and will include up to 372 multifamily residential units, including 19 restricted affordable apartment units, and approximately 5,342 square feet of retail space; and

WHEREAS, every phase of the 0 Seely Avenue Mixed-Use Development must comply with the Inclusionary Housing Agreement recorded against the site, as amended; and

WHEREAS, the City's Building and Structure Construction Tax and Commercial-Residential-Mobilehome Park Building Tax are based on residential construction valuation, with a combined tax rate of 3.96%, and proceeds are used to fund transportation capital improvement projects; and

WHEREAS, the standard Building and Structure Construction Tax and Commercial-Residential-Mobilehome Park Building Tax for Phase 2, Building B is estimated to be \$2,450,681, and a 50% construction tax reduction would result in estimated construction taxes to be received by the City in the amount of \$1,225,340.50; and

WHEREAS, the City's IHO requires residential developers to provide affordable housing or comply through other authorized options, including the Mixed Compliance option, which allows developers to pay a reduced in-lieu fee and provide 5% of total units as new restricted affordable housing; and

WHEREAS, based on the current Mixed Compliance fee of \$13.78 per net residential square foot for developments located in moderate market area, and 325,109 net residential square feet, the estimated Inclusionary Housing Ordinance in-lieu fee waiver for Phase 2, Building B is \$4,480,002; and

WHEREAS, the total proposed tax reduction and fee waiver for Phase 2, Building B is estimated to be \$5,705,342.50, consisting of the estimated \$4,480,002 Inclusionary Housing Ordinance in-lieu fee waiver and the estimated \$1,225,340.50 construction tax reduction; and

WHEREAS, Phase 2, Building B is anticipated to add 353 market-rate units and 19 restricted affordable units, create approximately 270 full-time construction jobs, and, upon completion, generate increased annual property tax revenue to support City

services; and

WHEREAS, by focusing development on an urban infill location near transit and existing infrastructure, Phase 2, Building B advances the City's Climate Smart San José goals by reducing vehicle miles traveled and minimizing sprawl; and

WHEREAS, the City will monitor project construction to ensure compliance with the MHIP, and the development must continue to comply with IHO requirements, including its Affordable Housing Compliance Plans and recordation of an Inclusionary Housing Agreement against the site before building permit issuance; and

WHEREAS, the proposed action aligns with the City's Economic Development Strategy to spur multifamily residential development in identified growth areas within the City; and

WHEREAS, the proposed action includes a public subsidy as defined in the City's Open Government Resolution section 2.2.10 in the amount of \$1,000,000 or more, and an informational memorandum will be released at least 28 calendar days before the City Council meeting at which the subsidy will be considered; and

WHEREAS, projects are eligible for the MHIP subsidy after issuance of building permits before February 28, 2027, and the subsidy will become finalized upon payment of taxes before issuance of the first Certificate of Occupancy, subject to applicable conditions; and

WHEREAS, the public purpose of the proposed subsidy is to encourage multifamily residential development, support retail amenities, increase transit use, improve public life in San José, and increase the City's economic vitality; and

WHEREAS, no significant impacts are anticipated on traffic or public infrastructure, given that funding is being transferred to the traffic capital fund to mitigate the one-time revenue reduction;

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

- A. The above recitals are true and correct.
- B. The Fee Reduction of up to \$5,705,342.50 for Building B within Phase 2 of the 0 Seely Avenue Mixed-Use Development is approved consistent with the Multifamily Housing Incentive Program.
- C. The Housing Director, or their designee, is authorized to negotiate and execute documents and document amendments related to implementing the Multifamily Housing Incentive Program, including but not limited to construction progress agreements.

ADOPTED this _____ day of _____, 2026, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk