

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 4.46.039.13 TO CHAPTER 4.46 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE UP TO A FIFTY PERCENT (50%) REDUCTION OF THE BUILDING AND STRUCTURE CONSTRUCTION TAX, AND ADDING SECTION 4.47.098 TO CHAPTER 4.47 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO PROVIDE A FIFTY PERCENT (50%) REDUCTION OF THE COMMERCIAL-RESIDENTIAL-MOBILEHOME PARK BUILDING TAX, FOR PROJECTS ELIGIBLE FOR THE TEMPORARY MULTIFAMILY HOUSING INCENTIVE PROGRAM

WHEREAS, on June 18, 2024, the City of San José (“City”) City Council extended and modified the Downtown Residential High-Rise Incentive Program and directed staff to study additional strategies for promoting housing construction aimed at Growth Areas defined in the Envision San José 2040 General Plan, with an emphasis on those projects with project applications that were deemed complete by the Planning, Building, and Code Enforcement Department by the end of June 2022; and

WHEREAS, while San José has seen some modest production of affordable housing in the last several years, the City has continued to underperform in housing production, particularly in the last calendar year for multifamily housing market rate (above moderate income) housing, and the economics shaping project feasibility for the new construction of multifamily market-rate housing continue to present an extremely challenging environment nationally and in San José; and

WHEREAS, the feasibility of multifamily residential development was analyzed in the latest Cost of Residential Development report (“Report”) which was presented and discussed with the City Council at an October 2023 Study Session, and City staff obtained a conceptual feasibility analysis review from the consultant responsible for the Report that discusses current feasibility at a high-level in the present conditions; and

WHEREAS, a Memorandum from the Departments of Planning, Building, and Code Enforcement; the Office of Economic Development and Cultural Affairs; Housing; Parks, Recreation, and Neighborhood Services; and Transportation, dated November 27, 2024, (“Memorandum”) includes information on project eligibility and criteria for a Multifamily Housing Incentive Program; and

WHEREAS, Chapter 14.10 of the San José Municipal Code sets “Minimum Labor Standards for a Private Construction Project Accepting a City Subsidy”, defining a subsidy to include any “reduction, permanent suspension or exemption of any fee or tax” that applies to single or multiple projects; and

WHEREAS, there are exemptions to the definition of a subsidy that include the reduction of a fee or tax that is applied uniformly across all private construction projects within a specific subcategory of use, e.g., high-rise residential, when City Council determines, based on specified criteria, that construction of the projects is not financially feasible; and

WHEREAS, the City recognizes the importance of supporting multifamily residential development to increase the production of affordable housing in San José; and

WHEREAS, based on the analysis in the Memorandum, staff recommends providing a fifty percent (50%) reduction of the Commercial-Residential-Mobilehome Park Building Tax and a fifty percent (50%) reduction of the Building and Structure Construction Tax to the first 1,500 units in projects eligible for the temporary Multifamily Housing Incentive that also obtain a City building permit by December 31, 2025; and starting January 1, 2026 a twenty-five percent (25%) reduction of the Building and Structure Construction Tax for up to 8,539 additional units in projects eligible for the temporary Multifamily Housing Incentive Program; and

WHEREAS, based on the Report and subsequent analysis conducted by the consultant, the City has determined that the fee reduction permitted under the Multifamily Housing Incentive Program is not a subsidy; and

WHEREAS, Council considered staff's recommendations, and the reduction of the Commercial-Residential-Mobilehome Park Building Tax and Building and Structure Construction Tax is made based on the findings of the Memorandum, the Report, the documents linked to the Memorandum, and the discussion at the Council meeting;

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

SECTION 1. A new section is added to Chapter 4.46 of Title 4 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

4.46.039.13 Suspension – Qualified Multifamily Housing Incentive Program Project

- A. The collection of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended as follows:
 - 1. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the periods set out below, and the tax shall not be collected with respect to construction of the first 1,500 residential units within a Qualified Multifamily Housing Incentive Program Project as provided in this Section, that also obtain a City building permit by December 31, 2025.

2. Beginning January 1, 2026, the collection of twenty-five percent (25%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the periods set out below, and the tax shall not be collected with respect to construction of up to 8,539 additional residential units within a Qualified Multifamily Housing Incentive Program Project as provided in this Section.
 3. For a Qualified Multifamily Housing Incentive Program Project that includes both residential uses and non-residential uses the tax suspensions above shall only apply to the residential uses therein.
- B. "Qualified Multifamily Housing Incentive Program Project" means the projects eligible for the temporary Multifamily Housing Incentive Program identified in Resolution No. _____, adopted by the City Council on December 10, 2024.
- C. Qualified Multifamily Housing Incentive Program Projects shall remain eligible until the expiration of the planning permit, including any extensions.
- D. Eligible projects may be modified and remain eligible for the Qualified Multifamily Housing Incentive Program under certain conditions. A project must submit an application for modification of the project to the City by December 31, 2025. To remain eligible, the modification must result in the project maintaining a density of at least 50 DU/AC. The modified project must obtain a building permit 12 months after planning approval of the modified project and pass a first inspection six months after building permit issuance to remain eligible for the Qualified Multifamily Housing Incentive Program.
- E. If a Qualified Multifamily Housing Incentive Program Project that was eligible for the reduction as provided for in this Section has not met the applicable deadlines

as set out in this Section, then the full amount of the tax shall be paid to the Building Official prior to the issuance of a certificate of occupancy, including a temporary certificate of occupancy.

- F. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Qualified Multifamily Housing Incentive Program Project that are consistent with the requirements of this Section.

Any person who enters into a Project Completion Agreement for the tax suspension pursuant to this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen and seven tenth's percent (16.7%) of the hours worked on the Qualified Multifamily Housing Incentive Program Project must be worked by registered apprentices from approved apprenticeship training programs;
2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Qualified Multifamily Housing Incentive Program Project have a barrier to employment such as being homeless, a veteran or an at-risk youth; and
3. Post or cause the posting of bids for subcontracting work on the Qualified Multifamily Housing Incentive Program Project on websites such as the Bay Area Builders Exchange for subcontractors to be able to access work for workers in the nine (9) Bay Area counties.

SECTION 2. A new section is added to Chapter 4.47 of Title 4 of the San José Municipal Code, to be numbered, entitled, and to read as follows:

4.47.098 Suspension – Qualified Multifamily Housing Incentive Program Project

- A. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the periods set out below, and the tax shall not be collected with respect to construction of the first 1,500 residential units within a Qualified Multifamily Housing Incentive Program Project as provided in this Section. For a Qualified Multifamily Housing Incentive Program Project that includes both residential uses and non-residential uses the tax suspension shall only apply to the residential uses therein.
- B. "Qualified Multifamily Housing Incentive Program Project" means the projects eligible for the temporary Multifamily Housing Incentive Program identified in Resolution No. _____, adopted by the City Council on December 10, 2024.
- C. Qualified Multifamily Housing Incentive Program Projects shall remain eligible until the expiration of the planning permit, including any extensions.
- D. Eligible projects may be modified and remain eligible for the Qualified Multifamily Housing Incentive Program under certain conditions. A project must submit an application for modification of the project to the City by December 31, 2025. To remain eligible, the modification must result in the project maintaining a density of at least 50 DU/AC. The modified project must obtain a building permit 12 months after planning approval of the modified project and pass a first inspection six months after building permit issuance to remain eligible for the Qualified Multifamily Housing Incentive Program.

- E. If a Qualified Multifamily Housing Incentive Program Project that was eligible for the reduction as provided for in this Section has not met the applicable deadlines as set out in this Section, then the full amount of the tax shall be paid to the Building Official prior to the issuance of a certificate of occupancy, including a temporary certificate of occupancy.
- F. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Qualified Multifamily Housing Incentive Program Project that are consistent with the requirements of this Section.

Any person who enters into a Project Completion Agreement for the tax suspension pursuant to this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen and seven tenth's percent (16.7%) of the hours worked on the Qualified Multifamily Housing Incentive Program Project must be worked by registered apprentices from approved apprenticeship training programs;
2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Qualified Multifamily Housing Incentive Program Project have a barrier to employment such as being homeless, a veteran or an at-risk youth; and
3. Post or cause the posting of bids for subcontracting work on the Qualified Multifamily Housing Incentive Program Project on websites such as the Bay Area Builders Exchange for subcontractors to be able to access work for workers in the nine (9) Bay Area counties.

PASSED FOR PUBLICATION of title this _____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, MMC
City Clerk