



COUNCIL AGENDA: 11-18-14  
ITEM: 4.1

# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Toni J. Taber, CMC  
City Clerk

**SUBJECT:** SEE BELOW

**DATE:** 11-6-2014

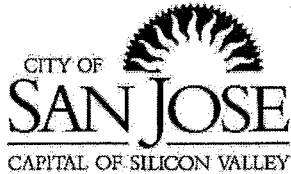
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**SUBJECT: EXTENSION OF NORTH SAN JOSE DEVELOPMENT INCENTIVE**

## RECOMMENDATION

As recommended by the Community and Economic Development Committee on September 22, 2014 and outlined in the attached memo previously submitted by the Community and Economic Development Committee, adopt a resolution amending the North San José Area Development Policy to:

- (a) Extend the North San José Traffic Impact Fee Incentive deadline for Tier 2 projects (build to suit projects of over one million square feet) to obtain building permits for one year to December 31, 2017; and to receive a certificate of occupancy for one year to December 31, 2017;
- (b) Limit the amount of development capacity in the incentive to a total of four million square feet across both Tiers; and
- (c) Designate the point at which the allocation of the incentive occurs is at the time of payment of the Traffic Impact Fee, or upon execution of an Industrial Project Completion Agreement upon approval of a valid development permit.



# Memorandum

**TO:** COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE

**FROM:** KIM WALESH  
HARRY FREITAS  
HANS F. LARSEN

**SUBJECT:** EXTENSION OF NORTH SAN JOSE  
DEVELOPMENT INCENTIVE

**DATE:** September 15, 2014

Approved

Date 9/15/14

**COUNCIL DISTRICT:** 3 and 4

## RECOMMENDATION

Forward a recommendation to City Council to adopt a resolution amending the North San Jose Area Development Policy to:

1. Extend the North San Jose Traffic Impact Fee Incentive deadline for Tier 2 projects (build to suit projects of over 1 million square feet) to obtain building permits for one year to December 31, 2015, and to receive a certificate of occupancy for one year to December 31, 2017,
2. Limit the amount of development capacity in the incentive to a total of 4 million square feet across both Tiers; and
3. Designate the point at which the allocation of the incentive occurs is at the time of payment of the Traffic Impact Fee, or upon execution of an Industrial Project Completion Agreement upon approval of a valid development permit.

## BACKGROUND

The North San Jose area plays a vital role in the achievement of San José's economic goals. In 2005, the City adopted the North San Jose Area Development Policy (Policy) which established a policy framework to guide the ongoing development of the area as an important employment center for San Jose. The Policy provides for a specified amount of new development including an additional 26.7 million square feet of new industrial development and brings additional consistency and predictability to the development process by standardizing traffic mitigation responsibilities within the Policy boundaries. In order to provide certainty to developers with regard to the public infrastructure requirements and to fund roadway improvements to mitigate the impacts of increased traffic generated by new development under the Policy, the City adopted a North San Jose Traffic Impact Fee, based on a nexus study analyzing, among other

things, expected trip generation for categories of development. When implemented, this fee was set at \$10.44 per square foot of industrial development. Due to an annual 3.3% construction cost escalator (compounded every two years) included in the Policy, the current fee for industrial development is \$13.54 per square foot and is set to rise again in 2015 to \$14.44 per square foot.

On January 31, 2012, the City Council adopted a resolution amending the North San José Area Development Policy to promote near-term industrial development of up to a total of 1 million square feet through a Traffic Impact Fee Incentive Program which reduced the traffic impact fee to \$5 per square foot for industrial development projects larger than 100,000 square feet that have completed both planning and building permits before December 31, 2014.

On February 12, 2013, the City Council approved a further amendment to the North San José Traffic Impact Fee Incentive Program that expanded the square footage allocation by an additional 250,000 square feet (1.25 million square feet total) to accommodate qualifying development projects in the pipeline at that time (referred to as Tier 1 of the incentive).

On December 17, 2013, the City Council adopted a resolution increasing the total square footage available for the incentive program by 2.75 million square feet to 4 million square feet total, and reducing the Traffic Impact Fee to \$2.00/sq. ft. for any build-to-suit Office/R&D campus of over 1 million square feet (referred to as Tier 2 of the incentive).

On June 10, 2014, the City Council adopted the Mayor's June Budget Message for Fiscal Year 2014-2015 and the Manager's Budget Addendum #8 that outlined a strategy to address an estimated \$50 million funding shortfall for Phase I of the North San Jose transportation improvements caused by both the incentive program and the loss of funding that was previously anticipated from the San Jose Redevelopment Agency. The City Council committed the City to provide the funding to compensate for the reduction in the Traffic Impact Fee payable by the industrial developers under the incentive program.

## ANALYSIS

Since its introduction in January 2012, the incentive program successfully attracted significant development interest in the area, with two qualifying development projects entering into agreements with the City to implement the incentive and obtaining all planning and building approvals, including a certificate of occupancy, within the specified timeframe and thereby paid the reduced Traffic Impact Fee. These projects are the Samsung Semiconductor R&D/HQ expansion which utilized 394,659 square feet of the \$5/sq. ft. incentive, and the Cisco Systems headquarters intensification projects which built a total of three additional parking structures utilizing 345,300 square feet of the \$5/sq. ft. incentive. In addition to these projects under construction, the City entered into an Industrial Project Completion Agreement with Ellis Partners to lock in the incentive for 440,000 square feet of the 660,000 square feet approved for their 101/Tech development proposal. Together, these projects have utilized 1,179,959 square feet leaving 2,820,041 square feet remaining within the incentive.

When Council approved the creation of the Tier 2 of the incentive in December, 2013, staff was aware of two additional development projects which intended to qualify for the incentive. Once

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adjusted for existing building credit, these projects comprise of the 2,025,000 square feet of the Peery Arrillaga development (in Tier 2 at \$2/sq. ft.), and 1,415,000 square feet of the 1,550,000 Super Micro development (in Tier 2 at \$2/sq. ft.). At 3.44 million square feet, this would account for 619,959 square feet more than the remaining capacity in the program.

Project	Net New Development TIF Applicable (sq. ft.)	Planning Permit	Building Permit
<i>Tier 1</i>			
Samsung	394,659	✓	✓
Cisco	345,300	✓	✓
Ellis Partners	440,000	✓	x
<i>Total Tier 1</i>	<i>1,179,959</i>		
<i>Tier 2</i>			
Peery Arriallga	2,025,000	✓	x
Super Micro	1,415,000	✓ (180,000sf)	x
<i>Total Tier 2</i>	<i>3,440,000</i>		
<b>Total Proposed Development</b>	<b>4,619,959</b>		

At the time of initial approval, and at the time of the expansion of the program, staff recommended limiting the scope of the incentive to a near term horizon, requiring that projects accessing the incentive program pull building permits by December 31, 2014. To date, these projects have not yet achieved this milestone. Given the range of potential issues facing large new development projects and the time required to obtain approvals through the planning, grading and building permit processes, it could be up to an additional year or more before these projects are ready to move forward with construction. Staff still considers the near term development incentive an important tool for accelerating new industrial development in North San Jose and that major new development will help encourage the build out of the first phase of the Policy. Build to suit projects over 1 million square feet accessing the second tier of the incentive have only had a year to secure appropriate approvals, and projects of this size and scope can often be complex and require more time. As such, staff is recommending that the Committee forward a recommendation to the full City Council to extend the deadline to obtain building permits by one year to December 31, 2015 and receive a certificate of occupancy prior to December 31, 2017 for those projects accessing Tier 2 incentive.

**Incentive Capacity**

The extension of the program should allow the program to be fully subscribed and result in over half of the intensification envisioned in the first phase of the Policy. The extension of the incentive could potentially result in more development activity than currently proposed or available in the program. In addition, new development proposals could obtain the necessary approvals ahead of those development projects that have been continually working towards completion with the extended deadline outlined above. For example, Planning staff is currently reviewing a development proposal on North First Street which includes approximately 1.3

million square feet of new development subject to the North San Jose Traffic Impact Fee. To ensure that potential developers have clear expectations of the amount of capacity available for the incentive, staff is proposing amending the Policy to highlight that the total amount of development capacity associated with the incentive is 4 million square feet across both Tier 1 and Tier 2 combined.

### **Incentive Allocation**

Although originally envisioned to be a first come/first served incentive, the Policy does not currently provide guidance on the point at which development locks in the incentive or how to prioritize which development projects receive the incentive when more projects are approved than capacity is left in the program. As originally approved, the incentive includes provision for qualifying projects to pay the reduced Traffic Impact Fee at occupancy of the development rather than the typical process of paying at the issuance of Building Permit. This was intended to provide additional financing flexibility to new development projects to encourage near term activity. The Policy currently considers development capacity allocated at the time of payment of the Traffic Impact Fee. As currently implemented, the incentive is allocated at the point at which the City enters into an Industrial Project Completion Agreement with the developer. Staff is working closely with those development projects currently under review regarding the timing of permit issuance, completion of Industrial Project Completion Agreements, and the payment of the fee so as to allocate the remainder of the incentive. The other alternative for projects to receive allocation of the incentive and lock in the associated reduction is to pay the fee in advance of their development approvals. The proposed amendments allow development projects to retain the flexibility to pay the TIF at any time up to occupancy of the development, but encourage payment as soon as financing is available to lock in the reduction.

### **COORDINATION**

The preparation of this memorandum and the associated work was coordinated with the City Manager's Budget Office and the City Attorney's Office.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

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While this action does not meet any of the above Criteria, this memorandum will be posted on the City's website for the September 22, 2014 Community and Economic Development Committee Agenda.

CEQA

North San Jose Environmental Impact Report, Resolution No. 72768 and Addenda thereto.

/s/

KIM WALESH  
Director of Economic Development  
Chief Strategist

/s/

HARRY FREITAS  
Director,  
Planning, Building & Code Enforcement

/s/

HANS F. LARSEN  
Director of Transportation

For questions please contact Chris Burton, Assistant to the City Manager, at (408) 535-8114.