

**RESOLUTION NO. 78010**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSE AMENDING RESOLUTION NO. 77218 TO  
AMEND THE PROVISIONS EXEMPTING FOR-SALE  
PROJECTS FROM THE AFFORDABLE HOUSING  
IMPACT FEE**

**WHEREAS**, on November 18, 2014, the Council of the City of San José (“City”) adopted Resolution No. 77218 (“Housing Impact Fee Resolution”) establishing the Affordable Housing Impact Fee (“AHIF”) program; and

**WHEREAS**, the AHIF incorporates a definition of for-sale that requires the sale of the first unit in an ownership project prior to the issuance of the certificate of occupancy to conclusively demonstrate that the project is for-sale, not rental and therefore not subject to the AHIF; and

**WHEREAS**, it is not clear that such a sale could be completed prior to the issuance of the certificate of occupancy, therefore the definition in the regulations and the guidelines for the Inclusionary Housing Ordinance have been restated to require confirmation before issuance of the certificate of occupancy based on issuance of a final report by the Bureau of Real Estate, formation of a homeowner’s association, and marketing as a for-sale project; and

**WHEREAS**, amending Resolution 77218 will provide a more readily achievable standard and provide consistency between the resolution and its regulations; and

**WHEREAS**, the City desires to amend Resolution 77218 to revise the provisions exempting for-sale projects from the AHIF to make the standard consistent with the staff report, the adopted AHIF regulations and the adopted Inclusionary Housing Ordinance guidelines;

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

SECTION 11 WAIVER of Resolution 77218 is hereby amended to read as follows:

**“SECTION 11. WAIVER**

- A. Notwithstanding any other provision in this resolution, the requirements to pay the Housing Impact Fee may be waived, adjusted or reduced if an Applicant shows based on substantial evidence, that there is no reasonable relationship between the impact of the proposed Rental Development and the requirement to pay the Housing Impact Fee, or that applying the requirements of this resolution would take property in violation of the United States Constitution or California Constitution.
- B. Notwithstanding any other provision in this resolution, the requirement to pay the Housing Impact Fee shall be waived, adjusted or reduced to the extent an Applicant shows at, or prior to, the issuance of the Certificate of Occupancy for a Rental Development, the Applicant submits proof to the Director that either: (a) the Rental Development is located in a redevelopment project area, received all its Development Permits except the Building Permits prior to June 30, 2016, and the requirements for For-Sale Units under the City's Inclusionary Housing Policy have been satisfied, or (b) Applicant has a City approved compliance plan that states that all or part of the Residential Development will be for-sale dwelling units; Applicant has timely met the requirements in Section 2.02.01, For-Sale Developments, of the regulations implementing this Resolution; and Applicant has timely met the requirements applicable to for-sale units and for-sale developments under the City's Inclusionary Housing Ordinance, San José Municipal Code Chapter 5.08 and its adopted guidelines have been satisfied.

- C. The Director shall review all submittals and requests under this Section. Within thirty (30) business days of receipt of the Applicant's submittals, the Director shall provide a written response regarding such request. The decision of the Director shall be final.”

ADOPTED this 6<sup>th</sup> day of December, 2016, by the following vote:

AYES: CARRASCO, HERRERA, JONES, JIMENEZ, KHAMIS, M. NGUYEN, T. NGUYEN, OLIVERIO. PERALEZ, ROCHA; LICCARDO.  
NOES: NONE.  
ABSENT: NONE.  
DISQUALIFIED: NONE.



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SAM LICCARDO  
Mayor

ATTEST:



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TONI J. TABER, CMC  
City Clerk