

HOUSING DEPARTMENT

Impact Analysis Report

OVERVIEW

The Housing Department is responsible for the collection of fees related to the Rental Rights and Referrals Program (RRRP) and for the collection of Inclusionary Fees, Affordable Housing Impact Program, Homebuyer Subordination Fees, and Multi-Family Fees. The proposed changes to the Housing Department's fees and charges will increase the department's overall cost recovery rate to 97.5% in 2016-2017 from 96.9% in 2015-2016.

The RRRP fees are collected from rental units covered by the Rent Control Ordinance and the Mobile Home Rent Control Ordinance. The fees are set at an amount to cover the estimated costs of providing the Program, which include mediation services to settle tenant-landlord disputes, information and referral services, and outreach and education services.

The City's Inclusionary Housing Policy, established in 1988, requires affordable housing units in newly-constructed for-sale housing developments with greater than 10 units that are located in former Redevelopment Project Areas. In limited circumstances, developers may choose to pay an "in-lieu" fee instead of building the required affordable units in the development. Although redevelopment agencies in California have been dissolved, the relevant provisions of the California Redevelopment Law requiring housing affordability in residential construction in Redevelopment Project Areas have not been repealed. Therefore, San José continues to implement its Inclusionary Housing Policy and require affordability in newly-constructed for-sale developments in those areas.

On January 12, 2010, the City Council approved the Inclusionary Housing Ordinance ("the Ordinance"). The Ordinance generally requires that, in market-rate for-sale developments of 20 or more units, 15% of the units be made affordable to and sold to moderate-income households. The Ordinance provides numerous alternative ways that the developer can meet this requirement, including payment of an in-lieu fee and construction of affordable units off-site, among many others.

Although the Ordinance was scheduled to take effect on January 1, 2013, its implementation was prevented by an injunction imposed by the Santa Clara County Superior Court, resulting from a challenge submitted by the California Building Industry Association (CBIA), in *California Building Industry Association v. City of San José*. That injunction was terminated when the Superior Court's decision invalidating the ordinance was overturned by the 6th District Court of Appeal. The ordinance was held to be valid, and the case was remanded to the Superior Court to render a decision consistent with the decision of the Appellate Court. However, CBIA appealed the decision further to the California Supreme Court. On June 15, 2015, the California Supreme Court issued its decision unanimously affirming the Court of Appeals' determination that the Inclusionary Housing Ordinance is valid, and remanding the case to the trial court for a determination consistent with the higher courts' direction. This decision became final on July 15, 2015.

On September 14, 2015, the CBIA filed a petition for a writ of certiorari with the U.S. Supreme Court seeking review of the California Supreme Court's unanimous ruling that

HOUSING DEPARTMENT

upheld the City’s Ordinance. On February 29, 2016, the Supreme Court declined to hear that petition. A judgment conceding the case in favor of the City was filed April 21, 2016, waiving remand to the Superior Court. The Housing Department has been actively implementing the Inclusionary Ordinance.

The Inclusionary Ordinance requires the City to establish an in-lieu fee on an annual basis. In accordance with the methodology outlined in the Ordinance, the Housing Department has calculated the proposed in-lieu fee for 2016-2017. The in-lieu fee, when selected, is based on 20% of the project’s for-sale housing units. The in-lieu fee per Inclusionary Housing unit is \$85,572. This amount includes the authorized charge for increases in housing costs and construction costs during the time between when the funds are received and the delivery of the units estimated at 2.5 years times the San Francisco Bay Area Consumer Price Index for All Urban Consumers.

On November 18, 2014 the City Council adopted an ordinance to establish a Housing Impact Fee Program on new market rate rental housing development to address the need for affordable housing associated with such new development. The City Council approved that the effective date of the ordinance be July 1, 2016, preceded by the implementation of an exemption process to minimize the financial impacts on development projects in the pipeline. The new process exempts pipeline development projects from the new \$17 per square foot Affordable Housing Impact Fee if the rental development project has received an entitlement prior to July 1, 2016 and if the project receives its Certificate of Occupancy prior to January 31, 2020. New fees are proposed for 2016-2017 to cover staff costs for the

collection of pipeline project applications and to track compliance and monitoring of exempted projects, and are recommended in accordance with the plan adopted by City Council.

SUMMARY AND IMPACT OF PROPOSED FEE REVISIONS

Existing Fees

In order to bring the Rental Rights and Referrals Program closer to cost recovery, annual fee changes are proposed for the following: rent-controlled apartments (from \$12.25 to \$12.50), mobile home units (from \$27.00 to \$33.48), and non-rent controlled apartment units (from \$1.95 to \$1.98). With these proposed revisions, the cost recovery rate for this Program will improve from 93.5% in 2015-2016 to 99.0% in 2016-2017. The Housing Department will continue its thorough review of the Program to identify opportunities for program improvement and to continue to improve cost recovery levels. Additionally, the Department intends to extend the invoice period for mobile home units from 30 to 45 days to minimize unnecessary late fees charged to mobile home owners.

Furthermore, as part of the modifications to the City’s Apartment Rent Ordinance (“ARO”) approved on April 19, 2016, staff will return to City Council in 2016-2017 for approval of a staffing plan and a fee structure to sufficiently administer, monitor, and enforce the newly adopted requirements of the ARO.

HOUSING DEPARTMENT

SUMMARY AND IMPACT OF PROPOSED FEE REVISIONS

Existing Fees (Cont'd.)

Recommended changes to existing fees pertaining to the management of the City's Multi-Family Affordable Housing Loan Portfolio will more accurately align the fees with the cost of delivering the services. In prior years, these services

were primarily funded by loan payments and low and moderate income housing funds. Due to the dissolution of the former Redevelopment Agency of the City of San José and the loss of the low and moderate income housing funds, the Housing Department is proposing fee increases to maintain full cost recovery of these services to its loan portfolio.

Increases to Single-Family and Multi-Family Asset Management transaction fees are recommended for the following fees: Single-Family Loan Payoff, Multi-Family Project Owner Transfer, Multi-Family Loan Payoff Processing, Multi-Family Loan Conversion, Multi-Family Loan Recapitalization, Multi-Family Loan Refinance, Multi-Family Affordability Restriction Monitoring, Multi-Family Origination, and Multi-Family Loan Servicing. Also proposed is a decrease to the Multi-Family Project Restructuring Fee standard transaction due to new cost analysis information. These cost recovery fees align with the staff time and resources necessary to complete these types of transaction and have been updated to reflect increases in salary, benefit and indirect costs. For more complicated refinancing scenarios that exceed the base hours, property owners will be assessed an additional per

hour rate for both Housing and City Attorney staff time. Proposed increases from \$130 per hour to \$140 per hour for Housing staff and from \$160 per hour to \$205 per hour for City Attorney staff are included. The proposed changes reflect the actual costs for the positions that perform these functions.

The Homebuyer Subordination Fee is also proposed to increase slightly due to increased costs in the costing analysis.

New Fees

Housing Impact Fee Program:

- *Affordable Housing Compliance Plan Application Fee:* The addition of this \$3,200 fee is recommended to offset costs for staff time associated with processing projects subject to both the City's Inclusionary Housing Ordinance and Affordable Housing Impact Fee Programs. For example, staff will be required to meet with developers to discuss potential obligations, interface with the Planning, Building, and Code Enforcement Department on conditions of approvals, work with the City Attorney's Office to draft the agreements, ensure the developer executes the agreement, and that the document is recorded correctly. If additional time is necessary, hourly rates for Attorney staff time and for Housing staff time would apply.
- *Affordable Housing Impact Fee:* The addition of this \$17 per square foot fee is a payment required as a condition of rental-market developments to cover the associated impact costs. As stated above, pipeline development projects are exempt if the project receives

HOUSING DEPARTMENT

SUMMARY AND IMPACT OF PROPOSED FEE REVISIONS

New Fees (Cont'd.)

entitlement prior to July 1, 2016 and if the project receives its Certificate of Occupancy prior to January 31, 2020. No revenue is currently assumed from this fee in 2016-2017.

- *Inclusionary In-Lieu Fee:* This fee is established at a rate of \$85,572 per unit, and may be paid instead of building the required affordable units in the development. No revenue is currently assumed from this fee in 2016-2017.

Fee Eliminations

To implement the Housing Impact Fee Program, fee revisions are recommended in accordance with the plan adopted by the City Council as referenced in the *Overview*:

- *Pipeline Application Processing Fee:* The elimination of this \$3,200 fee is recommended because the period to apply for a pipeline exemption is scheduled to expire on June 30, 2016.
- *Inclusionary Processing Fee:* The elimination of this \$3,200 fee is recommended because a consolidated new compliance plan fee, detailed earlier, is proposed to streamline the application process.

NOTIFICATION

The Housing Department staff met with potential impacted stakeholders and held public hearings at the March 10, 2016 and April 14, 2016 Housing and Community Development Commission meetings. The Proposed Fees and Charges Report was released on May 6, 2016, allowing for a minimum of 10 days for public review. Public input on fee proposals will be heard by the City Council at public hearings held on Tuesday, May 17, 2016, at 1:30 p.m. and Monday, June 13, 2016, at 7:00 p.m. in the Council Chambers.

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery	
					Current Fee	Proposed Fee	Current Fee	Proposed Fee
LOW/MOD INCOME HOUSING ASSET FD - CATEGORY I								
1. Homebuyer Subordination Fee								
1 Homebuyer Subordination Fee	\$202 per transaction		\$218 per transaction					
Sub-total Homebuyer Subordination Fee		100.0%		15,260	14,140	15,260	92.7%	100.0%
2. Multi-Family Affordability Restriction Monitoring Fee								
1 Multi-Family Affordability Restriction Monitoring Fee	\$20.25/unit per year		\$20.65/unit per year					
Sub-total Multi-Family Affordability Restriction Monitoring Fee		100.0%		4,130	4,050	4,130	98.1%	100.0%
3. Multi-Family Loan Conversion Fee								
1 City Attorney Staff Time	\$160/hr in excess of 89 hours		\$205/hr in excess of 89 hours					
2 City Housing Staff Time	\$130/hr in excess of 183 hours		\$140/hr in excess of 183 hours					
3 Standard Transaction	\$38,030 per transaction		\$43,865 per transaction					
Sub-total Multi-Family Loan Conversion Fee		100.0%		131,595	114,090	131,595	86.7%	100.0%
4. Multi-Family Loan Origination Fee								
1 City Attorney Staff Time	\$160/hr in excess of 89 hours		\$205/hr in excess of 89 hours					
2 City Housing Staff Time	\$130/hr in excess of 204 hours		\$140/hr in excess of 204 hours					
3 Standard Transaction	\$40,760 per transaction		\$46,805 per transaction					
Sub-total Multi-Family Loan Origination Fee		100.0%		93,610	81,520	93,610	87.1%	100.0%
5. Multi-Family Loan Payoff Processing Fee								
1 City Attorney Staff Time	\$160/hr in excess of 3 hours		\$205/hr in excess of 3 hours					

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery	
					Current Fee	Proposed Fee	Current Fee	Proposed Fee
LOW/MOD INCOME HOUSING ASSET FD - CATEGORY I								
5. Multi-Family Loan Payoff Processing Fee								
2 City Housing Staff Time	\$130/hr in excess of 24 hours		\$140/hr in excess of 24 hours					
3 Multi-Family Loan Payoff Processing Fee	\$3,600 per transaction		\$3,975 per transaction					
Sub-total Multi-Family Loan Payoff Processing Fee		100.0%		3,975	3,600	3,975	90.6%	100.0%
6. Multi-Family Loan Recapitalization Fee								
1 City Attorney Staff Time	\$160 in excess of 89 hours		\$205/hr in excess of 89 hours					
2 City Housing Staff Time	\$130/hr in excess of 183 hours		\$140/hr in excess of 183 hours					
3 Standard Transaction	\$37,965 per transaction		\$43,795 per transaction					
Sub-total Multi-Family Loan Recapitalization Fee		100.0%		43,795	37,965	43,795	86.7%	100.0%
7. Multi-Family Loan Refinance Fee								
1 City Attorney Staff Time	\$160/hr in excess of 29 hours		\$205/hr in excess of 29 hours					
2 City Housing Staff Time	\$130/hr in excess of 106 hours		\$140/hr in excess of 106 hours					
3 Standard Transaction	\$18,420 per transaction		\$20,785 per transaction					
Sub-total Multi-Family Loan Refinance Fee		100.0%		249,420	221,040	249,420	88.6%	100.0%
8. Multi-Family Loan Servicing Fee								
1 Multi-Family Loan Servicing Fee	\$20.25/unit per year		\$20.65/unit per year					
Sub-total Multi-Family Loan Servicing Fee		100.0%		4,130	4,050	4,130	98.1%	100.0%

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery	
					Current Fee	Proposed Fee	Current Fee	Proposed Fee
LOW/MOD INCOME HOUSING ASSET FD - CATEGORY I								
9. Multi-Family Project Owner Transfer Fee								
1 City Attorney Staff Time - New Parties	\$160/hr in excess of 29 hours		\$205/hr in excess of 29 hours					
2 City Attorney Staff Time - Related Parties	\$160/hr in excess of 22 hours		\$205/hr in excess of 22 hours					
3 City Housing Staff Time - New Parties	\$130/hr in excess of 106 hours		\$140/hr in excess of 106 hours					
4 City Housing Staff Time - Related Parties	\$130/hr in excess of 82 hours		\$140/hr in excess of 82 hours					
5 Standard Transaction - New Parties	\$18,420 per transaction		\$20,785 per transaction					
6 Standard Transaction - Related Parties	\$14,115 per transaction		\$15,920 per transaction					
Sub-total Multi-Family Project Owner Transfer Fee		100.0%		110,115	97,605	110,115	88.6%	100.0%
10. Multi-Family Project Restructuring Fee								
1 City Attorney Staff Time	\$160/hr in excess of 89 hours		\$205/hr in excess of 21 hours					
2 City Housing Staff Time	\$130/hr in excess of 183 hours		\$140/hr in excess of 20 hours					
3 Standard Transaction	\$37,965 per transaction		\$7,040 per transaction					
Sub-total Multi-Family Project Restructuring Fee		100.0%		7,040	37,965	7,040	539.3%	100.0%
11. Single-Family Loan Payoff Fee								
1 Short Sale Loan Payoff Fee	\$297 per transaction		\$350 per transaction					
2 Single-Family Loan Payoff Fee	\$150 per transaction		\$210 per transaction					
Sub-total Single-Family Loan Payoff Fee		100.0%		11,900	8,970	11,900	75.4%	100.0%

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery	
					Current Fee	Proposed Fee	Current Fee	Proposed Fee
LOW/MOD INCOME HOUSING ASSET FD - CATEGORY I								
12. Supplemental Document Processing Fee								
1 City Attorney Staff Time	\$160/hr		\$205/hr					
2 City Housing Staff Time	\$130/hr		\$140/hr					
3 County of Santa Clara Clerk Recorder's Office Fees	Actual costs charged by the County Recorder to the City		No Change					
Sub-total Supplemental Document Processing Fee		100.0%		9,975	8,200	9,975	82.2%	100.0%
SUB-TOTAL LOW/MOD INCOME HOUSING ASSET FD - CATEGORY I		100.0%		684,945	633,195	684,945	92.4%	100.0%
MULTI-SOURCE HOUSING FD - CATEGORY I								
1. Affordable Housing Compliance Fee Program								
1 City Attorney Staff Time			\$160/hr in excess of 7 hours					
2 Housing Staff Time			\$99/hr in excess of 20 hours					
3 Standard Application			\$3,200 per application	96,000		96,000		100.0%
Sub-total Affordable Housing Compliance Fee Program				96,000		96,000		100.0%
2. Affordable Housing Impact Fee Program								
1 Affordable Housing Impact Fee			\$17/sf					
Sub-total Affordable Housing Impact Fee Program								
3. Housing Impact Fee Program - Pipeline Annual Fee								
1 City Attorney Staff Time	\$160/hr in excess of 2 hours		No Change					
2 City Housing Staff Time	\$100/hr in excess of 13 hours		No Change					

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery	
					Current Fee	Proposed Fee	Current Fee	Proposed Fee
MULTI-SOURCE HOUSING FD - CATEGORY I								
3. Housing Impact Fee Program - Pipeline Annual Fee								
3 Standard Transaction	\$1,740 per transaction	100.0%	No Change	178,400	139,200	139,200	78.0%	78.0%
Sub-total Housing Impact Fee Program - Pipeline Annual Fee		100.0%		178,400	139,200	139,200	78.0%	78.0%
4. Housing Impact Fee Program - Pipeline Application Processing Fee								
1 City Attorney Staff Time	\$160/hr in excess of 7 hours		Delete					
2 City Housing Staff Time	\$99/hr in excess of 20 hours		Delete					
3 Standard Transaction	\$3,200 per transaction	100.0%	Delete					
Sub-total Housing Impact Fee Program - Pipeline Application Processing Fee		100.0%						
5. Inclusionary In-Lieu Fee								
1 Inclusionary In-Lieu Fee			\$85,572/unit					
Sub-total Inclusionary In-Lieu Fee								
6. Inclusionary Processing Fee								
1 City Attorney Staff Time	\$160/hr in excess of 7 hours		Delete					
2 City Housing Staff Time	\$99/hr in excess of 20 hours		Delete					
3 Standard Transaction	\$3,200 per transaction	100.0%	Delete					
Sub-total Inclusionary Processing Fee		100.0%						
7. Rental Rights and Referrals Program								
1 Apartment Unit	\$12.25 annually	99.0%	\$12.50 annually	572,160	553,284	564,575	96.7%	98.7%
2 Mobile Home Unit	\$27.00 annually	83.6%	\$33.48 annually	359,776	290,115	357,271	80.6%	99.3%

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery		
					Current Fee	Proposed Fee	Current Fee	Proposed Fee	
MULTI-SOURCE HOUSING FD - CATEGORY I									
7. Rental Rights and Referrals Program									
3 Non-Rent-Controlled Apartment Units Note: Formerly Titled "Non-Rent-Controlled Apartments"	\$1.95 annually	99.3%	\$1.98 annually	92,497	91,073	92,497	98.5%	100.0%	
Sub-total Rental Rights and Referrals Program		93.5%		1,024,433	934,472	1,014,343	91.2%	99.0%	
SUB-TOTAL MULTI-SOURCE HOUSING FD - CATEGORY I		95.6%		1,298,833	1,073,672	1,249,543	82.7%	96.2%	
MULTI-SOURCE HOUSING FD - CATEGORY II									
1. Inclusionary Fees									
1 For-Sale - High Rise Not in Downtown Core	\$17.00 per square foot of total living space in entire development. Maximum per affordable unit: \$200,200		No Change						
2 For-Sale - High Rise in Downtown High-Rise Incentive Area	\$8.50 per square foot of total living space in entire development. Maximum per affordable unit: \$65,000		No Change						
3 For-Sale - Low-Rise Condominium/Stacked Flat Units	\$17.00 per square foot of total living space in entire development. Maximum per affordable unit: \$90,000		No Change						
4 For-Sale - Single-Family Detached Units	\$17.00 per square foot of total living space in entire development. Maximum per affordable unit: \$200,000		No Change						
5 For-Sale - Townhouse/Row-House Units	\$17.00 per square foot of total living space in entire development. Maximum per affordable unit: \$120,000		No Change						

DEPARTMENTAL FEES AND CHARGES

HOUSING

Service	2015-2016 Adopted Fee	2015-2016 % Cost Recovery	2016-2017 Proposed Fee	2016-2017 Estimated Cost	2016-2017 Estimated Revenue		2016-2017 % Cost Recovery		
					Current Fee	Proposed Fee	Current Fee	Proposed Fee	
MULTI-SOURCE HOUSING FD - CATEGORY II									
1. Inclusionary Fees									
6 Rental Units	\$17.00 per square foot of total living space in entire development. Maximum per affordable unit: \$85,500		No Change						
2. Rental Mediation Penalty: Apartments									
1 30 days past due = 25% of principal	Penalties and interest assessed for delinquent permit payment		No Change						
2 60 days past due = 50% of principal	Penalties and interest assessed for delinquent permit payment		No Change						
3. Rental Mediation Penalty: Mobile Homes									
1 30 days past due = 10% of the amount of the fee	Penalties and interest assessed for delinquent permit payment		No Change						
SUB-TOTAL MULTI-SOURCE HOUSING FD - CATEGORY II									
TOTAL DEPARTMENT - NON-GENERAL FUND				1,983,778	1,706,867	1,934,488	86.0%	97.5%	
TOTAL DEPARTMENT - Category I				1,983,778	1,706,867	1,934,488	86.0%	97.5%	
TOTAL DEPARTMENT - Category II									
TOTAL DEPARTMENT				1,983,778	1,706,867	1,934,488	86.0%	97.5%	