

RESOLUTION NO. 80439

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING RESOLUTION NO. 72737 AS PREVIOUSLY AMENDED BY RESOLUTIONS NOS. 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841, 74981, 75135, 75334, 75338, 75442, 75502, 75509, 75600, 75610, 75639, 75641, 75684, 75725, 75783, 75863, 75913, 76085, 76230, 76282, 76397, 76476, 76611, 76663, 76953, 77018, 77102, 77110, 77137, 77253, 77382, 77558, 77784, 78032, 78163, 78210, 78415, 78472, 78627, 78694, 78858, 78932, 78981, 79138, 79368, 79580, 79688, 79903, 79992, AND 80088 TO ADD THE COMMERCIAL LINKAGE FEE AND MAKE CERTAIN CHANGES THERETO, AND SUPERSEDING RESOLUTION NO. 79705

WHEREAS, on June 14, 2005, the City Council adopted Resolution No. 72737 establishing the Schedule of Fees and Charges effective July 1, 2005; and

WHEREAS, on December 13, 2005, the City Council adopted Resolution No. 73019 amending the Schedule of Fees and Charges to establish a Secondary Units Clearance Fee, effective December 13, 2005; and

WHEREAS, on February 7, 2006, the City Council adopted Resolution No. 73056 amending the Schedule of Fees and Charges to establish an Off-Sale of Alcoholic Beverage Establishments Inspection Program Fee, effective February 7, 2006; and

WHEREAS, on June 20, 2006, the City Council adopted Resolution No. 73242 to amend and establish various fees and charges effective July 1, 2006; and

WHEREAS, on February 6, 2007, the City Council adopted Resolution No. 73637 amending the Schedule of Fees and Charges to increase the Lobbyist Delinquent Report Fee, effective February 6, 2007; and

WHEREAS, on June 12, 2007, the City Council adopted Resolution No. 73831 to amend and establish various fees and charges effective July 1, 2007; and

WHEREAS, on June 19, 2007, the City Council adopted Resolution 73879 amending the Schedule of Fees and Charges to revise the Source Reduction and Recycling Fee for Eligible Public School Districts, effective July 1, 2007; and

WHEREAS, on June 19, 2007, the City Council adopted Resolution No. 73881 amending the Schedule of Fees and Charges to revise the Inclusionary Fees, effective either July 1, 2007 or September 29, 2007; and

WHEREAS, on October 2, 2007, the City Council adopted Resolution No. 74035 amending the Schedule of Fees and Charges to conform new San José Municipal Code Section Numbers in Title 7 and to establish Administrative Late Fee for Licensing after Issuance of an Administration Citation, to be effective October 2, 2007; and

WHEREAS, on October 16, 2007, the City Council adopted Resolution No. 74047 amending the Schedule of Fees and Charges to Standardize Fees for Photocopying, to be effective October 16, 2007; and

WHEREAS, on June 17, 2008, the City Council adopted Resolution No. 74452 to amend and establish various fees and charges effective July 1, 2008; and

WHEREAS, on March 24, 2009 the City Council adopted Resolution No. 74839 amending the Schedule of Fees and Charges to Decrease Cardroom Table Fees (SJMC §16.30.060B) for Fiscal Year 2008-2009, to be effective March 24, 2009; and

WHEREAS, on March 24, 2009, the City Council adopted Resolution No. 74841 amending the Schedule of Fees and Charges to adjust certain Planning Fees to Cost Recovery and make other Minor Fee Changes, to be effective May 26, 2009; and

WHEREAS, on June 16, 2009, the City Council adopted Resolution No. 74981 to amend and establish various fees and charges effective July 1, 2009; and

WHEREAS, on October 20, 2009, the City Council adopted Resolution No. 75135 to eliminate the Subpoenaed Officer Court Appearance Fee; and

WHEREAS, on April 13, 2010, the City Council adopted Resolution No. 75334 to establish Reinspection Fees for Code Enforcement Services, to be effective April 13, 2010; and

WHEREAS, on April 13, 2010, the City Council adopted Resolution No. 75338 to increase the Maximum Ticket Charge for Gated Events on Public Property, to reduce the Gated Event on Public Property Fee for the period of January 1, 2009 to June 30, 2010, to repeal the Special Events Traffic Enforcement Unit Fee, and to authorize the Chief Development Officer to issue refunds to event organizers who paid Gated Event on Public Property Fees retroactive to January 1, 2009; and

WHEREAS, on June 17, 2010, the City Council adopted Resolution No. 75442 to amend and establish various fees and charges, effective July 1, 2010; and

WHEREAS, on August 3, 2010, the City Council adopted Resolution No. 75502 to correctly set forth the Public Entertainment Ownership/Management License Fee, effective August 3, 2010; and

WHEREAS, on August 3, 2010, the City Council adopted Resolution No. 75509 to decrease the Cardroom Card Table Fee, effective August 3, 2010; and

WHEREAS, on October 19, 2010, the City Council adopted Resolution No. 75600 to clarify the existing Disposal Facility Operator Integrated Waste Management Fee, effective October 19, 2010; and

WHEREAS, on October 26, 2010, the City Council adopted Resolution No. 75610 to revise and establish various Public Entertainment Ownership/Management License Fees, to be effective December 10, 2010; and

WHEREAS, on November 30, 2010, the City Council adopted Resolution No. 75639 to eliminate the Bicycle License Fees, to be effective November 30, 2010; and

WHEREAS, on November 30, 2010, the City Council adopted Resolution No. 75641 to establish fees for Waste Diversion Compliance, to be effective January 1, 2011; and

WHEREAS, on December 14, 2010, the City Council adopted Resolution No. 75684 to establish fees for Wayfinding Banner Application and Double Banner Installation, to be effective December 14, 2010; and

WHEREAS, on February 8, 2011, the City Council adopted Resolution No. 75725 to eliminate the Card Table Fees and to establish the Cardroom Regulation Fee, to be effective February 8, 2011; and

WHEREAS, on April 19, 2011, the City Council adopted Resolution No. 75783 to establish a Medical Marijuana Collective Application Processing Fee and to establish a Medical Marijuana Investigation Hourly Fee, to be effective April 19, 2011; and

WHEREAS, on June 14, 2011, the City Council adopted Resolution No. 75863 to amend and establish various fees and charges effective July 1, 2011; and

WHEREAS, on June 21, 2011, the City Council adopted Resolution No. 75913 to suspend the use and rental fees charged by the City for use of the Mexican Heritage Plaza, located at 1700 Alum Rock Avenue, San José, California, for so long as the City is not operating the facility, to be effective June 21, 2011; and

WHEREAS, on December 6, 2011, the City Council adopted Resolution No. 76085 to waive certain costs associated with Requests for Public Records, to be effective retroactive to November 10, 2011; and

WHEREAS, on May 15, 2012, the City Council adopted Resolution No. 76230 to revise the Source Reduction and Recycling Fee for commercial solid waste generators and exclusive franchisees (AB939 Fee), to be effective February 28, 2012; and

WHEREAS, on June 12, 2012, the City Council adopted Resolution No. 76282 to amend and establish various fees and charges effective July 1, 2012; and

WHEREAS, on August 21, 2012, the City Council adopted Resolution No. 76397 to establish Paseo/Plaza Use Permit Fees for Temporary Outdoor Uses of Parque de los Pobladores (also known as Gore Park), to be effective August 21, 2012; and

WHEREAS, on November 27, 2012, the City Council adopted Resolution No. 76476 to establish Foreign Trade Zone Alternative Site Framework Fees for economic development, to be effective November 27, 2012; and

WHEREAS, on April 23, 2013, the City Council adopted Resolution No. 76611 to eliminate the processing of exempt Business Tax Application Fees, to be effective June 1, 2013; and

WHEREAS, on June 11, 2013, the City Council adopted Resolution No. 76663 to amend and establish various fees and charges effective July 1, 2013; and

WHEREAS, on April 15, 2014, the City Council adopted Resolution No. 76953 to extend the suspension of the collection of the Gated Event on Outdoor Property Fee through June 30, 2016; and

WHEREAS, on June 10, 2014, the City Council adopted Resolution No. 77018 to amend and establish various fees and charges effective July 1, 2014; and

WHEREAS, on August 5, 2014, the City Council adopted Resolution No. 77102 to establish the Special Event Permit Fee, to be effective August 5, 2014; and

WHEREAS, on August 5, 2014, the City Council adopted Resolution No. 77110 to revise the Medical Marijuana Collective Registration Fees, to be effective August 5, 2014; and

WHEREAS, on August 26, 2014, the City Council adopted Resolution No. 77137 to establish that there will be no charge for a response to a Public Records Act request in which the total duplication charges are less than five dollars (\$5.00), to be effective August 26, 2014; and

WHEREAS, on December 16, 2014, the City Council adopted Resolution No. 77253 to revise the Medical Marijuana Collective Registration and Operating Fees, to be effective December 16, 2014; and

WHEREAS, on June 9, 2015, the City Council adopted Resolution No. 77382 to amend and establish various fees and charges effective July 1, 2015; and

WHEREAS, on October 20, 2015, the City Council adopted Resolution No. 77558 to decrease the Minor Development Signal Design: Traffic Controller Fee, to be effective retroactive to July 1, 2015; and

WHEREAS, on June 14, 2016, the City Council adopted Resolution No. 77784 to amend and establish various fees and charges effective July 1, 2016; and

WHEREAS, on June 21, 2016, the City Council adopted Resolution No. 77829 setting the schedule of fees for use of the City Hall and Plaza effective July 1, 2016, and superseding Resolution No. 76968 and all prior resolutions inconsistent therewith; and

WHEREAS, on December 13, 2016, the City Council adopted Resolution No. 78032 to establish the Urban Agriculture Incentive Zone Application Fee, to be effective November 15, 2016; and

WHEREAS, on May 16, 2017, the City Council adopted Resolution No. 78163 to set the Temporary Street Closure Permit Fee at \$0 for the first fifty (50) permits issued on a first-come first-served basis, for temporary street closures for block parties that will occur during the period of July 1, 2017 through July 4, 2017, to be effective May 16, 2017; and

WHEREAS, on June 13, 2017, the City Council adopted Resolution No. 78210 to amend and establish various fees and charges effective July 1, 2017; and

WHEREAS, on November 14, 2017, the City Council adopted Resolution No. 78415 to revise the annual Rental Rights and Referrals Program fees for rent stabilized apartments subject to San José Municipal Code Chapter 17.23, to be effective January 1, 2018; and

WHEREAS, on December 19, 2017, the City Council adopted Resolution No. 78472 to establish a Rental Development In-Lieu Fee for rental developments subject to the Inclusionary Housing Ordinance Program, to be effective January 1, 2018; and

WHEREAS, on June 12, 2018, the City Council adopted Resolution No. 78627 to amend and establish various fees and charges effective July 1, 2018; and

WHEREAS, on June 26, 2018, the City Council adopted Resolution No. 78694 to reduce the Rental Inclusionary In-Lieu Fee under San José Municipal Code Chapter 5.08 to \$0 for qualifying Downtown High Rise Rental Developments completed by June 30, 2021, to be effective June 26, 2018; and

WHEREAS, on November 6, 2018, the City Council adopted Resolution No. 78858 to establish an Off-Site Tree Replacement Fee, to be effective January 7, 2019; and

WHEREAS, on December 18, 2018, the City Council adopted Resolution No. 78932 to establish Shared Micro-Mobility Annual Permit and Program Monitoring Fees, to be effective December 18, 2018; and

WHEREAS, on February 12, 2019, the City Council adopted Resolution No. 78981 to decrease the Vehicle Impound Fee from \$290.00 per release to \$122.00 per release, to be effective February 12, 2019; and

WHEREAS, on June 11, 2019, the City Council adopted Resolution No. 79138 to amend and establish various fees and charges effective July 1, 2019; and

WHEREAS, on January 14, 2020, the City Council adopted Resolution No. 79368 to reduce plan review, building permit, and impact fees to \$0 for property owners who participate in the ADU Amnesty Program and who qualify for a Financial Hardship Exemption under the criteria set forth in San José Municipal Code Sections 4.76.400 through 4.76.470, to be effective on January 21, 2020; and

WHEREAS, on June 16, 2020, the City Council adopted Resolution No. 79580 to amend and establish various fees and charges effective July 1, 2020; and

WHEREAS, on August 18, 2020, the City Council adopted Resolution No. 79688 to reduce the Inclusionary In Lieu Fee under San José Municipal Code Chapter 5.08 for qualifying Downtown High-Rise Residential Developments receiving Certificates of Occupancy for 80% of dwelling units by June 30, 2025; and

WHEREAS, on February 23, 2021, the City Council adopted Resolution No. 79903 to amend the Inclusionary In-Lieu Fees for the Citywide Inclusionary Housing Program; and

WHEREAS, on May 11, 2021, the City Council adopted Resolution No. 79992 to establish response charges for emergency responses related to fireworks violations; and

WHEREAS, on June 15, 2021, the City Council adopted Resolution No. 80088 to amend and establish various fees and charges effective July 1, 2021; and

WHEREAS, the City Council desires to further amend Resolution No. 72737, as amended by Resolutions Nos. 73019, 73056, 73242, 73637, 73831, 73879, 73881, 74035, 74047, 74452, 74839, 74841, 74981, 75135, 75334, 75338, 75442, 75502, 75509, 75600, 75610, 75639, 75641, 75684, 75725, 75783, 75863, 75913, 76085, 76230, 76282, 76397, 76476, 76611, 76663, 76953, 77018, 77102, 77110, 77137, 77253, 77382, 77558, 77784, 78032, 78163, 78210, 78415, 78472, 78627, 78694, 78858, 78932, 78981, 79138, 79368, 79580, 79688, 79903, 79992, and 80088 to add the Commercial Linkage Fee and make certain changes;

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

SECTION 1. Part 12 of Resolution No. 72737 is amended to add Section 12.200, which was previously included in Resolution No. 79705 and is amended to read as follows:

- A. All Non-Residential Projects and all Non-Residential portions of a Project shall pay the fee based on the gross square footage of each use included in the proposed Project by Geographic Subarea as shown in the following tables:

Downtown and Nearby:

Office (\geq 100,000 sq.ft.)	\$15.00
Office (<100,000 sq.ft.)	No Fee (\$0) for all square footage \leq 50,000 sq.ft.; and \$3.00 for all remaining square footage
Retail	No Fee (\$0)
Hotel	\$5.00 excluding Common Area
Industrial/Research and Development (\geq 100,000 sq.ft.)	\$3.00
Industrial/Research and Development (<100,000 sq.ft.)	No fee (\$0)
Warehouse	\$5.00
Residential Care	\$6.00 Excluding Common Area

North San Jose and Nearby; West San Jose Urban Villages:

Office (\geq 100,000 sq.ft.)	\$5.00
Office (<100,000 sq.ft.)	No Fee (\$0) for all square footage \leq 50,000 sq.ft.; and \$3.00 for all remaining square footage
Retail	No Fee (\$0)
Hotel	\$5.00 excluding Common Area
Industrial/Research and Development (\geq 100,000 sq.ft.)	\$3.00
Industrial/Research and Development (<100,000 sq.ft.)	No fee (\$0)

Warehouse	\$5.00
Residential Care	\$6.00 Excluding Common Area
Edenvale and Monterey Corridor:	
Office (\geq 100,000 sq.ft.)	\$5.00
Office (<100,000 sq.ft.)	No Fee (\$0) for all square footage \leq 50,000 sq.ft.; and \$3.00 for all remaining square footage
Retail	No Fee (\$0)
Hotel	\$5.00 excluding Common Area
Industrial/Research and Development	No fee (\$0)
Warehouse	\$5.00
Residential Care	\$6.00 Excluding Common Area
South and East San Jose Growth Areas:	
Office	No Fee (\$0)
Retail	No Fee (\$0)
Hotel	\$5.00 excluding Common Area
Industrial/Research and Development (\geq 100,000 sq.ft.)	\$3.00
Industrial/Research and Development (<100,000 sq.ft.)	No fee (\$0)
Warehouse	\$5.00

Residential Care

\$6.00 excluding
Common Area

B. The amount of legally permitted Non-Residential square footage to be demolished or removed in an existing building or structure shall be a credit in the calculation of the Commercial Linkage Fee. Credit shall be applied on a per square foot basis according to the per square foot fee assigned to the type of Non-Residential use that existed on the site prior to the date of submittal of the new Non-Residential Project application.

C. Credits for Providing Affordable Housing

Non-Residential Projects that provide affordable Credit Units or Covenant Credit Units as defined in the Ordinance, shall receive a credit in the calculation of the amount of the Commercial Linkage Fee. Credits shall apply as a reduction to the square feet of Non-Residential floor area used to determine the Commercial Linkage Fee due. Square footage credits are set forth in the schedule below. Credit Units or Covenant Credit Units must meet applicable standards in the Ordinance and any adopted guidelines.

Schedule of Credits toward Commercial Linkage Fee Payment for Projects Providing Affordable Units		
Affordability Level of Provided	Income Level Applicable	Square Feet of Floor Area ⁽¹⁾ Credited for Commercial Linkage Fee Payment for Each Affordable Unit Provided

Unit	to Affordable Rents	Per Credit Unit (newly built affordable units)		Per Covenant Credit Unit (affordability restrictions placed on existing units)	
		Office in Downtown and Nearby Subarea (≥100,000 sq. ft.)	Other Non- Residential	Office in Downtown and Nearby Subarea (≥100,000 sq. ft.)	Other Non- Residential
Extremely Low	30% of AMI	20,323 SF	60,971 SF	10,162 SF	30,486 SF
Very Low	50% of AMI	15,605 SF	46,817 SF	7,803 SF	23,409 SF
Low	60% of AMI	12,097 SF	36,292 SF	6,049 SF	18,146 SF
Moderate	100% of AMI	2,903 SF	8,710 SF	1,452 SF	4,355 SF

AMI = Area Median Income

(1) Commercial Linkage Fee payment shall be satisfied for the specified square footage of floor area for each Credit Unit or Covenant Credit Unit provided. For uses for which the Commercial Linkage Fee applies to gross floor area, credits are applied to reduce the gross floor area subject to the Commercial Linkage Fee. For uses for which the Commercial Linkage Fee applies to floor area excluding Common Area, credits are applied to reduce the floor area excluding Common Area that is subject to the Commercial Linkage Fee.

D. Reduced Fee When Paid at Building Permit

Non-Residential Projects that pay the Commercial Linkage Fee in full prior to issuance of any Building Permit shall be eligible for a reduced Commercial Linkage Fee rate equal to 80% of the amount otherwise due under Section A. For example, Office (≥100,000 sq. ft.) within Downtown and Nearby is eligible for a fee of \$12 per square foot when paid at Building Permit (\$12 per square foot = \$15 per square foot rate per Section 2 x 80%).

E. Deferred Payment Agreement

The applicant for a Non-Residential Project with a gross new or additional floor area of at least one hundred thousand square feet of Office or Industrial/R&D

uses may enter into a deferred payment agreement prior to the issuance of the first building permit consistent with this section and the Commercial Linkage Fee guidelines. The deferred payment agreement will permit the Commercial Linkage Fee to be paid in up to five equal installments, the first of which is to be paid prior issuance of any building permit, the second of which is to be paid prior to the scheduling of final building inspection and the remaining three installments are to be paid on an annual basis with the outstanding amount accruing 3% simple interest. The deferred payment agreement must be secured by a payment bond or irrevocable letter of credit on a standard form approved by the City Attorney, so as to ensure the payment of the installments.

SECTION 2. As of March 8, 2022, Resolution No. 79705 related to the schedule of fees for the Commercial Linkage Fee is hereby superseded.

SECTION 3. The provisions in this Resolution shall be effective on March 8, 2022.

ADOPTED this 29th day of March, 2022, by the following vote:

AYES: ARENAS, CARRASCO, COHEN, DAVIS, ESPARZA,
FOLEY, JONES, JIMENEZ, MAHAN, PERALEZ,
LICCARDO.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



SAM LICCARDO
Mayor

ATTEST:



TONI J. TABER, CMC
City Clerk