

HOUSING IMPACT FEE REGULATIONS

CITY OF SAN JOSE

Versions & Revisions:
July 20, 2016 – Initial adoption of Interim Regulations
March 7, 2018 – Revision of dwelling unit definition
May 9, 2018 – AHIF Transition process
November 2, 2018 – AHIF Pipeline deadline extension
December 18, 2018 – Clarification of For-Sale requirements
May 1, 2019 – Co-Living
August 29, 2019 – Transition project phasing and final approved building plan requirements

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CHAPTER 1: INTENT OF THE REGULATIONS

The following Program Regulations shall guide the Affordable Housing Impact Fee Program that became effective January 18, 2015. These Regulations elaborate upon the administrative directions contained in City of San José [Resolution No. 77218](#) (the “Housing Impact Fee Resolution” or “Resolution”), and are intended to be used in conjunction with the Housing Impact Fee Resolution. The Resolution and additional information can be found on www.sjhousing.org.

These Regulations have been prepared per Section 12 C of Resolution Number 77218 which states: “The Director may adopt such rules and regulations as are needed to implement the intent of this Resolution.”

All capitalized undefined terms shall be defined as provided in the Resolution. Definitions for any capitalized undefined terms that are not defined in the Resolution may be found in Chapter 9 of these Regulations.

PART 1. THE AFFORDABLE HOUSING IMPACT FEE – PURPOSE

The Housing Impact Fee (also referred to as the “Affordable Housing Impact Fee”) on new market-rate rental housing developments was adopted by the City Council in order to collect revenue to address the demand for affordable housing connected with new market-rate development. This activity will facilitate the development and availability of housing affordable to a broad range of households with varying incomes with the City as mandated by California Government Code Section 65580 *et seq.*

The Affordable Housing Impact Fee will facilitate compliance with the proposed City General Plan goal of making at least 15% of new housing affordable and providing safe, affordable housing for workers in resident-serving industries.

PART 2. ADMINISTRATIVE RESPONSIBILITY

The Director of Housing or the Director’s designee is authorized to interpret and enforce all provisions of these Regulations to carry out the general administration of the Affordable Housing Impact Fee Resolution enacted by the City of San José (“City”). The Department of Housing will coordinate with the Department of Planning, Building and Code Enforcement in the implementation of the Affordable Housing Impact Fee permit conditions.

PART 3. RELATIONSHIP TO THE INCLUSIONARY HOUSING ORDINANCE

1.03.01 It is the City's goal that the Affordable Housing Impact Fee Resolution and Inclusionary Housing Ordinance are implemented in a manner that are complementary with each other. Therefore, these Regulations (and the Guidelines that will be prepared for the Inclusionary Housing Ordinance) are intended to provide direction on how the Housing Impact Fee will be implemented in conjunction with the Inclusionary Housing Ordinance and its Guidelines.

In an effort to provide consistent and seamless management of programs in support of the Housing Impact Fee Resolution and the Inclusionary Housing Ordinance, the Housing Department will implement a combined process with a single Compliance Plan application procedure.

Residential Developments that include Market Rate Rental Units will be subject to the Affordable Housing Impact Fee, and Residential Developments that contain For-Sale Dwelling Units will be subject to the requirements of the Inclusionary Housing Ordinance.

Some Residential Developments may include both rental units and For-Sale Dwelling Units; these developments will be subject to the Affordable Housing Impact Fee Resolution with respect to the Market Rate Rental Units, or the Inclusionary Ordinance with respect to the For-Sale Dwelling Units.

The initial determination as to whether the Affordable Housing Impact Fee or the Inclusionary Ordinance applies to a Residential Development will be made at the time of approval of the Compliance Plan application. This determination will be reviewed prior to the issuance of the Building Permit and memorialized by the recording of the Affordable Housing Agreement (also referred to as the Inclusionary Housing Agreement in the Inclusionary Housing Ordinance) and shall occur prior to the issuance of any building permits. See **Chapter 11 Attachment 2** for a [sample Affordable Housing Agreement](#).

1.03.02 Limited Term Transition for Projects with 20 or More Units –
Effective January 1, 2018, the Inclusionary Housing Ordinance will apply to developments with 20 or more rental units. The following subsections describe the limited term transition process which will allow qualifying rental developments to satisfy their affordable housing obligations under the Inclusionary Housing Ordinance by paying the Affordable Housing Impact Fee.

1.03.02.01 Transition between Affordable Housing Impact Fee and Inclusionary Housing Ordinance Requirements (for Projects Not Qualifying for the AHIF Downtown High Rise Fee Waiver)

A Developer who wishes to utilize the transition process for a Rental Development that is not a Downtown High Rise project must comply with the following:

- 1) The Developer of a Rental Development has executed, with owner authorization, and submitted [Acknowledgement of the Terms and Conditions for the Inclusionary Housing Ordinance Transition Waiver](#) without modification on or prior to June 30, 2018 and paid any review fee that may be adopted pursuant to the City's schedule of fees and charges;
- 2) The Developer has submitted a complete executed application for first approval and has paid all planning application fees to the Department of Planning, Building, and Code Enforcement (PBCE) on or prior to June 30, 2018;
- 3) The application for first approval is for a Conditional Use Permit, Planned Development Permit, Site Development Permit, or Special Use Permit;
- 4) The Developer has an approved [Affordable Housing Compliance Plan](#) and paid the associated fee of \$3,200 on or prior to June 30, 2018;
- 5) The Developer has submitted Building Department approved final building plans for the Rental Development to Housing and paid the then current AHIF on or prior to June 30, 2020 For the transition projects under this Section 1.03.02.01, the Building Department approved final plans for the Rental Development include those final plans signed and stamped by the Developer's responsible architects and engineers and approved by the Building Department for the purpose of issuance of a Building Permit or a Foundation-only Building Permit.
- 6) Different or additional requirements apply for the transition process to projects with tentative maps, Downtown High Rise Projects, and AHIF Pipeline Exemption Projects.

1.03.02.02 Transition between Affordable Housing Impact Fee and Inclusionary Housing Ordinance Requirements (for Projects Qualifying for the AHIF Downtown High Rise Fee Waiver)

- (1) The Developer of a Rental Development has executed, with owner authorization, and submitted an [Acknowledgement of the Terms and Conditions for the Inclusionary Housing Ordinance Transition Waiver for Downtown High Rises](#) without modification on or prior to June 30, 2018 and paid any review fee that may be adopted pursuant to the City's schedule of fees and charges;

- (2) The Developer has submitted a complete executed application for first approval and has paid all planning application fees to the Department of Planning, Building, and Code Enforcement (PBCE) on or prior to June 30, 2018;
- (3) The application for first approval is for a Conditional Use Permit, Planned Development Permit, Site Development Permit, or Special Use Permit;
- (4) The Developer has an approved [Affordable Housing Compliance Plan](#) and paid the associated fee of \$3,200 on or prior to June 30, 2018;
- (5) The Developer has executed a Downtown High Rise Affordable Housing Agreement on the City's form, recorded it against the property prior to pulling Building Permits; and
- (6) The Developer must obtain issuance of the Rental Development's final Certificates of Occupancy, no later than June 30, 2021 in order to obtain the complete waiver of affordable housing fees.
- (7) If the Developer has complied with items, (1)-(5) and has obtained all building permits for the residential development, the Developer may pay the then current Affordable Housing Impact Fee on or prior to June 30, 2021, rather than comply with the obligations under the Inclusionary Housing Ordinance.

1.03.03 Mapped Developments with 20 or More Units

The Developer of a Residential Development that has (1) tentative map(s) or other map(s) or plan(s) approved on or before June 30, 2018 allowing the creation of separately conveyable dwelling units or interests (such as condominiums, stock cooperatives, or community apartments) and (2) an approved compliance plan indicating that the residential development is rental may proceed under the Limited Term Transition for Projects with 20 or More Units as described in Section 1.03.02.1 or, if applicable, Section 1.03.02.2, subject also to the requirements of this Section. The Developer must record an Affordable Housing Agreement prior to payment of the Housing Impact Fee that provides for monitoring and requires and the Developer to comply with the Inclusionary Housing Ordinance's for-sale requirements if Developer has filed a final map, applied to the state Bureau of Real Estate for a public report or filed a notice of intention, or otherwise taken action to change the development to a for-sale development prior to the issuance of the final Certificates of Occupancy.

1.03.04 AHIF Pipeline Exemption Projects

If the Developer of Rental Development that previously qualified for the AHIF Pipeline Exemption wishes to participate in the transition process, the Developer must also comply with all terms of that exemption including the requirement to obtain 50% of certificates of occupancy on or prior to January 31, 2020 and also record an Affordable Housing Agreement for AHIF Pipeline Exemption Projects prior to issuance of Building Permits.

1.03.05 Phasing Fee Payment for Certain Transition Projects

A Developer with a Residential Development subject to Regulations Section 1.03.02.01 (and not subject to Section 1.03.02.02, 1.03.03 or 1.03.04) may, consistent with the Departments phasing procedures, pay the AHIF early for one or more separate buildings after the building department has approved the final plans for the building(s). The approval of a single building for early payment is not a promise to approve or remove the hold on any building not covered by the approval. Subsequent amendment of the approved final plans will void the Transition Exemption.

PART 4. WAIVERS AND EXEMPTIONS – LIMITATION

In most cases, exemptions are conditional. If the Department of Housing determines the conditions of the exemption have been met, the Department of Housing will provide a fee waiver at or prior to the issuance of the certificate of occupancy. The fee waiver must be used within 30 days and may not be banked for future use or conversion.

PART 5. SUBJECT (OR APPLICABLE) PROJECTS

1.05.01 Project Size – The Affordable Housing Impact Fee applies to all projects with three or more Rental Units.

1.05.02 Determination of Whether a Living Area is a Dwelling Unit –

1. A room or suite in a development permitted as assisted living is a Dwelling Unit as defined in the Ordinance if it has all of the following: its own bathroom; a second sink outside of the bathroom; an outlet (120V or greater) and room for a refrigerator (dorm size or larger); and a second outlet and room or counter space for a microwave oven or other food cooking appliance.
2. A co-living dwelling unit is a dwelling unit. With respect to other developments designed or permitted based on shared common facilities (e.g., single room occupancy, suite-style student or senior housing), the number of Dwelling Units and the square footage to be assessed shall be determined in a manner that reasonably reflects the design of a project for separate rental of bedrooms or suites with shared common facilities.

1.05.03 Limitation – No Affordable Housing Impact Fee shall be due for any building that obtains its final Certificate(s) of Occupancy on or prior to June 30, 2016.

1.05.04 Compliance is Condition of Approval – No application for a rezoning, tentative map, parcel map, conditional use permit, building permit or other entitlement (each a “Development Permit”) shall be approved without compliance with the requirements of the Resolution. Compliance with the Resolution shall be a condition

of approval of all Rental Developments, whether or not the condition is expressly included in the Development Permit. A Compliance Plan Application as described in Chapter 6 of these Regulations must be submitted for all Residential Developments, including Residential Developments that claim they are exempt from the Affordable Housing Impact Fee.

Except as otherwise provided in the Resolution, no Building Permit for a Rental Development shall be issued unless and until the Affordable Housing Impact Fee has been paid, a Fee Waiver issued, or alternatively, has successfully appealed to delay payment and recorded an Agreement for Deferred Impact Fee Payment.

1.05.05 Other City Fees and Requirements Are Not Precluded – Nothing in the Resolution or these Regulations shall restrict the ability of the City to require dedication of land, payment of fees, or construction of improvements for needs other than, or in addition to, those described in the Resolution.

CHAPTER 2: EXEMPTIONS

PART 1. RESPONSIBILITY

2.01.01 Evidence of Exemption – It is the responsibility of the Applicant to claim any exemption in the Compliance Plan and provide supporting evidence for each claim of an exemption. Developments that claim to be exempt from the Affordable Housing Impact Fee in the Compliance Plan and have been determined by the Director of Housing to have satisfied all of the requirements of the exemption will be provided a Fee Waiver at the time the Housing Impact Fee is due.

PART 2. FOR SALE OR OWNERSHIP PROJECTS

2.02.01 For-Sale Developments – Effective January 1, 2019, the Developer of a Residential Development who has indicated that it is a For-Sale Development in its Compliance Plan and claimed an exemption must provide:

1. prior to Building Permit issuance, preliminary evidence of compliance with State law and regulations required for a condominium, stock cooperative, or community apartment project including an approved tentative map, and submittal of a Notice of Intention (application) together with the appropriate fee to the California Bureau of Real Estate,
2. prior to Building Permit issuance, record an Agreement for Deferred Impact Fee Payment, which shall apply in the event the Developer fails to satisfy all exemption requirements, and
3. prior to issuance of any Certificate of Occupancy, evidence of compliance with the Subdivided Lands Act, including:
 - (i) recordation of covenants, conditions, and restrictions,
 - (ii) the formation of a Homeowner's Association including executed governing documents and incorporation,
 - (iii) California Bureau of Real Estate approval of a final subdivision report and
 - (iv) evidence of marketing of the Residential Development as a For-Sale Development. The Resolution also requires that the Developer has conveyed at least one unit, or in the case of a stock cooperative, one share, to a bona fide purchaser for value in an arm's length transaction and evidence of the conveyance has been recorded.

If compliance with these requirements is not shown, the units in the Development may be determined by the City to be Market Rate Rental Units subject to the Affordable Housing Impact Fee.

2.02.02 Projects without Subdivision Maps – Any Residential Development which has received all approved entitlements without an approved tentative map will be presumed to be a Rental Development.

PART 3. SMALL PROJECT EXEMPTION

2.03.01 Projects with Two (2) or Fewer Units – Residential Developments with two (2) or fewer rental units are exempt from the Affordable Housing Impact Fee. The Developer will not be required to complete a Compliance Plan Application. However, a project with phased development for a total unit count that exceeds the three (3)-unit limit will not be eligible for the exemption. To verify that there is no piecemealing of the Development, the Developer will be required to sign an affidavit stating that the Developer does not have any ownership interest or option in the contiguous parcels. For purposes of the Small Project Exemption, the term Residential Development is defined as the project described in the Developer's entitlement by the City's Department of Planning, Building, and Code Enforcement.

PART 4. DOWNTOWN HIGH-RISE EXEMPTION

- 2.04.01 Downtown High-rise Temporary Exemption** – The Developer of a Residential Development that has indicated that it is a Rental Development in its Compliance Plan and claimed an exemption as a Downtown High Rise must provide:
- (a) prior to issuance of a building permit, evidence that it is located in the specified Downtown Core Area, verification by the Building Department that based on the plans the Development meets Minimum Height requirement and evidence that the Development is not a For-Sale Development,
 - (b) prior to issuance of a building permit, record an Agreement for Deferred Impact Fee Payment, which shall apply in the event the Developer fails to satisfy all exemption requirements, and
 - (c) evidence of its final certificates of occupancy are ready to issue, except for the Fee Waiver, on or prior to June 30, 2021.
- 2.04.02 Minimum Height** – The highest occupied floor within the project must have a floor level elevation of at least 150 feet above the street level to qualify for the High-rise exemption.
- 2.04.03 Exemption Applies within Downtown Core Area** – Applicants seeking a high-rise exemption must demonstrate that the project is located in the Downtown Core Area (as described in [Resolution No. 73587](#) adopted January 9, 2007).

PART 5. PROJECTS WITH RESTRICTED AFFORDABLE UNITS

- 2.05.01** **100% Affordable Projects** – Affordable Housing Developments with 55-year affordability covenants restricting 100% of the units as Affordable Rental Units for households earning 60% of Area Median Income or below with rents that do not exceed Affordable Rent will not be assessed an Affordable Housing Impact Fee. Projects that have 100% Affordable Rental Units with the exception of manager unit(s) required by state law are deemed to be Affordable Housing Developments that qualify for the 100% affordable project exemption.
- 2.05.02** **Mixed-Income Projects** – The Housing Impact Fee will only apply to the Market Rate Units of a project that includes both Market Rate and Affordable Units. The Housing Impact Fee will not apply to Affordable Rental Units within projects which are subject to a 55-year affordability covenants restricting units to households earning 60% of Area Median Income or less.
- 2.05.03** **Evidence** – The Developer of a Residential Development that has indicated a Development is 100% Affordable or contains Affordable Units in its Compliance Plan, and claimed an exemption or partial exemption must provide: (a) a copy of the recorded agreement restricting the Affordable Units for the benefit of a state, local or federal entity prior to issuance of a building permit.

PART 6. AFFORDABLE PROJECTS AND PROJECTS WITH AN APPROVED DEVELOPMENT AGREEMENT

- 2.06.01** **Affordable Projects and Projects Subject to a Development Agreement**– The Developer of a Residential Development that has indicated a Development is either (a) 100% Affordable, (b) contains some Affordable Units, or (c) is subject to a Development Agreement, must provide documentation to satisfy the City that all or a portion of the Residential Development is exempt from the Housing Impact Fee.

CHAPTER 3: PIPELINE EXEMPTIONS

PART 1. PIPELINE EXEMPTION TIMELINE

3.01.01 Pipeline Exemption Timing – A development project may be exempted from the Housing Impact Fee if it meets all of the following conditions:

1. Receives approval of a completed Pipeline Exemption Application no later than June 30th, 2016.
2. On or prior to June 30, 2016, a proposed Rental Development has received approval for one of the following entitlements, which is current and unexpired as of June 30, 2016:
 - a. Planned Development Permit
 - b. Conditional Use Permit
 - c. Site Development Permit
 - d. Special Use Permit

Approval of entitlements means that any required ordinances have had its second reading and that the specific permit has been executed by the City.

If the permit that qualifies a Residential Development for the Pipeline Exemption is appealed, the Housing Department will monitor the appeal process. If the appeal is denied, the project will remain qualified for the exemption. However, if the appeal is granted, and any permit is modified or a new permit is required, the Residential Development will not be eligible for the exemption.

3. The Developer of a Residential Development that has indicated that it is a Rental Development must complete a Compliance Plan and claim a Pipeline Exemption subject to satisfaction of the Pipeline Exemption requirements including payment of the monitoring fee.
4. Prior to building permits issuance, Applicant must request a deferral of payment for the Housing Impact Fee until issuance of Certificate(s) of Occupancy and record an Agreement for Deferred Impact Fee Payment, which shall apply in the event that the Developer fails to satisfy all exemption requirements.

5. Prior to January 31, 2020, the Rental Development must receive final Certificate(s) of Occupancy for buildings containing at least 50% of the units declared in the Pipeline Exemption Application.

PART 2. PIPELINE EXEMPTION APPLICATION

3.02.01 Pipeline Application Requirement – To be exempted per the Pipeline provisions of the Resolution, the Developer must submit a complete Pipeline Exemption Application with evidence of the required permit.

3.02.02 Application Deadline – Applications must be submitted to the Housing Department by April 1, 2016 to ensure that the Developer's receive notice of an approved, completed application by June 30, 2016. Applications that are determined to be incomplete or unapproved as of June 30, 2016 will not be eligible for a Pipeline Exemption.

Within 30 business days of receipt of a Pipeline Exemption Application, the City will provide notice by e-mail of the completion of the Pipeline Exemption Application or a list of missing or incomplete items. Failure of the Applicant to receive such notice will not extend the June 30, 2016 deadline for notice of a completed Pipeline Exemption Application.

3.02.03 Application Fee – The Pipeline Application Fee will mitigate the cost of staff time to track compliance and monitoring. The amount of the Pipeline Application Fee and an annual monitoring fee will be determined as part of the adoption of the Annual Fees and Charges Resolution, which will be established as part of the 2015-2016 budget process.

The base fee for the initial year shall be \$3,200 per Pipeline Exemption Application payable at the time of filing. The base fee will cover the following: 1) initial application review, 2) issuance of a letter stating that the application is complete, and 3) review of the Certificate of Occupancy and the issuance of a pipeline certificate, which is described in this section.

There will be an extra hourly charge in the event that additional staff time is needed to review the application, prepare correspondence, and for other communications that may be needed.

The Pipeline Application Fee is non-refundable.

3.02.04 Adjustments to the Eligible Entitlement – Permit Amendments that lead to an increase in the project’s total number of units by fewer than 10% will not void the Pipeline Process for the eligible units provided that the Developer notifies the Department in advance with the exact number of units, executes a compliance plan, and pays the Affordable Housing Impact Fee for those units (based on the average square footage of all units in the Project). Adjustments adding 10% or more units will cause the Project to be ineligible for the Pipeline Process.

PART 3. ANNUAL MONITORING OF PIPELINE EXEMPTION DEVELOPMENTS

3.03.01 During the Pipeline Exemption period, Applicants shall be required to submit quarterly updates to the City of San José Housing Department on the status of their projects. The Housing Department will review the information to determine if each Applicant is meeting the intent of the Pipeline Exemption. The Pipeline Exemption Applicant will pay an annual monitoring fee of \$1,740 by November 15th of each year (or on the subsequent business day if the 15th were to fall on a weekend), except for 2019, where the fee shall be paid by August 15. Note: For the final year, fees may be prorated through January 31, 2020 based on a 365-day year.

PART 4. PIPELINE EXEMPTION DEVELOPMENTS WITHOUT A RECORDED AGREEMENT

3.04.01 The Developer of a Rental Development meeting all criteria of the AHIF Pipeline Projects in Chapter 3 of these regulations and the terms of their recorded agreement is not required to pay a Housing Impact Fee for the covered units. If a Developer’s Pipeline Project meets all criteria in Chapter 3 of the regulations and the terms of their recorded agreement except for the pipeline requirement to obtain final Certificates of Occupancy for 50% of the buildings by the January 31, 2020 due date, and the Developer has obtained building department approval of the final plans for the Rental Development, the Developer may pay the Housing Impact Fee on or prior to January 31, 2020, instead of complying with the requirements of the Inclusionary Housing Ordinance.

PART 5. REFUNDS AND WAIVERS OF FEES

An Applicant with an Eligible Pipeline Project that has met the requirements of Parts 1, 2, and 3 of Chapter 3, and who has paid the Housing Impact Fee for all of its Market Rate Units at building permit may be entitled to a refund if the Applicant obtains a Certificate of Occupancy for the building(s) that includes no less than 50% of the Market Rate Units by January 31, 2020.

An Applicant with an Eligible Pipeline Project that has met the requirements of Parts 1, 2, 3, and 4, and who has entered into an Deferred Payment Agreement at or prior to building permit (Resolution, Section 8 Part C & D) to pay the Housing Impact Fee at Certificate of Occupancy will be entitled to a waiver for all of its Market Rate Units if it obtains final Certificate(s) of Occupancy for the building(s) that include no less than 50% of the Market Rate Units by January 31, 2020.

The 50% threshold of the market rate units is based on the maximum number of units permitted in the Project's entitlements and listed in the Pipeline Exemption Application. If the entitlements do not list the number of units or conflict with the Pipeline Exemption Application, the number of units listed in the Pipeline Exemption Application will control. Even if the number of units built in the Project is reduced, the Developer is still required to complete at least 50% of the original listed Market Rate Units and building(s) by January 31, 2020.

There will be no refunds or waivers for Eligible Pipeline Projects that fail to obtain final Certificate(s) of Occupancy for the building(s) that include no less than 50% of the Market Rate Units by January 31, 2020. Those Projects are not exempt from the Housing Impact Fee.

CHAPTER 4: APPEAL OF HOUSING IMPACT FEE PAYMENT TIMING

(FEE DEFERRAL AT BUILDING PERMIT)

4.01.01 Appeal of Payment Timing – An Applicant may, prior to the issuance of the Applicant’s Building Permit, seek to delay payment of the Affordable Housing Impact Fee until the earlier of issuance of the Certificate of Occupancy or date of the final inspection of the Applicant’s Residential Development. To seek delay of payment, the Applicant must file a written appeal with the Director of Housing.

The Director of Housing will issue a written response to either uphold or deny the applicant’s request for deferred payment of the Affordable Housing Impact Fee within ten (10) business days of receipt of the Applicant’s request for delay of payment.

4.01.02 Appeal Must Be Filed Prior to Payment – Appeals must be filed prior to payment of the Housing Impact Fee. An appeal of the timing of the Housing Impact Fee submitted after payment shall be deemed untimely and shall not be considered.

4.01.03 Grounds for Appeal – Per the Resolution, the exclusive grounds for granting an Applicant’s appeal to delay payment of Housing Impact Fees shall be as follows:

1. The City has not done all of the following:
2. established a Housing Impact Fee Fund or account,
3. collected funds,
4. authorized expenditure of Housing Impact Fee revenues on one or more specific Housing Facilities, and
5. adopted a proposed construction plan or schedule for specific Housing Facilities.

The Affordable Housing Impact Fee is not intended to reimburse the City for expenditures that were made prior to the adoption of the Resolution.

4.01.04 Agreement for Deferred Impact Fee Payment – In the event that the Director of Housing grants the Applicant’s request for delay of payment, the Applicant shall enter into an agreement for the deferred payment of the Affordable Housing Impact Fee as a condition of issuance of the Applicant’s Building Permit(s).

The deferred payment agreement shall be recorded in the Office of the Santa Clara County Recorder and shall require the Applicant or the Applicant’s successor to pay the Affordable Housing Impact Fee for the Applicant’s

Residential Development, in full, no later than the date on which final inspection of the first dwelling unit within the Applicant's Residential Development occurs. Failure to pay the Affordable Housing Impact Fee when due will result in the imposition of late fees as described below.

The deferred payment agreement shall have a legal description of the real property attached as an exhibit on which the Applicant's Residential Development is to be built. The Applicant shall be responsible for providing the legal description to the City at the Applicant's sole cost.

4.01.05 Coordination

Housing Department staff will administer these provisions in coordination with the Planning, Building and Code Enforcement Department, including notification of payments due.

CHAPTER 5: THE HOUSING IMPACT FEE – AMOUNT, CALCULATION, PROCESS

PART 1. GENERAL

5.01.01 The Affordable Housing Impact Fee was established by [Resolution No. 77218](#) with the specific fee identified on Exhibit A -- Schedule of Fees.

PART 2. FEE ADJUSTMENTS

5.02.01 Annual Adjustments – Per the Resolution’s Exhibit A, the fee or fees listed shall be increased annually by 2.4% each fiscal year on July 1st.

The initial adopted fee of \$17.00 per square foot is adjusted annually; the 2.4% annual increase will be as follows:

Date	Full Fee Level
July 1, 2016	\$17.00
July 1, 2017	\$17.41
July 1, 2018	\$17.83

Any project subject to the Affordable Housing Impact Fee will pay the fee currently in effect (per Exhibit A) prior to issuance of any Building Permit. Projects that have claimed an exemption in their Compliance Plan will be reviewed to determine if the exemption conditions are met. If the exemption conditions cannot be met until a later date, or there has been a successful appeal of the payment timing, a deferred payment agreement shall be recorded.

PART 3. SQUARE FOOTAGE TO BE CHARGED

5.03.01 Fee Applies to Interior Residential Square Footage – The Affordable Housing Impact Fee, per Exhibit A, will be assessed on net residential square feet of building area. Measurement shall be from the outside surface of the exterior stud walls and will include all finished living space.

The Affordable Housing Impact Fee will not be assessed on the following (exclusions):

1. Vehicular (automobile, motorcycle, bicycle) parking areas, whether assigned to specific units or not, that are separate areas from the residential unit
2. Common hallways that access the front doors of two or more units
3. Common rooms/lounges together with supporting facilities such as kitchens and restrooms

4. Building lobbies
5. Balconies, whether private or open to all residents
6. Common stairwells that serve two or more units
7. Elevator shafts
8. Utility shafts
9. Custodial or janitorial closets
10. Common recreation areas – such as fitness centers, community rooms, and roof spaces
11. Storage lockers not located within residential units
12. Other qualifying areas that are not associated with residential units, upon approval of the Director of Housing

5.03.02 Fee - Interior Residential Square Footage for Co-Living

With respect to developments designed or permitted based on shared common facilities (e.g., co-living, single room occupancy, suite-style student or senior housing) the square footage to be assessed shall be determined in a manner that reasonably reflects the design of a project for separate rental of bedrooms or suites with shared common facilities. For those developments, the exclusions to square footage assessment under Section 5.03.01 will not include community rooms, common rooms/lounges together with supporting facilities such as kitchens and restrooms and other heated interior residential areas associated with the dwelling units or suites.

PART 4. PAYMENT

- 5.04.01 Due at Building Permit Issuance** – Payment of the full Housing Impact Fee is due at Building Permit Issuance, except as provided elsewhere in these Regulations. Projects that have claimed an exemption in their Compliance Plan will be reviewed by staff to determine if the exemption conditions are met. The City and the developer will execute an Affordable Housing Agreement to memorialize the project's affordable housing obligation. (See Chapter 7 of these Regulations).
- 5.04.02 Applicant to Provide Fee Estimate** – At submission of the Building Permit Application, the Applicant shall provide a calculation of the square foot area subject to the Housing Impact Fee. This calculation will be an update and refinement of the estimate submitted in the Compliance Plan Application per Chapter 6.02.01 -- Contents of Application.
- 5.04.03 City Responsible for Final Determination of Fee Amount** – The Department of Planning, Building and Code Enforcement shall be responsible for the final

measurement of the area subject to the fee. The final calculation will be used to adjust earlier estimates provided in the Compliance Plan and Building Permit Application.

5.04.04 Payment under Protest. The Applicant may pay the Housing Impact Fee under protest, consistent with the requirements of the Mitigation Fee Act -- Government Code Section 66020.

PART 5. LATE FEES

A late fee will be added to the Affordable Housing Impact Fee when any payment is delinquent. The late payment fee amount will be adopted in the City's Schedule of Fees and Charges. In addition, interest at the rate of one-and-a-half percent (1-1/2%) per month, pro rata, on the total unpaid balance, including late payment fees, shall be assessed from the original payment due date until the date that all past due amounts are paid to the City.

CHAPTER 6: COMPLIANCE PLAN APPLICATION

PART 1. COMPLIANCE PLAN APPLICATION

6.01.01 Compliance Plan Application – All applications for initial entitlements that include projects of three or more units, such as but not limited to Planned Development Permit, Site Development Permit, Conditional Use Permit, Special Use Permit, must include a Compliance Plan Application. The information in the Compliance Plan Application will be included in the Project’s conditions of approval. See **Attachment 1** for a sample Compliance Plan Application.

Approval of a Compliance Plan Application is not evidence of compliance with the Affordable Housing Impact Fee; payment of the Affordable Housing Impact Fee is required to satisfy compliance for projects that are subject to the Affordable Housing Impact Fee.

PART 2. COMPLIANCE PLAN SUBMITTAL REQUIREMENTS

6.02.01 Contents of Application – The Compliance Plan Application will state the number of rental units in the project and the estimated square foot area that will be subject to the Affordable Housing Impact Fee. Developers are also responsible for providing detailed information on the Project’s Building Plans that will be submitted for City approval. The Developer shall describe the Project’s unit mix that includes all the following information:

1. number of units by model type
2. square footage of each unit
3. number of bedrooms by model type
4. the square footage of heated areas per Section 5.03.02

Developers will also be required to state whether a Development is projected to be Rental or For-Sale and to claim any exemptions. Evidence of qualification for exemptions will be required. Developers will be required to execute an acknowledgement of the obligations and, in the event the requirements of a claimed exemption are not satisfied, pay the Affordable Housing Impact Fee.

6.02.02 Timing of Application - As part of the application for First Approval of any development, the Developer must submit a completed Compliance Plan application to the Department of Housing, and all attachments (including the Unit Mix Worksheet - Attachment A), and pay the Compliance Plan application processing fee.

CHAPTER 7: AFFORDABLE HOUSING AGREEMENT

As part of the building permit process, prior to issuance of any building or foundation permit, the developer must provide updated information that will allow the Housing Department to confirm satisfaction of any exemption claims and a final determination of calculation of the projects fee. This information will include an updated Unit Mix Worksheet. Further, the building plans submitted as part of the building permit process shall include a detailed unit mix completed and stamped by a licensed architect or engineer.

Prior to the approval of any final or parcel map, or issuance of any building permit for a residential development, the developer will execute an Affordable Housing Agreement to memorialize the project's affordable housing obligation. The Affordable Housing Agreement must then be recorded against the entire development. See Attachment 2 for a sample Affordable Housing Agreement.

CHAPTER 8: WAIVERS

- 8.01.01 No Reasonable Relationship** – Notwithstanding any other provision in the Resolution or the Regulations, the requirement 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 requirement of the Resolution would take property in violation of the United States Constitution or California Constitution.
- 8.01.02 Project Has Satisfied Inclusionary Policy Requirements** – Notwithstanding any other provision in the Resolution or the Regulations, the requirement to pay the Housing Impact Fee shall be waived, adjusted or reduced to the extent that the Applicant submits proof to the Director that the development is located in a redevelopment project area and the requirements to pay in-lieu fees or provide affordable for-sale units under the City’s Inclusionary Housing Policy applicable within former redevelopment project areas have been satisfied. For the purposes of the waiver, a “flip” or springing restriction recorded against a project where units are not marketed and offered for sale will not satisfy this requirement.
- 8.01.03 City Review of Claims of No Reasonable Relationship or Inclusionary Policy Compliance** – The Director shall review all submittals and requests under this Chapter. The Director may require submittal of any supporting documentation. Within 30 business days of receipt of Applicant’s submittals, the Director shall provide a written response regarding such a request. The decision of the Director shall be final.

CHAPTER 9: FEE REVENUES, ACCOUNTING, EXPENDITURE PLAN

PART 1. HOUSING IMPACT FEE FUND

- 9.01.01 Housing Impact Fee Fund Established** – With the adoption of [Resolution No. 77218](#), a Housing Impact Fee Fund was established. All Impact Fee revenues shall be deposited into the Housing Impact Fee Fund.
- 9.01.02 Loans from Housing Impact Fee Fund** – Any repayments of loans made from Housing Impact Fees or the Housing Impact Fee Fund shall be deposited into the Housing Impact Fee Fund.
- 9.01.03 Fund to Meet Mitigation Fee Act Requirements** – The Housing Impact Fee Fund, including accrued interest, shall be subject to all the applicable provisions of the Mitigation Fee Act, including but not limited to the requirements for accounting, reporting and expenditure of the fund to increase the supply of affordable housing in San José.
- 9.01.04 Expenditure Plan** – The Housing Impact Fee Fund shall be used, consistent with the City’s expenditure plan attached to the Resolution, as amended from time to time, to increase the supply of affordable housing in the City, including acquisition, financing, construction, and development of Housing Facilities, and any necessary and reasonable costs for administering the Housing Impact Fee Fund.

CHAPTER 10: DEFINITIONS

The definitions set forth in this Section will govern the application and interpretation of the regulations set forth in this document:

- a. "Affordable Housing Development" refers to a Rental Development where 100% of the Rental Units are Affordable Rental Units.
- b. "Affordable Rent" refers to a monthly rent that does not exceed one-twelfth of 30% of 60% of the Area Median Income at a level appropriate for the Assumed Household Size.
- c. "Affordable Rental Unit" refers to a dwelling unit restricted to Affordable Rent by a Recorded Covenant and deemed to include any manager's unit for an Affordable Housing Development which is required by State law.
- d. "Applicant" or "Developer" means a person, persons, or entity that applies for a development permit for a Residential Development and also includes the owner or owners of the property if the Applicant does not own the property on which development is proposed.
- e. "Area Median Income" or "AMI" means the annual median income for Santa Clara County, adjusted for household size, as published periodically in the California Code of Regulations, Title 25, Section 6932, or its successor provisions, or as established by the City of San José in the event that such median income figures are no longer published periodically in the California Code of Regulations.
- f. "Assumed Household Size" means, for any dwelling unit, the household size assumed for determining Affordable Rent based on a Recorded Covenant which shall be either (a) 1 person for each bedroom plus 1 person for the unit, or (b) 1.5 persons for each bedroom.
- g. "Building" shall have the meaning given in San José Municipal Code Section 17.84.102.
- h. "Building Permit" means a City issued building permit and includes full structural building permits as well as partial permits such as foundation-only permits.
- i. "City" means the City of San José.
- j. "Certificate of Occupancy" means the permit issued by the City Building Division authorizing the initial occupancy of one or more buildings (or units within buildings) with residential dwelling units and includes temporary certificates of occupancy permits.
- k. "Conditional Use Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.

- l. "Compliance Plan Application" is a plan submitted to the Housing Department meeting the requirements outlined in Chapter 6.
- m. "Development Permit" shall have the meaning given in Section 1.03.03.
- n. "Director" means the Director of Housing or such other director designated by the city manager to administer this resolution.
- o. "Dwelling Unit" means a building, or portion of a building, planned or designed for use as a residence for one family having its own bathroom, a sink and the capability (i.e., power and space) for cooking and refrigeration, as may be further clarified in these regulations. Dwelling Units also include co-living dwelling units as described in San José Municipal Code Section 20.80.290.
- p. "Downtown High Rise" means a Residential Development located in the Downtown Core Area (as described in Resolution No. 73587 adopted January 9, 2007) where the highest occupied floor has a floor level elevation is at least 150 feet above street level.
- q. "Effective Date" of Resolution No. 77218 is January 18, 2015.
- r. "Housing Facility" means (a) property acquired or proposed for acquisition by the City for affordable housing purposes and any improvements constructed thereon or (b) a recorded affordability restriction that is made for the benefit of and enforceable by the City.
- s. "Affordable Housing Impact Fee" means the fee established by the City pursuant Resolution No. 77218.
- t. "Housing Impact Fee Fund" means the fund established in Section 9 below.
- u. "Inclusionary Housing Policy" means the policy originally adopted by the City Council on October 4, 1988, by Resolution No. 60918, as amended, implementing Section 33413 of the California Health and Safety Code's requirement that a certain percentage of dwelling units developed in redevelopment project areas be available at affordable housing costs to persons and families of low or moderate incomes.
- v. "Market Rate Rental Unit" means a Rental Unit that is not an Affordable Rental Unit or a Reconstructed Unit.
- w. "Nexus Study" means the Nexus Study entitled, Residential Nexus Analysis dated October 2014, that is maintained for public review in the Department of Housing or any subsequent nexus study approved by the City Council.
- x. "Pipeline Application" (also referred to as a "Pipeline Exemption Application) means a housing impact fee pipeline application for a residential development

listing the qualifying City permit, the property description, address, and the number of all Market Rate Units in the residential development.

- y. "Planned Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100
- z. "Reconstructed Unit" means a dwelling unit that replaces a dwelling unit that was located on the same parcel and was occupied no more than five (5) years prior to the building permit application.
- aa. "Recorded Covenant" means a recorded affordability restriction with a term of at least 55 years that limits the rental of the dwelling units to households with an income not exceeding 60% of the Area Median Income at Affordable Rent and is made for the benefit of and enforceable by the City, Santa Clara County, or a State or Federal Agency.
- bb. "Rental Development" means a Residential Development that includes multiple dwelling as defined in San José Municipal Code Section 20.200.340.
- cc. "Rental Unit" means a dwelling unit in a Rental Development.
- dd. "Residential" means any use of land specified as a residential use in Title 20 of this Code.
- ee. "Residential Development" (also referred to as a "Project") means any development project, or portion thereof, that creates dwelling units.
- ff. "Schedule of Fees" means the schedule of fees and charged adopted by the City of San José, as may be amended.
- gg. "Shall" means must.
- hh. "Site Development Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.
- ii. "Special Use Permit" shall have the meaning given in San José Municipal Code Chapter 20.100.

CHAPTER 11: ATTACHMENTS

1. [Sample Affordable Housing Compliance Plan Application](#)
2. [Sample Affordable Housing Agreement](#)