

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: IHO Fee Resolution
Date: Tuesday, April 6, 2021 3:34:02 PM
Attachments: [RES79903.pdf](#)

From: Phan, Johnny
Sent: Monday, April 5, 2021 11:59 AM
To: Miller, J. Gregg <gmler@coblenzlaw.com>
Cc: Straka, Stephanie <SStraka@coblenzlaw.com>
Subject: IHO Fee Resolution

Per your prior request. Johnny

Johnny V. Phan

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RESOLUTION NO. 79903

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, AND 79688 TO AMEND THE INCLUSIONARY IN-LIEU FEES FOR THE CITYWIDE INCLUSIONARY HOUSING PROGRAM

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, 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, and 79688 to amend the Inclusionary In-Lieu Fees for the Citywide Inclusionary Housing Program;

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

SECTION 1. Section 12.025 of Part 12 of Resolution No. 72737 is amended as follows:

12.025 For Sale Inclusionary In-Lieu Fees under Municipal
Code Section 5.08.520

Prior to May 1, 2021:

Pursuant to San José Municipal Code Section 5.08.520, the inclusionary housing requirement may be satisfied by the payment of a fee in lieu of constructing affordable housing units provided that such fee is paid for 20% of total Market Rate Units and received after issuance of a development permit for the project, but prior to the issuance of any certificate of occupancy for a building in the Residential Development. \$157,858.00 per unit

On or after May 1, 2021:

Pursuant to San José Municipal Code Section 5.08.520, the inclusionary housing requirement may be satisfied by the payment of a fee in lieu of constructing affordable housing units provided that such fee is paid and received after issuance of a development permit for the project, but prior to the issuance of any certificate of occupancy for a building in the Residential Development, as follows:

In-Lieu Fee for For-Sale Residential Developments
Per Net New Square Foot of Residential Floor Area ⁽¹⁾

Residential Developments Adding 20 or More Units or Adding 10 to 19 Units at less than 90% of maximum density allowed by the General Plan ("Allowable Density")	\$25.00
Residential Developments Adding 10 to 19 Units at 90% or More of Allowable Density	\$12.50

(1) As determined pursuant to the Inclusionary Housing Ordinance Guidelines.

The in-lieu fee shall be increased on July 1 of each year by the Engineering News Record ("ENR") Construction Cost Index for the San Francisco Urban area as determined for the preceding twelve (12) months – until the fee is recalculated pursuant to the Inclusionary Housing Ordinance.

Fee for qualifying Downtown High Rise Developments, pursuant to Resolution No. 79688, the Inclusionary Housing Guidelines, and San José Municipal Code Section 5.08.520.D., that obtain all Certificates of Occupancy on or prior to June 30, 2025 shall be as follows:

Building permit by June 30, 2021	\$0/square foot
Building permit by June 30, 2022	\$0/square foot
Building permit by June 30, 2023	\$0/square foot
Building permit by June 30, 2024	\$13/square foot
Building permit by June 30, 2025	\$23/square foot

SECTION 2. Section 12.026 of Part 12 of Resolution No. 72737 is amended as follows:

12.026 Rental Inclusionary In-Lieu Fees under Municipal Code Section 5.08.520

On or after May 1, 2021:

Pursuant to San José Municipal Code Section 5.08.520, the inclusionary housing requirement for rental developments may be satisfied by the payment of a fee in lieu of constructing affordable rental residential units provided that such fee is paid for 20% of all units in the rental development and received after issuance of a development permit for the project, but prior to the issuance of any certificate of occupancy for a building in the rental development.	\$125,000.00 per unit
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On or after May 1, 2021:

Pursuant to San José Municipal Code Section 5.08.520 the inclusionary housing requirement may be satisfied by the payment of a fee in lieu of constructing affordable housing units provided that such fee is paid and received after issuance of a development permit for the project, but prior to the issuance of any certificate of occupancy for a building in the Residential Development, as follows:

In-Lieu Fee for Rental Residential Developments
Per Net New Square Foot of Residential Floor Area ⁽¹⁾

	Strong Market Areas	Moderate Market Areas
Rental Residential Developments Adding 20 or More Units or Adding 10 to 19 Units at Less Than 90% of Allowable Density	\$43.00	\$18.70
Rental Residential Developments Adding 10 to 19 Units at 90% or More of Allowable Density	\$21.50	\$9.35

⁽¹⁾ As determined pursuant to the Inclusionary Housing Ordinance Guidelines.

The in-lieu fee shall be increased on July 1 of each year by the Engineering News Record ("ENR") Construction Cost Index for the San Francisco Urban area as determined for the preceding twelve (12) months – until the fee is recalculated pursuant to the Inclusionary Housing Ordinance.

Fee for qualifying Downtown High Rise Rental Developments, pursuant to Resolution No. 79688, the Inclusionary Housing Guidelines, and San José Municipal Code Section 5.08.520.D., that obtain all Certificates of Occupancy on or prior to June 30, 2025 shall be as follows:

Building permit by June 30, 2021	\$0/square foot
Building permit by June 30, 2022	\$0/square foot
Building permit by June 30, 2023	\$0/square foot
Building permit by June 30, 2024	\$13/square foot
Building permit by June 30, 2025	\$23/square foot

SECTION 3. Part 12 of Resolution No. 72737 is amended to add Section 12.027 as follows:

12.027 Rental Inclusionary Adjusted In-Lieu Fees under Municipal Code Section 5.08.525

On or after May 1, 2021:

Pursuant to San José Municipal Code Section 5.08.525 the inclusionary housing requirement may be satisfied by the payment of a fee in lieu of constructing affordable housing units provided that such fee is paid and received after issuance of a development permit for the project, but prior to the issuance of any certificate of occupancy for a building in the Residential Development, as follows:

**In-Lieu Fee for Rental Residential Developments
Providing a Minimum of 5% Inclusionary Units On-Site**
Per Net New Square Foot of Residential Floor Area ⁽¹⁾

		Rental Residential Developments Adding 20 or More Units or Adding 10 to 19 Units at Less Than 90% of Allowable Density		Rental Residential Developments Adding 10 to 19 Units at 90% or More of Allowable Density	
Inclusionary Units On-Site		Strong Market Areas	Moderate Market Areas	Strong Market Areas	Moderate Market Areas
5% at 100% AMI rents		\$18.70	\$11.87	\$9.35	\$5.94
With 5% Inclusion ary Units On-Site	5% at 60% AMI rents	\$12.47	\$7.92	\$6.24	\$3.96
	5% at 50% AMI rents	\$10.07	\$6.39	\$5.04	\$3.20
With 10% Inclusion ary Units On-Site	5% at 100% AMI and 5% at 60% AMI rents	\$10.55	\$6.70	\$5.28	\$3.35
	5% at 100% AMI and 5% at 50% AMI rents	\$8.15	\$5.17	\$4.08	\$2.59

5% at 60% AMI and 5% at 50% AMI rents	\$1.92	\$1.22	\$0.96	\$0.61
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AMI = Area Median Income

(1) As determined pursuant to the Inclusionary Housing Ordinance Guidelines.

The in-lieu fee shall be increased on July 1 of each year by the Engineering News Record ("ENR") Construction Cost Index for the San Francisco Urban area as determined for the preceding twelve (12) months – until the fee is recalculated pursuant to the Inclusionary Housing Ordinance.

SECTION 4. The provisions in this Resolution shall be effective on May 1, 2021.

ADOPTED this 23rd day of February 2021, by the following vote:

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

NOES: NONE.

ABSENT: ESPARZA.

DISQUALIFIED: NONE.

ATTEST:



TONI J. TABER, CMC
City Clerk



SAM LICCARDO
Mayor