

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTERS 4.46 AND 4.47 OF TITLE 4 OF THE SAN JOSE MUNICIPAL CODE TO SUSPEND THE COLLECTION OF A PORTION OF THE BUILDING AND STRUCTURE CONSTRUCTION TAX AND THE COMMERCIAL RESIDENTIAL MOBILEHOME PARK BUILDING TAX FOR UP TO 1,000 UNITS IN QUALIFIED RESIDENTIAL HIGH-RISE PROJECTS LOCATED WITHIN THE DOWNTOWN PLANNED GROWTH AREA AS DESIGNATED IN THE SAN JOSE 2040 GENERAL PLAN, THAT ARE 10 OR MORE FLOORS OR STORIES IN HEIGHT (NOT INCLUDING ANY NONRESIDENTIAL USES) WHERE THE HIGHEST OCCUPIED FLOOR HAS A FLOOR LEVEL ELEVATION THAT IS AT LEAST 150 FEET ABOVE STREET LEVEL, THAT OBTAIN A BUILDING PERMIT BY DECEMBER 31, 2025, AND PASS FIRST INSPECTION WITHIN 12 MONTHS OF OBTAINING A BUILDING PERMIT, AND PROVIDING A FIFTY PERCENT (50%) REDUCTION OF THE BUILDING AND STRUCTURE CONSTRUCTION TAX AND THE COMMERCIAL-RESIDENTIAL-MOBILEHOME PARK BUILDING TAX FOR UP TO 3,078 UNITS IN QUALIFIED RESIDENTIAL HIGH-RISE PROJECTS THAT OBTAIN A BUILDING PERMIT BETWEEN JANUARY 1, 2026, AND DECEMBER 31, 2026 AND PASS FIRST INSPECTION WITHIN 12 MONTHS OF OBTAINING A BUILDING PERMIT

WHEREAS, on October 26, 2023, the Cit of San José (“City”) City Council held a study session and received the latest report on the Cost of Residential Development (“Report”), which concluded that current economic conditions remain a significant barrier to the construction of new market rate and affordable housing within Downtown and citywide; and

WHEREAS, a Memorandum from the Departments of Planning, Building, and Code Enforcement; the Office of Economic Development and Cultural Affairs; Housing; Parks, Recreation, and Neighborhood Services; and Transportation, dated May 28, 2024 (“Memorandum”) includes information on a two-phased program to support the

production of high-rise residential development in the City's Downtown Planned Growth Area; and

WHEREAS, Chapter 14.10 of the San José Municipal Code sets "Minimum Labor Standards for a Private Construction Project Accepting a City Subsidy", defining a subsidy to include any "reduction, permanent suspension or exemption of any fee or tax" that applies to single or multiple projects; and

WHEREAS, construction projects receiving a City subsidy are required to pay all workers employed on the construction prevailing wage rates, and are subject to other provisions such as requiring apprenticeships and local hire, among others; and

WHEREAS, there are exemptions to the definition of a subsidy that include the reduction of a fee or tax that is applied uniformly across all private construction projects within a specific subcategory of use, e.g., high-rise residential, when City Council determines, based on specified criteria, that construction of the projects is not financially feasible; and

WHEREAS, the City recognizes the importance of supporting High Rise Residential Development to complement job growth, catalyze transit usage, and foster vibrant retail environments; and

WHEREAS, based on the results of the analysis in the Report regarding the lack of financial feasibility, staff recommends suspending the Building and Structure Construction Tax and the Commercial-Residential-Mobilehome Park Building Tax for up to 1,000 units in qualified residential high-rise projects located within the Downtown Planned Growth Area that are 10 or more floors or stories in height (not including any nonresidential uses) where the highest occupied floor has a floor level elevation that is at least 150 feet above street level, that obtain a building permit by December 31, 2025,

and pass first inspection within 12 months of obtaining a building permit, and providing a fifty percent (50%) reduction of the Building and Structure Construction Tax and the Commercial-Residential-Mobilehome Park Building Tax for up to 3,078 units in qualified residential high-rise projects that obtain a building permit between January 1, 2026, and December 31, 2026 and pass first inspection within 12 months of obtaining a building permit; and

WHEREAS, the suspensions and reductions of the Building and Structure Construction Tax and the Commercial-Residential-Mobilehome Park Building Tax are made based on the findings of the Memorandum, the Report, and the documents linked to the Memorandum;

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

SECTION 1. Section 4.46.036 of Chapter 4.46 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.46.036. Suspension – Qualified Residential High Rise Project

A. The suspension of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the period set out below, and the tax shall not be collected with respect to construction of residential uses within a Qualified Residential High Rise Project as provided in this Section. For a Qualified Residential High Rise Project that includes both residential uses and non-residential uses, the tax suspension shall only apply to the residential uses therein.

B. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the period set out below, and the tax shall not be collected with respect to construction of residential units within a Qualified Residential High Rise Project as provided in this Section. For a Qualified Residential High Rise Project that includes both residential uses and non-residential uses the tax suspension shall only apply to the residential uses therein.

C. "Qualified Residential High Rise Project" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where the highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential uses.

D. The suspension will apply to residential uses located within a Qualified Residential High Rise Project of up to one thousand (1,000) units that obtain a building permit by December 31, 2025, and pass first inspection within twelve (12) months of obtain a building permit; the fifty percent (50%) reduction will apply to residential uses located within a Qualified Residential High Rise Project of up to three thousand seventy-eight (3,078) units that obtain a building permit between January 1, 2026, and December 31, 2026 and pass first inspection within twelve (12) months of obtaining the building permit, provided that the Qualified Residential High Rise Project meets each of the following:

1. The developer of the Qualified Residential High Rise Project shall retain contractors licensed by the State of California for the construction of the Qualified Residential High Rise Project; and

2. The developer of the Qualified Residential High Rise Project shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and

3. The developer of the Qualified Residential High Rise Project enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to either the suspension or the reduction of fifty percent (50%) of the amount of the tax specified in this Chapter and payment of the unsuspended portion of the tax, if applicable. Any applicable tax will be due at City's issuance of the Certificate of Occupancy.

E. If a Qualified Residential High Rise Project that was eligible for either the suspension or reduction as provided for in this Section has not met the applicable deadlines as set out in subsection D above, then the full amount of the tax shall be paid to the Building Official prior to the issuance of a certificate of occupancy, including a temporary certificate of occupancy.

F. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Qualified Residential High Rise Projects that are consistent with the requirements of this Section.

Any person who enters into a Project Completion Agreement for the tax suspension pursuant to subsection D.3 of this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen and seven tenth's percent (16.7%) of the hours

worked on the Qualified Residential High Rise Project must be worked by registered apprentices from approved apprenticeship training programs;

2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Qualified Residential High Rise Project have a barrier to employment such as being homeless, a veteran or an at-risk youth; and

3. Post or cause the posting of bids for subcontracting work on the Qualified Residential High Rise Project on websites such as the Bay Area Builders Exchange for subcontractors to be able to access work for workers in the nine (9) Bay Area counties.

~~A. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended and the tax shall not be collected with respect to construction of residential units within a Downtown High Rise Residential Structure as provided in this Section. For a Downtown High Rise Residential Structure that includes both residential units and non-residential units the tax suspension shall only apply to the residential units therein.~~

~~B. "Downtown High Rise Residential Structure" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where the highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential.~~

~~C. The suspension shall apply to residential units located within a Downtown High Rise Residential Structure for which a certificate of occupancy has been issued in the Downtown Planned Growth Area from the date the ordinance enacting this Section becomes effective through and including June 30, 2029, provided that~~

~~the Downtown High Rise Residential Structure project meets each of the following:~~

- ~~1. The developer of the Downtown High Rise Residential Structure shall retain contractors licensed by the State of California for the construction of the Downtown High Rise Residential Structure; and~~
- ~~2. The developer of the Downtown High Rise Residential Structure shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and~~
- ~~3. The developer of the Downtown High Rise Residential Structure enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to both the suspension of fifty percent (50%) of the amount of the tax specified in this Chapter and payment of the unsuspended portion of the tax; and~~
- ~~4. A building permit for the construction of the Downtown High Rise Residential Structure has been issued on or before June 30, 2025.~~

~~D. In the event that a residential unit that was eligible for the suspension provided for in this Section has not scheduled final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure on or before June 30, 2029, then the full amount of the tax shall be paid to the Building Official prior to scheduling additional inspections.~~

~~E. The suspension set forth in Subsection A shall be effective until June 30, 2029.~~

~~F. Notwithstanding Section 4.46.070, the amount of tax imposed under this Section for the construction of any Downtown High Rise Residential Structure shall be due and payable prior to the scheduling of the final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure.~~

~~G. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Downtown High Rise Residential Structures that are consistent with the requirements of this Section.~~

~~Any person who enters into a Project Completion Agreement for the tax suspension pursuant to Subsection C.3 of this Section is encouraged to make good faith efforts to:~~

- ~~1. Comply with the State of California's apprenticeship program requirement that at least sixteen point seven percent (16.7%) of the hours worked on the Downtown High Rise Residential Structure must be worked by registered apprentices from approved apprenticeship training programs;~~
- ~~2. Ensure that twenty five percent (25%) of the registered apprentices working on the Downtown High Rise Residential Structure have a barrier to employment such as being homeless, a veteran or an at-risk youth; and~~
- ~~3. Post or cause the posting of bids for subcontracting work on the Downtown High Rise Residential Structure on websites such as the Bay Area Builders Exchange in order for subcontractors to be able to access work for workers in the nine Bay Area counties.~~

SECTION 2. Section 4.47.089 of Chapter 4.47 of Title 4 of the San José Municipal Code is hereby amended to read as follows:

4.47.089 Suspension – Qualified Residential High Rise Project

- A. The suspension of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the period set out below, and the tax shall not be collected with respect to construction of residential units within a Qualified Residential High Rise Project as provided in this Section. For a Qualified Residential High Rise Project that includes both residential units and non-residential units, the tax suspension shall only apply to the residential uses therein.
- B. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended during the period set out below, and the tax shall not be collected with respect to construction of residential units within a Qualified Residential High Rise Project as provided in this Section. For a Qualified Residential High Rise Project that includes both residential units and non-residential units the tax suspension shall only apply to the residential units therein.
- C. "Qualified Residential High Rise Project" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where the highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential.

D. The suspension will apply to residential units located within a Qualified Residential High Rise Project of up to one thousand (1,000) units that obtain a building permit by December 31, 2025, and pass first inspection within twelve (12) months of obtaining a building permit; the fifty percent (50%) reduction will apply to residential units located within a Qualified Residential High Rise Project of up to three thousand seventy-eight (3,078) units that obtain a building permit between January 1, 2026, and December 31, 2026 and pass first inspection within twelve (12) months of obtaining the building permit, provided that the Qualified Residential High Rise Project meets each of the following:

1. The developer of the Qualified Residential High Rise Project shall retain contractors licensed by the State of California for the construction of the Qualified Residential High Rise Project; and
2. The developer of the Qualified Residential High Rise Project shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and
3. The developer of the Qualified Residential High Rise Project enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to either the suspension or the reduction of fifty percent (50%) of the amount of the tax specified in this Chapter and payment of the unsuspended portion of the tax, if applicable.

E. If a Qualified Residential High Rise Project that was eligible for either the suspension or reduction as provided for in this Section has not met the applicable deadlines as set out in subsection D above, then the full amount of the tax shall

be paid to the Building Official prior to the issuance of a certificate of occupancy, including a temporary certificate of occupancy.

F. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Qualified Residential High Rise Projects that are consistent with the requirements of this Section.

Any person who enters into a Project Completion Agreement for the tax suspension pursuant to subsection D.3 of this Section is encouraged to make good faith efforts to:

1. Comply with the State of California's apprenticeship program requirement that at least sixteen and seven tenth's percent (16.7%) of the hours worked on the Qualified Residential High Rise Project must be worked by registered apprentices from approved apprenticeship training programs;
2. Ensure that twenty-five percent (25%) of the registered apprentices working on the Qualified Residential High Rise Project have a barrier to employment such as being homeless, a veteran or an at-risk youth; and
3. Post or cause the posting of bids for subcontracting work on the Qualified Residential High Rise Project on websites such as the Bay Area Builders Exchange for subcontractors to be able to access work for workers in the nine Bay Area counties.

~~A. The collection of fifty percent (50%) of the tax imposed under this Chapter, to the extent not already suspended, shall be suspended and the tax shall not be collected with respect to construction of residential units within a Downtown High Rise Residential Structure as provided in this Section. For a Downtown High Rise~~

~~Residential Structure that includes both residential units and non-residential units the tax suspension shall only apply to the residential units therein.~~

~~B. "Downtown High Rise Residential Structure" means any new residential structure located in the Downtown Planned Growth Area, as designated in the San José 2040 General Plan, where the highest occupied floor has a floor level elevation that is at least one hundred fifty (150) feet above street level and the development has ten (10) or more floors or stories in height not including any non-residential.~~

~~C. The suspension shall apply to the residential units located within a Downtown High Rise Residential Structure for which a certificate of occupancy has been issued in the Downtown Planned Growth Area from the date the ordinance enacting this Section becomes effective through and including June 30, 2029, provided that the Downtown High Rise Residential Structure project meets each of the following:~~

~~1. The developer of the Downtown High Rise Residential Structure shall retain contractors licensed by the State of California for the construction of the Downtown High Rise Residential Structure; and~~

~~2. The developer of the Downtown High Rise Residential Structure shall employ only construction workers who possess necessary licenses and certifications required by the State of California; and~~

~~3. The developer of the Downtown High Rise Residential Structure enters into a Project Completion Agreement with the City in a form approved by the City Attorney that sets forth the requirements of this Section related to both the suspension of fifty percent (50%) of the amount of the tax~~

~~specified in this Chapter and payment of the unsuspended portion of the tax; and~~

~~4. A building permit for the construction of the Downtown High Rise Residential Structure has been issued on or before June 30, 2025.~~

~~D. In the event that a residential unit that was eligible for the suspension provided for in this Section has not received final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure on or before June 30, 2029, then the full amount of the tax shall be paid to the Building Official prior to scheduling additional inspections.~~

~~E. The suspension set forth in Subsection A shall be effective until June 30, 2029.~~

~~F. Notwithstanding Section 4.47.030, amount of tax imposed under this Section for the construction of any Downtown High Rise Residential Structure shall be due and payable prior to the scheduling of the final inspection for eighty percent (80%) of the residential units within the Downtown High Rise Residential Structure.~~

~~G. The City Manager is authorized to execute on behalf of the City Project Completion Agreements with developers of Downtown High Rise Residential Structures that are consistent with the requirements of this Section.~~

~~H. Any person who enters into a Project Completion Agreement for the tax suspension pursuant to Subsection C.3 of this Section is encouraged to make good faith efforts to:~~

- ~~1. Comply with the State of California's apprenticeship program requirement that at least sixteen point seven percent (16.7%) of the hours worked on the Downtown High Rise Residential Structure must be worked by registered apprentices from approved apprenticeship training programs;~~
- ~~2. Ensure that twenty five percent (25%) of the registered apprentices working on the Downtown High Rise Residential Structure have a barrier to employment such as being homeless, a veteran or an at-risk youth; and~~
- ~~3. Post or cause the posting of bids for subcontracting work on the Downtown High Rise Residential Structure on websites such as the Bay Area Builders Exchange in order for subcontractors to be able to access work for workers in the nine Bay Area counties.~~

PASSED FOR PUBLICATION of title this ____ day of _____, 2024, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

MATT MAHAN
Mayor

ATTEST:

TONI J. TABER, CMC
Acting City Clerk