

RESOLUTION NO. 2024-9387

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS REPEALING RESOLUTION 2000-5417 AND ESTABLISHING THE AMOUNT OF FEES PAYABLE IN-LIEU OF PROVIDING AFFORDABLE HOUSING UNITS AS ALLOWED BY CHAPTER 20.310 OF THE SAN MARCOS MUNICIPAL CODE

WHEREAS, Chapter 20.310 of the San Marcos Municipal Code ("SMMC"), referred to as the Inclusionary Housing Ordinance of the City of San Marcos ("City"), establishes requirements for the inclusion of affordable housing units for extremely low-, very low-, low-, and moderate-income households in residential development projects within the City's jurisdiction, or the payment of a fee in-lieu under specified circumstances; and

WHEREAS, the California Legislature's adoption of Assembly Bill 1505, which went into effect on January 1, 2018, restored local agency authority to impose inclusionary and other affordable housing requirements on residential rental projects, including the construction of new rental units, which had been affected by the 2009 California Court of Appeal decision in *Palmer/Sixth Street Properties LP v. City of Los Angeles*, by which a City of Los Angeles ordinance requiring developers to construct affordable housing units subject to rent restrictions for at least 30 years, or pay an in-lieu fee, was held to violate the Costa-Hawkins Rental Housing Act; and

WHEREAS, on July 21, 2024, the City Council introduced an ordinance to amend the Inclusionary Housing Ordinance, and thereafter adopted the amended Inclusionary Housing Ordinance on September 10, 2024, making it effective on October 10, 2024; and

WHEREAS, the Inclusionary Housing Ordinance now authorizes the imposition of Inclusionary Housing In-Lieu Fees on for-sale and rental residential developments to provide funds to support the cost of providing affordable housing on-site and to mitigate the impact of market-rate housing developments on the need for affordable housing, where applicants are allowed to pay Inclusionary Housing In-Lieu Fees rather than provide affordable units on- or off-site; and

WHEREAS, as described in Policy 2.1 of the City's 2021-2029 Housing Element, the City shall continue to utilize federal and State subsidies, as well as City housing in-lieu fees in a cost-efficient manner to the fullest extent to meet the needs of lower-income residents, including extremely low-income residents; and

WHEREAS, as described in Program 6 of the City's 2021-2029 Housing Element, the City shall continue to implement the Inclusionary Housing Ordinance, which requires the inclusion of housing affordable to lower- and moderate-income households within a project, or payment of an in-lieu fee; and

WHEREAS, to ensure that the Inclusionary Housing In-lieu Fees adopted by this Resolution do not exceed the cost of providing affordable housing on-site or the actual affordable housing impacts attributable to the development projects on which the fee is imposed, the City retained Keyser Marston Associates ("KMA"), a qualified consultant with demonstrated expertise preparing economic feasibility studies, to prepare an affordable housing real estate financial feasibility analysis and gap analysis related to the Inclusionary Housing Ordinance; and

WHEREAS, the City Council has received and considered the report from KMA dated January 2024, entitled "Inclusionary Housing In-Lieu Fee Study," attached hereto as Exhibit "A" which includes, among other information, an affordability gap analysis, a financial feasibility analysis, and an on-site compliance cost analysis ("KMA Study"); and

WHEREAS, the KMA Study demonstrates that to fully mitigate the burdens created by new residential developments on the need for affordable housing, the maximum supported fee would be \$20 to \$30 per square foot or \$20,000 - \$30,000 per unit depending on building type; and

WHEREAS, the KMA Study found that the Inclusionary Housing In-Lieu Fees imposed by this Resolution are economically feasible and will not pose a constraint on the construction of housing in the City; and

WHEREAS, the Inclusionary Housing In-Lieu fees established by this resolution are equal to or lower than the amount needed to fully mitigate the impacts of new for sale and rental residential projects as shown in the Inclusionary Housing In-Lieu Fee Study; and

WHEREAS, in accordance with Government Code Section 66016, at least 14 days prior to the public hearing at which the City Council first considered the adoption of the Inclusionary Housing In-Lieu Fees, notice of the time and place of the hearing was mailed to eligible interested parties who filed written requests with the City for mailed notice of meetings on new or increased fees or service charges; and

WHEREAS, notice was published in the San Diego Union Tribune on November 13, 2024, and November 18, 2024, setting forth the time and manner of compliance with the requirements of law of providing notice of the time and place for the public hearing in the form and manner required by Government Code sections 66018, 6062a and 66019; and

WHEREAS, in accordance with Government Code Section 66016, the KMA Study containing the data supporting the imposition of the Inclusionary Housing In-Lieu Fee, was made available for public review and comment for 10 days prior the public hearing at which the Council first considered the adoption of the Fee; and

WHEREAS, the public hearing at which the City Council first considered the adoption of the Inclusionary Housing In-Lieu Fee was duly noticed by publication in accordance with Section 6062a of the Government Code; and

WHEREAS, the City Council finds that there is a reasonable relationship between the amount of the fee and the cost attributable to new development; and

WHEREAS, the City Council now desires to adopt Inclusionary Housing In-Lieu Fees for residential developments as authorized by Ordinance No. 2024-1550.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of San Marcos resolves as follows:

SECTION 1: The recitals above are each incorporated by reference and adopted as findings by the City Council.

SECTION 2: The City Council further finds:

- A. The purpose of the Inclusionary Housing In-Lieu Fee is to provide funds to the City to develop and construct affordable housing as would otherwise be provided on-site and to mitigate the burdens created by new residential development on the need for extremely low-, very low-, low- and moderate-income housing. An applicant for a residential housing development project may elect to provide affordable units on-site, to provide units off-site, or meet the Inclusionary Housing Ordinance requirements through other means including the payment of Inclusionary Housing In-Lieu Fees in certain situations authorized by the San Marcos Municipal Code.
- B. In compliance with Inclusionary Housing Ordinance, all inclusionary housing in-lieu fees collected shall be deposited in the City's Inclusionary Housing Fund to be used solely to provide housing affordable to extremely low-, very low-, low- and moderate-income households in the City, including reasonable administrative costs not to exceed 2% of fees collected in the previous fiscal year.
- C. There is a need in the City for housing affordable to households of extremely low-, very low-, low- and moderate-income.
- D. The KMA Study set forth cost estimates that are reasonable for constructing affordable housing, and the fees expected to be generated by new development will not exceed these costs.
- E. Based on the KMA Study, the proposed Inclusionary Housing In-Lieu Fee is economically feasible and will not pose a constraint on housing production.
- F. The adoption of this Resolution is not a project under the California Environmental Quality Act ("CEQA") because the adoption of the Inclusionary Housing In-Lieu Fee consists of the creation of a governmental funding mechanism that does not involve any commitment to any specific project (CEQA Guidelines section 15378(b)(4)); and the Resolution commits no fees to any specific project.
- G. The City Manager is hereby authorized to take whatever actions are necessary and appropriate to carry out the purpose and intent of this Resolution.

SECTION 3: Pursuant to Section 20.310.050 of the San Marcos Municipal Code, the City Council hereby adopts the following Inclusionary Housing In-Lieu Fee for residential development projects, with such Fee to be subject to Section 4, below:

1. Inclusionary Housing In-Lieu Fee

Residential Developments \$15.00/Square Foot of Floor Area

*Note: The Inclusionary Housing In-Lieu Fee is applied to the residential floor area of the project excluding garages, parking areas, elevator, and stairway square footage.

2. Fractional Units

In accordance with San Marcos Municipal Code Section 20.310.040, if the applicant elects to pay Inclusionary Housing In-lieu Fees for a fractional unit of a whole number, the fractional In-Lieu Fee payment shall be calculated as noted in Exhibit B.

SECTION 4: Following a duly noticed public hearing, the Inclusionary Housing In-Lieu Fee may be adjusted periodically, no more frequently than annually, based on the Engineering News Record – Construction Cost Index to ensure that the fees will continue to generate sufficient funds to develop and construct affordable housing in the City. Any increase in the Inclusionary Housing Fee must be below the maximum supported fee of \$30 per square foot as demonstrated in the KMA Study. The adjusted amounts shall be submitted to the City Council for consideration. If adopted by the City Council, the adjusted amounts shall become effective no earlier than sixty (60) days thereafter, or a later date as may be set by the City Council.

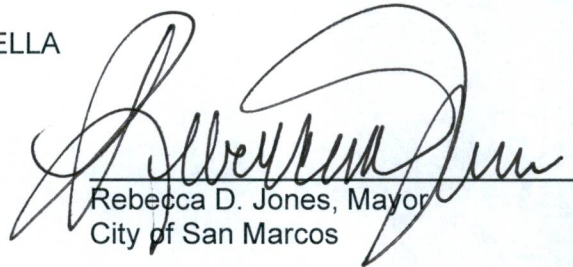
SECTION 5: For purposes of imposition of the Inclusionary Housing In-Lieu Fee amount set by this Resolution, the adjusted amounts shall be effective as of March 3, 2025. Until that date, the prior Inclusionary Housing In-Lieu fee amount in use by the City will be used for calculation of In-Lieu fee amounts.

PASSED, APPROVED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS at a regular meeting held on the 26th day of November, 2024, by the following roll call vote:

AYES: COUNCILMEMBERS: JENKINS, MUSGROVE, NUÑEZ, JONES

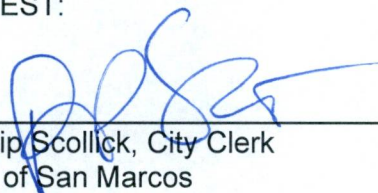
NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: SANNELLA



Rebecca D. Jones, Mayor
City of San Marcos

ATTEST:



Phillip Scollick, City Clerk
City of San Marcos

ATTACHMENT(S):

EXHIBIT A – INCLUSIONARY HOUSING IN-LIEU FEE STUDY

EXHIBIT B – HOUSING IN-LIEU FEE FRACTIONAL CALCULATION EXAMPLE

Exhibit B
Housing In-Lieu Fee Fractional Calculation Example

Example: 30-unit single family home project totaling 84,000 square feet of floor area has an on-site requirement of 15% affordable units or 4.5 units. Developer is required to provide 4 affordable units and pay an in-lieu fee for the .5 fractional units. The payment is calculated as follows:

Fractional Unit Example Based on Number of Units

Total Units	Total Sq ft	Affordable %	Required units affordable	Affordable units (actual)	Unit shortfall	Percentage units: (Shortfall factor/Total units)	Unit shortfall factor x total project sq ft (Required X Total)	Required charge per sq \$	Required in lieu based on number of units required - provided divided by total
30	84000	15%	4.5	4	0.5	1.67%	1400	\$ 15.00	\$ 21,000.00

Fractional Unit Example Based on Sq Ft.

Total Units	Total Sq ft	Approx sq ft per unit (total Units/Total Sq. Ft)	Affordable %	Required Sq Ft Affordable	Sq ft affordable actual based on average sq ft per unit (Approx sq. ft x Sq ft shortfall)	Sq ft affordable shortfall	Required charge per sq \$	Required In Lieu Fee	
30	84000	2800	15%	12600	11200	1400	\$ 15.00	\$ 21,000.00	