

RESOLUTION NO. 73216

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE CLARIFYING THAT THE INTENT OF THE REQUIREMENT FOR PROJECTS TO OBTAIN A BUILDING PERMIT BY JUNE 30, 2006, UNDER THE HIGH-RISE RESIDENTIAL INCENTIVE PROGRAM FOR THE DOWNTOWN CORE IS CONSIDERED SATISFIED WHEN THE BUILDING FOUNDATION PERMIT IS OBTAINED**

**WHEREAS**, on June 29, 2004, the Board of Directors of the Redevelopment Agency of the City of San Jose ("Agency") directed staff to develop a residential high-rise incentive program for the Downtown Core in response to a growing interest among developers to consider high rise residential projects but who had expressed concern about the financial risk; and

**WHEREAS**, State law requires that fifteen percent of residential development constructed in project areas adopted after January 1, 1976 be subject to long-term affordability restrictions, and the City and Agency adopted an Inclusionary Housing Policy that requires developers to fulfill the Agency's production requirement on a project-by-project basis; and

**WHEREAS**, on August 17, 2004, the Agency Board and City Council approved a high-rise residential incentive program for projects in the downtown to be relieved from the Inclusionary Housing Policy requirements for a very short period of time to encourage construction of high rise residential in the downtown core and avoid negatively impacting the City's General Fund; and

**WHEREAS**, the temporary high rise incentive program includes the following conditions: (a) projects must be located in the Downtown Core, bounded by Highway 87, Interstate 280, Fourth Street, and the Union Pacific Rail Road tracks; (b) high rise is defined as a residential building of at least 12 occupied floors, including the ground floor, which may

have commercial uses, and residential is defined as for-sale or rental units with minimum six-month leases; (c) projects must obtain a building permit no later than June 30, 2006; (d) prior to obtaining a Site Development Permit for the Project, the Developer of a project under this program shall execute and deliver to the Agency an Affordability Agreement consistent with all of the provisions of the City's Inclusionary Housing Policy. If a high-rise residential project satisfies all of the conditions described above, the executed Affordability Agreement shall be voided and returned to Developer. If the Developer fails to satisfy any one of the conditions described above, the Affordability Agreement shall be recorded against the project and the project shall be subject to the inclusionary housing requirements of the City's Inclusionary Housing Policy; and

**WHEREAS**, as a condition of the high-rise incentive program, the equivalent of 100% of the first two years of tax increment generated by projects that qualify for exemption under this program are to be allocated to the City's affordable housing production efforts; and

**WHEREAS**, there are differences within the City and Agency as to what form of permit secures entitlements and other obligations; and

**WHEREAS**, staff recommends that the foundation permit be designated as the appropriate trigger to determine compliance with the incentive program since the Planning Division conducts some measure of review of a building's structural plans prior to issuance of the foundation permit, and the developer must have financing in place and title to the property at the time of foundation work.

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

The requirement for projects to obtain a building permit by June 30, 2006, under the high-rise residential incentive program for the downtown core is considered satisfied when the foundation permit for the project is obtained.

ADOPTED this 13<sup>th</sup> day of June, 2006, by the following vote:

AYES: CAMPOS, CHAVEZ, CHIRCO, CORTESE, LeZOTTE,  
NGUYEN, PYLE, REED, WILLIAMS; GONZALES

NOES: NONE

ABSENT: YEAGER

DISQUALIFIED: NONE

---

RON GONZALES  
Mayor

ATTEST:

---

LEE PRICE, MMC  
City Clerk