

CITY COUNCIL TRANSMITTAL


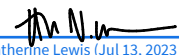


Lisa Shaffer, Chief Administrative Officer

Date Received: 07/13/2023
Date sent to Council: 07/13/2023

TO: Salt Lake City Council
Darin Mano

DATE: July 3, 2023

FROM: Mary Beth Thompson, Chief Financial Officer 
Katherine Lewis, City Attorney 
Katherine Lewis (Jul 13, 2023 14:57 MDT)

SUBJECT: Authorizing the refund of certain building fees and an exemption from impact fees incurred in the development of a student housing project by Ivory University House L3C. Ivory University House L3C will pledge to use these funds toward scholarships funded by the operations of Ivory University House in an amount equal to the fees refunded: Public Benefit Analysis under Utah Code Section 10-8-2.

SPONSOR: NA

STAFF CONTACT: Kimberly Chytraus, City Attorney (801) 535-7685
Blake Thomas, Director of Community & Neighborhoods Department
Randy Hillier, Policy and Budget Analyst (801) 535-6606,

DOCUMENT TYPE: Public Benefits Analysis and Recommendation


RECOMMENDATION: It is recommended that the Salt Lake City Council provide a refund of certain building fees and an exemption from impact fees incurred in the development of a student housing project by Ivory University House L3C (“**University House**”). Because of the timing of development, University House has paid the fees described herein, so if the fee waiver is granted the City will refund the paid amounts. University House has also committed that, if the fees are refunded, it will pledge scholarships funded by the operations of Ivory University House in an amount equal to the fees refunded (an amount over \$2,400,000) for Salt Lake City residents to be paid over a period of ten years.

A portion of the Impact Fees being refunded, specifically the Fire Fee in the amount of \$79,515, will need to be obtained from the general fund through an upcoming budget amendment since these fees have already been spent.

BUDGET IMPACT: NA

BACKGROUND/DISCUSSION:

PUBLIC PROCESS: Public Hearing


Alejandro Sanchez (Jul 13, 2023 15:01 MDT)

MEMORANDUM

TO: City Council Members

SUBJECT: Analysis of Public Benefits Provided by Fee Waiver and Refund to Ivory University House

INTRODUCTION

It is recommended that the Salt Lake City Council provide a refund of certain building fees and an exemption from impact fees incurred in the development of a student housing project by Ivory University House L3C (“**University House**”). Because of the timing of development, University House has paid the fees described herein, so if the fee waiver is granted the City will refund the paid amounts. University House has also committed that, if the fees are refunded, it will pledge scholarships funded by the operations of Ivory University House in an amount equal to the fees refunded (an amount over \$2,400,000) for Salt Lake City residents to be paid over a period of ten years.

University House is developing a student housing project at 434 South Mario Capecchi Drive, Salt Lake City, Utah known as the Ivory University House (the “**Project**”). The Project is being developed in two separate phases. University House paid the permit fees for the Project in the amount of \$754,483.23, broken down as follows:

Permit	1st Phase Fees Paid	2nd Phase Fees Paid	Total
Building Permit Fee	\$211,114.98	\$211,117.77	\$422,232.75
Plan Check Fee	\$137,224.74	\$137,226.55	\$274,451.29
Utah State Surcharge	\$2,111.15	\$2,111.18	\$4,222.33
Fire Sprinkler	\$3,398.41	\$3,398.41	\$6,796.82
Plumbing	\$8,080.71	\$9,572.78	\$17,653.49
Electrical	\$4,315.60	\$5,805.61	\$10,121.21
Mechanical	\$6,429.83	\$12,575.51	\$19,005.34
Fire Alarm Permit	Not yet applied for	Not yet applied for	Not yet applied for
Total	\$372,675.42	\$381,807.81	\$754,483.23

University House initially applied for a permit fee waiver under Salt Lake City Code (“**City Code**”) Section 18.20.220, but such waiver is only available to a nonprofit organization building affordable housing (limited to households under 80% of the City’s average median income (“**AMI**”))¹. As discussed herein, because University House operates on a nonprofit basis and rent

¹ Code Section 18.20.220 (E) establishes the standard for a fee waiver request by a nonprofit organization: “HAAB [Housing Advisory and Appeals Board] may recommend granting the waiver or deferral if it finds that the project or projects, and the sponsoring nonprofit organization furthers the city’s established low income housing goals to provide housing for persons or families under eighty percent (80%) of the city’s median income, as defined by the United States department of housing and urban development, and also meets all applicable guidelines established for any such programs by the United States department of housing and urban development. HAAB may recommend that

is considered affordable under the HUD standard described below, it is recommended that the Project's actual fees be refunded as described herein.

In addition, the Administration is seeking an exemption and reimbursement of impact fees for the Project. Ivory paid the impact fees for the Project in the amount of \$1,648,715, broken down as follows for 465 units:

Impact Fee Permit	Fee per Unit	1st Phase Paid (280 units)	2nd Phase Paid (185 units)	Total
Fire Fee	\$171	\$47,880	\$31,635	\$79,515
Park Fee	\$3,078	\$861,840	\$569,430	\$1,431,270
Police Fee	\$59	\$16,520	\$10,915	\$27,435
Roadway Fee	\$242	\$67,760	\$42,735	\$110,495
TOTAL		\$994,000	\$654,715	\$1,648,715

City Code Section 18.98.060 provides for an exemption from the payment of impact fees for housing that meets certain rent restrictions and income restrictions, ranging from 60% - 80% AMI². While the Project is not income restricted, it will be rent restricted and will address critical affordable housing needs of students. It is recommended that the Project be granted an impact fee waiver and the paid impact fees be refunded to University House, in the actual amount of the impact fees, which is \$1,648,715.

LEGAL FRAMEWORK

Utah Code section 10-8-2 states municipalities may appropriate funds for "corporate purposes only." Utah Code §10-8-2(1)(a)(i). Those purposes are, in the judgment of the municipal legislative body, any purpose that "provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the city." Utah Code § 10-8-2(3). A municipal legislative body must determine that the "net value received for any money appropriated" is "measured on a project-by-project basis over the life of the project." Utah Code § 10-8-2(3)(a). The municipal legislative branch "may consider intangible benefits received by the municipality in determining net value received." Utah Code § 10-8-2(3)(c). Moreover, a "determination of value received, made by the municipality's legislative body, shall be presumed valid unless it can be shown that the determination was arbitrary, capricious, or illegal." Utah Code § 10-8-2(3)(b).

Prior to the municipal legislative body making a decision to appropriate any funds for a corporate purpose, a public hearing must be held. If the entity receiving the benefit from the City

waivers may be granted for remodeling or construction of offices for nonprofit housing corporations if it finds that such remodeling or construction will save the corporation money and that such savings will be applied to a specific housing project."

² City Code Section 18.98.060 in relevant part provides: "The following housing may be exempt from the payment of impact fees, to the following extent:

"1. A one hundred percent (100%) exemption shall be granted for rental housing for which the annualized rent per dwelling unit does not exceed thirty percent (30%) of the annual income of a family whose annual income equals sixty percent (60%) of the median income for Salt Lake City, as determined by HUD;"

is a for-profit entity, then a study (“**Study**”) that demonstrates the purpose for the appropriation must be undertaken and posted for review by the public at least 14 days before a public hearing on the issue. Utah Code § 10-8-2(3)(e). The factors to be considered in the Study are set forth under Utah Code as:

- (i) what identified benefit the municipality will receive in return for any money or resources appropriated;
- (ii) the municipality’s purpose for the appropriation, including an analysis of the way the appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the municipality; and
- (iii) whether the appropriation is necessary and appropriate to accomplish the reasonable goals and objectives of the municipality in the area of economic development, job creation, affordable housing, blight elimination, job preservation, the preservation of historic structures and property, and any other public purpose.

Utah Code § 10-8-2(3)(e)(i)-(iii). This Study examines each of these factors below.

BACKGROUND OF THE PROJECT

The Developer. University House is a low-profit limited liability company, wholly owned by the Ivory University House Trust, with the Clark and Christine Ivory Foundation as its beneficiary (a 501(c)(3) private foundation). University House leases the underlying real property from The Church of Jesus Christ of Latter-day Saints. It is an express requirement of that Lease that University House donate all profits to student scholarships at the University of Utah. This contractual obligation that University House not retain any profits ensures that University House will operate the Project on a nonprofit basis in order to continue leasing the property.

The Project. Ivory University House is the only privately funded, philanthropically driven student housing project in Salt Lake City and Utah. The Project is located on 5.4 acres bordered by South Campus Drive, Mario Capecchi Drive, and Research Road. The Project is financed through conventional financing and a \$10,000,000 personal donation from the Ivory family. The total Project cost is estimated to be approximately \$96,000,000. It will have four buildings and 465 apartments. There are three unit types: 144 studios with a full kitchen, 243 studios with a kitchenette, and 78 units with 3 bedrooms and 3 bathrooms.

The Project will also include community rooms, classrooms, and outdoor study areas. The single living structure is designed to allow students to focus on their studies with common areas to promote student engagement. The Project is across the street from the University of Utah, with a TRAX station a 3-minute walking distance and the Student Life Center a 5-minute walking distance.

The Ground Lease. The property is owned by The Church of Jesus Christ of Latter-day Saints, and is ground leased to University House with a ground lease term of 99 years. The terms of the ground lease require that all profits, i.e., “the amount gross revenue exceed the costs and expenses associated with operating [the Project]” be donated by University House to a

scholarship fund and housing assistance for students attending the University of Utah. The ground lease can only be assigned to a tax-exempt charitable organization (a 501(c)(3)).

Affordable Housing. The maximum rent per bed will be at or below 30% of the monthly income limit set by the Department of Housing and Urban Development (“HUD”) for a single person household of 80% AMI or below. Since the project is student housing, rents will be calculated by bedroom rather than by unit, with a limit of one student occupant per bedroom. There will be an additional utility fee of an initial maximum of \$55 per month, which may increase not more than 3% per year (note that utilities are usually included in the amount of maximum rent under HUD’s limits). The rent restriction will be evidenced by a restrictive use agreement recorded against the leasehold interest held by University House (meaning the restriction is in place as long as University House is leasing the land). HUD considers rent for persons at 80% of AMI as affordable for low-income households. The amount of rent may be adjusted with changes to HUD’s schedule.

Maximum Monthly Rent Per Bedroom by Unit Type

Unit Type	Maximum Rent per Bedroom - AMI	2022 Maximum Rent per Bedroom	# of Bedrooms
Single Bedroom Unit: 440 - 455 sq ft	80%	\$1,434	144
Single Bedroom Unit: 345 sq ft	75%	\$1,344	243
3-Bedroom Unit (per bedroom)	55%	\$986	234

Source: AMI data as per HUD’s FY 22 Income Limit Documentation System for the Salt Lake City, UT HUD Metro FMR Area

Note: Units will be rent restricted but not income restricted.

Note: Maximum rent is assessed per bedroom and based on 30% of income for the applicable AMI for a household size of one and will be updated annually based on AMI data as per HUD’s Income Limit Documentation System for the Salt Lake City, UT HUD Metro FMR Area.

In addition to voluntarily restricting rents across the board, University House and the University and Utah have committed that no less than 25% of the Project residents will receive additional housing assistance. This will ensure that even students with the most financial need will have the opportunity to live at the Project.

The Scholarship Fund. All profits from the housing project will be donated to a new scholarship fund called the Ivory University House Scholarship Fund and will provide scholarships, internships, or housing assistance for students at the University of Utah. The fund was seeded by an additional \$6,000,000 gift from the Clark and Christine Ivory Foundation and is administered by the University of Utah, with priority given to students with the most financial need. Applications for the first year recently opened and the fund has already received over 450

applications, one third of which came from students with significant financial needs. University House has committed that if the fees are refunded, it will pledge scholarships funded by the operations of the Project in an amount equal to the fees waived for Salt Lake City residents to be paid over a period of ten years.

TERMS OF ASSISTANCE AND PUBLIC BENEFITS PROVIDED

I. Terms of Assistance

A. Waiver of Permit Fees. Under the City Code, a request to waive permit fees is reviewed by the Housing Advisory and Appeals Board (“HAAB”), who reviews the request in a public meeting and forwards its recommendation to the Director of Community and Neighborhoods. The waiver is available to nonprofit organizations who are developing housing for persons or families under eighty percent (80%) of AMI. The Director may approve the waiver. The permit fees are typically paid into the general fund to cover the cost of the services of reviewing and administering the permit, including building inspections. With a waiver, those services are provided by the City at no cost. Fees paid to Public Utilities may not be waived. The total amount of fees waived by the City is calculated as \$754,483.23, plus the actual costs of the fire alarm permit fees.

B. Exemption of Impact Fees. An exemption of impact fees is also approved by the Director of Community and Neighborhoods. A 100% exemption is available for rental housing for which the annualized rent per dwelling unit does not exceed thirty percent (30%) of the annual income of a family whose annual income equals sixty percent (60%) of AMI. There are additional exemptions available for nonrental housing with higher income restrictions. Such rent and income restrictions are documented and enforced through the recordation of a restrictive use agreement on the property. The City’s exemption is allowed pursuant to the Utah Code,³ which provides that the City can give an exemption for “low income housing”. The Utah Code does not provide a definition for “low income housing” and the City relies on its Code for the definition. The total amount of the impact fees that could be waived is \$1,648,715.

II. Public Benefits Provided by Fee Waiver and Exemption

The Project is not strictly eligible for the permit fee waiver or impact fee exemption under the City Code because University House, as a L3C, is a for-profit entity, and the Project is not income restricted to residents whose income is at or below 60% AMI. However, because the Project will provide significant and much needed benefits to the City, the Administration proposes the fee waiver and impact fee exemption as appropriate for the Project.

University House, while a low-profit entity, has agreed to donate all its profits to the University of Utah for a scholarship fund. Therefore, any proceeds will be reinvested in the student population and into the housing located in Salt Lake City. University House estimates that the

³ 11-36a-403 Other provisions of impact fee enactment. (1) A local political subdivision or private entity may include a provision in an impact fee enactment that: (a) provides an impact fee exemption for: (i) development activity attributable to: (A) low income housing; . . . and (b) except for an exemption under Subsection (1)(a)(i)(A), establishes one or more sources of funds other than impact fees to pay for that development activity.

benefit to the student population and community will be over \$1 billion over the life of the ground lease. Student housing is not typically eligible for affordable housing subsidies available to other types of housing developments, however, creation of 465 units at affordable rent levels brings a significant benefit to the Salt Lake City housing market.

Increasing the housing stock within Salt Lake City in the form of student housing contributes to a decrease in demand for students in the Salt Lake City rental market. The rent restriction will help insulate students from the massive rate increases that continue to impact the rental market, driven in part by the housing demand.

The proposed development offers a significant public benefit to Salt Lake City. It includes the construction of privately financed student housing, comprising 465 units with rents below 80% of the area median income. Additionally, 100% of the units will be subject to a voluntary deeded restrictive use agreement for the 99-year lease period, and 25% of students will receive additional rental assistance. These efforts will provide crucial student support and access to affordable housing, all without any current public subsidy. In view of these benefits, the fees waived by the City for this development are proportionate to the public benefit it provides.

III. Ivory University House will Benefit Salt Lake City Residents

Ivory University House is a unique philanthropic project. As with any innovative project, it doesn't fit neatly into any existing box. It has taken collaboration between The Church of Jesus Christ of Latter-day Saints, the University of Utah, Salt Lake City, and University House to make this project a reality. University House and the University of Utah intend to honor their partnership with the City by pledging scholarships funded by the operations of the Project in amount equal to fees waived (in an amount over \$2,400,000) for Salt Lake City residents to be paid over a period of ten years. Depending on a student's needs, these scholarships may come in the form of tuition stipends, paid internships, or housing assistance. In essence, University House will invest the value of fees waived directly into the individual lives of some of the City's residents who otherwise lack financial access to opportunity.

IV. Salt Lake City's Purposes and Enhancing the Quality of Life for Residents.

The City places a high value on health and safety. Housing an additional 621 students in the Project will reduce the number of cars commuting to campus, which has a positive environmental impact on air quality. Fewer cars also means fewer accidents that could occur in heavy campus traffic. Reducing campus traffic enhances the health and safety of the surrounding communities. The Project is located within walking distance of a TRAX station, providing easy access to public transportation to the students who will live in the Project. Additionally, every student is provided a public transit pass.

V. Accomplishing Salt Lake City's Goals.

Support of the Project helps accomplish the goals of the City in affordable housing. Salt Lake City faces a critical housing shortage. The University of Utah draws students from all over to the University, and similarly faces a housing shortage for its students. As of last year, the University of Utah had a wait list of 2,280 students seeking an on-campus living experience. The

University's housing shortage increases the pressure on the housing needs in Salt Lake City, given the large numbers of students who need affordable housing. The Project is being developed on a site that was not previously used for residential purposes, thus the redevelopment of the site is a true increase in housing units without any displacement. The ability to house 621 students in the Project will mean there are 621 fewer people who need housing in Salt Lake City. The Project is also better suited to meeting the needs of the student population than a typical housing project in the city.

Growing SLC: A Five Year Housing Plan envisions Salt Lake City as a place for a growing, diverse population to find housing opportunities that are safe, secure, and enrich lives and communities, recognizes the changing nature of the city, and provides the foundation for creating goals and strategies to manage the housing needs of tomorrow. The City's support of the Project through the fee waivers and refunds meets the housing plan goals by expanding housing opportunities, addressing systematic failures in the rental market, and contributing to the diverse housing types available for the student population. University House has created a new approach to satisfy a fundamental need in our housing stock and this innovation is mutually beneficial to the purposes in *Growing SLC*.

Within *Growing SLC*, the Council adopted policy statements to be used for evaluating and appropriating City funds for housing. The priorities relevant to the Project are as follows:

- (1) Create a net increase in affordable housing units while: (i) Avoiding displacement of existing affordable housing to the extent possible, and (ii) Retaining and expanding the diversity of AMI and innovative housing types.
- (2) Include collaboration with community and private sector partners to enable opportunities for in kind contributions, creative financing and service delivery models.
- (3) Include affordable housing in transit-oriented developments because access to public transit increases access to opportunities. Moderate increases in density should be encouraged along transit corridors.
- (4) Incentivize affordable housing within areas of high opportunity.

The project will also have the added benefit of providing scholarship assistance to Salt Lake City residents.

CONCLUSION

Approval of a permit fee and impact fee waiver and refunds supports many of the City's goals with respect to the creation of affordable and diverse housing. Additionally, the Project will create a broad public benefit through its philanthropic mission. Although the Project does not meet the codified requirements for a permit fee waiver and impact fee exemption, the Project fulfills a specific need and provides public benefits to the City that satisfy the requirements of Utah Code § 10-8-2. For these reasons, the Administration requests that City Council approve the requested permit fee and impact fee waiver and refunds.

REFERENCES This analysis has been available in the City Recorder's Office, Room 415, City & County Building, 451 South State Street since _____, 2023. The City Council will hold a public hearing on whether to adopt a resolution approving the proposed study. The public hearing will be held _____.

RESOLUTION NO. ____ OF 2023

Authorizing Impact Fee and Permit Fee Waivers and Refunds
for Ivory University House L3C

WHEREAS, the Salt Lake City Department of Community and Neighborhoods has proposed the waiver and refund of certain permit and impact fees (the “**Fee Waiver**”) paid by the Ivory University House L3C, a low-profit limited liability company (“**University House**”); and

WHEREAS, University House is developing a student housing project at 434 South Mario Capecchi Drive (the “**Project**”); and

WHEREAS, the Project will offer 465 units for 621 University of Utah students with a maximum rent per bed at or below 30% of the monthly income limit set by the Department of Housing and Urban Development for a single person household of 80% area median income (“**AMI**”) or below; and

WHEREAS, all profits from the Project will be donated to a new scholarship fund at the University of Utah, with priority given to students with the most financial need, and if the Fee Waiver is granted, then University House will pledge scholarships for Salt Lake City residents in the amount of the Fee Waiver over a period of ten years; and

WHEREAS, the Project provides rent rates at or below 80% AMI and significant public benefits but does not meet the City code requirements to waive permit fees or impact fees for affordable housing because University House is legally a for-profit entity and the Project is not income restricted as the residents will be students; and

WHEREAS, Utah Code section 10-8-2 states that municipalities may appropriate funds for “corporate purposes only,” and those purposes are, in the judgment of the municipal

legislative body, any purpose that “provides for the safety, health, prosperity, moral well-being, peace, order, comfort, or convenience of the inhabitants of the city.” Utah Code § 10-8-2(3); and

WHEREAS, Utah Code Section 10-8-2(3)(e) allows public entities to provide nonmonetary assistance and waive fees to for-profit entities after a public hearing and conducting a study to consider intangible benefits received by the municipality in determining net value received for the appropriation; and

WHEREAS, the City performed an analysis (the “**Analysis**”) of the public benefits of providing the Fee Waiver to University House, which Analysis was included in the transmittal to the City Council before the public hearing; and

WHEREAS, the City Council has, following the giving of not less than 14 days public notice, conducted a public hearing relating to the foregoing, in satisfaction of the requirements of Utah Code Section 10-8-2; and

WHEREAS, the City Council has reviewed the Analysis, and has fully considered the conclusions set forth therein and all comments made during the public hearing;

THEREFORE, BE IT RESOLVED by the City Council of Salt Lake City, Utah, as follows:

1. The City Council hereby adopts the conclusions set forth in the Analysis, and hereby finds and determines that, for all the reasons set forth in the Analysis, the Fee Waiver is appropriate under these circumstances.

2. The City Council hereby authorizes the City administration to waive and refund the fees consistent with this Resolution and incorporating such other terms and agreements as recommended by the City Attorney’s office.


Passed by the City Council of Salt Lake City, Utah, this _____ day of _____ 2023.

SALT LAKE CITY COUNCIL

By: _____
CHAIRPERSON

ATTEST:

CITY RECORDER

<p>APPROVED AS TO FORM: Salt Lake City Attorney's Office  _____ Kimberly Chytraus, Senior City Attorney Date: June 5, 2023</p>
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