



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Joseph Horwedel

**SUBJECT: MODIFICATION TO
RESOLUTION NO. 73587 SETTING
FORTH THE PARKLAND IN-LIEU
FEES AND CREDITS**

DATE: June 4, 2007

Approved

Date

COUNCIL DISTRICT: Citywide
SNI AREA: All

RECOMMENDATION

Staff recommends that the City Council adopt a resolution to amend the Resolution setting forth the Schedule of In-Lieu Fees Charged and Credits Issued Pursuant to Chapters 14.25 (Park Impact Ordinance) and 19.38 (Parkland Dedication Ordinance) of the San Jose Municipal Code (Fees and Credits Resolution), in order to modify the definition of "projects in process".

PURPOSE

The purpose of this memorandum is to describe the proposed changes to the "projects in process" definition contained in the Fees and Credits Resolution. Staff is proposing two very specific modifications to the Fees and Credits Resolution to address: (1) the timing of the first General Plan hearing in 2007 and (2) the effect of the Memorial Day holiday on the Council calendar. No other aspect of the Fees and Credits Resolution nor its Exhibits is affected or revisited by the proposed modifications.

BACKGROUND

In late 2006 and early 2007, the City Council held hearings on an update to the Parkland Dedication Ordinance (PDO) and Park Impact Ordinance (PIO). After considerable testimony and Council discussion, the Council adopted Resolution 73587 setting forth the schedule of in-lieu fees charged and credits issued pursuant to the PDO and PIO (Fees and Credits Resolution).

Exhibit A of the Fees and Credits Resolution contains a definition for "projects in process" which enables developers who meet certain criteria to pay in lieu fees in accordance with the rates set forth

in Table 2 of Resolution No. 71180 (the Previous Fees and Credits Resolution). Payment of in-lieu fees for "projects in process" must be made by no later than January 31, 2009 in order to be eligible to pay the rates in the Previous Fees and Credits Resolution, otherwise the project will be subject to the fees and credits in effect at the time of payment.

"Projects in process" are currently defined in the Fees and Credits Resolution as *"Those residential housing development projects that have obtained an approved Plan Development Permit, Conditional Use Permit, Site Development Permit, or Tentative Map no later than July 9, 2007."* If a project does not receive one of these approvals by July 9th, then the higher parkland fees will apply. Per longstanding practice in the administration of this ordinance, "approved" means that all appeal periods have run without challenge and that the land use approval or map can immediately proceed to the next step in the entitlement process.

During a Rules Committee meeting in early 2007 regarding the General Plan amendment hearing schedule, Planning staff and applicants explained that in the last few years, General Plan hearings were typically held four times per year, with the first hearing generally in February. Staff acknowledged that with the first General Plan hearing in April 2007, applicants who were ready for hearing in February needed to wait two months. Several applicants expressed concern that changing the hearing schedule to April might impact their ability to obtain the other approvals necessary to enable them to pay their parkland fees under the Previous Fees and Credits Resolution. The Planning Director mentioned that staff would explore the possibility of a limited modification to the parkland in-lieu fee resolution to address this circumstance and bring it forward for Council consideration. This memorandum makes such a proposal.

In addition, staff discovered that the Council's practice of not conducting a meeting the day after Memorial Day holiday meant that zonings that otherwise could have been effective before the July 9th date would now be effective on July 13th. Given the provision in the Municipal Code that allows concurrent processing of zonings and planning permits, the permit appeal period would not end until July 12th. The proposal explained in this report suggests a minor modification to the projects in process definition to extend the date to July 13, 2007.

ANALYSIS

Given the large amount of public interest in the recent update to the PDO/PIO, staff is interested in proposing two very limited and specific modifications to the definition of projects in process.

To address the General Plan hearing schedule, staff is proposing to extend the planning permit approval date from July 9 to September 9 due to the two month change from a February General Plan Hearing to April General Plan Hearing. To utilize this extension, an applicant would need to continue to be making forward progress on their zoning and planning permit/tentative map applications to meet these dates. Only one project, the Race Street Housing Project (Sobrato/Morley), would be able to qualify for this extension.

To address the zonings and permits affected by the cancellation of the May 29, 2007 Council meeting, staff is proposing an extension from July 9 to July 13, 2007 to obtain the appropriate

planning permit/tentative map. Staff have identified two residential projects that would benefit from this change because they are concurrently processing Planned Development Permits with the zonings (File Number PDC07-001 on Dent Avenue and File Number PDC06-122 on Kentwood Avenue).

The proposed changes to the definition of “projects in process” which is set forth in Exhibit A of the Fees and Credits Resolution are depicted below with a strikethrough for a deletion and underline for an addition:

Section 1. Definitions

- A. “Projects in Process” shall mean those residential housing development projects that have obtained an approved Plan Development Permit, Conditional Use Permit, Site Development Permit, or Tentative Map no later than July 9 ~~13~~, 2007.
- B. Notwithstanding the provisions of Section 1.A above, “Projects in Process” also shall include those residential housing development projects for which the City Council adopted a General Plan amendment in April 2007, and that have obtained an approved Plan Development Permit, Conditional Use Permit, Site Development Permit, or Tentative Map no later than September 9, 2007.

POLICY ALTERNATIVE

In addition to the proposal explained in this memorandum, the Council could also consider the following alternative:

Policy Alternative: No change to the Parkland Resolution. This option would result in the new fees being applicable to all housing projects which have not obtained an approved Plan Development Permit, Conditional Use Permit, Site Development Permit, or Tentative Map by July 9, 2007 without exception.

Pros: The higher parkland fees would be collected and used towards the City’s park needs.

Cons: Up to approximately six applicants are affected by the current Resolution as adopted and they were hoping to be assessed the lower fees given their unique circumstances relating to changed Council hearing schedules.

POLICY ALIGNMENT

The Parkland Dedication Ordinance and Park Impact Ordinance and parkland in-lieu fees help to further the goals and policies of the San Jose 2020 General Plan to create usable parks and open space as part of the overall quality of life in San Jose.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ✓ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

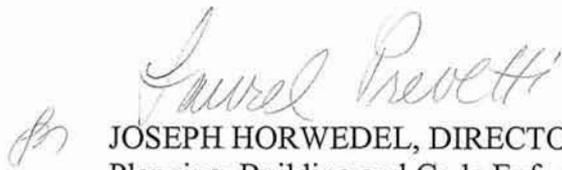
This memorandum and other materials associated with the proposed modification will be posted on the City's website to facilitate the public's ability to watch, attend and/or address the Council at the public hearing. Given the large community interest in the PDO/PIO update earlier this year, staff will send an email with a link to these materials to individuals, neighborhood associations, and other groups (e.g., CALSJ). Any input received prior to Council consideration of the proposed modifications, will be summarized for the Council at its June 26th meeting.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and Department of Parks, Recreation, and Neighborhood Services.

CEQA

Resolution No. 65459.


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Planning, Building and Code Enforcement

For questions please contact Laurel Prevetti, Assistant Director, at (408) 535-7901.