



Memorandum

TO: HONORABLE MAYOR
CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Deferred Payment of Parkland
In-Lieu Fees for Highrise Multi-
Family Residential Projects
Located in the Downtown Core

DATE: May 16, 2008

Pursuant to the Rules and Open Government Committee direction on May 14, 2008, Item G5, attached is a copy of the draft Resolution to amend Resolution No. 73587 to allow the City Manager, in consultation with the Redevelopment Agency Executive Director, to negotiate and execute written agreements with developers to extend the deferment of parkland in-lieu fees for highrise multi-family residential projects located in the Downtown Core Area.

The attached draft Resolution is consistent with the memo from Mayor Reed and Councilmember Liccardo to the Rules and Open Government Committee, dated May 6, 2008, and the discussions at the Rules and Open Government Committee meeting on May 14, 2008 with some additional changes. The draft Resolution includes additional language on the timing of payments so that it is clear that the extended deferral commences on the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit. The draft Resolution also contemplates full payment of the parkland in-lieu fees and accrued interests on or before the earlier of any of the following events: (a) eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten (10) percent of the Downtown Units within the project. In consultation with staff, in order to protect the City's interests in the event of breach of the deferment agreement, the draft Resolution provides that certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) will not be issued for more than ninety percent (90%) of the Downtown Units contain within a project, unless and until, the in-lieu fees and accrued interests are fully paid to the City.

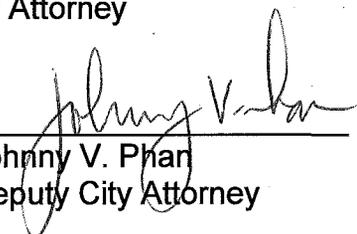
HONORABLE MAYOR AND CITY COUNCIL

May 16, 2008

Subject: Deferred Payment of Parkland In-Lieu Fees for Highrise in Downtown Core Area

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Richard Doyle
City Attorney

By: 

Johnny V. Phan
Deputy City Attorney

Attachment

DRAFT

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING EXHIBIT B OF RESOLUTION NO. 73587 TO EXTEND THE DEFERRAL OF THE PAYMENT OF PARKLAND IN-LIEU FEES CHARGED PURSUANT TO CHAPTERS 14.25 AND 19.38 OF THE SAN JOSE MUNICIPAL CODE FOR HIGHRISE MULTI-FAMILY RESIDENTIAL PROJECTS LOCATED IN THE DOWNTOWN CORE AREA

WHEREAS, the City enacted the Parkland Dedication Ordinance, San José Municipal Code ("SJMC") Chapter 19.38 ("PDO") in 1988 and the Park Impact Ordinance, SJMC Chapter 14.25 ("PIO") in 1992 to meet the demand for new neighborhood and community parkland generated by development of new residential subdivisions and new non-subdivided residential projects; and

WHEREAS, on January 9, 2007, the City Council adopted Resolution No. 73587 setting forth the Schedule of In-lieu Fees charged and credits issued pursuant to Chapters 14.25 and 19.38 of the SJMC and reduced and deferred payments of parkland in-lieu fees for developers of projects containing Downtown Units, as that term is defined in Resolution No. 73587; and

WHEREAS, under Resolution No. 73587, parkland in-lieu fees for Downtown Units which would otherwise be due and payable to the City no later than the issuance of the first building permit for the project were deferred to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, including temporary certificates of occupancy; and

WHEREAS, the City Council finds that highrise multi-family residential projects located in the Downtown Core Area are critical to the continued emergence of the Downtown Core Area as a vibrant regional center, the financial markets in recent months have particularly impacted highrise housing development in the Downtown Core Area, and extending the deferral of the parkland in-lieu fees will encourage continued investment in the Downtown Core Area; and

WHEREAS, this Resolution amends Resolution No. 73587 to allow the City Manager to enter into written agreements with developers of projects containing Downtown Units in order to extend deferral of the payment of parkland in-lieu fees as more particularly set forth in this Resolution;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of San José that:

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SECTION 1.

Section 2C of Exhibit B ("Deferred Payment") of Resolution No. 73587 is hereby amended as follows:

C. Deferred Payment.

1. Developers of projects containing Downtown Units shall be eligible to defer payment of in-lieu fees as specified in this Subsection, which would otherwise be due and payable to the City no later than the date of the issuance of the first building permit for the project. The in-lieu fees shall be due and payable to the City prior to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy. Certificates of occupancy include temporary certificates of occupancy permits, for residential occupancy.

2. Notwithstanding the preceding Subsection, the City Manager, in consultation with the City of San José Redevelopment Agency Executive Director, may enter into written agreements with developers of projects containing Downtown Units to defer payment of in-lieu fees for an additional period of time beyond the date of the scheduling of the final inspection for the first certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for a Downtown Unit if all of the following conditions are met:

a. the City Manager finds that deferred payment of the in-lieu fees for the duration of the written agreement will not substantially interfere with the construction schedule of any Park Facilities or Recreational Facilities eligible to be funded by the in-lieu fees proposed to be deferred; and

b. the written agreement requires the developer to pay interest on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the period between the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificate of occupancy for residential occupancy) and the date on which the developer makes payment of the deferred in-lieu fees to the City; and

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c. the written agreement shall be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the Downtown Units are located; and

d. prior to the City's execution of the written agreement, Developer shall provide to the City with certain collateral or security, such as a letter of credit, deed of trust, or other security instrument, for the payment of the deferred in-lieu fees and estimated interest as acceptable to the City Manager; and

e. the in-lieu fees and accrued interests shall be due and payable to the City on or before the earlier of any of the following events: (a) eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager pursuant to Subsection 2a above; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten (10) percent of the Downtown Units within the project. In no event will certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) be issued for more than ninety percent (90%) of the Downtown Units contain within a project, unless and until, the in-lieu fees and accrued interests are fully paid to the City.

3. The provisions of Subsection C.2 shall expire on July 1, 2009.

SECTION 2.

This Resolution is effective on May 20, 2008. The provisions of Resolution No. 73587 that have not been amended by this Resolution shall remain in full force and effect.

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ADOPTED this _____ day of _____, 2008, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk