



Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL AND REDEVELOPMENT
AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: 1-13-09

COUNCIL DISTRICT: 3
SNI AREA: 13th Street

**SUBJECT: DEFERRED PAYMENT OF PARKLAND IN-LIEU FEES FOR
ALMADEN TOWER VENTURE, LLC, AGENCY FUNDING OF
WATSON PARK RESTORATION PROJECT AND ADOPTION OF
APPROPRIATION ORDINANCE AND FUNDING SOURCES
RESOLUTION AMENDMENTS IN THE CONSTRUCTION TAX AND
PROPERTY CONVEYANCE TAX FUND: PARKS PURPOSES COUNCIL
DISTRICT 3**

RECOMMENDATIONS

It is recommended that the City Council and Redevelopment Agency Board take the following actions related to the Watson Park Restoration Project (Phase 1 Construction) and the Almaden Tower Venture, LLC downtown high-rise development:

- (a) Conduct a public hearing as required by Health and Safety Code Section 33679 and adoption of a resolution by the City Council making certain determinations required by Health and Safety Code Section 33445 for Agency funding of the Watson Park Restoration Project (Phase 1 Construction).
- (b) Approval of a Cooperation Agreement between the City and Redevelopment Agency that:
 - (1) Provides Agency funding to the City in the amount of \$3,297,000 for the Watson Park Restoration Project (Phase 1 Construction) that will allow City to enter into a third amended parkland agreement with Almaden Tower Venture, LLC, to defer its parkland in-lieu fees for an additional 12 months, pursuant to Council Resolution No. 74382; and,
 - (2) Amends the FY 2008-2009 Merged Area Cooperation Agreement between the City of San Jose and the Redevelopment Agency of the City of San Jose.

- (c) Adoption of Appropriation Ordinance and Funding Sources Resolution amendments in the Construction Tax and Property Conveyance Tax Fund: Parks Purposes Council District #3 (Fund 380):
- 1) Increase the estimate for Earned Revenue by \$3,297,000; and.
 - 2) Establish an appropriation to the Department of Parks, Recreation and Neighborhood Services in the amount of \$3,297,000 for the Watson Site Clean-up and Restoration.

OUTCOME

Approval of the recommendations in this memorandum will ensure that the Watson Park Restoration project continues on schedule and will provide Almaden Tower Venture, LLC, a downtown high-rise developer, an additional 12 months (from February 1, 2009 to February 1, 2010) to pay its parkland in-lieu fees to City pursuant to Resolution No. 74382.

BACKGROUND

Mayor Chuck Reed and Councilmember Sam Liccardo submitted a memorandum, dated May 6, 2008, entitled "Downtown High Rise Financing Incentive" for consideration by the May 14, 2008, Rules and Open Government Committee. The purpose of the memorandum was to recommend City Council consideration for authorization of the City Manager to enter into written agreements for up to 18 months with high-rise housing developers in the Downtown Core area to defer payments of parkland in-lieu fees in certain limited situations.

On May 20, 2008, City Council adopted Resolution No. 74382 authorizing the City Manager to enter into written agreements with high-rise housing developers to defer payments of parkland in-lieu fees for certain high-rise housing developments in the Downtown Core area under the following conditions:

1. City Manager finds that deferred payment of the in-lieu fees for the duration contemplated in the agreement will not substantially interfere with the construction schedule of any park or recreational facilities to be funded by the in-lieu fees to be deferred; and,
2. Developer to pay interest that the deferred in-lieu fees would have earned had the payment occurred; and,
3. The period in which such agreements can be made will terminate on July 1, 2009; and
4. Written agreement to be fully executed and recorded; and,
5. Developer provide collateral to City for the deferred fees and interests; and,
6. Certificate of Occupancy withheld on at least ten percent of residential units located within the project until deferred fees are paid in full; and,
7. Maximum length of the deferment for each eligible project is 18 months.

On August 1, 2008, City and Almaden Tower Venture, LLC ("Developer") entered into a Second Amended Parkland Agreement pursuant to Resolution No. 74382 to defer parkland in-lieu fees in the amount of \$3,297,000 (plus interest) for up to six months (from August 1, 2008 to

February 1, 2009). This developer is constructing a 22-story condominium high-rise project on the southwest corner of Carlysle Street and Notre Dame Avenue. Due to the continued economic downturn, Developer has requested an additional deferral of up to 12 months (from February 1, 2009 to February 1, 2010) to pay the deferred in-lieu fees. This would defer the payment of the parkland in-lieu fees for this project for up to the maximum 18 months authorized under Resolution No. 74382.

ANALYSIS

In accordance with Resolution No. 74382, the City entered into a written agreement with Developer on August 1, 2008, to defer their parkland in-lieu fee payment from August 1, 2008 to February 1, 2009 (6 months). The deferred parkland in-lieu fee in the amount of \$3,297,000 is intended to be used for the Watson Park Restoration Project (Phase 1 Construction). However, the construction contract for the Watson Park Restoration Project (Phase 1 Construction) is scheduled to be awarded in late February 2009. Therefore, the City will need the \$3,297,000 by late February 2009 to avoid any delays or negative impact on the Watson Park Restoration project (Phase 1 Construction) schedule.

Due to the continued economic downturn, Developer has requested an additional extension of up to 12 months to pay its parkland in-lieu fees. As outlined in Resolution No. 74382, the City Manager must make a finding that the additional deferral will not substantially interfere with the construction schedule of any park or recreational facilities eligible to be funded by the deferred fees in order to grant an additional 12 months of deferral and amend the City's agreement with the Developer. The City Manager will not be able to make this finding unless the City is able to find an alternative source of funding to award the construction contract for the Watson Park Restoration project (Phase 1 Construction) in late February 2009 as scheduled.

The Redevelopment Agency has agreed to provide funding to the City in the amount of \$3,297,000 for the Watson Park Restoration project (Phase 1 Construction). The Developer will also pay directly to the City approximately \$75,185 in estimated interest earnings on or before February 1, 2009. The estimated interest is based on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the deferred period (August 1, 2008 to February 1, 2009). If the recommendations in this memorandum are approved, this will facilitate the City's ability to move forward with the Watson Park Restoration project (Phase 1 Construction) as scheduled and enter into a Third Amended Parkland Agreement with Developer to defer its parkland in-lieu fees for an additional 12 months (from February 1, 2009 to February 1, 2010). The Third Amended Parkland Agreement with Developer would be consistent with Resolution No. 74382 requiring Developer to (1) record the written agreement against the project; (2) pay interest on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the deferred period; (3) provide collateral for the payment of the deferred in-lieu fees and estimated interests; and (4) withhold certificate of occupancy on the remaining ten percent of the residential units in the project until the deferred fees and interests are paid in full to City.

This memorandum includes appropriation actions in the Council District 3 Construction and Conveyance Tax Fund (Fund 380) to increase the Earned Revenue estimate and establish the Watson Park Restoration project for \$3,297,000. As previously mentioned, the City anticipates receiving an additional \$75,185 from the Developer, which will be recommended to be appropriated as part of the Watson Park Phase I bid award memorandum. Agency funding of the \$3,297,000 is provided for in the Agency's Amended Adopted FY 2008-2009 Capital Budget, Almaden Gateway Project, Development Assistance line.

The City and Agency would also enter into a Cooperation Agreement that provides as follows:

1. Agency provides City \$3,297,000 on or before February 13, 2009, to be used for the Watson Park Restoration Project (Phase 1 Construction). Additionally, in the event Developer does not pay City interest of approximately \$75,185 on or before February 1, 2009, City, at its sole option, may elect not to proceed with the Third Amended Parkland Agreement with Developer.
2. City and Developer will enter into a Third Amended Parkland Agreement requiring Developer to pay City \$3,297,000 plus approximately \$150,370 in interest (estimated interest to be accrued from February 1, 2009 through February 1, 2010) on or before February 1, 2010. Once payment is received by City, this entire amount including interest payments would go to the Agency. In the event that City elects to proceed with the Third Amended Parkland Agreement despite Developer's failure to pay City interest of approximately \$75,185 on or before February 1, 2009, amounts payable under the Third Amended Parkland Agreement would be increased by such unpaid interest, which additional amounts would be retained by City once received.
3. In the event that Developer defaults or does not pay the full deferred parkland in-lieu fees and interests on or before February 1, 2010, City will assign its rights under the Third Amended Parkland Agreement and any collateral received by City for the deferred fees to Agency, and Agency can pursue any available legal remedies available under the agreement and collateral against Developer.
4. The Agreement will not affect the Agency's obligation to pay to the City the supplemental Parkland Fees in the total amount of \$8,111,800, as evidenced in the existing FY 2008-09 cooperation agreement between the parties; provided, however that this obligation shall now be satisfied, in part, by the payment by Agency to City of \$2,300,000 on or before October 1, 2009, with the timing of the remaining amount to be paid by Agency to City to be agreed between the City and Agency at a later date.

PUBLIC IMPROVEMENT DETERMINATIONS

Watson Park is a community park of approximately 35 acres located in Council District 3. Watson Park has frontage along 22nd Street and is accessed by Jackson Street. In May 2004, construction began on a skate park facility in Watson Park. During excavation, contractors uncovered refuse materials indicative of a burn dump. This discovery led to the closing of the

park as a precautionary measure in August 2005. Since the park's closure, the public, City, the California Environmental Protection Agency's Department of Toxic Substances Control, and other agencies have worked together to determine the limit of the former burn dump, to study how best to remediate the area, and to identify a preferred approach to reopen the park. On September 23, 2008, the City Council approved the updated master plan for the park restoration. The master plan includes the following programmatic elements:

- Two soccer fields with supporting field house, parking and other amenities;
- Community garden plots;
- Group picnic areas;
- Skate park, basketball courts and volleyball courts;
- Play lots for tots and youth;
- Open space;
- Senior area with gazebo and labyrinth;
- Restrooms; and,
- Coyote creek trail and pedestrian bridge over Coyote Creek.

The master plan will be implemented in phases. The City is planning on awarding construction of the first phase in February 2009, which will consist of basketball courts, a dog park, one soccer field, a walking circuit, site electrical, and other irrigation and miscellaneous landscaping, together with various possible add alternates including restrooms. The improvements proposed by the Watson Park Restoration project (Phase 1 Construction) will be City-owned. Section 33445 of California Redevelopment Law requires that the City Council adopt a resolution making certain determinations with respect to publicly-owned improvements funded by the Redevelopment Agency. Following are the required determinations and the facts supporting each one:

- The public improvements will be of benefit to the Project Area.

The project consists of improvements to Watson Park, located within the Strong Neighborhoods Initiative Redevelopment Project Area. This project benefits the Project Area by restoring and enhancing an important park which provides additional open space and recreational opportunities to the community, thereby serving the redevelopment purpose of providing valuable recreational resources for the community.

- There are no other reasonable means of funding the public improvements.

No other reasonable means of financing the temporary project funding shortfall resulting from the proposed deferral is available, as the City has no funds currently budgeted or otherwise identified to pay for the project funding shortfall, and no other source, public or private, has been identified to provide funds to satisfy this shortfall.

- The public improvements will assist the elimination of one or more blighting conditions in the Project Area.

Restoring and enhancing Watson Park will encourage further investment in the Project Area neighborhoods and make them more desirable places to visit and live, and assist the rehabilitation of deteriorated buildings and alleviate the existence of substandard structures. By providing additional recreation facilities certain crimes related to gang activity should be reduced.

- The public improvements are consistent with the Implementation Plan for the Project Area.

The project is consistent with the adopted Five-Year Implementation Plan, including the specific goal of the Plan to provide quality parks, community gardens and trail connections in the neighborhoods.

EVALUATION AND FOLLOW-UP

Action taken by City Council on this item will allow staff to continue to work with Almaden Tower Venture, LLC to assist them in deferring their park fees and will allow the City to proceed on schedule with the Watson Park Restoration project (Phase 1 Construction).

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 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.
- Criterion 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.

This item meets Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. This memorandum will also be posted on the City's website for the January 27, 2008 City Council agenda.

A number of community meetings have been held with local residents and other interested parties to discuss master plan approval and construction schedule for Watson Park. This action will allow the City to proceed on the schedule committed to the residents which calls for beginning construction in April 2009.

January 13, 2009

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COORDINATION

This item has been coordinated with the Departments of Parks, Recreation and Neighborhood Services and Planning, Building and Code Enforcement, the City Attorney's Office, and the City Manager's Budget Office.

COST SUMMARY/IMPLICATIONS

Annual maintenance costs for the Watson Park Restoration project will be discussed in the memorandum for City Council to award the project which is anticipated in late February 2009. The Preliminary 2010-2014 General Fund Forecast, released November 20, 2008, included a total of \$32,000 annually beginning in 2009-2010 for this project.

CEQA

PP 07-130, Mitigated Negative Declaration.



DEBRA FIGONE
City Manager



HARRY S. MAVROGENES
Executive Director

For questions please contact Matt Cano, PRNS Division Manager, at (408) 535-3580 or Abi Maghamfar, Deputy Executive Director, San Jose Redevelopment Agency, at (408) 795-1891