

Sent to Council:

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Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Nadine Nader

SUBJECT: Early Council Packet

DATE: November 3, 2009

Approved

Date

11/3/09

EARLY DISTRIBUTION COUNCIL PACKET FOR NOVEMBER 17, 2009

Please find attached the Early Distribution Council Packet for the November 17, 2009 Council Meeting.

4.x Inclusionary Housing Ordinance.

Recommendation: Approve an ordinance amending Title 5 of the San José Municipal Code to add a new Chapter 5.08 adopting a Citywide Inclusionary Housing Program.
CEQA: Resolution No. 65459, File No. PP08-258. (Housing)

4.x Development Fee Program Budgets.

Recommendation:

- (a) Adopt the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
- (1) Decrease the Licenses and Permits (Building Fee Program) estimate by \$1,811,262;
 - (2) Decrease the Licenses and Permits (Fire Fee Program) estimate by \$363,000;
 - (3) Decrease the Departmental Charges (Planning Fee Program) estimate by \$722,323;
 - (4) Decrease the Departmental Charges (Public Works Fee Program) estimate by \$1,001,335;

- (5) Decrease the Planning, Building and Code Enforcement Personal Services appropriation by \$1,872,242;
 - (6) Decrease the Planning, Building and Code Enforcement Non-Personal/Equipment appropriation by \$171,000;
 - (7) Decrease the Information Technology Personal Services appropriation by \$307,824;
 - (8) Decrease the Information Technology Non-Personal/Equipment appropriation by \$153,800;
 - (9) Decrease the Public Works Personal Services appropriation by \$937,611;
 - (10) Decrease the Fire Personal Services appropriation by \$217,983;
 - (11) Decrease the Fire Development Fee Program Earmarked Reserve by \$80,273;
 - (12) Decrease the Public Works Development Fee Program Earmarked Reserve by \$31,528;
 - (13) Decrease the Planning Development Fee Program Earmarked Reserve by \$81,692;
 - (14) Decrease the Building Development Fee Program Earmarked Reserve by \$37,091; and
 - (15) Decrease the Salary and Benefit Earmarked Reserve by \$6,876.
- (b) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Integrated Waste Management Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$12,654; and
 - (2) Decrease the Ending Fund Balance by \$12,654.
- (c) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$12,654; and
 - (2) Decrease the Ending Fund Balance by \$12,654.
- (d) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Water Utility Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$8,436;
 - (2) Decrease the Ending Fund Balance by \$8,436;
- (e) Adopt the following 2009-2010 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
- (1) Increase the Information Technology Personal Services appropriation by \$8,436; and
 - (2) Decrease the Ending Fund Balance by \$8,436;
- (f) Eliminate 43.5 positions in Planning, Building and Code Enforcement (29.00), Public Works (11.50), and Information Technology (3.00) Departments included in Attachment A of the Council memorandum.

CEQA: Not a Project. (Planning, Building and Code Enforcement/Public Works/Fire/City Manager's Office).

4.x Sign Ordinance Update.

Recommendation: Accept the report and direct staff to prepare an ordinance to revise Title 23 of the San José Municipal Code (the Sign Ordinance) consistent with the proposed draft signage strategy and conduct additional related community outreach.

CEQA: Not a Project. (Planning, Building and Code Enforcement)

TO BE HEARD IN THE EVENING

TO BE DISTRIBUTED WITH THE 11/17/09 COUNCIL PACKET

7.x Agreement with City of Santa Clara for the South Bay Water Recycling Program.

Recommendation:

(a) Adopt a resolution authorizing the City Manager to negotiate and execute the Sixth Amendment to the construction service agreement with City of Santa Clara for the South Bay Water Recycling Program, revising the approved project list, increasing the maximum amount payable by \$3,000,000 to a total maximum amount not to exceed \$30,600,000 and extending the term of the agreement by eighteen months to December 31, 2011.

(b) Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the San José-Santa Clara Treatment Plant Capital Fund:

(1) Increase the appropriation to the Environmental Services Department for the Revised South Bay Action Plan – SBWR Extension by \$3,410,000; and

(2) Decrease the Ending Fund Balance by \$3,410,000.

CEQA: Resolution No. 64667 (PP#91-04-090) and Addenda thereto scheduled for action by City of Santa Clara prior to action by San José City Council under the following reference numbers: Santa Clara Central Park: PLN 2009-07751; CEQ 2009-01085; Santa Clara Industrial 1: PLN 2009-07749, CEQ 2009-01083; Santa Clara Industrial 2: PLN 2009-07616, CEQ 2009-01080. (Environmental Services)

These items will also be included in the Council Agenda Packet with item numbers.



NADINE NADER

Assistant to the City Manager



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leslye Krutko

SUBJECT: SEE BELOW

DATE: October 26, 2009

Approved

Date

11-3-09

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

**SUBJECT: ADOPTION OF A CITYWIDE INCLUSIONARY HOUSING
ORDINANCE**

RECOMMENDATION

It is recommended that the City Council adopt the citywide inclusionary housing ordinance as proposed.

OUTCOME

With the City Council's approval to adopt a citywide ordinance, staff will begin developing guidelines for the administration of the ordinance upon its operative date, which would be the earlier of 6 months after the City has reached 2,500 annual residential permits outside of North San Jose or January 1, 2013.

EXECUTIVE SUMMARY

On December 8, 2008, the City Council provided policy direction for the drafting of an inclusionary housing ordinance. Staff coordinated with the City Attorney's Office, Redevelopment Agency, and the Planning and Building Code Enforcement Department in drafting the ordinance. For certain provisions of the Council direction, staff is recommending alternative language that accomplishes the intent of the Council direction as indicated in the analysis section below. Pursuant to City Council direction in December 2008, the Department held nine additional community and stakeholder meetings to acquaint the community with provisions of the draft ordinance.

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 2

BACKGROUND

Purpose

“Inclusionary housing” is a policy that requires that residential developments include a certain number (or percentage) of units affordable to very-low or low-income households. These units are typically integrated within market-rate developments. Inclusionary policies are one tool in the toolbox for providing additional affordable housing in a community. In California, there are 170 jurisdictions with some form of inclusionary housing program or policy.

A community may consider inclusionary housing for many reasons. The most common include: (1) high cost housing markets where workers are priced out, (2) a lack of supply to meet the affordable housing demand, and (3) a desire to integrate market rate and affordable housing. San Jose has a significant need for affordable housing. The State Regional Housing Needs Allocation indicates that the City should plan for the development of 19,000 affordable housing units over the next seven years. The proposed ordinance would assist the City in reaching the Regional Housing Needs goals in the future.

Public Process and City Council Direction

Given the potential for increasing affordable housing, in June 19, 2007, the City Council adopted the Five-Year Housing Investment Plan, which included an action item for the City to consider the feasibility of a citywide policy for inclusionary housing. Additionally, on December 11, 2007, the City Council held a special study session to discuss inclusionary housing, how it has been used in other jurisdictions, including those in the Bay Area, and the potential benefits and impacts of a City-wide policy including how the policy would help the City meet its regional housing goals.

As a first step in the process, the City Administration worked with a consultant (David Rosen and Associates) in early 2008 on an economic feasibility study related to the potential of a citywide inclusionary policy. This feasibility study was developed with the help of over 700 individuals, affordable housing advocates, developers, and community organizations. The study determined that while the economy was faltering and residential development was at a standstill, with the right developer incentives, inclusionary housing could under better economic circumstances, be economically feasible in most product types. A full copy of this study (along with public comments, agendas, reports, and meeting materials) can be located on the Housing Department’s website at <http://www.sjhousing.org/policy/inclusionarystudy.html>.

The findings of this study were presented to the City Council on June 17, 2008. The City Council directed the Administration to develop a policy, educate the public about its potential impacts, and most importantly, get community and stakeholder feedback prior to bringing a draft policy forward for City Council consideration.

Between June and December 2008, the Housing Department conducted a total of 56 meetings. Three types of forums were held to discuss inclusionary housing programs and components with the public. Two meetings were held with the purpose of educating interested community

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 3

members on the issue of inclusionary housing and its impacts. Forty one-on-one meetings were conducted with stakeholders (nonprofit, for-profit, community organizations, affordable housing advocates, labor associations, homebuilders association, and businesses) in order to understand concerns or the positions of these groups. Lastly, 14 community meetings were held throughout the City to give the public an opportunity to discuss and review potential policy options that would be included in a draft ordinance.

At the conclusion of this extensive public outreach, on December 8, 2009, the City Council approved an Inclusionary Housing Policy that included a matrix of key elements for the development of an ordinance. The Mayor and City Council directed staff to return to the City Council in early 2009 with a timeline for the drafting, release, public process, and approval of an inclusionary housing ordinance.

Due to the complexity of drafting such an ordinance, City staff delayed the release of an ordinance in order to ensure proper coordination among the various City departments and Redevelopment Agency and to provide enough time to conduct adequate public outreach.

Once the draft ordinance was released for public review in July 2009, nine public meetings were held between July and October. The purpose of these meetings was to discuss with stakeholders and the public components of the ordinance and the staff's recommended changes to the draft ordinances than what was provided by City Council under the approved policy direction from December 2008.

ANALYSIS

Staff from the Housing Department; Redevelopment Agency; Planning, Building, and Code Enforcement; and the City Attorney's Office have crafted an inclusionary housing ordinance after much time and consideration based on the policy adopted by City Council in December 2008.

The major objectives staff used in drafting an ordinance were: consistency, fairness, feasibility of implementation, achieving the direction provided by City Council, while also meeting the objectives of creating integrated affordable housing in our community. However, after working for several months in partnership with our City partners, it became clear that we could not meet these objectives in several areas of an ordinance. In some cases the provisions approved by City Council may not lawfully or administratively lead to feasible implementation or an effective program. Therefore, staff is proposing the following changes that comport with the intent of the direction provided by City Council and provides for consistent and feasible implementation.

The detailed matrix below provides a basic overview of the central provisions of the ordinance directed to be included by the City Council on December 8, 2008. As noted above, there are several specific areas where staff is recommending that the City Council make changes to the previous policy direction. These areas are highlighted below. The following is a discussion of the staff recommended changes and includes the rationale for those changes. Where the staff recommendation is blank, no change to Council direction is recommended.

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 4

Issue	Council Direction	Staff Recommendation
<p>Applicability refers to where the ordinance will apply in the City of San Jose.</p> <p>Section 5.08.400</p>	<p>Geographic – In RdA areas, 20% of the units will be affordable.</p> <p>In Low income areas outside of RdA areas, 15% will be affordable.</p> <p>In all other areas, the percent set-aside requirements in the next section will apply.</p> <p>Building Types – Ordinance requirements will apply to new construction and conversion of non-residential development to residential development (but not to acquisition/rehabilitation).</p> <p>Rationale: For ease and consistency of implementation and certainty to the development community, but also consistent with Council’s intent, staff recommends applying the lower threshold of 15% affordable units citywide when the affordable units are constructed on the same site as the market rate units, and 20% if the affordable units are provided off-site. Staff believes this would provide certainty and less confusion regarding applicability of the ordinance and will further encourage the units to be integrated on-site, which is one of the City’s policy goals. The Council direction to implement different set-aside requirements in RdA verses the rest of the City would have negatively impacted housing development in the RdA. By imposing the same requirement in all areas of the City, affordable housing will be constructed in redevelopment project areas to the same degree as other areas of the City, rather than less in redevelopment areas because of greater affordability requirements.</p>	<p>Citywide requirement:</p> <ul style="list-style-type: none"> • Onsite: 15% • Offsite: 20%
<p>Percent Inclusionary and Income Targeting Requirement refers to the percentage of housing units that developers will construct, and sell or rent, as affordable under the ordinance. Targeting requirements refers to the income categories that the inclusionary units will target under the ordinance (i.e. low-income is 60% area median income)</p> <p>Section 5.08.400 & 5.08.510</p>	<p>Rental—Developer chooses one of two options:</p> <p>Onsite: 15% of total units</p> <ul style="list-style-type: none"> • 6% of total units affordable to very low-income households; and • 9% of total units affordable to Low-Income households. <p>Offsite: 20% of total units</p> <ul style="list-style-type: none"> • 12% affordable to Low-Income households. • 8% affordable to Very Low-Income households. <p>For-Sale—Developer chooses one of two options: Onsite: 15% of total units</p> <ul style="list-style-type: none"> • 15% Moderate-Income households <p>Offsite: 20% of total units (rental)</p> <ul style="list-style-type: none"> • 20% Moderate-Income households <u>or</u> • 8% Very Low-Income and 12% Low-Income households. 	<p>Changes have been recommended under the rental component of the ordinance to comport with recent case law and to expand the definitions of the required income categories:</p> <p>Rental - Staff also recommends that Council include the requirements for rental projects to provide inclusionary housing in the ordinance with the specific proviso in the ordinance that if the decision in <i>Palmer/Sixth Street Properties v. City of Los Angeles</i> (2009) 175 Cal.App.4th 1396 is overturned, disproved or there is legislation that effectively invalidates the <i>Palmer</i> holding, the requirement for rental inclusionary housing will take effect (See discussion of case in <i>Rationale</i> section below).</p> <p>Staff has provided specific income targets for the rental component, but the mix of affordability remains the same as the Council’s direction. Additionally, staff expanded the definition of moderate income. The income categories are:</p>

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 5

Issue	Council Direction	Staff Recommendation
		<ul style="list-style-type: none"> • Very Low Income (50% AMI) • Low Income (60% AMI) • Moderate Income (80% AMI) <p>For Sale – Staff has provided income definitions for the for-sale requirement. The specific income categories listed below:</p> <ul style="list-style-type: none"> • Sales price set at 110% AMI, eligible households up to 120% AMI (Moderate Income). <p>Staff clarified that for-sale developers will have the alternative compliance option to build rental housing off-site. The income definitions for the off-site compliance option for rental housing are:</p> <ul style="list-style-type: none"> • Very Low Income (50% AMI) • Low Income (60% AMI)
<p><u>Rationale:</u></p> <p><u>Rental:</u> At the time the Council considered its direction to staff regarding this ordinance, Council and staff recommended that the ordinance include a requirement for rental housing projects to include affordable housing. Since that time, on July 22, 2009, the 2nd District Court of Appeal decided a case called <i>Palmer/Sixth Street Properties v. City of Los Angeles</i> (2009) 175 Cal.App.4th 1396 which, although not legally binding upon the City of San Jose, calls into question the validity of inclusionary housing mandates upon rental housing projects. The case stems from a challenge by a rental housing developer to the imposition of an inclusionary housing requirement within a Specific Plan area in the City of Los Angeles.</p> <p>In <i>Palmer</i>, the developer sued the City of Los Angeles on the grounds that the Specific Plan's affordable housing requirement violates the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 <i>et seq.</i>). The Costa-Hawkins Act, which was enacted by the Legislature in August 1995, establishes "vacancy decontrol" by declaring that, "[n]otwithstanding any other provision of law," all residential landlords may, with limited exceptions, establish the initial rental rate for a dwelling unit upon any change in tenancy. The Costa-Hawkins Act limits the ability of local laws to regulate rents over time. The only exceptions to Costa-Hawkins are when the developer requests a density bonus from the local agency in exchange for the provision of affordable housing or the developer voluntarily agrees to provide housing at restricted rents in exchange for monetary or other consideration from the local agency.</p> <p>Although the <i>Palmer</i> case is not binding upon the City of San Jose, staff recommends that Council include the requirements for rental projects to provide inclusionary housing in the ordinance with the specific proviso in the ordinance that if the <i>Palmer</i> decision is overturned, disproved or there is legislation that effectively invalidates the <i>Palmer</i> holding, the requirement for rental inclusionary housing will take effect. Currently, the City of Los Angeles has petitioned the California Supreme Court to review the appellate court decision, but it is yet undetermined whether the Supreme Court will hear the appeal. Staff also recommends the proposed ordinance include an on-site rental inclusionary housing option that for-sale housing developers may select in lieu of providing for sale inclusionary units.</p> <p>Also, in order to provide more clarity in the rental provisions of the ordinance, staff added definitions of the income targeting. First, in the case of meeting the rental inclusionary on-site obligation, staff suggests changing the 9% low-income units to moderate units not to exceed</p>		

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 6

Issue	Council Direction	Staff Recommendation
	<p>80% of area median income. This provides an incentive to developers to integrate the affordable units on-site, which is a goal. Last, a definition was provided in the ordinance for the (rental) very-low and low-income units as not to exceed 50% and 60% of area median income (AMI), respectively. These changes would take effect if the rental provision became effective as explained above.</p> <p>For Sale: The definition for for-sale moderate was defined as a unit priced to households at 110% of the AMI but could be sold to households earning no more than 120% of the AMI. Staff is recommending this provision in order to be consistent with State Redevelopment Law.</p> <p>Staff is recommending an additional off-site compliance option for for-sale housing that is consistent with the rental alternative outlined by the City Council.</p>	
<p>Partial unit refers to a situation where the percent aside requirement equals a non-whole number.</p>	<p>When an inclusionary obligation results in a fractional unit greater than 0.5, the obligation will be rounded up. The developer can choose to provide the unit or pay the pro rata in-lieu fee for the fractional unit.</p>	
<p>Threshold is the number of units that a project must hold to fall under the jurisdiction of the inclusionary ordinance. Section 5.08.330.B</p>	<p>Ordinance requirements will apply to developments with 20 or more units.</p>	
<p>Term of Affordability is the number of years an affordable unit must remain affordable under this ordinance. Section 5.08.600.B</p>	<p>Rental - Inclusionary units must remain affordable for 55 years. Owner - Inclusionary units must remain affordable for 45 years (the restriction can be removed with an equity-share buyout at the time of re-sale).</p>	
<p>Operative Date of Ordinance is the date the ordinance will become operative or go into effect Section 5.08.300</p>	<p>Ordinance becomes operative following a 12-month period in which building permits for 2,500 units have been issues, as long as 1,250 or more of the units have been issued outside of North San Jose.</p> <p><u>OR</u></p> <p>The ordinance will become operative no later than January 1, 2013 if the City Council passes a motion at least a month prior to that date authorizing the ordinance to become effective.</p>	<p>Six months after the first 12 month consecutive period in which 2,500 residential building permits have been issued by the City, of which no more than 1,250 are for Dwelling Units in the North San José Development Policy Area;</p> <p><u>OR</u></p> <p>January 1, 2013.</p>

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 7

Issue	Council Direction	Staff Recommendation
	<p>Rationale: In the public meetings held regarding the draft ordinance in July and September 2009, staff heard comments that developers would need more notice than the first day of the month following the issuance of 2,500 permits. Therefore, staff is recommending that Section 5.08.300.A of the proposed ordinance be changed to make the building permit related operative date: <i>“6 months after the first day of the month following the first 12-month consecutive period prior to January 1, 2013 in which two thousand five hundred (2,500) residential units have been issued...”</i></p> <p>The second change staff recommends is removing language in Section 5.08.300.B of the proposed ordinance that would require the Administration to return to City Council for further approval of the ordinance to become effective on January 1, 2013 at the latest. Once an ordinance is approved by City Council, it takes effect within 30 days of adoption and is not required to be re-approved or ratified at a later date. Staff is concerned that this last provision will create uncertainty in the market and planning process. Rather, staff suggests that it will distribute an Information Memorandum to the Mayor and City Council not less than six months from the January 1, 2013 operative date of the ordinance (in the event that the ordinance has not already become operable because the City has issued more than 2,500 residential building permits under that option), and will publicly post a notice to the development community. This should achieve the objective of informing the public and City Council of the upcoming operative date of the ordinance and will provide the Council with the opportunity to reconsider the ordinance if desirable at that time.</p>	
<p>Exemptions are situations in which developments will not be required to comply with the ordinance.</p> <p>Section 5.08.330</p>	<p>Developers meeting the following requirements will be exempt from the requirements of the ordinance:</p> <p>i.) All Units: Within 6 months of the operative date of the ordinance, the developer submits a signed, application, pays all required fees, and submits data required on a planning permit check list that was in place at time of ordinance adoption, for a planning permit (General Plan Amendment, Zone Change, CUP, site development, or PO permit) and environmental clearance pursuant to the provisions of the Zoning Ordinance and the Environmental Clearance Ordinance, and</p> <p>ii.) Projects 749 units or less: Within 24 months after the operative date of the ordinance, the developer receives an approved planning permit. Within 30 months after the operative date of the ordinance the developer receives an approved building permit.</p> <p>OR</p> <p>iii.) Projects of 750 units or greater: Within 30 months after the operative date of the ordinance, the developer receives an approved planning permit. Within 40 months after the operative date of the ordinance, the developer receives an approved building permit.</p> <p>AND</p> <p>iv.) Projects requiring phasing: The builder shall have 24 months from the pulling of the first building permit to pull the permits for the final</p>	<p>Residential developments which are not located, wholly or in part, within a Redevelopment Project Area that have obtained prior to the operative date one of the following: an approved (1) Development Agreement, (2) Disposition and Development Agreement, or (3) Planning Permit for which any and all appeals have been exhausted pursuant to Title 20. The Residential Development in a Planned Community (“PC”), as set forth in the General Plan as of the adoption date of this ordinance, for which a Specific Plan was originally adopted no later than 1992 such that the PC requires the construction of new on-site and off-site infrastructure on an incremental basis in conjunction with the Residential Development, provided that, unless otherwise vested, prior to the operative date of this ordinance, each of following apply:</p> <ul style="list-style-type: none"> ▪ One or more phases of the Residential Development have been completed in conformance with the Specific Plan. ▪ The completed phase or phases of the Residential Development have constructed

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 8

Issue	Council Direction	Staff Recommendation
	<p>phase. These times will be extended by the amount of time necessary to resolve delays imposed by city policy or regulations as well as non-city regulations</p> <p>If building permits are allowed to expire without construction of the project, the development will no longer be exempt from the ordinance.</p> <p>Rationale: Staff is concerned about the complexity of the requirements and the ability and time required for staff to track and monitor projects in accordance with these requirements. Staff recommends that it will still meet the Council's objective of providing an exemption for those projects that are well underway upon the operative date of the ordinance, but that more clarity and ease of administration can be accomplished with some changes to the Council direction. Staff recommends changing the exemption language in Section 3.04.300.F of the ordinance language so that developers meeting the following requirements will be exempt from the requirements of the ordinance if, prior to the operative date, the development has one of the above requirements. In addition, staff received feedback from the development community that the large scale development exception had been removed. As a result, staff has added an additional exemption for large scale developments which are part of a Residential Development and have been completed with a Specific Plan adopted no later than 1992 can receive an exemption if a building permit is pulled within 40 months of the operative date.</p> <p>The majority property owner in the Communication Hill Specific Plan area contends that any deadline for obtaining the first building permit may well inhibit any prospective developers of the remaining 2,500+ units from developing because they must finance in excess of \$200 million of extra ordinary infrastructure costs.</p>	<p>some, but not all, of the new infrastructure improvements consistent with the Specific Plan for the PC.</p> <ul style="list-style-type: none"> ▪ At minimum, one undeveloped portion of the site within the Specific Plan must obtain an approved building permit within forty (40) months of the operative date of this ordinance.
<p>Limited Waiver Section 5.08.400.B</p>	<p>When the gap between the market price and the calculated affordable price for homeownership units is within 5%, the developer is entitled to relief from his/her inclusionary obligation upon certification to the Housing Department of market prices in his/her development. The following provisions constitute the form of that partial relief:</p> <ol style="list-style-type: none"> 1. The home must be sold at the restricted price 2. No equity share provision will be required. 3. The unit must be owner-occupied. 4. No income verification of the buyer will be required. 5. Developer must re-certify that the relief is needed every six months. 	

Incentives for On-site Inclusionary Units

Issue	Ordinance	Staff Recommendations
<p>Density Bonus Section 5.08.440.A.1</p>	<p>The developer that provides the affordable units on-site may receive a density bonus equal to the percentage inclusionary housing required by the Ordinance, provided it is consistent with State density bonus law.</p>	
<p>Parking Space Requirement for Affordable Units allows developer to decrease the number of parking spaces required in developments with affordable units on-site. Section 5.08.440.A.2</p>	<p>With the approval of the Planning Department Director, a development that provides the affordable units on-site may be granted reduced parking requirements for the affordable units.</p>	
<p>Reduction in Minimum Setback Requirements Section 5.08.440.A.3</p>	<p>With the approval of the Planning Department Director, a development that provides the affordable units on-site may be granted altered setback requirements for the affordable units.</p>	
<p>Alternative Unit Type allows developers who build the affordable units onsite to build alternative types of units (i.e. townhomes) Section 5.08.440.A.4</p>	<p>Provided the affordable units are provided on-site and have the same bedroom count distribution as the market rate units, developers may provide affordable units that are a different product type than the development's market rate units.</p>	
<p>Alternative Interior Design Standards allow developers who build the affordable units onsite to utilize alternative types of interior finishes within the affordable units. Section 5.08.440.A.5</p>	<p>Provided the affordable units are provided on-site and have the same bedroom count distribution as the market rate units, the affordable units may use different interior design, appliances and materials than the market rate units.</p>	
<p>Expedited Review allows developers who build the affordable units on-site to receive expedited review from</p>	<p>A development that provides the affordable units on-site will be offered an expedited review process.</p>	<p>Due to the current financial situation, the Planning Department does not have the available financial resources to offer this off-set at this time.</p>

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 10

Issue	Ordinance	Staff Recommendations
<p>the City during the planning process. Section 5.08.440.A.6</p>	<p>Rationale: Staff recommends deleting this incentive, but retain the seven other incentives for on-site development. After many discussions with the Department of Planning, Building, and Code Enforcement current staffing levels and budget cannot support this effort.</p>	
<p>City Process Assistance allows developers who build the affordable units on-site to receive City assistance (such as development review and technical assistance)</p>	<p>A development that provides the affordable units on-site will be offered technical assistance, including assistance with the development review process, financing alternatives, and selling/renting the affordable units to qualified buyers/tenants.</p>	
<p>Financial Subsidies Section 5.08.44.A.8</p>	<p>The developer may apply for financial subsidies for the affordable units from federal and state funding sources.</p> <p>The developer may apply for City financial subsidy if demonstrated that more units or deeper affordability will be achieved than is required under the Ordinance.</p>	

Alternative Developer Compliance Options

Issue	Council Direction	Staff Recommendations
<p>Off-Site Construction is an alternative compliance option that allows developers to build the affordable housing units off-site from the market rate development. Section 5.08.510</p>	<p>Off site construction of affordable units may be in any planning area as long as the project is compatible with the city's affordable housing dispersion policies.</p> <ul style="list-style-type: none"> - The project must meet City quality standards. - Units developed in RdA area must provide off-site construction units in the same or another RdA area. 	

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 11

Issue	Council Direction	Staff Recommendations
<p>In Lieu Fee is an alternative compliance option that allows developers to pay a fee to the City in-lieu of building the affordable housing units.</p> <p>Section 5.08.520</p>	<ul style="list-style-type: none"> ▪ The per unit in-lieu fee amount will equal the amount stated in the staff recommendation except that fees for rentals, condos, and townhouses will be set at 15% less than the staff recommendation. The fee level will be reviewed on a biannual basis and readjusted by Council if a disproportionate number of projects pay fees rather than construct inclusionary units. • Fees shall be collected immediately prior to the issuance of certificates of occupancy; failure to pay fees shall delay the issuance of certificates. In order to ensure payment of the fees, the City will impose an affordability restriction/ affordable housing plan. • Rental Housing-- The per unit in-lieu fee amount will equal the average per unit City subsidy required for affordable new construction rental housing development in the prior year. • Ownership Housing—The per unit in-lieu fee amount will equal the “affordability gap,” or the gap between the cost of constructing the unit and the revenue collected from selling the unit at the affordable sales price. • High-Rise Housing—The per unit in-lieu fee for high-rise housing in the downtown will be reduced consistent with current or future Council direction • The City will use the in-lieu fees to provide funding for: <ol style="list-style-type: none"> 1. at least 30% of the funds collected will be used to develop housing for households earning at or below 30% of the AMI; • Cover reasonable administrative or related expenses associated with the administration of the ordinance, including funding for staff to implement expedited permit review. 	<p>Rental Residential Development:</p> <ul style="list-style-type: none"> • The in lieu fee for each Inclusionary Unit shall be no greater than the average City subsidy required for new construction of a rental residential unit at an Affordable Housing Cost for a Lower Income Household, with changes in the fee based upon commitments of City affordable housing development funding in the prior twelve (12) month reporting period specified in the Affordable Housing Guidelines. <p>For-Sale Residential Development:</p> <ul style="list-style-type: none"> • The in-lieu fee for each Inclusionary Unit in for-sale Residential Developments shall be no greater than the difference between the median sales price of all attached ownership units Citywide in the prior thirty-six (36) month reporting period specified in the Affordable Housing Guidelines and the Affordable Housing Cost for the average-sized attached for-sale Inclusionary Unit based on the Affordable Housing Cost for a Moderate Income Household. <p>Attachment D outlines the methodology utilizes to calculate the in-lieu fee.</p>

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 12

Issue	Council Direction	Staff Recommendations
	<p>Rationale: The in-lieu fee methodology must be legally justifiable, subject to ease and consistency of administration, and allow for periodic adjustment as may be necessary to support the goals of the inclusionary program. Staff performed an in-depth financial assessment to justify a reasonable in-lieu fee methodology. This analysis looked at the cost of developing market rate housing compared to the per unit subsidy that the housing department provides to affordable housing developments.</p> <p>Therefore, the ordinance was drafted with the following provisions related to for-sale and rental development in lieu fee methodology. Applicable to for-sale residential development, the in lieu fee methodology for each inclusionary unit is be no greater than the difference between the median sales price of a Market Rate Unit and the Affordable Housing Cost for an Inclusionary Unit based upon the Affordable Housing Cost for a Moderate Income Household.</p> <p>For rental residential development, the in lieu fee methodology for each inclusionary unit is to be no greater than the average City subsidy required for new construction of a rental residential unit at an Affordable Housing Cost for a Lower Income Household, with changes in the fee based upon commitments of City affordable housing development funding in the prior twelve (12) month reporting period specified in the Affordable Housing Guidelines. This provision will only become operative if the rental residential inclusionary housing requirement is operative as discussed in Section 2 above.</p> <p>Related to in lieu fees, but for information purposes only, there is a recent case decided on January 30, 2009 by the Fifth District Court of Appeal, <i>Building Industry Ass'n of Central California v. City of Patterson</i> (2009) 171 Cal.App.4th 886, where an affordable housing in lieu fee was invalidated as applied to a residential development project through an existing development agreement that required the fee to be reasonably justified. In <i>Patterson</i>, the reason the fee was invalidated as applied to this particular project was that the City had merely divided its projected cost of developing the City's regional share of affordable housing by the total number of projected market rate housing units in the City, raising the fee from \$736 to \$20,946 per unit. In San Jose, the developer's option to pay a fee in the proposed ordinance and the methodology therefore does not take the <i>Patterson</i> approach, nor does it affect any existing development rights conferred by development agreements, so it is unnecessary to modify the proposed ordinance as a result of the <i>Patterson</i> case.</p> <p>Finally, staff is not recommending a 15% reduction in fees for rentals and condominiums. This provision would under fund the affordable housing program and there is no secondary source with which the Department can utilize to backfill these needed funds.</p>	
<p>Land Dedication is an alternative compliance option that allows developers to donate land to the City in-lieu of building the affordable housing units.</p> <p>Section 5.08.530</p>	<p>The developer may provide developable land instead of providing units on-site if the site is suitable for residential development and the land value is sufficient to meet the inclusionary requirement without additional City funding.</p>	

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 13

Issue	Council Direction	Staff Recommendations
<p>Credit Trading or Credit Transfer – General is an alternative compliance option that allows developers to transfer or trade inclusionary unit credits to another developer in-lieu of building the affordable housing units.</p> <p>Section 5.08.540</p>	<p>Developers may transfer and/or trade inclusionary unit credits to pool together and build larger affordable projects off-site.</p>	
<p>HUD Restricted Preservation alternative compliance option allows owners of HUD multi-family buildings to receive an inclusionary housing unit credit for a certain number of existing HUD-restricted units.</p> <p>Section 5.08.560</p>	<p>An owner of a multi-family project that is subject to a HUD restriction that expires after the date of the ordinance takes effect can receive <u>a credit for one future inclusionary unit for every five HUD contract units</u> that the owner agrees to maintain at affordable levels for as long as HUD provides subsidies, but no less than <u>five years</u>.</p> <p>This benefit is not transferable from the owner to another developer.</p> <p>Rationale: In drafting the ordinance, a concern arose that the language requiring a 4:1 or 5:1 ratio for rehabilitation of market-rate or provision of HUD-restricted units as affordable units may not have a rational relationship to the basic inclusionary requirement nor to Council’s expressed desire that the in lieu options have some equivalency in cost so that one option will not be simpler or necessarily more desirable than another. Upon analysis, staff found that a more cost equivalent approach is a ratio of two acquisition/rehabilitated units to one new inclusionary unit and with some other additional requirements on the nature of the rehabilitation work. Therefore, staff recommends reducing the amount of the inclusionary developer in lieu option for acquisition/rehabilitation restricted units to require two acquisition/rehabilitated inclusionary units in lieu of one on-site inclusionary rate unit. Similarly, staff also recommends a 2:1 ratio be required for the developer option of providing two HUD-restricted affordable units in lieu of each inclusionary unit that would otherwise be required on-site.</p> <p>Last, staff recommends that a minimum affordability restriction be placed on these units of not less than 40 years so, in particular, that the use of such existing units as inclusionary units continues for the same length of time as all other required inclusionary units pursuant to the ordinance. The goal of inclusionary is to have affordable units continue to count toward the City’s regional housing needs allocation obligation for the maximum period authorized by law. Under Housing Element law, in order to count a preserved affordable unit, it must be affordable for period not less than 40 years.</p>	<p>For every <u>two units HUD contract units</u>, the owner will receive <u>one future inclusionary unit credit</u>.</p> <p>Units must remain affordable for <u>40 years</u>.</p>

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 14

Issue	Council Direction	Staff Recommendations
<p>Acquisition and Rehabilitation is an alternative compliance option that allows developers to acquire and rehabilitated existing blighted units. The rehabbed units will be affordable.</p> <p>Section 5.08.550</p>	<p>The developer may comply with the inclusionary obligation by acquiring and rehabilitating market-rate apartment units and converting them to affordable units. Developer must meet requirements that are stated in the administrative rules and regulations for the timing of commencement of rehabilitation work and completion of the rehabilitated units.</p> <p>Developers who acquire and rehabilitate existing housing units and market the units with deeded affordability restrictions shall receive one future inclusionary credit for every four units rehabilitated. There was no direction on the term of affordability for acquisition and rehabilitated units.</p> <p>Rationale: Same as rationale above for HUD restricted units.</p>	<p>For every two units, developer will receive one future inclusionary unit credit.</p> <p>Units must remain affordable for 55 years.</p>
<p>Combination Section 5.08.570</p>	<p>The developer may comply by combining alternative compliance options.</p>	

EVALUATION AND FOLLOW-UP

If the City Council adopts the ordinance, the City Administration will alert the City Council via an Information Memorandum three months prior to the ordinance becoming operative the earlier of the City reaching 2,500 building permits or January 1, 2013.

POLICY ALTERNATIVES

Alternative #1: Do not adopt the inclusionary housing ordinance

Pros: No administrative efforts

Cons: Once the market recovers, there will be an opportunity lost to provide a sustainable program to create more affordable housing.

Reason for not recommending: City staff has worked with stakeholders and the community for two years on the development of a fair and balanced ordinance. The draft ordinance represents the need and importance of providing affordable housing in our community, includes provisions that are sensitive to the recovery of the housing market, and provides a great deal of incentives to developers to make it feasible. To stop now would represent a lost opportunity for more affordable housing.

Alternative #2: Do not accept the staff recommended changes in the draft ordinance

Pros: This would provide City Council more opportunity to make changes and suggest improvements or provide direction to staff to adopted the provisions from December 2008.

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 15

Cons: May remove some significant concessions made to the development community and flexibility in the administration of the program. Also, this alternative will cost additional staff time and funding.

Reason for not recommending: City staff and stakeholders have spent many hours crafting and revising the draft ordinance in order to meet the major objectives of providing consistency, fairness, feasibility of implementation, while meeting City Council expectations. In most cases, the changes suggested by staff were made in response to concerns raised by the public and development community in order to provide more consistency and or flexibility to developers to meet the requirements of the ordinance or to provide a rationale basis for the requirement.

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)**

Over the course of the last two years, the City Administration has conducted extensive public outreach (over 70 meetings) through every phase of the policy development process. Since the City Council adopted the policy (December 2008) and the City released the draft ordinance in July 2009, the Administration has held 14 public meetings with the public and stakeholders to vet the draft ordinance. City staff received great feedback and as a result incorporated many of the suggestions received. Please refer to Attachment A for a list of these comments. Additionally, Attachment B outlines the public meeting schedule completed to date as part of the public outreach process.

COORDINATION

Preparation of this report has been coordinated with the San Jose Redevelopment Agency, Department of Planning, Building and Code Enforcement, and the City Attorney's Office. This recommendation aligns with the Five-Year Housing Implementation Plan adopted by City Council in 2007 and the Inclusionary Housing Policy adopted by the City Council in December 2008.

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2009

Subject: Approval of an Ordinance related to the Inclusionary Housing Policy Guidelines

Page 16

CEQA

Resolution # 65459, PP08-258.


LESLYE KRUTKO
Director of Housing

For questions please contact Leslye Krutko, Director of Housing at (408) 535-3851

Attachments (4)

ATTACHMENT A

COMMENTS RECEIVED DURING THE PUBLIC OUTREACH PROCESS: JULY 2009 – SEPTEMBER 2009

Issue/Option	Positive Comments/Suggestions Received	Negative Comments/Concerns Expressed	General Comments
<p>General Comments</p>	<ul style="list-style-type: none"> • Add an incentive for ELI housing. • The City needs the flexibility to put money where the need is. • Five years from the operative date the housing department should report on the results. • I appreciate that Very Low-Income is targeted in the ordinance. • I strongly support the date certain approach. 	<ul style="list-style-type: none"> • The ordinance omits housing for ELI, which has the greatest demand for housing in the City. 	<ul style="list-style-type: none"> • The City Council stated that 30% of in-lieu fees would go toward the development of ELI housing. • How much ELI housing do you think will be built under inclusionary? • ELI is missing from the restrictions of the affordable housing fund. • The shared appreciation payment appears useful. • The density bonus does not apply if developers use other off-sets. • Can you include “functional equivalent” in the definition section?
<p>Operative Date</p>	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • The language in the operative date section should be simplified. • The City should not give developers so much time before the ordinance goes into affect. • It seems the City will be missing out on a lot of opportunity for affordable units. • Six months seems like too long, I think 30 days would be more appropriate. • The City should provide ample time for developers to be prepared for the inclusionary ordinance. 	<ul style="list-style-type: none"> • Is there no 6 month date before the ordinance goes into effect? • The City should warn developers that the ordinance is going into effect. • This City should provide information between the trigger and operative date.

ATTACHMENT A

Issue/Option	Positive Comments/Suggestions Received	Negative Comments/Concerns Expressed	General Comments
Exemptions	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> How does this relate to a "specific plan zone" such as Communications Hill? 	<ul style="list-style-type: none"> It appears that all approved projects should be exempt up to the operative date.
Preservation	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Need to add council's direction on the preservation issue into the ordinance, it is currently not included.
In-lieu fee	<ul style="list-style-type: none"> These models seem rational based on what the City needs to provide if the developer doesn't build it. 	<ul style="list-style-type: none"> The in-lieu fee should include the cost of the development. If the in-lieu fee is zero, will the pressure valve kick in (not conditional as currently written)? The in-lieu fee doesn't allow developers to plan for the unexpected costs. 	<ul style="list-style-type: none"> The "average city subsidy" includes State and federal monies. Please clarify the difference between "no greater than" as oppose to "equal to." The in-lieu fee is separate for condos, townhomes, and single-family homes. Please describe the financial components of the rental in-lieu. What will the fee be? The Housing Department should use a time-series forecasting method to determine the in-lieu fee/cost of replacing an affordable limit. Most of the monies from the inclusionary ordinance in-lieu fee should go to ELL.

ATTACHMENT A

Issue/Option	Positive Comments/Suggestions Received	Negative Comments/Concerns Expressed	General Comments
<p>Acquisition/Rehabilitation</p>	<ul style="list-style-type: none"> The change in the term of affordability will keep units affordable for a longer period of time. 	<ul style="list-style-type: none"> The original ratio for acquisition/rehabilitation units was four to one. I am concerned about the change in the ratio to 2:1. 	<ul style="list-style-type: none"> The term of affordability was increased to fifty-five years.
<p>Pipeline</p>	<ul style="list-style-type: none"> Planning permits are issued bi-monthly and building permits should be easily tracked. 	<ul style="list-style-type: none"> The development time period was shortened. This raises concerns for developers. The ordinance does not provide enough advanced notice before it goes into effect. Under this draft, developers are losing three months from the Council's direction. Projects in the City are in jeopardy because of the bad economy. The City Council was trying to address these concerns. Projects of 750 or more are difficult to build in San Jose. This ordinance provides an inadequate amount of time. Developing large projects and obtaining PDO permits can be a long and extended process in the City. Perhaps multi-phase projects should be excluded from the ordinance. 	<ul style="list-style-type: none"> Please provide a definition of a planning permit in this ordinance. The ordinance should apply to multi-phase projects. What happens if you are building three towers, build tower one and come back and pull second permit for building two—will IZ apply in the second tower? Suggested that the Planning Department has the capacity to run the necessary reports to determine the City Council's version of allowing exceptions for pipeline projects.

ATTACHMENT A

Issue/Option	Positive Comments/Suggestions Received	Negative Comments/Concerns Expressed	General Comments
Legal Issues	<ul style="list-style-type: none"> Do not change course of the ordinance on the Palmer case, please keep the rental component in. 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> The City of Patterson case should be considered in the drafting of this ordinance. The Legislature will take action on the Palmer case. The relationship to market rate housing needs to be clear.

ATTACHMENT B

PUBLIC MEETING SCHEDULE– INCLUSIONARY HOUSING ORDINANCE

Topic	Attendees	Meeting Dates
Economic Feasibility Study – David Rosen & Associates	Stakeholders and Community Members	<ul style="list-style-type: none"> • December 11, 2007 – Special Study Session • January 17, 2008 - City Hall • February 13, 2008 – Northside Community Center • March 26, 2008 – City Hall • June 17, 2008 - City Council Meeting
Educational forum – What is inclusionary?	Community Members	<ul style="list-style-type: none"> • May 29, 2008 – Dr. Roberto Cruz Alum Rock Library • June 18, 2008 – West Valley Branch Library
Policy Components of Inclusionary Housing	Stakeholders and Community Members	<ul style="list-style-type: none"> • September 23, 2008 – Willow Glen Senior Center • September 25, 2008 – City Hall • October 6, 2009 – City Hall • October 23, 2008 – City Hall
Open forum on ways to finance and produce affordable housing	Stakeholders and Community Members	<ul style="list-style-type: none"> • October 14, 2008 - City Hall
One-on-One Meetings	Various Stakeholders (including but not limited to: non-profit and for-profit developers, community organizations, affordable housing advocates, labor associations, homebuilders association, Chamber of Commerce, California Apartment Association)	<ul style="list-style-type: none"> • Forty meetings held between August 2008 and November 2008.
Discuss of Policy Components and Draft Proposed Policy of Inclusionary Housing Ordinance	Community Members	<ul style="list-style-type: none"> • November 3, 2008 – Willow Glen Branch Library • November 6, 2008 – Edenvale Branch Library • November 10, 2008 – City Hall • November 10, 2008 - Special

ATTACHMENT B

		<p>City Council Meeting</p> <ul style="list-style-type: none"> • November 12, 2008 – Berryessa Branch Library • November 17, 2008 – City Hall • November 20, 2008 – Yo-Ai Kai Community Center • December 2, 2008 – Tully Branch Library • December 3, 2008 – Berryessa Community Center – Vietnamese American Community
Draft Inclusionary Housing Ordinance	Community Members	<ul style="list-style-type: none"> • July 21, 2009 – Berryessa Community Library • July 23, 2009 – Tully Community Library • September 8, 2009 – Willows Senior Center • September 22, 2009 – Southside Community Center • September 23, 2009 – City Hall • September 24, 2009 – West Valley Branch Library
Draft Inclusionary Housing Ordinance	Stakeholders	<ul style="list-style-type: none"> • July 16, 2009 – City Hall • July 20, 2009 – City Hall • September 17, 2009 – City Hall

ATTACHMENT C

INCOME CATEGORIES

INCOME CATEGORY	1	Household Size 2	3	4
Very-Low (31-50%) • Rental Only • Minimum wage workers in food service, retail and support services. • Security guard • Janitor • Bank teller • Paralegal	\$37,150	\$42,450	\$47,750	\$53,050
Low (51-79%) • Dental Assistant • Science Teacher • Librarian • Plumber	\$59,400	\$67,900	\$76,400	\$84,900
Median (80-119%) • Computer analyst • Engineer • Loan Officer • Insurance Agent	\$73,900	\$84,400	\$95,000	\$105,500
Moderate (120% +) • Administrative Service Manager • Education Administrator • Budget Analyst • Environmental Scientist • Healthcare Professional	\$88,600	\$101,300	\$113,900	\$126,600

*Employment incomes provided by the California Employment Development Department

City of San Jose
 Department of Housing
 October 26, 2009

ATTACHMENT D

INCLUSIONARY IN-LIEU FEES

The In-Lieu Fee is but one of several options a developer can choose from to satisfy a development's inclusionary housing obligation.

Were the ordinance operative in 2009, the following in-lieu fees would apply:

Rental Housing Developments

The in-lieu fee is based on the average per-unit City funding commitment approved for affordable housing projects in the 12-month period from April 1, 2008 through March 31, 2009.

<u>Date</u>	<u>Project</u>	<u>City Subsidy</u>	<u>No. of Units</u>
6/24/08	Cornerstone	\$6,300,000	52
9/30/08	McCreery Courtyards	\$7,900,000	92
12/9/08	90 Archer Street	\$4,580,000	41
3/18/09	Kings Crossing	<u>\$10,565,700</u>	<u>92</u>
	TOTALS	\$29,345,700	277

Dividing the total amount of City subsidies by the total number of units yields an average per-unit funding commitment of \$105,941, which, when rounded to the nearest one-hundred dollars, would result in an in-lieu fee of **\$106,000**.

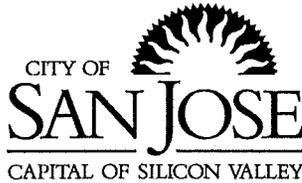
Ownership Housing Developments

The in-lieu fee for most development is based on the difference, rounded to the nearest one-hundred dollars, between:

- An affordable housing price for a moderate-income household of 2.5 persons for an attached product (based on an assumed average of 1.5 bedrooms);
- and
- The median sales price for all attached units in San Jose in the 36-month period from April 1, 2006 through March 31, 2009.

Median of 3 Years of Home Sales	\$485,000
Affordable Housing Price	<u>\$363,006</u>
Difference	\$121,994
Rounded Difference = In-Lieu Fee	<u>\$122,000</u>

Consistent with the current City/Redevelopment Agency Inclusionary Housing Policy for redevelopment project areas, the in-lieu fee for the first 2,500 units in high-rise developments in the Downtown area is recommended to be 50% of the Citywide rate, or **\$61,000**.



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: Joseph Horwedel
Katy Allen
Darryl Von Raesfeld
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: October 26, 2009

Approved

Date

11/1/09

COUNCIL DISTRICT: City-Wide
SNI AREA: All

SUBJECT: ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN VARIOUS FUNDS FOR REBALANCING THE PLANNING, BUILDING, PUBLIC WORKS AND FIRE DEVELOPMENT FEE PROGRAM BUDGETS

RECOMMENDATION

1. Adoption of the following 2009-2010 Appropriation Ordinance and Funding Sources Resolution amendments in the General Fund:
 - a. Decrease the Licenses and Permits (Building Fee Program) estimate by \$1,811,262;
 - b. Decrease the Licenses and Permits (Fire Fee Program) estimate by \$363,000;
 - c. Decrease the Departmental Charges (Planning Fee Program) estimate by \$722,323;
 - d. Decrease the Departmental Charges (Public Works Fee Program) estimate by \$1,001,335;
 - e. Decrease the Planning, Building and Code Enforcement Personal Services appropriation by \$1,872,242;
 - f. Decrease the Planning, Building and Code Enforcement Non-Personal/Equipment appropriation by \$171,000;
 - g. Decrease the Information Technology Personal Services appropriation by \$307,824;
 - h. Decrease the Information Technology Non-Personal/Equipment appropriation by \$153,800;
 - i. Decrease the Public Works Personal Services appropriation by \$937,611;

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 2

- j. Decrease the Fire Personal Services appropriation by \$217,983;
 - k. Decrease the Fire Development Fee Program Earmarked Reserve by \$80,273;
 - l. Decrease the Public Works Development Fee Program Earmarked Reserve by \$31,528;
 - m. Decrease the Planning Development Fee Program Earmarked Reserve by \$81,692;
 - n. Decrease the Building Development Fee Program Earmarked Reserve by \$37,091;
 - o. Decrease the Salary and Benefit Earmarked Reserve by \$6,876.
2. Adoption of the following 2009-2010 Appropriation Ordinance amendments in the Integrated Waste Management Fund:
 - a. Increase the Information Technology Personal Services appropriation by \$12,654;
 - b. Decrease the Ending Fund Balance by \$12,654;
 3. Adoption of the following 2009-2010 Appropriation Ordinance amendments in the Storm Sewer Operating Fund:
 - a. Increase the Information Technology Personal Services appropriation by \$12,654;
 - b. Decrease the Ending Fund Balance by \$12,654;
 4. Adoption of the following 2009-2010 Appropriation Ordinance amendments in the Water Utility Fund:
 - a. Increase the Information Technology Personal Services appropriation by \$8,436;
 - b. Decrease the Ending Fund Balance by \$8,436;
 5. Adoption of the following 2009-2010 Appropriation Ordinance amendments in the Sewer Service and Use Charge Fund:
 - a. Increase the Information Technology Personal Services appropriation by \$8,436;
 - b. Decrease the Ending Fund Balance by \$8,436;
 6. Elimination of 43.5 positions in Planning, Building and Code Enforcement (29.00), Public Works (11.50), and Information Technology (3.00) Departments included in Attachment A of this memorandum.

OUTCOME

The outcome of these actions will be to rebalance the Development Fee Programs (Planning, Building, Public Works and Fire) by closing an estimated \$3,898,000 gap between projected costs and projected revenues in 2009-2010. If development activity continues at its severely depressed pace, the gap in the Planning Fee Program is estimated to grow an additional \$470,000 and the Building Fee Program by an additional \$600,000 by the end of the fiscal year, which will require additional actions. The proposed budget actions included in this memorandum will bring the Development Fee Programs closer to the Council-approved 100% cost-recovery levels. An additional reduction of \$468,000 from the loss of overhead from the Development Fee Programs

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 3

to the General Fund will be included in the Mid-Year Budget Review scheduled for review in February.

In light of reductions taken in 2008-2009 and 2009-2010, in which the Development Fee Programs realized a total reduction of 97.68 positions (20.53 in Planning, 62.52 in Building, 9.63 in Public Works, and 5.0 in Fire), the incoming volume of relatively small development projects, and the backlog of applications that need to be processed, there will be service declines in the City's development process, especially those that are not full cost recovery. Specifically, customers are likely to experience longer wait times in the Permit Center, longer review cycle times for Planning, Fire and Building Plan review functions, and longer lead times for Fire and Building inspections. The four Development Fee Program Partners (Partners) are continuing to undertake process improvement efforts to provide services more efficiently; however, the capacity to invest in significant, new initiatives is being further eroded by the proposed reductions.

EXECUTIVE SUMMARY

The City provides a wide range of development services including, but not limited to, planning, zoning, permitting, environmental clearance, fire and building plan check, and construction inspection. These services are paid for through fees to cover the City's costs of providing those services at the City Council approved 100% cost-recovery level. The largest portion of fee program dollars traditionally has gone to pay for the salaries and benefits of the City employees who deliver those services to the paying customers.

In addition to rebalancing actions taken last January to resolve a projected revenue shortfall during 2008-2009, the 2009-2010 Adopted Operating Budget assumed a further decline in development activity and additional expenditure reductions were approved; however, it was not anticipated that the extent of the decline would be much steeper. As a result, the Development Fee Programs are currently facing a projected \$5.3 million gap between projected revenues and costs. A small portion of the shortfall was already addressed during the Annual Report with reductions taken in Planning (\$67,000), Building (\$373,000), and Fire's (\$470,000) non-personal/equipment and overtime allocations. At this time, the Administration is recommending additional budget actions that would close the gap by \$3.9 million (and \$0.5 million for overhead loss at Mid-Year), recognizing that additional actions may be required later this fiscal year if the projection of an additional \$1,070,000 shortfall in the Planning (\$470,000) and Building (\$600,000) programs becomes more likely.

This memorandum recommends that the City Council take actions to close the gap, including the elimination of filled and vacant positions, holding positions vacant, reallocating positions to other funding sources, reducing non-personal/equipment allocations, and using a limited amount of reserves. As in the past, the proposed budget actions include the use of the Planning, Building, Public Works, and Fire Fee Reserves, however, the Administration does not recommend bringing the reserves below the proposed amounts included in this memorandum in order to fund current works in progress and to maintain a contingency for unanticipated decreases in revenues in order to maintain a minimum service delivery to development customers.

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 4

BACKGROUND

In 2008-2009, the City Council approved reductions in the Development Fee Programs to reflect a significant decrease in development activity associated with the economic downturn. The four Development Fee Program Partners consist of Planning, Building and Code Enforcement (PBCE), Public Works, and Fire. Development fee revenue dropped such that, even with numerous staff vacancies, development fee revenues were projected not to cover that fiscal year's development services expenses. Among other actions, the City Council deleted 28 filled positions and 27 vacant positions, used \$4.5 million in reserves, reduced \$382,000 in non-personal/equipment costs, and saved over \$1.98 million in miscellaneous personal services savings. In all, this represented a reduction of \$8,498,000 for the Development Fee Programs in 2008-2009. At the time of the City Council actions, revenues for the Partners totaled \$34.4 million (Building, \$18.2 million; Planning, \$4.9 million; Fire, \$4.7 million; and Public Works, \$6.6 million).

Although these reductions were estimated to have minimal service delivery impacts, the Development Fee Programs did experience a decline in performance as staff was bumped, and the remaining staff adjusted to new, increased workloads as a direct result of staff reductions. Despite these reductions, however, the pace of development continued to decline and, for fiscal year 2009-2010, the revenue estimate was further reduced to approximately \$3,978,000 for the Planning Fee Program, \$16,959,000 for the Building Fee Program, \$5,388,000 for the Public Works Fee Program, and \$4,126,000 for the Fire Fee Program with no fee increases except for Public Works. A fee restructuring that was approved in 2009-2010 in the Public Works' Fee Program is now helping that program to recover the full cost of services provided. The Partners consequently further reduced staffing levels and currently the Development Fee Programs have a total of 22.11 Planning positions, 104.69 Building positions, 32.7 Public Works positions, and 25.0 Fire positions.

Development activity has continued to decline since the July projections, and, at the current rate of development activity, revenues are now estimated to be approximately \$2,500,000 for the Planning Fee Program, \$14,000,000 for the Building Fee Program, \$4,387,000 for the Public Works Fee Program, and \$3,293,000 for the Fire Fee Program. See Attachment B for information regarding Planning and Building development activity during the first quarter of 2008-2009 compared with 2009-2010.

Throughout 2009, a number of efforts have been implemented to control costs and improve productivity/efficiency. These include, but are not limited to:

1. Annual Report approved by City Council on October 20, 2009 which included reductions of over \$440,000 in the Planning and Building Fee Programs and \$470,000 in the Fire Fee Program by reducing non-personal, overtime and Fire's Earmarked Reserve.
2. Shifted two Building Inspection positions from the Building Fee Program to the Public Works capital program.
3. Shifted seven positions from the Public Works Fee Program to the Public Works capital program.

4. Focused service delivery to the fee paying customers who file applications and reduced non-cost recovery services (e.g., less staffing of phone service and walk-in inquiries at the Permit Center).
5. Consolidated Permit Center services to the first floor of City Hall to reduce redundancies of specialized staff on two floors.
6. Established online avenues for inspection times and appointments for application submittals to redirect customers to more time and cost efficient ways to access PBCE services.
7. Continued to streamline the review of non-cost recovery permits (e.g., noticing for Tree Removal Permits to code minimums).
8. Increased the workload of line staff given the higher volume of smaller types of development projects.
9. Designed an inspection schedule to balance the furlough with customer service.
10. Tightened cancellation procedures for Inspection and Special Programs (i.e., Industrial Tool Installation and Special Tenant Improvement).
11. Clarified for customers the minimum requirements for Planning application submittals.
12. Reorganized Public Works project teams to facilitate quicker decision making by more experienced staff.

ANALYSIS

The Partners used the following principles to determine the specific actions needed to maintain fiscal health by bringing projected costs as close as possible to projected revenues:

- Focus resources to front-line staff to provide the core development services of plan check, inspection, and planning.
- Maintain sufficient reserves to be able to provide service for which fees have already been paid;
- Communicate openly and frequently with employees, customers, and bargaining units regarding the fiscal situation and potential actions;
- Explore all feasible options for cost savings before considering lay offs, including restructuring service delivery and reducing non-personal expenses;
- Continue strategic, though now much more limited, investments in process improvements/streamlining and training to enable staff to do their best work and meet performance targets;
- Minimize disruptions to the customer and morale impacts to staff;

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 6

- Continue targeted adjustments to fees to cover the cost of specific services without assuming an across the board fee increase; and
- Organize staff resources to respond flexibly to changes in activity, including rapid response to economic recovery.

The Partners applied these principles in the careful evaluation of a variety of cost savings measures, including ideas that came forward from staff and the bargaining units. Specifically, the Partners have assembled a proposed package to close the \$3.9 million gap between costs and reduced revenues, as detailed below. Given that this is the third round of staff reductions within a single calendar year, the opportunities for reductions are severely limited.

This package, particularly the proposed cuts of filled positions, was very difficult to put together and was done thoughtfully and deliberately. For positions in other Departments funded by the Development Fee Programs, Department leadership coordinated closely to arrive at a mutually agreed upon package. Communication has occurred with the employees and bargaining units and will continue to occur as the budget rebalancing actions occur and we prepare for the 2010-2011 operating budget process.

Use of Reserves - \$238,000

The Development Fee Program Earmarked Reserves currently are Planning (\$0.5 million), Building (\$1.5 million), Fire (\$2.3 million), and Public Works (\$31,528). Limited use of these Earmarked Reserves is recommended. During the Annual Report, funding was returned to each Development Fee Program's Earmarked Reserve from the implementation of the employee concessions that were approved to preserve specific services as part of the Mayor's June Budget Message for 2009-2010 and the final approval of the 2009-2010 Operating Budget. These funds are recommended to be used to address the projected shortfalls in each of the programs. For the Planning Program, \$50,000 of the reserve is recommended to be used to extend one Planner proposed in this memorandum for elimination to June 30, 2010 to reduce the backlog (and therefore fee liability) of partially processed Planning applications, and \$32,000 is available from the employee concessions savings. This position temporarily offsets one of the reductions and prepares the Department to have a temporary resource on hand should the economy pick up and the position needs to be extended for some or all of 2010-2011. This is a reasonable use of the reserve because unspent fees are added to the reserve as an offset to the fiscal liability for projects on file that require staff time to complete. For the Building and Public Works Programs, the Departments recommend the use of their employee concessions savings of \$37,000 and \$32,000, respectively. For the Fire Department, \$65,000 of the reserve is recommended to be used for balancing purposes in order to maintain current performance and \$15,000 is available from the employee concessions savings.

The Administration does not recommend bringing the reserves below the proposed amounts. The purposes of the reserves are (1) to fund current works-in-progress for projects whose fees have already been remitted, but the work is not yet completed and (2) to provide a small contingency for unanticipated decreases in revenues in order to maintain a minimum service delivery to development customers. Based on past history of other economic downturns, San José's economic recovery from the current downturn will likely involve new development and/or improvements to existing properties. It is essential that the City has the necessary staff expertise on hand to respond promptly to development applications. The reserves provide that ability.

Non-Personal/Equipment Reductions - \$324,800

Non-Personal/Equipment budget savings in the Building Fee program of \$171,000 would be realized by reducing purchases to replace the Planning, Building and Code Enforcement Department's technology equipment, such as desktop PCs, scanners, and plotters. In alignment with the reductions in staffing levels, a corresponding decrease in training and supplies budget is also proposed. In addition, the Department is proposing reductions in the travel and other miscellaneous Non-Personal/Equipment expenditures. Funding for hardware and software maintenance for the various development systems is budgeted in the Information Technology Department and is used on a yearly basis to replace the servers and equipment needed to support the permitting, document management and Geographic Information Systems (GIS). Information Technology Non-Personal/Equipment budget savings of \$153,800 would be realized by reducing the number of software licenses to align with current usage and eliminating funding for GIS consulting and corrective programming services. While this funding is not normally essential for providing daily GIS services, should these services be required during the fiscal year for unplanned software repair, funding will need to be reallocated from other essential services in order to maintain critical Integrated Data Tracking System (IDTS) functionality. Additionally, should the City need to increase these limited users levels, the City may be obligated to fund prior years' maintenance costs on the de-funded portion of licenses.

Miscellaneous Personal Services Savings - \$771,000

The Departments have identified the following areas to reduce costs and realize additional savings of \$771,000:

- Reassignment of 3.50 development staff to capital work and rightsizing of capital program staff (\$155,000) The Public Works Department will temporarily reassign 3.50 positions to its capital program to generate Public Works Development Fee Program savings. In addition, the elimination of 9 vacant positions is proposed to facilitate the alignment of staff resources with the anticipated decline in capital activity. Unlike the other Partners, the vast majority of Public Works staff are funded by a still sizeable capital program. Knowing that the capital program will shrink considerably when the Airport and bond programs are completed in 2010-2011, the Department has, for the past year, been cutting positions that are vacated through retirements or resignations rather than filling them. In keeping with this strategy, the Department is recommending the elimination of 8.92 vacant FTE associated with the Public Works capital and utility programs that cannot be supported by project workload in the long-term. This approach allows the short-term reassignment of 3.5 filled positions to capital and utility work for the remainder of the fiscal year to keep capital projects on track and to postpone the budgetary and position rebalancing of its fee program until the 2010-2011 budget process in case development activity rebounds. In addition, two filled Program Manager II positions in the Public Works' capital program are proposed for elimination effective June 30, 2010 when the projects they are overseeing will be substantially completed.
- Vacancy Savings (\$218,000) The Fire Department recommends holding a Division Manager position vacant for one year and a Fire Prevention Inspector vacant for six months. This will allow the Department to minimize service level impacts and to allow flexibility should activity levels improve.

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 8

- Voluntary staff furlough (\$30,000). Several employees in the Planning and Building Fee Programs have signed up for the City's Voluntary Furlough and Special Reduced Work Week programs whereby employees schedule unpaid time at specific points during the fiscal year.
- Staff working across other City departments (\$49,000). A portion of an Information Systems Analyst position in the Information Technology Department that supports the Geographic Information Systems (GIS) application, who is funded by the Development Fee Program, can be reassigned and appropriately funded by Environmental Services Department funds.
- Miscellaneous Program Savings (\$319,000) The Public Works Department is anticipating the generation of savings in its fee program personal services appropriation when staff charge their paid time off to the Department's compensated absence appropriation. The Public Works Development Fee Program was removed from the Department's compensated absence program this year, but will continue to charge their paid time off to the compensated absence appropriation until the funds paid into the reserve in prior years by the fee programs are depleted.

Elimination of Vacant Positions - \$314,000

In order to address the revenue and expenditure imbalance in its Development Fee Program, the Departments have proposed the elimination of both vacant and filled positions. The positions that have been identified for elimination are from all levels of the organization and impact all levels and core services of Planning, Building and Code Enforcement, Public Works and Information Technology Departments, including inspection/plan check/planning, technology, clerical and administrative support, and key leadership positions. The positions proposed for elimination are included and detailed in Attachment A.

Elimination of Filled Positions - \$2,230,000

A total of 34 filled positions are recommended for elimination. Due to the slowdown in development activity that is projected to continue in 2009-2010, the proposed staffing complement matches projected revenue forecast expecting relatively small development projects; however, given the existing applications on file, the overall service to customers is expected to decline as discussed on the next page under "Service Impacts." As discussed earlier, a Planner position is recommended to be retained through the end of the fiscal year to address works-in-progress. The positions proposed for elimination are included and detailed in Attachment A.

The loss of three Information Technology (IT) positions, combined with an additional reduction in Development Services, will reduce support to supporting only essential operations, and stop any progress on improvements and upgrades to the Development Services website and the IDTS permitting system. Initiatives currently in progress such as the Chess Clock, Development Services website redesign, and Planning Fee restructuring will be on hold until such time when information technology resources can again be retained to focus upon these initiatives. Remaining IT staff dedicated to Development Services will focus solely on maintaining current functionality and, as such, IT services need to be carefully prioritized to only include essential operations; the full effect of staff displacements is yet to be determined.

The City's layoff rules, contained in the Civil Service Rules and the bargaining unit Memoranda of Agreement, provide certain rights and options to employees. With the use of these rules, employees

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 9

who are displaced from a job class may not necessarily be laid off from City employment -- they may retain a different City job through the "bumping" process, or be offered the opportunity for "redeployment" in lieu of layoff. The term "layoff" includes situations that result in an employee either leaving City employment involuntarily, or leaving his/her classification involuntarily. Employees whose positions are discontinued may have rights to other positions in their class. If there are no opportunities for reassignment, bumping, or other placement, then the employee may be separated from City service. "Reassignment" is the process for determining which employees may be relocated to different positions in the same classification or possibly to a lower classification. All impacted employees will receive a 30-day notice at the time this memorandum is public. Given the unique circumstances of each affected employee, Department management will be conducting one-on-one meetings with each impacted employee to keep the individuals apprised of their specific situation. All employees impacted by these actions will be evaluated on a case-by-case basis by the Human Resources Department during this time period.

Employees that are at risk of layoff, their co-workers and managers/supervisors will be provided with training and resources from the City's contracted provider for our Employee Assistance Program to assist them in dealing with this difficult situation. They will receive support and have a contact person in Human Resources that will answer any questions and assist them in the redeployment process. In addition, employees for which there are no opportunities for reassignment, bumping, or other placements that are separated from City service will be placed on a reinstatement list for their classification in order of seniority. Reinstatement lists shall be in effect for three (3) years from the date of the layoff from the class, and employees on these lists will have the right to be rehired into vacancies in the classification they held when laid off as they occur in the City. In most cases, the last day of service for employees who may be separated from the City as a result of the actions in this memorandum is November 27, 2009.

The City Administration is balancing compassionate handling of this situation with minimizing disruption of City services. While the direct and indirect effects go beyond the Development Services Partners, the Administration appreciates everyone's patience and understanding as we work through these challenging transitions as seamlessly as possible.

Service Impacts

The reductions recommended in this memorandum will affect service delivery through the loss of overall capacity and flexibility to accommodate unplanned assignments and referrals. While the intention is to continue to meet as many performance targets as possible, it is likely that cycle times for various services will increase due to the number of commitments already made for work activities and the sudden loss of resources. For example, wait times at the Development Services Permit Center will increase for walk-in customers. The reduction in flexibility to assign work and the desire to minimize hand-offs between staff will cause processing time to increase for Planning and Plan Check applications, and it is anticipated that fire and building inspections will have a schedule a couple of days out instead of the next day inspection customers currently experience. Because Public Works completed a thorough Business Model and User Fee Study last year, the revenue is now closely aligned with the workload. The proposed reduction of resources is commensurate with the reduction in permit review and inspection work. This means that the Department anticipates only near term performance level impacts due to the probability of projects being shifted from one project manager to another.

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 10

Development Services management will continue to collect and analyze performance data and make necessary service adjustments to minimize the impacts to our customers. For example, the smaller land use and construction projects typically involve applicants who are unfamiliar with development, requiring extra "handholding" by staff to get them through the process successfully. In the current environment, staff will have less opportunity for such "handholding" and instead will guide applicants to professional contractors, architects, etc. to assist them with their projects. Limited process improvements and training will continue in order to improve efficiencies in operations and continue to develop the remaining talent in the organization. Communication with the staff and customers will be on-going so that changes in service delivery can be discussed openly and ideas for improvement can be explored collaboratively.

EVALUATION AND FOLLOW-UP

The Development Fee Program Partners will continue to monitor development activity and revenues. If activity continues to decline beyond the revised projections discussed in this memorandum, then the City Council will be asked to take additional cost savings measures later this year and/or as part of the 2010-2011 budget process. Conversely, when development activity begins to increase, the Partners will seek to reinstate Engineers, Planners, and Inspectors temporarily in order to respond proactively and promptly to customer needs. If activity picks up substantially and is determined to be sustainable, then the City Council will be asked to take appropriate action to restore positions to ensure staff levels are adequate to respond to the customer demands of an economic recovery. As described earlier in this report, if positions are restored within three years, there is an opportunity for laid off staff to be reinstated.

The Partners are continuing to work together and with their customers to develop strategies to make targeted fee adjustments to improve cost recovery, as well as complete its analysis of services that are not cost recovery. The Partners may propose to modify, suspend, or eliminate such programs. Examples of PBCE programs that are currently not cost recovery include tree removal permits, Small Business Ambassador Program presubmittal consulting, and administrative handling of City taxes paid at building permit issuance.

POLICY ALTERNATIVES

Alternative #1: Reduce the Planning Fee Program by an additional \$465,000 and the Building Fee Program by an additional \$138,000 to match the projected revenue exactly.

Pros: The Planning and Building Fee Program would be sized to meet the projected revenue for the current fiscal year and may not need to make further reductions later.

Cons: At current staffing levels (before the cuts proposed in this memorandum), any absence due to sick time or vacation places burden on the remaining staff to cover not only their own work but also that of a colleague. With even fewer staff, these absences will be more noticeable as customers would not be receiving services because there would not be the resources to back up a colleague.

Reason for not recommending: The proposed cuts are a reasonable effort to close the budget gap while retaining necessary resources to complete works in progress and respond to customers trying to open businesses in the current economy.

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 11

Alternative #2: Increase Non-Personal/Equipment reductions in PBCE.

Pros: In view of rapidly declining permit activity, additional savings could be realized by increasing reductions in Non-Personal/Equipment costs, such as training, office supplies, office equipment, and contractual services. Additional savings of \$100,000 could be realized.

Cons: Staff may be limited in their ability to effectively and efficiently perform their jobs.

Reason for not recommending: While it is acknowledged that additional savings could be realized by further reducing the Non-Personal/Equipment budget, the Department firmly believes that additional reductions in this area would negatively impact the ability of the staff to do their daily work. As PCs and other technology equipment experience failures, staff currently is swapping out failed equipment for old equipment that is also barely functional. In addition, if the Department does not invest in even minimal staff training, the capacity to continue to provide efficient and effective service will noticeably decline. Additionally, since the Department currently has a very low Non-Personal/Equipment budget when compared to actual need, the possible reduction of only \$100,000 in this area could not be realized without significant impact.

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)
- X **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)

For 2009-2010, management has been tracking revenue and activity, and shared these trends with staff in smaller team meetings. An email to all PBCE staff was issued in early October acknowledging that budget adjustments would be coming forward for the City Council's consideration this calendar year. A meeting with all Public Works Development Services staff was held on October 1, 2009 to discuss all of the staff reassignments. Public Works had an all-hands Department Meeting on October 15, 2009 where the Development Services fiscal situation was discussed at length. In PBCE due to the severity of cuts, additionally, all management has had an "open door" to staff ideas, and these suggestions were taken seriously in the development of the proposed package. Communication occurred with the affected bargaining units to inform them of the revenue trends and likelihood of needed action prior to the preparation of this memorandum.

Once this memorandum is public, it will be distributed to employees and customers. City Management will also be talking on a one-on-one basis to all directly impacted staff and will utilizing the City Policy and Ordinances regarding layoffs.

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 12

COORDINATION

The preparation of this memorandum was coordinated with the Office of Employee Relations, City Manager's Office, Human Resource Department, Information Technology Department, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The proposal contained in this memorandum is consistent with the City of San Jose's goal of being fiscally responsible.

COST SUMMARY/IMPLICATIONS

As discussed in this memorandum, a package of cost savings proposals are recommended to close a \$3.9 million gap between projected revenues and costs in the Development Fee Programs. Specifically, if the City Council approves the proposed package, the Departments, will have revised budgets that reflect reduced revenues associated with smaller scale projects and several development activity projections. The Departments will be able to provide development services to new customers and work through older caseloads but with longer processing times. Work will continue to streamline processes to find greater efficiencies and explore other funding options for required activities, such as public records requests and citywide GIS development that have been subsidized by the Development Fee Programs.

HONORABLE MAYOR AND CITY COUNCIL

October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 13

BUDGET REFERENCE

The table below identifies the fund and appropriations that will be impacted from the actions recommended as part of this memo.

Fund #	Appn #	Appn #Name	Total Appn	Amount to Reduce	2009-2010 Adopted Operating Budget (Page #)	Last Budget Action (Date, Ord #)
001	0581	Planning, Bldg & Code Enf Personal Services	23,571,939	(1,872,242)	VIII-202	10/20/2009, 28653
001	0582	Planning, Bldg & Code Enf Non-Personal/Equip	2,602,809	(171,000)	VIII-202	10/20/2009, 28653
001	0431	Information Technology Personal Services	11,724,874	(307,824)	VIII-154	10/20/2009, 28653
001	0432	Information Technology Non-Personal/Equip	5,146,289	(153,800)	VIII-154	10/20/2009, 28653
001	0574	Public Works/Develop Personal Services	3,941,868	(937,611)	VIII-232	10/20/2009, 28653
001	0541	Fire Personal Services	147,395,225	(217,983)	VIII-100	10/20/2009, 28653
001	8636	Fee Supported Reserve-Fire	2,299,969	(80,273)	N/A	10/20/2009, 28653
001	8610	Fee Supported Reserve-Public Works	31,528	(31,528)	N/A	10/20/2009, 28653
001	8637	Fee Supported Reserve-Planning	487,000	(81,692)	N/A	10/20/2009, 28653
001	8609	Fee Supported Reserve-Building	1,483,926	(37,091)	N/A	10/20/2009, 28653
001	8853	Salary and Benefit	6,948,011	(6,876)	IX-52	10/20/2009, 28653
423	8999	Ending Fund Balance	3,213,788	12,654	VIII-154	10/20/2009, 28653
446	8999	Ending Fund Balance	296,937	12,654	VIII-154	10/20/2009, 28653
515	8999	Ending Fund Balance	X296,258	8,436	VIII-154	10/20/2009, 28653
541	8999	Ending Fund Balance	506,472	8,436	VIII-154	10/20/2009, 28653

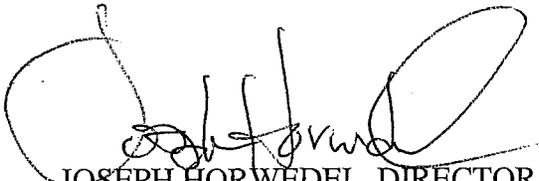
October 26, 2009

Subject: Rebalancing the Planning, Building, Public Works and
Fire Development Fee Program Budgets

Page 14

CEQA

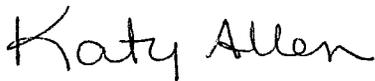
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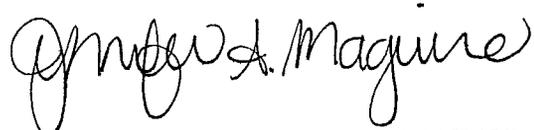
JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement



DARRYL VON RAESFELD, FIRE CHIEF
Fire Department



KATY ALLEN, DIRECTOR
Public Works



JENNIFER A. MAGUIRE, DIRECTOR
City Manager's Budget Office

For questions please contact Joseph Horwedel at 408-535-7900.

Attachment B

Activity Data:

High Volume Services	FY 07-08	FY 08-09	Q1 09-10
Planning applications	2,047	2,135	487
Building permits	25,500	21,294	5,349
Building plan reviews	11,010	9,204	2,028
Building inspections	194,619	124,969	28,219
Permit Center customers	46,332	33,894	9,312
Planning Calls Taken Live	8,833	8,277	1,867

Year to Year Comparison of Q1 Activity Data:

PBCE Activity	Jul 08	Jul 09	% Change	Aug 08	Aug 09	% Change	Sept 08	Sept 09	% Change
Planning Applications	230	153	-33.48%	194	177	-8.76%	172	157	-8.72%
Permit Center Customers	3,524	3,407	-3.32%	3,121	3,037	-2.69%	3,232	2,868	-11.26%
Building Inspections	13,935	8,988	-35.50%	11,804	10,320	-12.57%	13,444	8,911	-33.72%
Building Plan Reviews Conducted	979	681	-30.44%	923	708	-23.29%	849	639	-24.73%
Building Permits Issued	2,362	1,813	-23.24%	2,053	1,876	-8.62%	2,143	1,660	-22.54%
Planning Calls Taken Live	888	672	-24.32%	754	613	-18.70%	792	582	-26.52%

Positions Proposed for Elimination

Classification	Filled	Vacant	Total
<i>Planning, Building and Code Enforcement Department</i>			
Associate Architect	(1.00)		(1.00)
Associate Engineer	(1.00)		(1.00)
Building Inspection Manager		(1.0)	(1.00)
Building Inspector	(7.00)		(7.00)
Geographic Systems Specialist	(1.00)		(1.00)
Planner	(4.00)		(4.00)
Planning Technician	(2.00)		(2.00)
Principal Permit Specialist	(1.00)		(1.00)
Principal Planner	(1.00)		(1.00)
Program Manager II	(1.00)		(1.00)
Senior Account Clerk	(1.00)		(1.00)
Senior Office Specialist	(4.00)		(4.00)
Senior Permit Specialist	(1.00)		(1.00)
Senior Planner	(2.00)		(2.00)
Senior Systems Applications Programmer	(1.00)		(1.00)
	(28.00)	(1.00)	(29.00)
<i>Information Technology Department</i>			
Information Systems Analyst	(1.00)		(1.00)
Senior Systems Applications Programmer	(1.00)		(1.00)
Supervising Applications Analyst	(1.00)		(1.00)
	(3.00)	(0.00)	(3.00)
<i>Public Works Department</i>			
Construction Manager		(1.00)	(1.00)
Engineering Technician II		(1.00)	(1.00)
Engineering Trainee PT		(0.50)	(0.50)
Office Specialist	(1.00)		(1.00)
Principal Construction Inspector		(2.00)	(2.00)
Program Manager II	(2.00)		(2.00)
Senior Account Clerk		(1.00)	(1.00)
Senior Construction Inspector		(2.00)	(2.00)
Structure/Landscape Designer II		(1.00)	(1.00)
	(3.00)	(8.50)	(11.50)
GRAND TOTAL	(34.00)	(9.50)	(43.50)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: John Stufflebean
Jennifer Maguire

SUBJECT: SEE BELOW

DATE: 10-26-09

Approved

Date

11-2-09

SUBJECT: SIXTH AMENDMENT TO AGREEMENT WITH THE CITY OF SANTA CLARA FOR CONSTRUCTION SERVICES FOR SOUTH BAY WATER RECYLING PROGRAM

RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to negotiate and execute the Sixth Amendment to the construction service agreement with City of Santa Clara for the South Bay Water Recycling Program, revising the approved project list, increasing the maximum amount payable by \$3,000,000 to a total maximum amount not to exceed \$30,600,000 and extending the term of the agreement by eighteen months to December 31, 2011.
2. Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the San José-Santa Clara Treatment Plant Capital Fund:
 - a. Increase the appropriation to the Environmental Services Department for the Revised South Bay Action Plan – SBWR Extension by \$3,410,000; and
 - b. Decrease the Ending Fund Balance by \$3,410,000.

OUTCOME

Approval of the Sixth Amendment to the construction services agreement with the City of Santa Clara (Santa Clara) for South Bay Water Recycling (SBWR) will allow additional extension projects to be designed and built in Santa Clara. The approval of the appropriation actions will provide sufficient matching funds for an anticipated American Recovery and Reinvestment Act of 2009 (ARRA) grant from the U.S. Bureau of Reclamation, which in turn would provide for additional extension projects.

BACKGROUND

On May 24, 1995 the City of San José entered into an agreement with the City of Santa Clara (Santa Clara) in the amount of \$12.6 million for design and construction services to extend the recycled water system within the boundaries of Santa Clara. The City of San José and Santa Clara subsequently executed five amendments to the original agreement increasing the total compensation to \$27.6 million expanding the recycled water pipeline extensions to be constructed by Santa Clara, and providing funding for administration of a grant program to convert customers from existing potable water connections to the recycled water system.

Following successful completion and startup of the first phase of water recycling facilities the City of San José and the tributary agencies of the San José/Santa Clara Water Pollution Control Plant authorized the expenditure of up to \$100 million for the development and implementation of South Bay Water Recycling Phase 2. Of that amount, approximately \$83 million in Phase 2 facility improvements were built between 1998 and 2008, leaving approximately \$17 million in Phase 2 assets still remaining to be built.

ANALYSIS***Sixth Amendment to Santa Clara Agreement***

Since execution of the Fifth Amendment to the Santa Clara Agreement in March 2008, design work has been completed on two projects identified in that Amendment, and other recycled water expansions within Santa Clara have been identified given projected customer demand. As a result, there are now three Santa Clara projects that are scheduled to have environmental clearance from Santa Clara and be ready to proceed with final design and construction by the time that this memorandum is considered by the San José City Council. In addition, two other Santa Clara projects have been identified given potential customer demand, but further design work is needed in order to pursue environmental clearance.

The projects and the estimated design and construction costs associated with each are as follows:

Pipeline Extension	Description	Total Cost (\$)
Santa Clara Central Park (SC-6)	Design and construction of approx. 12,000 LF of 8-16 in. pipe to serve 115 acre-feet per year (AFY) to 52-acre Santa Clara Central Park and adjacent customers.	\$4,200,000
Santa Clara Industrial 1 (SC-9)	Design and construction of approx. 3000 LF of 8-12-inch pipe to serve 300 AFY for cooling and irrigation at data centers and other sites.	750,000
Santa Clara Industrial 2 (SC-8)	Design and construction of approx. 6500 LF of 12-in pipe to serve 140 AFY to Santa Clara industrial sites for cooling and irrigation.	1,900,000
Santa Clara Industrial 3A (SC-3)	Design of approx. 14,000 LF of 12-inch pipe to serve 500 AFY to industrial sites for cooling and irrigation.	250,000
Santa Clara Industrial 3B	Design of approx. 8340 LF of 12-in dia. pipe to serve 500 AFY to industrial sites for cooling and irrigation.	250,000
	Customer retrofits in Santa Clara	550,000
	Total cost	\$7,900,000
Available Under the current construction service agreement with the City of Santa Clara		4,900,000
Contract Amendment Required		\$3,000,000

It should be noted that the total cost for design and construction of pipeline extensions Industrial 3A and 3B is \$3.3 million and \$2.0 million, respectively. The funding required for the construction of the Industrial 3A extension (\$3.3 million) is available within the Revised South Bay Action Plan – SBWR Extension appropriation. The funding for the construction of the Industrial 3B extension (\$2.0 million) has not yet been identified, but may come from savings in current projects, additional federal funding, or require the use of fund balance. Staff will return to Council seeking appropriation actions for this project if savings are not identified.

For the projects listed in the table on the previous page, \$4.9 million is available in the Revised South Bay Action Plan – SBWR Extension appropriation for the existing construction service agreement with City of Santa Clara. An additional \$3.0 million is needed to cover the cost of additional work, including the design and construction of Santa Clara Central Park, Industrial 1, and Industrial 2; and design of Industrial 3A and Industrial 3B (\$500,000 total); and up to \$550,000 in retrofits to serve new customers in Santa Clara. The Sixth Amendment also revises the Agreement to require conformance with various provisions of the American Recovery and Reinvestment Act of 2009 (ARRA) funding program, to enable San José to continue to pursue federal funding for reimbursement of these project's costs.

The proposed Santa Clara Extensions include more than eight miles of recycled water pipe ranging between eight inches and sixteen inches in diameter. These pipelines will annually serve an additional 1,400 acre-feet of recycled water to irrigate Santa Clara Central Park and provide cooling water for data centers and other industrial facilities. This represents a significant increase in the amount of recycled water delivered by the SBWR system, reducing summer discharge flows from the San Jose/Santa Clara Water Pollution Control Plant by up to 3 million gallons per day (mgd) and generating up to \$250,000 per year in additional revenues under the current rate structure.

Appropriations Actions

Since the inception of the SBWR project, a total of \$31.7 million in federal Title XVI grants has been received through a Cooperative Agreement with the US Bureau of Reclamation for reimbursement of Phase 1 recycled water improvements. This represents a federal cost share to date for Phase 1 of approximately 23% of total eligible costs. In April 2009, San José applied for an ARRA grant from the US Bureau of Reclamation to fund additional extensions to the South Bay Water Recycling system, including some pipelines that had been identified for construction within the existing Santa Clara Agreement as well as some new pipelines. On July 1, 2009 the US Bureau of Reclamation notified San José of its intention to award up to \$6.46 million in ARRA funding to reimburse the City for construction of additional water reuse facilities. The final grant agreement has not yet been executed.

On July 23, 2009 the City submitted the requisite forms to initiate a new Cooperative Agreement with the US Bureau of Reclamation to apply the anticipated \$6.46 million award, and a \$8.33 million SBWR match towards the construction of a total of \$14.8 million of projects (see table below). This would bring the federal cost share of these projects to 44%. Of the SBWR match, \$4.9 million is encumbered by the existing Agreement with the City of Santa Clara for In-Kind Services and is available in the current South Bay Action Plan – SBWR Extension appropriation.

The remaining \$3,410,000 required to meet SBWR's match under the proposed Cooperative Agreement is recommended for appropriation to the Environmental Services Department for the Revised South Bay Action Plan – SBWR Extension project for this purpose. A corresponding decrease to Ending Fund Balance would fund this recommended appropriation action.

Unbudgeted grant revenue of \$3.1 million was received in 2008-2009 from the U.S. Bureau of Reclamation for SBWR projects. This unanticipated revenue has resulted in a higher than expected ending fund balance, and offsets most of the recommended appropriation action.

The table below describes the \$14.8 million in projects proposed to be funded under the Cooperative Agreement.:

Project Name	Description	Cost (\$M)
<u>Projects in San José</u>		
San José Airport Extension	Approx. 4500 LF of 12-inch pipe to serve 75 AFY to Norman E. Mineta-San José International Airport.	\$1.7
SBWR Laterals and Garden Improvements	Approx. 1500 LF of 6-12-inch pipe to serve 100 AFY to a community garden, civic buildings and access points in SBWR service area.	\$1.0
San José School Extensions	Approx. 1800 LF of 6-inch pipe to serve 75 AFY to four schools in central and south San Jose.	\$1.1
San Jose State University Improvements (SJSU)	Approx. 500 LF of 6-8-inch pipe to serve up to 150 AFY to SJSU campus for irrigation and indoor use.	\$0.8
<u>Projects in Santa Clara*</u>		
Santa Clara Central Park (SC-6)	Approx. 12,000 LF of 8-16-inch pipe to serve 115 AFY to 52-acre Santa Clara Central Park and adjacent customers.	\$4.2
Santa Clara Industrial 1	Approx. 3000 LF of 8-12-inch pipe to serve 300 AFY for cooling and irrigation at data centers and other industrial sites.	\$0.8
Santa Clara Industrial 2	Approx. 6500 LF of 12-inch pipe to serve 140 AFY to Santa Clara industrial sites for cooling and irrigation.	\$1.9
Santa Clara Industrial 3A	Approx. 14,000 LF of 12-inch diameter pipe to serve 500 AFY to Santa Clara industrial sites for cooling and irrigation.	\$3.3
Total Cost of Projects for Proposed Contract (\$M)		14.8
Proposed Federal ARRA Share (\$M)		6.5
Proposed Local Share – already encumbered and available (\$M)		4.9
Proposed Local Share – recommended for appropriation (\$M)		3.4
Total Proposed Funding for Projects		\$14.8

* The projects in Santa Clara to be funded by this Cooperative Agreement are included in the construction service agreement with City of Santa Clara for the South Bay Water Recycling

Program that is discussed in the "*Sixth Amendment to Santa Clara Agreement*" section of this memorandum.

PUBLIC OUTEACH

- ✓ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- 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. **(Required: E-mail and Website Posting)**
- 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. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

During the summer and fall of 2000 the cities of San José, Santa Clara, and Milpitas held public meetings on the local use of recycled water. Also, representatives of various stakeholder groups (e.g. Sierra Club, League of Women Voters, Silicon Valley Chamber of Commerce) met regularly in 1998 and 1999 to create the present plans for extension of the recycled water systems. In addition, staff members from the cities of San José (San José Municipal Water), Santa Clara and Milpitas, and San José Water Company have attended monthly meetings to review South Bay Water Recycling planning and operations.

COORDINATION

This memo has been coordinated with the City's Attorney's office, Human Resources Risk Management, and the City of Santa Clara. This memo is scheduled to be heard at the November 12, 2009, Treatment Plant Advisory Committee (TPAC) meeting.

FISCAL/POLICY ALIGNMENT

The tasks under this agreement support the Council's Green Vision Goal #6 by increasing the capacity of the South Bay Water Recycling system to "Recycle or beneficially reuse 100 percent of our wastewater (100 million gallons per day)."

COST SUMMARY/IMPLICATIONS

1. AMOUNT OF RECOMMENDATION FOR CONTRACT AMENDMENT:	\$3,000,000
Project Delivery	\$1,340,000
Construction	6,560,000
Total Current Year Costs	\$7,900,000
Prior Year Expenditures	22,700,000
Total Project Costs	\$30,600,000

2. SOURCE OF FUNDING: 512 – San José/Santa Clara Treatment Plant Capital Fund

3. OPERATING COST:

Approval of this Agreement is not expected to significantly increase South Bay Water Recycling annual operating costs, since new pressure-tested pipelines do not normally require much maintenance, and construction of all the proposed Santa Clara extensions will comprise only about eight miles of additional pipe increasing the total length of the pipeline network by less than 8%. While delivery of an additional 1500 acre-feet of recycled water per year amounts to an increase in usage of about 15%, this will correspond to an increase in operating costs of only about \$50,000 per year, primarily for additional pumping costs.

BUDGET REFERENCE

Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. for agreement with City of Santa Clara	Recommended Appropriation Action	Adopted Capital Budget Page	Last Budget Action (Date, Ord. No.)
Total Funding For Agreement					\$3,000,000			
Funding Available								
512	6589	Revised SBAP-SBWR Extension	062873	\$14,364,000	\$3,000,000*		V - 150	6/23/2009 Ord. No. 28593
Recommended Budget Actions								
512	8999	Ending Fund Balance	TBD	\$3,410,000**		\$3,410,000	V - 140	6/23/2009 Ord. No. 28593
Total Funding for Agreements					\$3,000,000	\$3,410,000		

* The \$3,000,000 for the Agreement with the City of Santa Clara is part of the \$14,770,000 package of projects under the proposed Cooperative Agreement with the US Bureau of Reclamation.

** The Current Ending Fund Balance is \$24,143,907. Funding of \$3,410,000 is recommended to be reallocated to the Revised SBAP – SBWR Extension appropriation as part of this memorandum. This would bring the current Ending Fund Balance to \$20,733,907, and the current Revised SBAP – SBWR Extension appropriation to \$17,774,000.

HONORABLE MAYOR AND CITY COUNCIL

10-26-09

Subject: Sixth Amendment To The Agreement With The City Of Santa Clara

Page 7

CEQA

Resolution No. 64667 (PP#91-04-090) and Addenda thereto scheduled for action by City of Santa Clara prior to action by San José City Council under the following reference numbers:

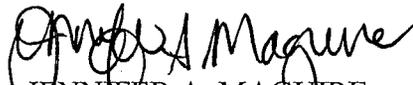
Santa Clara Central Park: PLN 2009-07751; CEQ 2009-01085.

Santa Clara Industrial 1: PLN 2009-07749, CEQ 2009-01083

Santa Clara Industrial 2: PLN 2009-07616, CEQ 2009-01080



JOHN STUFFLEBEAN
Director, Environmental Services



JENNIFER A. MAGUIRE
Budget Director

For questions please contact Mansour Nasser, Deputy Director, at (408) 277-2558.