



# Memorandum

**TO:** HONORABLE MAYOR, CITY  
COUNCIL AND REDEVELOPMENT  
AGENCY BOARD

**FROM:** Harry S. Mavrogenes  
Debra Figone

**SUBJECT:** SEE BELOW

**DATE:** 12-17-09

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**COUNCIL DISTRICT:** 3

**SUBJECT: DEFERRED PAYMENT OF PARKLAND IN-LIEU FEES FOR HIGHRISE MULTI-FAMILY RESIDENTIAL PROJECTS LOCATED IN THE DOWNTOWN CORE AREA**

## RECOMMENDATIONS

It is recommended that the City Council and Redevelopment Agency Board take the following actions related to the deferment of parkland in-lieu fees for high-rise multi-family residential projects located in the Downtown Core Area:

- (a) Adoption of a resolution by City Council to amend Council Resolution No. 73587 authorizing the City Manager to negotiate and execute an amendment to agreements with developers of high-rise multi-family residential projects located in the Downtown Core Area who previously executed a deferment agreement with City pursuant to Resolution No. 74382 to provide up to an additional thirteen (13) months for payment of parkland in-lieu fees and accrued interest owed to City.
- (b) Subject to City Council approval of Recommendation (a) above, adoption of resolutions by City Council and Redevelopment Agency Board authorizing the City Manager and Executive Director the authority to negotiate and execute an amendment to the Cooperation Agreement between the City and Redevelopment Agency executed on January 27, 2009 for the City to reimburse the Agency the total amount of \$3,297,000 previously provided by the Agency to City for Watson Park.
- (c) Adoption of the following Appropriation Ordinance amendments in the Subdivision Parks Trust Fund:
  - a. Establish a Transfer to the Redevelopment Agency for Watson Park Repayment in the amount of \$2,750,000; and

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- b. Decrease the Martin Park Expansion appropriation to the Parks, Recreation, and Neighborhood Services Department by \$2,750,000.
- (d) Adoption of the following Appropriation Ordinance amendments in the General Fund:
- a. Establish a Transfer to the Redevelopment Agency for Watson Park Repayment in the amount of \$547,000; and
  - b. Decrease the Watson Site Clean-up and Restoration appropriation to the Public Works Department by \$547,000.

### **OUTCOME**

Approval of the recommendations of this memorandum will ensure that the City can continue to encourage and facilitate high-rise construction in the Downtown Core Area, while, at the same time, ensuring the obligations are met for the payment of parkland in-lieu fees.

### **BACKGROUND**

Parkland in-lieu fees are generally required to be paid to City prior to the issuance of a building permit for the residential project or no later than one (1) year from the date of the approval of the final or parcel map, whichever occurs first. On January 9, 2007, City Council adopted Resolution No. 73587 allowing developer of high-rise multi-family residential projects located in the Downtown Core Area to defer payment of in-lieu fees to no later than the scheduling of the final inspection for the first certificate of occupancy. Instead of having to pay City the parkland in-lieu fees prior to the issuance of a building permit, developers of high-rise multi-family residential projects in the Downtown Core Area were eligible under Resolution No. 73587 to enter into written agreements with City to defer the payment until the scheduling of the final inspection for the first certificate of occupancy.

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

On May 20, 2008, City Council adopted Resolution No. 74382 amending Resolution No. 73587 authorizing the City Manager to enter into written agreements with high-rise housing developers to provide an additional deferment of up to eighteen (18) months for payments of parkland in-lieu fees for certain high-rise housing developments in the Downtown Core Area under the following conditions:

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1. City Manager finds that deferred payment of the in-lieu fees for the duration contemplated in the agreement will not substantially interfere with the construction schedule of any park or recreational facilities to be funded by the in-lieu fees to be deferred; and
2. Developer to pay interest that the deferred in-lieu fees would have earned had the payment occurred; and
3. The period in which such agreements can be made will terminate on July 1, 2009; and
4. Written agreement to be fully executed and recorded; and
5. Developer provide collateral to City for the deferred fees and interest; and
6. Certificate of Occupancy withheld on at least ten percent (10%) of residential units located within the project until deferred fees and interests are paid in full; and
7. Maximum length of the deferment for each eligible project is eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy.

On February 12, 2007, City and Almaden Tower Venture, LLC ("Developer") entered into a First Amended Parkland Agreement pursuant to Resolution No. 73587 to defer parkland in-lieu fees in the amount of \$3,297,000 until the scheduling of the final inspection for the first certificate of occupancy for the project. Developer constructed a 22 story condominium high-rise project on the southwest corner of Carlyle Street and Notre Dame Avenue. On August 1, 2008, City and Developer entered into a Second Amended Parkland Agreement pursuant to the terms outlined under Resolution No. 74382 to defer the parkland in-lieu fees (plus interest) for up to six (6) months (from August 1, 2008 to February 1, 2009). The reason the City only agreed to a six (6) month extension was because City anticipated commencing construction on Watson Park in early 2009 and needed the outstanding payment of in-lieu fees of \$3,297,000 (plus interest) for that project.

Developer requested an additional extension of up to twelve (12) months under Resolution No. 73587, as amended, (from February 1, 2009 to January 31, 2010) prior to the expiration of the Second Amended Parkland Agreement. However, City was unable to grant such extension unless there was an alternative source of funding for Watson Park and the City Manager makes a finding under Resolution No. 74382 that additional deferment of twelve (12) months would not substantially interfere with the construction schedule of Watson Park. On January 27, 2009, the City Council and Redevelopment Agency Board approved a cooperation agreement between the City and Redevelopment Agency to provide a payment of \$3,297,000 from the Agency to the City. This funding matched the payment owed to City by Developer and allowed City to proceed with the re-construction of Watson Park and enter into a Third Amendment with the Developer.

A Third Amended Parkland Agreement was entered into between City and Developer on or about February 23, 2009. This Third Amendment deferred Developer's payment to January 15, 2010, substantially within the maximum time (18 months) allowed under Council Resolution

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73587, as amended. The cooperation agreement between the City and Agency also provides for the following:

- When City receives deferred payment from Developer it will be paid by City to the Agency within seven (7) business days;
- City will assign its rights under the Agreement and associated collateral to the Agency if the Developer fails to fully pay the City the deferred parkland in-lieu fees and interest in a timely manner.

Almaden Towers Venture, LLC is the only developer who entered into an agreement with the City under Resolution No. 73587, as amended. Due to the continued economic downturn, Developer has requested an additional deferral of up to twelve (12) months (from January 15, 2010 to January 15, 2011) to pay the deferred parkland in-lieu fees. This would defer the payment of the parkland in-lieu fees for this project for more than the maximum eighteen (18) months authorized under Resolution No. 73587, as amended, and, therefore, will require Council action to adopt a resolution amending Resolution No. 73587.

### ANALYSIS

The continued economic downturn has led Developer to request an additional extension of twelve (12) months to pay its parkland in-lieu fee to City in the amount of \$3,297,000 (plus interest). City has provided three previous deferments. The first deferment under Resolution No. 73587 authorized Developer to pay the parkland in-lieu fees on or before the scheduling of the final inspection for the first certificate of occupancy. The second deferment under Resolution No. 73587, as amended, provided an additional six (6) months deferment and required Developer to pay the in-lieu fees on or before February 1, 2009. The latest deferment was for an additional twelve (12) months under Resolution No. 73587, as amended, and will expire on January 15, 2010. Developer has received deferments totaling more than thirty-six (36) months. Developer is now requesting an additional deferment of twelve (12) months. Due to budget constraints, Agency will require the repayment of \$3,297,000 it previously provided for Watson Park on or before February 15, 2010. Therefore, there are two options available to the City:

- 1) City could provide notice to Developer and its surety company of the pending January 15, 2010 payment deadline and the City/Agency's intention to pursue collection of the outstanding parkland fees and interest if Developer does not pay by the deadline.
- 2) City provides Developer with an additional deferment until February 15, 2011 under the same conditions outlined in Resolution No. 74382 and require Developer to extend the performance bond with its surety company for the extended period of time and to increase the bond in the amount of \$150,000 to cover the estimated interest. City would pay back to the Agency the \$3,297,000 from a combination of Park Trust and Watson

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Site Clean-up and Restoration Funds and City would replenish these funding sources in January 2011 when the Developer pays the outstanding parkland fees and interest.

Staff recommends the second option to provide an additional deferment for the Developer in order to help facilitate high-rise construction in the Downtown Core.

The Park Trust funds that currently are available to used to repay the Agency are allocated to the construction of Martin Park. Construction of Martin Park is scheduled to begin in Spring 2010. However, staff is currently evaluating the potential to defer this project due to the lack of operation and maintenance funding and will recommend to Council to defer the construction of Martin Park until 2011.

The construction start date for Martin Park will be deferred until at least Spring 2011 if Council authorizes the use of money appropriated for Martin Park to reimburse the Agency.

The Park Trust Fund fees currently allocated to Martin Park that will be used for this payment were collected by the City in July and August 2008. These fees must be committed to a specific park project benefiting the project that paid the fees within five years of the collection date. In the event the Developer fails to timely make payment of the parkland fees owed, the City may need to repay the residents of the projects that paid the fees if parkland fees are not committed to an eligible project within five years of the date of collection. If the Developer fails to pay the City by the extended deadline of February 15, 2011, City will need to make a claim against the surety company to recover the outstanding fees and interest and/or find another funding source, such as the General Fund, to reimburse the Park Trust Fund to meet the statutory requirements.

In order to accommodate this latest request, Council Resolution No. 73587 must be amended in order to extend the maximum deferment period of eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy for certain high-rise multi-family downtown residential development. The proposed resolution would authorize the City Manager to grant an additional deferment of up to thirteen (13) months if it is determined by the City Manager that the deferred fees would not substantially interfere with the construction schedule of any park or recreational facilities that would be funded by the deferred fees. The reason for thirteen (13) as opposed to twelve (12) months is to allow for sufficient time in January 2011 to collect the developer's payment as opposed to attempting to collect the payment during the holiday period. In the case of Developer, since the City will delay the construction of Martin Park due to our own operating and maintenance budget constraints, the City Manager could make this finding as the reimbursement of the outstanding amount owe to the Agency from money appropriated for Martin Park will not be used for any park or recreational project within the next year.

This proposed additional thirteen (13) month deferment would only be eligible to those developers that have previously executed a deferment agreement by July 1, 2009 as outlined in Resolution No. 74382. Almaden Towers Venture, LLC is the only developer that has executed such an agreement with the City and therefore, the proposed resolution would only apply to

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them. No other developer would be eligible for the additional thirteen (13) month deferral under the proposed resolution.

If the proposed resolution is adopted by Council, consistent with prior agreements and the proposed resolution, the amended Parkland Agreement with Developer would require Developer to (1) pay all outstanding parkland in-lieu fees and interest on or before February 15, 2011; (2) record the written agreement against the project; (3) pay interest on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the deferred period; (4) provide collateral for the payment of the deferred in-lieu fees and estimated interest; and (5) withhold certificate of occupancy on the remaining ten percent (10%) of the residential units in the project until the deferred fees and interest are paid in full to City. Staff is also working with the developer to establish a progress payment plan in order to reduce the outstanding obligation prior to the end of the proposed extension. In addition, prior to January 15, 2010, Developer would be required to (1) extend the expiration date of their bond with its surety company to March 15, 2011 and adjust it to include the additional estimated interest to be accrued; (2) sign the amended parkland agreement with the City under the terms and conditions adopted by Council in the new resolution. If any one of these items is not completed by noon on January 15, 2010, City may need to protect its right and send a letter to the Developer and its surety company requiring payment of the parkland fees and interest in full.

In addition to the amendment of Resolution No. 73857 and an amended Parkland Agreement with the Developer, City and Agency are seeking authority to negotiate and execute an amendment to the Cooperation Agreement entered into between the parties on January 27, 2009, which would amend the Cooperation Agreement to provide that if City elects to enter into an amended Parkland Agreement with Developer to defer the parkland fees and interest, City shall reimburse Agency \$3,297,000 on or before January 15, 2010. In addition, when City receives the payment from the Developer for the interest for the deferral period from February 1, 2009 through January 15, 2010, City will provide this payment to the Agency. This amount shall be considered full payment for Agency's previous contribution to Watson Park in the amount of \$3,297,000 under the Cooperation Agreement executed on January 27, 2009.

### **EVALUATION AND FOLLOW-UP**

Action taken by City Council on this item will allow staff to continue to work with Almaden Tower Venture, LLC to assist them in deferring their park fees and facilitate future high-rise construction in the Downtown Core Area.

### **POLICY ALTERNATIVES**

Policy alternatives are discussed in the analysis section of this memo.

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**PUBLIC OUTREACH/INTEREST**

- 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)**

This item meets Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater. This memorandum will also be posted on the City's website for the January 12, 2010 City Council agenda.

**COORDINATION**

This item has been coordinated with the Department of Parks, Recreation and Neighborhood Services, the City Attorney's Office, and the City Manager's Budget Office.

**COST SUMMARY/IMPLICATIONS**

This recommendation has no impact to the operational budget. The implications to the Capital Improvement and Parks Trust Fund are discussed in the analysis section of this memo.

**CEQA**

CEQA: PP 07-130, Mitigated Negative Declaration.

  
DEBRA FIGONE  
City Manager

  
HARRY S. MAVROGENES  
Executive Director

For questions please contact Matt Cano, PRNS Division Manager, at 408-535-3580