



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso

SUBJECT: SEE BELOW

DATE: 12-06-10

Approved

Date

12/16/10

COUNCIL DISTRICT: 3

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

RECOMMENDATION

Adoption of a resolution to amend the Schedule of Parkland Fees and Credits (Council Resolution No. 73587, as amended) authorizing the City Manager to negotiate and execute an amendment to agreements with developers of highrise multi-family residential projects located in the Downtown Core Area who previously executed a deferment agreement with City to provide up to an additional twelve (12) months for payment of parkland in-lieu fees and accrued interest owed to City.

OUTCOME

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

BACKGROUND

Parkland 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 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 highrise 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 parkland fees prior to the issuance of a building permit, developers of highrise multi-family residential projects in the

Downtown Core Area were eligible under Resolution No. 73587 to enter into written agreements with the 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 Highrise 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 18 months with highrise housing developers in the Downtown Core Area to provide an additional deferment of payments of parkland 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 highrise housing developers to provide an additional deferment of up to 18 months for payments of parkland in-lieu fees for certain highrise housing developments in the Downtown Core Area under the following conditions:

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

On August 1, 2008, City and Almaden Tower Venture, LLC ("Developer") entered into a Second Amended Parkland Agreement pursuant to the terms outlined above to defer parkland in-lieu fees in the amount of \$3,297,000 (plus interest) for up to six months (from August 1, 2008 to February 1, 2009). Developer is constructing a 22 story condominium highrise project on the southwest corner of Carlisle Street and Notre Dame Avenue. The reason the City only agreed to a six month extension was because City anticipated commencing construction on Watson Park in early 2009 and needed the outstanding payment of parkland fees of \$3,297,000 (plus interest) for that project. Developer previously requested an additional extension of up to 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)

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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 the 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, within the maximum time (18 months) allowed under Council Resolution 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 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 fees and interest in a timely manner.

The Developer is the only entity that entered into an agreement with the City under Resolution No. 73587, as amended. Due to the continued economic downturn, Developer requested an additional deferral of up to 12 months (from January 15, 2010 to January 15, 2011) to pay the deferred parkland fees. On January 12, 2010, City Council adopted Resolution No. 75249, the fourth amendment to Resolution No. 73587, providing an additional extension of up to 13 months for deferral of parkland in-lieu fees. This Fourth Amendment deferred Developer's payment to February 15, 2011 within the maximum time (31 months) allowed under Council Resolution No. 73587, as amended.

Concurrently on January 12, 2010, City Council adopted Resolution No. 75250 authorizing the City Manager to negotiate and execute an amended and restated Cooperation Agreement with the Agency providing City reimbursement to Agency the total principal amount of \$3,297,000 previously provided for Watson Park to the Agency. Reimbursement was made prior to February 15, 2010 by utilizing Park Trust Funds allocated to Martin Park totaling \$2,750,000 and Watson Park Site Clean-up and Restoration appropriation within the General Fund totaling \$547,000.

ANALYSIS

The continued economic downturn has led Developer to request an additional extension of 12 months to pay its parkland to City in the amount of \$3,297,000 (plus interest). City has provided four 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,

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provided an additional six months deferment and required Developer to pay the in-lieu fees on or before February 1, 2009. The third deferment under Resolution No. 73587, as amended, was for an additional 12 months and expired on January 15, 2010. The latest deferment was for an additional 13 months and will expire on February 15, 2011. Developer has received deferments totaling more than 30 months. Developer is now requesting an additional deferment of 12 months, from February 15, 2011 to February 15, 2012.

Staff is recommending an additional deferment until February 15, 2012 under the same conditions outlined in Resolution No. 75249 and require Developer to:

- a. pay the City \$200,000 toward accrued interest to date on the outstanding parkland fees on or before February 15, 2011; and
- b. extend the performance bond with its surety company for the extended deferment and to increase the bond in the amount of \$150,000 to cover the anticipated interest through the extension period ending February 15, 2012; and
- c. make three quarterly installment payments on May 15, 2011, August 15, 2011 and November 15, 2011 based upon units sold within each quarter on the outstanding parkland fees and interest and one final balloon payment due on or before February 15, 2012.

Staff recommends the above option to provide an additional deferment for the Developer in order to help facilitate highrise construction in the Downtown Core.

The allocated Park Trust Funds to the construction of Martin Park are currently impacted. Construction of Martin Park was previously deferred from Spring 2010 to Spring 2011 due to the need to reimburse the Agency and a lack of funding for operations and maintenance. Although the Agency has been reimbursed, the lack of operation and maintenance funding remains and construction of Martin Park will not commence until long term funding is identified for operation and maintenance.

Notwithstanding the operations and maintenance funding issues at Martin Park, the parkland fees currently allocated to Martin Park 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 make timely payment of the parkland fees owed, the City may need to repay the residents of the projects originating the fees if parkland fees are not committed to an eligible project within five years of the collection date. If the Developer fails to pay the City by the extended deadline of February 15, 2012, City must make a claim against the surety company to recover the outstanding parkland 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. Due to projected budget constraints upon other funding sources such as the General Fund, reimbursing the Parks Trust Fund from alternative sources does not appear to provide viable options.

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Council Resolution No. 73587, as amended, must be amended in order to extend the maximum deferment period of 31 months from the date of the scheduling of the final inspection for the first certificate of occupancy for certain highrise multi-family downtown residential development. The proposed resolution would authorize the City Manager to grant an additional deferment of up to 12 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. Since the City will delay the construction of Martin Park due to our own operating and maintenance budget constraints, the City Manager may conclude that there is no substantial interference with the construction schedule of any park or recreational facility, particularly Martin Park, within the next year.

This proposed additional 12 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 agreement with the City and therefore, the proposed resolution would only apply to them. No other developer would be eligible for the additional 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, 2012; (2) record the written agreement against the project; (3) pay \$200,000 toward interest on the deferred parkland 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 parkland fees and estimated interests; 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. Should any one of these items is not completed by noon on February 15, 2011, City may need to protect its right and send a letter to the Developer and its surety company requiring payment of parkland fees and interest in full.

In addition to the amendment of Resolution No. 73857 and an amended Parkland Agreement with the Developer, City seeks to complete its obligations with the Agency as described in the restated and amended Cooperation Agreement entered into between the parties on January 7, 2010. City shall reimburse the Agency for actual interest accrued from February 1, 2009 through January 15, 2010 and will be considered full payment for Agency's previous contributions to Watson Park. This is the time period for which the Agency was fronting the funding for the developer's parkland fee extension.

Upon Developer's payment to City of \$200,000 toward interest to date, the actual interest accrued will be transferred from the City to the Agency within seven business days and close the restated and amended Cooperation Agreement. The remaining balance will be placed in the Park Trust Fund and General Fund.

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 highrise construction in the Downtown Core Area.

POLICY ALTERNATIVES

Not applicable

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 11, 2011 City Council agenda.

COORDINATION

This item has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

FISCAL POLICY/ALIGNMENT

This Project is consistent with the Council-approved Budget Strategy Economic Recovery section in that it will spur construction spending in our local economy.

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COST SUMMARY/IMPLICATIONS

This recommendation has no impact to the operational budget.

BUDGET REFERENCE

Not applicable

CEQA

CEQA: PP 07-130, Mitigated Negative Declaration.

/s/

ALBERT BALAGSO
Director of Parks, Recreation and
Neighborhood Services

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