



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT: DEFERMENT OF PARKLAND  
FEES**

**DATE:** 12-06-10

Approved

Date

12/16/10

**COUNCIL DISTRICT:** Citywide

## RECOMMENDATION

Adopt a resolution amending the Schedule of Parkland In-Lieu Fees and Credits (Resolution No. 73587, as amended) charged pursuant to the Park Impact and Parkland Dedication Ordinance (Chapters 14.25 and 19.38 of the San José Municipal Code) to provide an additional deferment of payment of parkland fees, interest and penalty until January 15, 2012, or the date of issuance of the first building permit for residential construction, whichever occurs earlier, for projects that currently have an approved parcel or final map by the City and have not been issued a building permit by the City for residential construction.

## OUTCOME

City Council approval of the recommended action will allow developers with approved parcel or final maps who are not in a position to begin construction of the residential development to defer payment of parkland fees to January 15, 2012, or the date of the issuance of the first building permit for residential construction, whichever comes first.

## BACKGROUND

Mayor Reed issued a memo dated October 21, 2009 to the Rules and Open Government Committee recommending that staff evaluate options to allow developers who are currently in default, or will be in default shortly, to defer payment of parkland fees to the City. The memo discussed certain residential developments that have an approved parcel or final maps but, due to the economic climate, are not in a position to request a building permit to begin construction of the residential units.

At the October 28, 2009 Rules and Open Government Committee meeting, Mayor Reed discussed his memo and deferring the timing of payment of parkland fees to assist residential development projects that may have been delayed for economic reasons. The City Council adopted Resolution

No. 75219 on December 8, 2009 amending the Schedule of Parkland In-Lieu Fees and Credits (Resolution No. 73587, as amended) charged pursuant to the Park Impact and Parkland Dedication Ordinance (Chapters 14.25 and 19.38 of the San José Municipal Code) to retroactively defer payment of parkland fees, interest and penalty until January 15, 2011, or the date of issuance of the first building permit for residential construction, whichever occurs earlier, for projects that currently have an approved parcel or final map by the City and have not been issued a building permit by the City for residential construction.

Since adoption of Resolution No. 75219, the economic environment has changed little resulting in similar impacts to the development of residential projects. Deferring the timing of parkland fees to further assist the residential development projects delayed for economic reasons may be warranted.

**ANALYSIS**

Pursuant to San Jose Municipal Code 19.38.335, parkland fees may be paid to the City before the City's approval of the final or parcel map for the subdivided residential project. Alternatively, a subdivision developer may enter into a parkland agreement with City, which provides for payment of the parkland fee in full, concurrent with the issuance of the first building permit, but no later than one year after the final or parcel map is approved by City.

Based on the previous research conducted by staff, there were five residential projects that have an approved parcel or final map, and have entered into a parkland agreement with the City to defer payment of parkland in-lieu fees until the issuance of a building permit, or within one year of the approval of the parcel or final map. Based upon Resolution No 75219, each of the developers will need to pay the required parkland fees to the City on or before January 15, 2011. A summary of the five projects is as follows:

<b>Project</b>	<b>Developer or Representative</b>	<b>Amount Due</b>	<b>*Payment Deadline</b>	<b>Late Fee (Not including interest)</b>
**Northpointe Apartments Zanker Road and Tasman Drive	FF Development Company	\$2,234,777	12-23-2009	\$1,360 per month
**Morrison Park Apartments Cinnabar Street and Stockton Avenue	Morrison Park Apts. LLC	\$4,214,092	12-08-2009	\$2,020 per month
Zeman Estates East Taylor Street and North Sixth Street	Todd Zeman	\$53,000	09-12-2009	\$40 per month
Almaden Skylark Townhomes Skylark Drive at Hummingbird Drive	JSM Enterprises, Inc.	\$336,000	12-21-2008	\$320 per month
Springbrook Springbrook Avenue and Canyon Ridge Drive	Angie Ceraolo	\$56,600	06-20-08	\$40 per month

12-06-10

**Subject: Deferment of Parkland Fees**

Page 3

- \* Payment deadline shown is one year after approval of the final tract map.
- \*\* These projects must also provide private recreation facilities or land dedication in addition to payment of in-lieu fees according to the terms of their individual parkland agreements.

For projects that do not pay parkland fees within the required deadline, a late fee of \$10.00 per unit per month is assessed pursuant to Resolution No. 73587. Additionally, interest on the overdue amount is also charged at a rate of one half of one percent per month. In addition to payment of parkland in-lieu fees, two projects have also agreed to dedicate land or construction of private recreation facilities to meet their parkland obligations and the terms and timing for these actions are set forth in their existing parkland agreements. These terms will also need to be amended in order for these projects to continue to receive credits as originally envisioned.

City staff recommends that parkland fees be deferred until January 15, 2012 or prior to issuance of the first building permit, whichever occurs first, for developers that meet all of the following conditions:

1. City has approved a parcel or final map for the residential project; and
2. City has not issued the first building permit for residential construction for the project; and
3. City and developer enter into a fully executed Parkland Agreement by no later than March 1, 2011.

If a building permit for residential construction is issued for a project before January 15, 2012, payment of parkland fees would be required to be fully paid to the City prior to the issuance of the building permit. It is important for the City to require full payment before the issuance of the building permit because the City has very little leverage to collect parkland fees after the issuance of building permits. Additionally, the City would then be in the position to have to require collateral for the deferment, which would be an administrative burden and additional cost to developers.

City staff has attempted to contact the developers for all five projects listed above. Representatives of Northpointe Apartments and Morrison Park Apartments have been in contact with the City and there has been no response from the other developers. Developers for Zeman Estates, Almaden Skylark Townhomes and Springbrook have not yet pulled building permits but the one year deadline from Final Map for payment of their park fees has passed so they are currently in default and subject to a penalty for late payment in the amount of \$10.00 per unit per month plus interest as outlined in Resolution No. 73587 (Schedule of Parkland Fees and Credits). Staff is pursuing collection of parkland fees, penalties and interest.

If the proposed resolution is adopted by Council and Northpointe Apartments and Morrison Park Apartments projects fail to enter into an amended parkland agreement with the City to defer parkland fees, interest and penalty within the required deadline, these developers will be in default of their written agreements and staff will look for legal options to enforce the agreements. Further, if the proposed resolution is adopted and with respect to the current economic environment, the developers of Zeman Estates, Almaden Skylark Townhomes and Springbrook projects may enter into an amended parkland agreement with the City to defer parkland fees by the required deadline.

Should these latter developers fail to amend their respective agreements, staff will continue to pursue collection of parkland fees, penalties and interest.

### **EVALUATION AND FOLLOW UP**

If the resolution is passed, City staff will work with applicants to amend existing parkland agreements to extend the term of each agreement to January 15, 2012.

### **POLICY ALTERNATIVES**

#### ***Alternative #1: Do Nothing***

**Pros:** The City will collect late fees for untimely payment at the time of building permit issuance.

**Cons:** Development applicants will be required to pay late fees which will further impact their ability to finance and construct delayed projects.

**Reason for not recommending:** It would not support Council's goals regarding economic stimulus.

#### ***Alternative #2: Allow deferment of payment of parkland fees until issuance of Certificate of Occupancy or by another type of deadline than that proposed.***

**Pros:** Developers would have more flexibility.

**Cons:** Parks would not be available to serve the residents that generate the need for park facilities because it can take up to 3 years to build park facilities once fees have been paid and the City has very little leverage to collect fees at that point in development

**Reason for not recommending:** The risk of never collecting fees is high and it is difficult to meet the needs of new residents for park facilities in a timely way. In park deficient areas such as the Central/Downtown area (Morrison Apartments Project) the impact is severe.

### **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)

The proposed Council action meets Criterion 1. The topic was discussed at the October 28, 2009 Rules and Open Government Committee. This topic was discussed at the November 4, 2009 Parks and Recreation Commission Hearing and the Commission unanimously supported an extension to developers. This memo was posted on the City's website as an agenda item prior to the City Council meeting on January 11, 2011.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, the Department of Planning, Building and Code Enforcement, the City Manager's Budget Office, and the Public Works Department.

### **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.

### **COST SUMMARY/IMPLICATIONS**

Since the City has not received this funding it has not been included or projected in the Five Year Capital Improvement Program so there are no direct cost implications associated with this proposal. However, by deferring the collections of these fees, the allocations of these fees to new projects will be delayed in the future.

### **BUDGET REFERENCE**

Not Applicable

### **CEQA**

Not a Project

/s/

ALBERT BALAGSO  
Director of Parks, Recreation and  
Neighborhood Services