



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Albert Balagso
Jennifer A. Maguire

SUBJECT: PARKLAND FEE REFUND

DATE: 02-24-11

Approved

Date

2-25-11

COUNCIL DISTRICT: Citywide

REPLACEMENT

REASON FOR REPLACEMENT

Replacement memo to reflect the receipt of additional and eligible refund requests.

RECOMMENDATION

It is recommended that the City Council:

1. Adopt a resolution setting forth the refund procedures and policy for parkland fees collected pursuant to Chapters 14.25 ("Park Impact Ordinance") and 19.38 ("Park Dedication Ordinance") of the San José Municipal Code.
2. Adopt the following Appropriation Ordinance amendments in the Subdivision Park Trust Fund (Fund 375):
 - a. Establish an appropriation to the Department of Parks, Recreation and Neighborhood Services in the amount of \$100,000 for the Park Fee Reimbursement project; and
 - b. Decrease the Reserve: Future PDO/PIO Projects by \$100,000.

OUTCOME

Approval of recommendations in this memorandum would:

1. Establish guidelines to provide parkland fee refunds to applicants that have not secured a final map and/or obtained building permits within a defined set of parameters, and
2. Provide clear parameters for future requests of parkland fee refunds.
3. Provide refunds totaling up to \$100,000 to five developers who satisfy the criteria for providing refunds to developers who submitted a request for refund before March 1, 2011.

EXECUTIVE SUMMARY

This memorandum establishes guidelines for the refund of parkland fees for developers that have pursued early steps in the permitting process and paid their parkland fees, but have not proceeded with the required subsequent development approvals (entitlements) for their project (final map and building permits). The guidelines set forth in this memorandum establish measurable conditions to facilitate refunds when necessary but not significantly impact the City's ability to plan for the allocation of park fees for future park development.

BACKGROUND

The City's Parkland Dedication Ordinance (PDO), San José Municipal Code Chapter 19.38, requires developers to support park development to help meet the demand for neighborhood and community parkland generated by the development of new residential subdivisions. The PDO is consistent with the requirements and procedures for the dedication of parkland by developers as set forth in the California law known as the Quimby Act (Section 66477 of the Government Code).

Developers are required under the PDO to:

1. Dedicate land for neighborhood and community parks, or recreational facilities, or
2. Construct park or recreational improvements, or
3. Pay a parkland fee in lieu of dedication or construction, or
4. A combination of dedication, construction and parkland fee payment.

The Park Impact Ordinance (PIO), San José Municipal Code Chapter 14.25, also requires developers to support park development for non-subdivided projects as described above for the PDO, such as apartments or additions to a single-family home without subdivision. The City's PIO is consistent with the California Mitigation Fee Act (Section 66000 et seq).

The PDO requires parkland fees to be paid in full prior to the City's approval of the parcel map or final map. Alternatively, the entity seeking to subdivide may enter into a parkland agreement with the City which provides for payment concurrent with issuance of the first building permit but no later than one year after the City's approval of the final or parcel map. As to non-subdivided projects, the PIO requires that parkland fees be paid by the developer before the issuance of building permits. Parkland fees collected pursuant to the PIO and PDO are required to be committed by the City in a budgetary year within five years of receipt of payment for a specific project to serve or benefit residents of the project for which the fees were collected. Due to the statutory constraint of having to commit the parkland fees within five years of receipt of payment, the City is required to act in an efficient manner to identify potential projects, pool sufficient funds to complete the identified projects, and commit the funds within the required statutory time period to the specific projects to serve or benefit the residents who paid the fees.

The PDO/PIO does not have a provision setting forth the procedures to refund parkland fees. Additionally, City currently has no policy in place to refund parkland fees either. Due to the current

economic climate a few developers have been unable to move forward with their projects because of the inability to secure financing and other factors and have requested a refund of their previously paid parkland fees. These projects have not received approval of final maps (subdivided projects) or secured building permits (non-subdivided projects).

Adoption of a policy will permit staff to refund parkland fees in certain limited situations as discussed below. A policy with clearly defined and limited parameters can continue to support the City's long-term planning needs for strategic parkland development and development of project-specific funding plans.

ANALYSIS

There are a few small development projects in the City for which developers pursued early steps in the permitting process, paid their parkland fees, but have not proceeded with the required subsequent development approvals (entitlements) for their project (final map and building permits). Five applicants who have paid their parkland fees and elected to not move forward with entitlements for their projects have requested refunds of their parkland fees.

Staff recommends City Council adoption of a resolution setting forth the procedures and policy that would authorize staff to provide refund of parkland fees in limited situations as follows:

1. Refunds of Parkland Fees for Requests Made on or Before March 1, 2011

City will refund parkland fees paid by a developer to the City pursuant to the PDO or PIO, including interest earned, if each of the following parameters is met:

- a. Developer, who made the payment to the City, provides the City of San José, Department of Parks, Recreation & Neighborhood Services with a written request for a refund of parkland fees on or before March 1, 2011¹ (12:00 p.m. (PST)); and
- b. City has not approved a parcel map, any final map, or any building permit for the residential project; and
- c. City has not expended or is not obligated to expend the parkland fees on the development of any park, trail, or recreational facilities.

2. Refund of Parkland Fees for Requests Made After March 1, 2011

City will refund parkland fees paid by a developer to the City pursuant to the PDO or PIO, including interest earned, if each of the following parameters is met:

- a. Developer, who made payment to the City, provides the City of San José, Department of Parks, Recreation & Neighborhood Services with a written request for a refund of parkland

¹ This date was selected because it occurs during the public posting of this memorandum in advance of the Council Meeting.

- fees within ninety (90) calendar days from the date on which payment was made to the City; and
- b. There is no valid City approved parcel map, any final map, or any building permit for the residential project; and
 - c. City has not expended or is not obligated to expend the parkland fees on the development of any park, trail, or recreational facilities.

Staff is recommending Council adopt a two-tier refund approach. The first part of the policy will address the current and limited number of refund requests (five at the time of writing this memorandum) for which a clear policy has not been established by Council, and the second part of the policy will address future refund requests. This two tier approach is recommended for the following reasons:

1. The current economic climate has presented a wide variety of challenges to the development community, including but not limited to, securing financing and housing valuations, causing five developers to request refunds. Since the City currently does not have a refund provision in the PDO/PIO or Council policy to address the current refund requests, staff is recommending a policy that would allow staff to provide a refund for the current requests or refunds received until March 1, 2011, at 12:00 pm (noon).
2. For any refund request received in writing after March 1, 2011, a statute of limitation of 90-days is recommended. Staff believes a 90 day period is reasonable for two main reasons. First, 90 days would be consistent with the statute of limitations under State laws for a developer to contest the amount of parkland fees paid to the City. So, the City's refund policy will be in line with when a developer generally may contest the amount of fees paid to the City. Second, the City is required under State laws and the Municipal Code to commit the parkland fees within five years and 90 days will strike a balance between the obligation of committing the fees and providing a sufficient amount of time for a developer to seek a refund.

The approximate refund amounts listed in the table below represent fees paid and interest earned. The following five developers have provided staff with a written request prior to March 1, 2011.

| Date Fee Collected | Location | Payee | CD | Refund |
|--------------------|--|---------------------------|----|------------------|
| 04/26/07 | Page Street / Chiechi Avenue | Joseph Linh Do | 6 | \$30,000 |
| 12/11/07 | S. 21 st Street / San Fernando Street | Truong Phong et al | 3 | \$29,100 |
| 08/05/08 | Taylor Street / North 21 st Street | Paul Garcia | 3 | \$16,900 |
| 06/30/09 | 49 N. 33 rd Street | Tobias Raposo | 3 | \$12,600 |
| 12/15/08 | 544 S. 8 th Street | Williams, Keith and Megan | 3 | \$11,400 |
| TOTAL | | | | \$100,000 |

All other refund requests will be subject to the 90 day statute of limitations established by Council as part of the recommendations in this memorandum. Staff has performed an analysis of the park trust fund and has attempted to contact the limited other applicants who may be able to receive a refund. Staff will inform the City Council at the March 1, 2011 meeting if additional eligible applicants request refunds.

Staff will come back to Council at a future date to amend the PIO/PDO ordinances to make appropriate changes to the ordinances consistent with the policy adopted by Council. In the interim, the policy will allow staff to process current refund requests, address future refund requests until changes are made to the PIO/PDO, and gain experience with the implementation of this policy before amending the ordinances.

EVALUATION AND FOLLOW-UP

Approval of this memorandum establishes a policy for issuance of refunds under a set of parameters. Staff will monitor the policy for a 12 month period to identify if adjustments are required. Staff will report back and pursue necessary ordinance changes. Further, if additional refund requests are received, staff may have to return to the City Council for additional appropriation actions to the Department of Park, Recreation, and Neighborhood Services for Park Fee Reimbursements.

POLICY ALTERNATIVES

Alternative #1: Do not adopt procedures and policy for refund of Parkland Fees.

Pros: Provides additional funding for Parks, Community Centers and Trail infrastructure rehabilitation and development in the City.

Cons: Does not reimburse certain developers who paid parkland fees and did not move forward with development entitlements.

Reason for not recommending: The City provides services to support the permitting and review process, and targets anticipated funds to park development efforts. A refund policy with no or few parameters would likely increase the number of refunds and prevent the City from effectively planning for future park development.

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 memorandum will be posted on the City's website for the March 1, 2011 City Council agenda.

PRNS staff has contacted developers that have requested refunds to make them aware of the recommended policy. PRNS coordinated with Development Services to ensure that all other developments are proceeding through the process and unlikely to pursue a refund of fees. Documentation regarding the 90-day provision for refunds will be included as part of Development Services process documentation.

COORDINATION

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

FISCAL/POLICY ALIGNMENT

Not applicable.

COST SUMMARY/IMPLICATIONS

There is no significant impact to the Subdivision Park Trust Fund as the funds that are being requested to be refunded are not required to deliver any currently active capital projects.

BUDGET REFERENCE

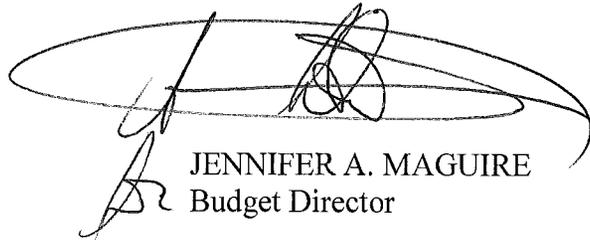
| Fund # | Appn # | Appn. Name | Total Appn | Amt. for Refund | Adopted Budget Page | Last Budget Action (Date, Ord. No.) |
|--------|--------|----------------------------------|------------|-----------------|---------------------|-------------------------------------|
| 375 | 8845 | Reserve: Future PDO/PIO Projects | 21,834,465 | \$100,000 | V-544 | 11/16/2010 28853 |

CEQA

Not a project, file no. PP10-069: City Organizational & Administrative Activities

/s/

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