

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SETTING FORTH THE POLICY AND PROCEDURES FOR REFUND OF PARKLAND FEES PAID TO CITY PURSUANT TO CHAPTERS 14.25 (“PARK IMPACT ORDINANCE”) AND 19.38 (“PARK DEDICATION ORDINANCE”) OF THE SAN JOSE MUNICIPAL CODE

WHEREAS, the City of San José (“City”) enacted the Parkland Dedication Ordinance, San José Municipal Code (“SJMC”) Chapter 19.38 (“PDO”) in 1988 and the Park Impact Ordinance, SJMC Chapter 14.25 (“PIO”) in 1992 to meet the demand for new neighborhood and community parkland generated by development of new residential subdivisions and new non-subdivided residential projects, which ordinances have each been amended from time to time; and

WHEREAS, the PDO and PIO require developers to dedicate land for neighborhood and community parks, construct park or recreational improvements, pay a parkland fee in lieu of dedication or construction, or a combination thereof, to help meet the demand for neighborhood and community parkland generated by the development of new residential projects; and

WHEREAS, the PDO requires parkland fees be paid in full prior to the City’s approval of the parcel map or final map or alternatively, as a condition of City’s approval of the subdivider’s final map or parcel map, the subdivider shall enter into a Parkland Agreement with the City which provides for payment of the parkland fees in full, concurrent with the issuance of the first building permit for the subdivider’s project, but no later than one (1) year after City’s approval of the subdivider’s final or parcel map, unless the Schedule of Fees and Credits provides for delayed payment of the parkland fees; and

WHEREAS, the PIO requires parkland fees be paid in full prior to the issuance of a building permit for each residential unit subject to the requirements of the PIO; and

WHEREAS, the parkland fees collected pursuant to the PIO and PDO are required to be committed by the City in a budgetary year within five (5) years of receipt of payment for a specific project to serve or benefit residents of the project for which the fees were collected; and

WHEREAS, the statutory constraint of having to commit the parkland fees within five (5) years of receipt of payment requires the City 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; and

WHEREAS, the City desires to set forth the policy and procedures for the refund of parkland fees paid to the City pursuant to the PIO and PDO;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. Refunds of Parkland Fees for Requests Made on or Before 03/01/2011.

City will refund parkland fees paid by a developer to the City pursuant to the PDO or PIO if each of the following conditions exists:

- A. Developer, who made the payment to the City, provides the Division Manager, of the Department of Parks, Recreation & Neighborhood Services of the City of San José, at 200 E. Santa Clara Street, 9th Floor, San José, CA 95113, Fax No. (408) 292-6416, with a written request for a refund of parkland fees on or before March 1, 2011 (12:00 p.m. (PST)); and

- B. City has not approved any 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.

SECTION 2. Refund of Parkland Fees for Requests Made After 03/01/2011.

City will refund parkland fees paid by a developer to the City pursuant to the PDO or PIO if each of the following conditions exists:

- A. Developer, who made payment to the City, provides the Division Manager, of the Department of Parks, Recreation & Neighborhood Services of the City of San José, at 200 E. Santa Clara Street, 9th Floor, San José, CA 95113, Fax No. (408) 292-6416, with a written request for a refund of parkland 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.

SECTION 3. GENERAL PROVISIONS

A. Nothing stated herein shall affect any procedures and/or statute of limitations set forth in applicable statutes, including but not limited to, the California Government Code Sections 66020 *et seq.* and 66499.37 *et seq.*, as may be amended from time to time, to protest the imposition of any fees, dedications, reservations, or other exactions imposed on the subdivision or development project.

B. If not otherwise defined in this Resolution, capitalized terms shall have the meanings set forth in San José Municipal Code Chapter 19.38 and Chapter 14.25.

C. This Resolution is effective on the same day it is adopted by City Council.

D. In the event the City provides a refund to a developer under this Resolution, the developer shall be subject to the requirements of the PDO and PIO, and the payment of parkland fees pursuant to the PDO and PIO, if applicable, in effect at the time of City approval of the parcel map, any final map, or any building permit for the residential project.

ADOPTED this _____ day of _____, 2011, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk