



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: January 23, 2012

Approved

Date

1/31/12

COUNCIL DISTRICT: 3

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

RECOMMENDATION

Adopt 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, Council adopted Resolution No. 73587 allowing developers of highrise multi-family residential projects located in the Downtown Core Area to defer payment of parkland 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

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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 20, 2008, 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 fees for certain highrise housing developments in the Downtown Core Area under the following conditions:

1. City Manager finds that deferred payment of the parkland 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 parkland fees would have earned had the payment occurred; and
3. The period in which such agreements can be made would 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, the City and Almaden Tower Venture, LLC ("Developer") entered into a Second Amended Parkland Agreement pursuant to the terms outlined above to defer parkland fees in the amount of \$3,297,000 (plus interest) for up to six months (from August 1, 2008 to February 1, 2009). Developer constructed 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 (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 was able to make a finding under Resolution No. 74382 that additional deferment of 12 months would not substantially interfere with the construction schedule of Watson Park. On January 27, 2009, the 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,

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2010, within the maximum time (18 months) allowed under Council Resolution 73587, as amended.

On January 12, 2010, 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 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, 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.

With the continuing economic downturn, Developer requested an additional deferral of up to 12 months (from February 15, 2011 to February 15, 2012) to pay the deferred parkland fees. On January 11, 2011, Council adopted Resolution No. 75691, the Fifth Amendment to Resolution No. 73587, providing an additional extension of up to 12 months for deferral of parkland in-lieu fees. This Fifth Amendment deferred Developer's payment to February 15, 2012, within the maximum time (43 months) allowed under Council Resolution No. 73587, as amended.

ANALYSIS

The Developer has requested an additional extension of 12 months to pay its parkland fees to the City in the amount of \$2,829,471 (plus interest). The City has provided five previous deferments to the Developer.

1. The first deferment under Resolution No. 73587 authorized Developer to pay the parkland fees on or before the scheduling of the final inspection for the first certificate of occupancy and no later than August 1, 2008.
2. The second deferment under Resolution No. 73587, as amended, provided an additional six months deferment and required Developer to pay the parkland fees on or before February 1, 2009.
3. The third deferment under Resolution No. 73587, as amended, was for an additional 12 months and expired on January 15, 2010.
4. The fourth deferment was for an additional 13 months and expired on February 15, 2011.
5. The fifth deferment was for an additional 12 months and will expire on February 15, 2012. Developer has received deferments totaling 43 months.
6. Developer is now requesting an additional deferment of 12 months, from February 15, 2012 to February 15, 2013.

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During the deferment period ending February 15, 2012, the Developer was required to make three quarterly installment payments toward outstanding parkland fees and interest based upon the units sold within each quarter. The Developer was delinquent in making payments at each quarterly date established under Resolution No. 75691. Although the installment payments were received late by the City, staff proactively worked with the Developer to assure the Developer met its commitments under Resolution No 75691 and written agreement with the City. To date, the Developer has paid \$685,083 toward parkland fees and interest accrued on the parkland fees.

Staff recommends an additional deferment from February 15, 2012 to February 15, 2013 under the similar conditions outlined in Resolution No. 75691 with additional requirements that Developer:

- a. Extend the performance bond with its surety company to March 15, 2013, establish the performance bond amount to be equal to the calculated deferred parkland fee balance and increase the bond amount by \$150,000 to cover the anticipated interest through the extension period ending February 15, 2013; and
- b. Make three quarterly installment payments to the City on May 15, 2012, August 15, 2012 and November 15, 2012 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, 2013; and
- c. Owe late payment fees to the City in the amount of Ten Dollars (\$10.00) per unit per month plus interest at the rate of one half of one percent per month on the deferred parkland fee balance, pro rata as established under Resolution No. 73587 for late payment of parkland fees for any quarterly payments; and
- d. Increase the withhold certificate of occupancy from ten percent (10%) to fifteen percent (15%) on the remaining residential units in the project until the parkland fees and interest are paid in full to City.

Staff recommends the above additional conditions as part of any additional deferment for the Developer in order to help facilitate highrise construction in the Downtown Core.

The allocated Park Trust Funds to construct Martin Park are currently impacted. Construction of Martin Park was previously deferred from spring 2011 to spring 2012 and requires further deferral. Once the Martin Park funds have been restored, staff will identify funding options for operations and maintenance in order to proceed with the development of the park.

Council Resolution No. 73587, as amended, must be amended in order to extend the maximum deferment period of 43 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

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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. Because the Park Trust Funds to construct Martin Park have not been restored and funding options for operations and maintenance have not been identified, 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 with the City 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, the City will enter into an amended Parkland Agreement with Developer that would require Developer to (1) pay all outstanding parkland fees and interest on or before February 15, 2013; (2) record the written agreement against the project; (3) provide collateral for the payment of the deferred parkland fees and estimated interests; (4) apply late payment fees and interest to delinquent quarterly payments; and (5) withhold certificate of occupancy on the remaining fifteen percent (15%) of the residential units in the project until the deferred fees and interest are paid in full to City. Should the amended Parkland Agreement not be signed and notarized by the Developer by noon on or before February 15, 2012, 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.

EVALUATION AND FOLLOW-UP

Action taken by 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.

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

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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 February 14, 2012 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.

COST SUMMARY/IMPLICATIONS

This recommendation has no impact to the operational budget.

CEQA

CEQA: PP 07-130, Mitigated Negative Declaration.

/s/

JULIE EDMONDS-MARES
Acting Director of Parks, Recreation and
Neighborhood Services

For questions please contact Matt Cano, PRNS Deputy Director, at 408-535-3580.