CEDC AGENDA: 2/22/10
ITEM: d (3)

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE

FROM: Leslye Krutko and Albert Balagso

SUBJECT: SEE BELOW

DATE: February 5, 2010

Approved

Date 2-11-10

COUNCIL DISTRICT: City-Wide
SNI AREA: N/A

SUBJECT: REPORT OUT REGARDING THE CITY'S POLICY EXEMPTING AFFORDABLE HOUSING FROM PAYMENT OF PARKLAND DEDICATION/PARK IMPACT FEES

RECOMMENDATION

It is recommended that the Community and Economic Development Committee review and provide feedback to staff regarding its proposed recommendation to consider an amendment to the Parkland Dedication Ordinance (PDO)/Park Impact Ordinance (PIO) to remove the exemption for affordable housing units from payment of parkland fees, and direct staff to bring the issue to the City Council to adopt a resolution establishing parkland fees for affordable housing units at 50% of the applicable fees for each residential unit type.

BACKGROUND

More than twenty years ago, the City Council took action to exempt affordable housing from the payment of fees for park development, with the intention of reducing the cost of affordable housing construction, and thereby removing a potential barrier to development. This exemption is one incentive the City provides to affordable housing developers to encourage the development of housing for lower-income households (those earning 80% or less of Area Median Income).

Concerns have been raised about the impact the exemption for affordable housing units from payment of fees for park development has on the City's ability to address its needs for parkland for its residents. These concerns have increased in recent months with the proposed development of several new affordable housing projects in areas that are considered park deficient.

In December of 2008, during the City Council's discussion of inclusionary housing, there were a number of follow-up actions requested related to the City's affordable housing policies. One of these actions was to review the City's policy to exempt affordable housing from payment of parkland fees. This report discusses the history of the City's policy, provides a cost/benefit analysis, potential policy alternatives, and makes a recommendation to amend the PIO/PDO to eliminate the current exemption for affordable housing units and establish parkland fees for affordable housing units at 50% for applicable fees for each unit type for City Council consideration.

ANALYSIS

While the exemption from payment of parkland fees contributes to the development of needed affordable housing, it also has the impact of reducing the amount of available parkland for new residents. Therefore, the policy pits two important City priorities against one another—the development of affordable housing for the City's lower-income residents and the development of new parkland or park amenities for new and existing City residents.

History of the Parkland Dedication Ordinance/Park Impact Ordinance

In 1988, the City Council adopted the Parkland Dedication Ordinance (PDO) [San Jose Municipal Code Chapter 19.38] to help meet the demand for neighborhood and community parks generated by the development of new residential parcels. In 1992, the City Council adopted the Park Impact Ordinance (PIO) [San Jose Municipal Code Chapter 14.25], which applied parkland dedication requirements to new units in non-subdivided residential projects. Prior to 1988, the City negotiated the size and location of parks within large subdivisions as a condition of approval. The City's PDO is consistent with the requirements and procedures for the dedication of parkland by housing developers as set forth in the California law known as the Quimby Act, Section 66477 of the Government Code. Both the PDO and PIO require that new housing projects dedicate land for public parks, pay a fee in lieu of dedication, construct park improvements, or a combination thereof. The PIO was enacted to parallel the parkland dedication and in-lieu fees requirements of the PDO for non-subdivided residential projects that are not subject to the PDO.

In 1998, the two Ordinances changed from a fee-based to land-based program. The current fees, which took effect February 2, 2009, range from $10,450 to $22,350 per unit for a multi-family development (5+ units) and $4,500 to $9,700 per unit in a Single-Room Occupancy development. The fees are determined by the acquisition costs of three acres of raw land per 1000 new residents by housing types in the fourteen (14) Multiple Listing Service Areas (MLS) located in the City. The amount of land dedication or fees to be paid is based upon the residential density by housing type as disclosed by the most recent available Federal Census, or as determined by the local legislative body for housing types other than those published in the Federal Census. The City has added two additional housing types - Single-Room Occupancy (SRO) and Secondary Units - to the four stated in the Federal Census (Single Family Detached, Single Family Attached, Multi-Family 2 to 4 units in one building, Multi-Family 5 units or more in one building).

The City conducts a residential land value study each year to determine the cost to purchase large tracts of raw land in the various MLS areas. Land values in 2007 ranged from $35 per square foot to $75 per square foot, or $1.5 to $3.2 million per acre. The City Council, by resolution, sets the park fees in lieu of land dedication paid by developers per housing type and MLS area to reflect the cost to purchase land. In addition to the fees being generated for park development and renovations, residential developers have dedicated approximately 116.5 acres of public parklands to the City as a result of these two ordinances. Potentially another 64 acres of public parklands may be coming to the City through land dedications from residential developers under current zonings.

History of the Affordable Housing Exemption

Since 1988, when both the Housing Department was created and the PDO was adopted, lowincome units (defined as those units set aside for households making 80% or less of the Area Median Income) subject to a recorded affordability restriction of at least 30 years have been exempt from the requirements of the PDO (and the PIO beginning in 1992). In its 1988 report, the Mayor's Task Force on Housing made the exemption of certain fees and taxes, including parks fees, a priority in an effort to encourage affordable housing development by removing barriers.

Between 1998 and December 2005, the City suspended the PDO/PIO exemption for lowincome units. However, in recognition of the City's priority to increase the supply of affordable housing, developers were not required to pay the fee and were able to satisfy their obligation by presenting a voucher issued by the Housing Department or San José Redevelopment Agency (SJRA). The voucher triggered the Agency's payment of the parkland fees on behalf of the developer to the City. Over this seven-year period, the SJRA paid approximately $21.5 million in park fees on behalf of developers to the City for 3,690 low-income units, with another $8.1 million remain outstanding (representing about 860 units). On January 1, 2006, the voucher program ended and low income units subject to a recorded affordability restriction of at least 30 years became exempt again from the requirements of the ordinances.

Need for Parks and Affordable Housing

As mentioned earlier in this memorandum, the determination of whether to exempt affordable housing from the payment of parkland fees becomes a question of competing priorities. The City has a significant need for housing for its lower-income residents and, similarly, it is well known that the City is struggling to meet its goals for park development and that there are a number of areas in the City that have been identified as park deficient.

Parks, recreational spaces, trails and recreational facilities represent a critical physical, social, and psychological element for a community, adding to the quality of life for San José's residents. Beyond merely providing recreational opportunities, carefully sited and well designed parks serve a multitude of functions for the community in creating neighborhood identity, serving as focal points for gathering and celebration, attracting and retaining employees and businesses to help fuel the local economy, and protecting environmental resources. Parks and recreational facilities are vital to the quality of life discussion.

The goal of the City under the 2020 *Greenprint Update* is to create a balanced park system within each of the urban planning areas by ensuring access to various types of recreational facilities, from passive park areas to indoor gymnasiums. The City has a service level objective of 3.5 acres of neighborhood/community serving parkland per 1,000 population as well as a goal of having a park, open space, trail or recreational school ground within 1/3 mile of every resident. Based upon the service level objective and the current pace of park development, the City will be short 1,124.6 acres of park and recreational land by the year 2020. Furthermore, there are 51 areas in the City that do not have a recreational facility within 1/3 of a mile of residents. While there are certain areas that are more deficient in parkland than others, every planning area in the City is in need of additional access to parks and recreation facilities as outlined in the 2020 Greenprint Update.

Likewise, affordable housing is needed in our high-cost City in order to provide for our community's work force. Without adequate affordable housing options, we can not continue to attract and retain the best jobs and workforce. The consequences of not having adequate housing choices for our residents and workers exacerbates problems of overcrowding, longer commute patterns, and generally drives up of the cost of housing for everyone. As identified in the City's Five-Year Consolidated Plan, Five-Year Housing Investment Plan, the San José Housing Element, and the Housing Silicon Valley report by the Bay Area Local Initiative Support Corporation (LISC), San José has an average need between 37,000 – 60,000 units of housing affordable to four-person households making less than $80,000 per year over the next two decades. This equates to the production of nearly 1,800 - 3,000 units of lower income housing units every year just to keep pace with the current and future demand. However, due to the lack of federal, State, and local resources, the City can only financially assist between 550 – 1,000 units; thus leaving a significant gap to meet the needs of our community.

<u>Cost-Benefit Analysis and Policy Alternatives</u>

In order to give the City Council an idea of how various policy options would impact affordable housing production or parks production/improvements, staff developed a cost-benefit analysis. Staff began with a list of 13 potential affordable housing projects in the pipeline. These projects have not received <u>any</u> funding commitment from the City and are not likely to materialize in the next several years due to significant budget reductions and the difficulty in the current market for financing affordable housing development. However, for illustrative purposes, staff felt it was helpful to provide some context of potential financial impacts under a more favorable budget situation.

For each of these projects, staff received preliminary information from developers about the location, size, number of units, potential funding sources, amenities, and then calculated what the in-lieu fee would be for these projects based on these factors. It was assumed that because all the potential projects indicated that there would contain some type of private recreation or active element, they would receive some form of credit under the current PDO/PIO guidelines.

Therefore, it was assumed that, on average, each development would receive about a 20% credit (or pay 80% of the current fees).

The financing of affordable housing is very intricate and dependent on several sources in order to get constructed. The Housing Department provides the last piece of financing in any affordable housing development or what is known as "gap financing." Therefore, the first step in coming up with an financial analysis was determining how much of this fee could be absorbed by other sources of financing, like low-income housing tax credits. The Housing Department worked with an experienced affordable housing financial consultant to determine this percentage. The consultant developed an economic model and determined that for all the projects in the study, tax credits could pick up between 30-60% of any park fee. It was then assumed that because the City's Affordable Housing Fund provides the "gap" financing it would then pick up the remainder of a fee between 40-70%.

Once these fees were determined, different policy options or alternatives were applied to determine the impact to affordable housing production and parks. These alternatives range from making no changes to the current policy to deleting the exemption. There are also alternatives that consider the impact of different options like exemption certain types of housing or units restricted to certain levels of affordability (see Attachment A).

Of the 1,600 affordable units analyzed in the pipeline, it was estimated that if the exemption from PDO/PIO were eliminated or modified, between $1.3 - 15 million could be collected for park production or maintenance over a 3-5 year period. This equates to the loss of City affordable housing monies between $835,000 - $9.2 million or about 7-76 affordable units.

After the cost benefit analysis and policy alternatives were completed, City staff met with a joint meeting of the Housing and Community Development Advisory and the Parks and Recreation Commissions to review and provide comment on September 29, 2009.

The two commissions found consensus on quite a few issues and agreed on set of guiding principles for examining this issue. First, the joint commission felt that healthy and vibrant communities need both parks and affordable housing. They agreed that parks and affordable housing should be well-integrated, designed and planned in order to enhance and benefit the public. Secondly, the joint commission felt it was a disservice to the community to pit these two important attributes of a community against one another, by requiring one to subsidize the other. Additionally, the joint commission encouraged the City to consider ways to streamline the process and make park purchase and development cheaper, including thinking more creatively about future density and park development. Furthermore, the joint commission encourages the City to reject a one-size-fits-all approach. Lastly, the joint commission determined it is important to look at ways to share the cost of parks across many partners. One example was to examine whether it was feasible to lower other development taxes/fees charged by the City to offset park fees for affordable housing.

After agreeing to this set of principles, the joint commission voted on the policy alternatives brought forward by City staff. The joint commission voted that policy options to eliminate the current exemption, continue to exempt affordable housing, and payment of the park fee from redevelopment funds did not achieve these guiding principles or were not feasible. The joint commission generally supported the principles to partial eliminate or reduce fees for certain types or location of affordable housing, but noted its concern about only providing a partial solution. The joint commission supported the policy alternative to create a permanent or dedicated source of financing, citywide, for parks. Lastly, the joint commission voted to add another policy alternative for consideration, to eliminate the exemption of fees for affordable housing, but only if there was another mechanism or offset to spread the cost of the fees across broad, so that not one funding source would be responsible for paying. The joint commission suggested that City staff look at reduced planning, building or construction fees to offset an elimination of the affordable housing exemption.

Based on this feedback, staff from the Departments of Housing and Parks, Recreation, and Neighborhood Services recommends eliminating the current exemption and setting the parkland fees at 50% of the applicable fee for each unit type. Staff believes that due to the extreme difficulty with financing for affordable housing and, secondly, because City Council would like to continue to encourage development, recommending the elimination of the current exemption, while also providing a reduction in fees for affordable housing units, will meet both important objectives of developing parkland and encouraging affordable housing development. Therefore, it is recommended that the City Council (1) provide direction to the City Attorney' Office to draft an amendment to the PIO/PDO ordinance to eliminate the current exemption for City Council consideration; and (2) adopt a resolution to establish parkland fees for affordable housing units at 50% of the applicable fee for each unit type.

NEXT STEPS

Once City staff receives feedback from the CED Committee, it is recommended the issue go to City Council for approval of a change in policy. With this direction, the City Attorney's office could then proceed with drafting an amendment to the PDO/PIO ordinance.

Additionally, staff will continue seek other opportunities to apply for grant funding for parks in conjunction with affordable housing development through Proposition 1C - Housing Bond and Proposition 84. Also, staff will continue to work with the Redevelopment Agency on outlining when payment of the $8 million will be budgeted under the expired Park Voucher Program.

LESLYE KRUTKO
Director of Housing

ALBERT BALAGSO
Director of Parks, Recreation and Neighborhood Services

Attachment (1)

PARKS AND AFFORDABLE HOUSING
EXEMPTION POLICY FOR PARKLAND FEES

NOTE: *Due to the complexity of financing of residential development, many assumptions have been made for the purpose of this study. The affordable housing projects used for this analysis represent potential developments that have no City commitment of financing. These are only developments that may likely seek City funding over the next 3-5 years. However, the City Housing Department will not have enough funds for all these projects. Therefore, the potential dollars generated below are much higher than likely to occur. Additionally, the following options may represent legal issues that will need to be coordinated with the City Attorney's Office before adoption by City Council.*

POTENTIAL POLICY OPTIONS:

1. Eliminate the current exemption for affordable housing.

Pros:

- **a.** The Parks fund would receive an estimated $15 million to assist with development of new and enhanced facilities for residents. Combined with existing park trust fund reserves, this could equate to approximately 5 total acres of new parkland in North San Jose, Alum Rock, Burbank/Del Monte, Tully Road, Spartan Keyes and Evans Lane in addition to improvements such as Watson Park Phase II, Willow Glen Spur Trail development and south San Jose sports field enhancements. Alternatively, if used solely for trail construction, this could equate to approximately 7 to 8 miles of new trails in the City.
- **b.** Neighborhoods would be less likely to oppose affordable housing development.

Cons:

- **a.** While tax credits and other State/federal resources can offset between 30-60% of these fees, the remainder of the gap about $9.2 would likely come from the City's affordable housing funds. This could equate to the loss of about 76 affordable units out of 1,600 in the pipeline.

---

2. No Change: Continue Exemption for Affordable Housing.

Pros:

- **a.** Provides a significant incentive for the development of affordable housing.
- **b.** The fee exemption is seen as a positive effort to remove barriers to affordable housing and is part of the City's State certified Housing Element.

Cons:

- **a.** Many residents have expressed public opinion that all housing developments should pay for parks.

- **b.** The park projects discussed in Option 1 would not proceed or would need to find alternative funding sources.
- **c.** Virtually all areas of the City are in need of more, or enhanced park amenities. Increasing the residential population of these areas without adding funding for additional park amenities will compound this problem.

---

3. Eliminate the current exemption for affordable housing but reinstitute a voucher program paid for by redevelopment agency or some other source.

Pros:

- **a.** Ensures that both the need for affordable housing and those park projects mentioned in Option 1 could proceed.
- **b.** There is precedent for this action as the San Jose Redevelopment Agency paid this fee for several years.

Cons:

- **a.** The Agency has a serious budget deficit and does not have funds available for this purpose for the next several years.
- **b.** SJRA still owes approximately $8.1 million to the parks program from the previous program and the payment of this has been deferred several times due to budget constraints.
- **c.** Were funds available, this would possibly divert redevelopment funding from Strong Neighborhoods Initiative (SNI) areas or other key economic development projects.

---

4. Institute a Reduced PDO/PIO fee for certain levels of affordability like low-income units.

Pros:

- **a.** This could provide nearly $1.3 million for enhancing amenities and features on existing parks.
- **b.** Already precedent for reduced fees in under current PDO/PIO for downtown high-rises.
- **c.** Already precedent in other City programs for exempting very-low income (VLI) and extremely-low income (ELI) units from construction taxes.
- **d.** If it were based on the level of affordable housing, it could be an incentive for developers to provide more deeply affordable units and would be similar to current City construction tax exemptions

Cons:

- a. The reality is that the majority of new affordable units funded will primarily be for extremely-low and very-low income households. There will be very few low-income (LI) units produced over the next several years. Therefore, only providing a portion of the funding, it is unlikely that there would be enough to afford the purchase of new parkland. The funding produced would likely be used to enhance existing parks or provide trail connections to existing facilities.

b. While tax credits and other State/federal resources can offset between 30-60% of these fees, the remainder of the gap about $835,000 would likely come from the City's affordable housing funds. This would equate to the loss of about 7 affordable units out of 1,600 units.

---

5. Require a park fee in underserved areas, per the Urban Environmental Accords and identified in the City's 2009 Greenprint Update

Pros:

a. Roughly $6.6 million would be made available to the Parks fund.
b. Provides funding to areas in most need of parkland per the Urban Environmental Accords goal of having a recreational facility within 1/3 mile distance of each resident.
c. Targets limited affordable housing resources to areas with high need for additional parks.

Cons:

a. The Urban Environmental Accords are based only upon the distance to parks, not whether the parks are sufficient in size or whether the neighborhood has other amenities necessary for a balanced park system such as a community center and sports fields.
b. While tax credits and other State/federal resources can offset between 30-60% of these fees, the remainder of the gap about $4 million would likely come from the City's affordable housing funds. This would equate to the loss of about 33 affordable units out of the 1,600 units in the development pipeline.
c. Creates an issue of fairness among developers building in certain areas of the City.
d. May result in an effort by developers to avoid construction in high-park need areas.
e. Creates more constraints regarding the usage and spending of these monies for parks.

---

6. Exempt certain types of affordable units like senior and special needs.

Pros:

a. Roughly $9.4 million would be made available to the Parks fund.
b. Recognizes that some housing types may have a lower impact on park usage due to the fact that these product types typically have enhanced, on-site public or community spaces for these populations.

Cons:

a. Implies that senior or special needs residents do not use park facilities.
b. While tax credits and other State/federal resources can offset between 30-60% of these fees, the remainder of the gap about $5.6 million would likely come from the City's affordable housing funds. This would equate to the loss of about 46 affordable units out of the possible 1,600 units in the development pipeline.

---

7. Consider new, on-going or one-time funding sources for parks: general obligation bonds, real estate/sales/ use taxes, parcel tax, special assessment districts, etc.

Pros:

a. If the community as a whole supports the idea that both parks and affordable housing are important, people can vote for increased revenues.
b. Could mean a steady stream of funding for this effort and more effectively target and raise the capital needed to invest in this resource.
c. Several States and communities have implemented these actions: Los Angeles County; Chicago; Minneapolis; East Bay Regional Park District; and Virginia Beach, VA.

Cons:

a. The voters and public may feel fatigued at the thought of paying more in fees or services to cover these costs.
b. Some funding sources, i.e. general obligation bonds, are only one-time sources and there are competing priorities.

---

8. Eliminate the exemption but partially offset with reductions to other City fees (i.e. planning, building or public works) – Recommended by the Housing and Community Development Commission & Parks and Recreation Commission

Pros:

a. Allows for the creation of both parks and affordable housing, with less impact to parks and the affordable housing fund.

Cons:

a. Places a significant cost on Planning, Building and Code Enforcement and Public Works, which operates only as cost recovery.