CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: RULES COMMITTEE **FROM:** Katy Allen

SUBJECT: SEE BELOW **DATE:** May 10, 2004

Approved Date

SUBJECT: PROPOSAL FOR REINSTATEMENT OF EVERGREEN SPECIFIC PLAN FIRE AND HOUSING INCENTIVE ZONE BUILDING TAX SUSPENSIONS

RECOMMENDATION

No action is recommended on the ESP Developer request to reinstate the tax suspensions embodied in Ordinance No. 24213.

BACKGROUND

On November 10, 1992, the City Council adopted Ordinance No. 24213, (attached), establishing the Evergreen Specific Plan Fire and Housing Incentive Zone to encourage expedited development of the Evergreen Specific Plan (ESP) with a total of $74.1 million of public infrastructure. The creation of this incentive zone was part of an overall financing plan designed to assure the construction of a local fire station and the necessary infrastructure to support residential development within the Evergreen area. These improvements were completely paid for and built by the ESP developers and several greater Evergreen Area property owners/ developers, known as the EDP group.

Developers also deposited nearly $16 million up front to construct extraordinary off-site regional infrastructure. This incentive offered the following tax suspensions:

- The Residential Construction Tax; (San Jose Municipal Code § 4.54.039.E)
- The Building and Structure Tax; (San Jose Municipal Code § 4.46.039.6.E)
- A forty-eight percent 48% suspension of the Construction Tax. (San Jose Municipal Code § 4.64.036.E)

The ordinance detailing these tax suspensions was adopted, in advance of a financing plan for ESP, with the ten-year sunset date of January 1, 2003. In 1995, when the financing district was formed, the developers entered into a Cooperation Agreement with the City detailing financial obligations and establishing the methods of reimbursement. The agreement specified the tax suspensions would apply to all ESP dwelling units. However, in compliance with the governing ordinance, the City discontinued the three tax suspensions on January 1, 2003. The ESP developers are protesting the discontinuance of the tax suspensions.

ANALYSIS

Staff prepared an analysis of several alternatives that would reinstate all or part of approximately \$1.8 million dollars in tax suspensions on remaining ESP units from January 1, 2003 to final build-out. The amount of tax revenue collected under protest from the ESP developers since January 1, 2003 to the present is \$828,130. Of this amount, \$398,941 was collected prior to July 1, 2003 and has already been programmed and budgeted into the Capital Improvement Program for fiscal year 2003-2004. Since January 1, 2003, about 250 building permits have been issued within this tax incentive zone and 300 remain to achieve ultimate build-out of ESP.

Of the \$74.1 million of necessary improvements, the ESP and EDP developers were required to deposit \$15,983,000 up front for Phase I Priority Improvements, which include improvements to Capitol Expressway and US101, that were considered essential before any development was allowed to proceed in Evergreen. These Priority Improvements were constructed and managed by the Evergreen Specific Plan Property Owners Partnership (the "Partnership"), with the City administering the funds. The ESP developers were later required to contribute the Phase II priority deposit of \$4,864,597, plus an additional \$1.4 million on a cash call necessary to complete two regional water tanks.

The individual ESP developers have constructed all the remaining public improvements included in the Evergreen Specific Plan as a condition of development, and contend that they have fulfilled their obligations to the City as specified in the Cooperation Agreements. Consequently, they expect the City to honor the cooperation agreement commitments to extend the tax suspensions for all ESP dwelling units.

Based on prior Rules Committee action, City Manager's Office and Public Works staff met repeatedly with the Partnership representatives in order to discuss potential terms in order to arrive at a mutually agreeable resolution. The following points summarize the most recent staff proposal to be recommended to the City Council, also illustrating the complexity of the existing ESP financing structure:

A. In the event that the City would ever reinstate the tax suspension for the period between January 1, 2003 and December 31, 2006, the Partnership would forego any claim that the tax waiver should be extended beyond December 31, 2006.

B. In the event that the City would ever reinstate the tax suspension, the Partnership would agree to forego any claim to the \$398,941 in taxes paid between January 1, 2003 and July 1, 2003, since those funds have already been programmed and budgeted into the Capital Improvement Program for fiscal year 2003-2004.

C. The remaining $429,189 paid after July 1, 2003 up to the present would be refunded to the ESP developers. Staff has collected $800,544 in benefit assessments that could be used to offset the tax suspension refund to ESP developers.

D. The Partnership understands that if the City were to reinstate the tax waiver, the City desires to spur completion of the retail development at Evergreen Square. The Partnership understands that this incentive will expire on December 31, 2006.

E. The Partnership would continue to fund the City’s fund management and administrative support costs from January 1, 2004 to December 31, 2006, at $100,000 per year.

F. The City and the Partnership will initiate final accounting of ESP funds, with the intent to close the books on December 31, 2006. The Partnership will provide additional resources to the City if needed to accomplish this task.

G. The City will examine mechanisms to enforce liens or collect monies for the fair share of improvements for benefiting properties not yet developed.

Unfortunately, the Partnership has requested stronger language in item G that City staff does not support. As a result, it is not recommended that Council reinstate the building tax suspension.

FISCAL IMPACT

The potential unrealized City revenue due to reinstatement of the tax suspensions would be up to $1,440,744. Assessment collections of $800,544 by Benefit Assessment District No. 91-209 designated to reimburse the City for the EDP tax suspensions could partially offset the impact of extending the tax suspension, for a net unrealized revenue of $640,200. The terms outlined above would have further reduced the potential unrealized revenue.

COORDINATION

This item has been coordinated with the City Attorney's Office, the City's Budget Office, the Office of Economic Development, the Department of Transportation, and the Department of Planning, Building and Code Enforcement.

KATY ALLEN
Director, Public Works Department