

RESOLUTION NO. 75219

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING EXHIBIT B OF RESOLUTION NO. 73587 AS AMENDED, TO PROVIDE FOR THE RETROACTIVE DEFERMENT OF THE PAYMENT OF PARKLAND IN-LIEU FEES, AND THE INTEREST AND PENALTY CHARGED PURSUANT TO CHAPTER 19.38 OF THE SAN JOSE MUNICIPAL CODE FOR RESIDENTIAL PROJECTS WITH APPROVED FINAL MAPS AND PARCEL MAPS AND FOR WHICH BUILDING PERMITS HAVE NOT BEEN ISSUED

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; and

WHEREAS, on January 9, 2007, the City Council adopted Resolution No. 73587 setting forth the Schedule of Parkland In-Lieu Fees charged and credits issued pursuant to Chapters 14.25 and 19.38 of the SJMC and reduced and deferred payments of parkland in-lieu fees for developers of projects containing Downtown Units, as that term is defined in Resolution No. 73587; and

WHEREAS, since that time, Resolution No. 73587 has been amended as follows: 1) Resolution No. 73906 amended Exhibit A and the definition of "Projects in Process," and 2) Resolution No. 74382 allowed the additional extension of up to eighteen (18) months for payment of parkland fees by developers of projects containing Downtown Units; and

WHEREAS, pursuant to SJMC 19.38.335, developers are required to pay parkland fees for a residential project in full prior to City's approval of the final or parcel map. In the alternative, as a condition of City's approval of the final or parcel map, developers may 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 residential project, but no later than one (1) year after City's approval of the final or parcel map unless the Schedule of Parkland Fees and Credits provides for delayed payment of the parkland fees; and

WHEREAS, due to the unprecedented economic conditions confronting residential developers, certain developers who currently have an approved final or parcel map are

unable to commence construction of their residential projects and are currently either in default of their obligation to pay parkland fees to the City or will be in default in the near future; and

WHEREAS, the City Council believes that residential development in the City is critical to the economy of the City and making the City a vibrant place to live, work and visit, and allowing the deferral of the parkland in-lieu fees for developers who have an approved final or parcel map and are unable to commence residential construction will encourage continued investment in the City; and

WHEREAS, this Resolution amends Resolution No. 73587, as amended, to allow the City Manager to enter into written agreements with developers of projects with approved final or parcel maps that have not been issued a building permit for the residential development project in order to defer the payment of parkland in-lieu fees as more particularly set forth in this Resolution;

NOW THEREFORE, BE IT RESOLVED by the Council of the City of San José that:

SECTION 1. Section 1 of Exhibit B of Resolution No. 73587, as amended, is hereby amended to add the following section:

C. Deferred Payment.

1. Pursuant to SJMC 19.38.355, developers are required to pay parkland fees for residential projects in full prior to City's approval of the final or parcel map. In the alternative, as a condition of City's approval of the final or parcel map, developers may enter into a parkland agreement with City which provides for payment of the parkland fees in full, concurrent with the issuance of the first building permit for the residential project, but no later than one (1) year after City's approval of the final or parcel map unless the Schedule of Parkland Fees and Credits provides for delayed payment of the parkland fees.
2. Notwithstanding the requirements set forth above in Section 1.C.1. of this Exhibit, developers of projects meeting each of the conditions set forth below are eligible to defer payment of parkland in-lieu fees charged pursuant to SJMC 19.38 as specified in this Subsection to the earlier date of January 15, 2011, or

the date of the issuance of the first building permit for residential construction, which would otherwise be due and payable to the City as set forth in Section 1.C.1:

- a. Developer has entered into a fully executed parkland agreement with the City prior to the date City Council adopts this Resolution to pay parkland fees concurrent with the issuance of the first building permit for the residential project, or within one (1) year from the date of the approval of the final or parcel map, whichever occurs first; and
 - b. City has approved the final or parcel map for the development project associated with the fully executed parkland agreement prior to the date the City Council adopts this Resolution; and
 - c. City has not issued any building permit(s) for residential construction associated with the development project under the fully executed parkland agreement; and
 - d. Developer and the City shall enter into a written amendment to the parkland agreement on or before March 1, 2010, which will be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the development project is located, and which amendment provides that all parkland fees shall be due and payable in accordance with this Resolution.
3. The City Manager is authorized to execute all such amendments to parkland agreements deferring payment of parkland fees in accordance with this Resolution.
 4. The provisions of this Subsection C shall automatically expire on January 15, 2011.

SECTION 2. If not otherwise defined in this Resolution, capitalized terms shall have the meanings set forth in SJMC Chapter 19.38.

SECTION 3. This Resolution is effective retroactive to June 20, 2008. The provisions of Resolution No. 73587, as amended by Resolution Nos. 73906 and 74382 that have not been amended by this Resolution shall remain in full force and effect.

ADOPTED this 8th day of December, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,
KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE, REED.

NOES: NONE.

ABSENT: NONE.

DISQUALIFIED: NONE.



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk