

RESOLUTION NO. 75249

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE AMENDING EXHIBIT B OF RESOLUTION NO. 73587, AS AMENDED BY RESOLUTION NO. 74382, TO PROVIDE AN ADDITIONAL EXTENSION OF UP TO THIRTEEN (13) MONTHS FOR DEFERRAL OF THE PAYMENT OF PARKLAND IN-LIEU FEES CHARGED PURSUANT TO CHAPTERS 14.25 AND 19.38 OF THE SAN JOSE MUNICIPAL CODE FOR HIGHRISE MULTI-FAMILY RESIDENTIAL PROJECTS LOCATED IN THE DOWNTOWN CORE AREA

WHEREAS, 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, 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, under Resolution No. 73587, parkland in-lieu fees for Downtown Units which would otherwise be due and payable to City no later than the issuance of the first building permit for the project were deferred to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, including temporary certificates of occupancy; and

WHEREAS, City Council found that high-rise multi-family residential projects located in the Downtown Core Area are critical to the continued emergence of the Downtown Core Area as a vibrant regional center, the financial markets in recent years have particularly impacted high-rise housing development in the Downtown Core Area, and extending the deferral of the parkland in-lieu fees will encourage continued investment in the Downtown Core Area; and

WHEREAS, on May 20, 2008, City Council adopted Resolution No. 74382, amending Resolution No. 73587, to allow City Manager to enter into written agreements with developers of projects containing Downtown Units in order to extend deferral of the payment of parkland in-lieu fees for up to eighteen (18) months from the date of the

scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit as more particularly set forth in Resolution No. 74382; and

WHEREAS, City Council finds that high-rise multi-family residential projects located in the Downtown Core Area continue to be affected by the economy and the instability of the financial markets, and extending the deferral of the parkland in-lieu fees for up to an additional thirteen (13) months will encourage continued investment in the Downtown Core Area; and

WHEREAS, this Resolution amends Resolution No. 73587, as amended by Resolution No. 74382, to allow City Manager to enter into amendments with developers that have previously executed agreements with City pursuant to Resolution No. 74382 to extend the deferral of payment of parkland in-lieu fees for up to an additional thirteen (13) months (from up to eighteen (18) to up to thirty-one (31) months) 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 2.C of Exhibit B ("Deferred Payment") of Resolution No. 73587 is hereby amended as follows:

C. Deferred Payment.

1. Developers of projects containing Downtown Units shall be eligible to defer payment of in-lieu fees as specified in this Subsection, which would otherwise be due and payable to the City no later than the date of the issuance of the first building permit for the project. The in-lieu fees shall be due and payable to the City prior to the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy. Certificates of occupancy include temporary certificates of occupancy permits, for residential occupancy.

2. Notwithstanding the preceding Subsection, the City Manager, in consultation with the City of San José Redevelopment Agency Executive Director, may enter into written agreements with developers of projects containing Downtown Units to defer payment of in-lieu fees for an additional period of time beyond the date of the scheduling of the final inspection for the first certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for a Downtown Unit if all of the following conditions are met:

a. the City Manager finds that deferred payment of the in-lieu fees for the duration of the written agreement will not substantially interfere with the construction schedule of any Park Facilities or Recreational Facilities eligible to be funded by the in-lieu fees proposed to be deferred; and

b. the written agreement requires the developer to pay interest on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the period between the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificate of occupancy for residential occupancy) and the date on which the developer makes payment of the deferred in-lieu fees to the City; and

c. the written agreement shall be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the Downtown Units are located; and

d. prior to the City's execution of the written agreement, Developer shall provide to the City with certain collateral or security, such as a letter of credit, deed of trust, or other security instrument, for the payment of the deferred in-lieu fees and estimated interest as acceptable to the City Manager; and

e. the in-lieu fees and accrued interests shall be due and payable to the City on or before the earlier of any of the following events: (a) eighteen (18) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager pursuant to Subsection 2.a above; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten (10) percent of the Downtown Units within the project. In no event will certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) be issued for more than ninety percent (90%) of the Downtown Units contain within a project, unless and until, the in-lieu fees and accrued interests are fully paid to the City.

3. The provisions of Subsection C.2 shall expire on July 1, 2009. Notwithstanding the expiration date set forth in this Subsection, the City Manager may enter into amendments to written agreements with developers who have previously executed a written agreement with City pursuant to Section C.2 above to defer payment of in-lieu fees for an additional period of up to thirteen (13) months from the date of the expiration of the executed agreement if all of the following conditions are met:

a. the City Manager finds that deferred payment of the in-lieu fees for the additional duration in the amendment will not substantially interfere with the construction schedule of any Park Facilities or Recreational Facilities eligible to be funded by the in-lieu fees proposed for an additional deferment; and

b. the amendment continues to require the developer to pay interest on the deferred in-lieu fees calculated at the rate earned by the City's investment portfolio during the period between the date on which the developer schedules the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy (including any temporary certificate of occupancy for residential occupancy) and the date on which the developer makes payment of the deferred in-lieu fees to the City; and

c. the amendment shall be fully executed by all parties and recorded in the Santa Clara County Recorder's Office against the real property on which the Downtown Units are located; and

d. prior to the City's execution of the amendment, Developer shall provide to the City with certain collateral or security, such as a letter of credit, deed of trust, or other security instrument, for the payment of the deferred in-lieu fees and estimated interest as acceptable to the City Manager, in addition to any collateral that was previously provided to the City under the executed agreement; and

e. the in-lieu fees and accrued interests shall be due and payable to the City on or before the earlier of any of the following events: (a) thirty-one (31) months from the date of the scheduling of the final inspection for the first certificate of occupancy for a Downtown Unit, for residential occupancy

(including any temporary certificates of occupancy for residential occupancy); (b) a date determined by the City Manager pursuant to Subsection 3.a above; or (c) the date of the scheduling of the final inspection for the certificate of occupancy (including any temporary certificates of occupancy for residential occupancy) for the last ten percent (10%) of the Downtown Units within the project. In no event shall certificates of occupancy (including any temporary certificates of occupancy for residential occupancy) be issued for more than ninety percent (90%) of the Downtown Units contain within a project, unless and until, the in-lieu fees and accrued interests are fully paid to the City.

Nothing stated herein shall effect any agreement executed between the City and developer pursuant to Section C.2 above unless it has been modified in writing between the parties pursuant to this Subsection.

SECTION 2.

This Resolution is effective on the same day it is adopted by City Council. The provisions of Resolution No. 73587, as amended by Resolution No. 74382, that have not been amended by this Resolution shall remain in full force and effect.

ADOPTED this 12th day of January 2010, 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