



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: May 7, 2018

Approved

Date

5-7-18

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF DOWNTOWN HIGH-RISE RESIDENTIAL INCENTIVE FOR AVIATO @ NORTH SAN PEDRO AT 199 BASSETT STREET

RECOMMENDATION

Conduct a public hearing regarding an economic development subsidy given in connection with a reduction in construction and conveyance taxes and park impact in-lieu fees for a Downtown residential high-rise at 199 Bassett Street in the amount of \$4,391,240, pursuant to California Government Code Section 53083 and Open Government Resolution Section 2.3.2.6 C.

OUTCOME

Approval of an economic development subsidy in the amount of \$4,391,240 in conjunction with the Downtown High-Rise Residential Incentive Program, approved by City Council in December 2016, for the project at 199 Bassett Street in Downtown San Jose.

BACKGROUND

The number of residents in the Downtown has long been viewed as critical to support increased transit investment, diversification of retail, and the generation of more jobs in the City's core. With this objective, the City Council approved incentives for high-rise residential development in 2007 (park impact fee-specific) and again in 2012 (park impact fee and construction and conveyance taxes). These programs supported the construction of 1,522 units.

These incentives expired in 2016 for projects that were in the entitlement process or recently approved at a time when financial and market conditions were tightening for new high-rise development. In this context, the City Council approved the extension of the Downtown High-

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Rise Residential Incentive Program on December 13, 2016 with the intent that the completion of additional high-rise projects will add housing units, spur more retail amenities, attract more employers, increase transit use, and improve public life through increased enjoyment of currently under-utilized public spaces. The memo for the December 13, 2016 Council action provided the data and analysis documenting the need for the Incentive Program.

The current Downtown High-Rise Residential Incentive Program suspends 50% of taxes on high-rise developments in the Downtown Growth Area (Appendix A) and allows for payment of the non-suspended taxes to be delayed until the issuance of the Certificate of Occupancy. The Incentive Program also sets the park impact in-lieu fees charged for residential downtown high-rise developments at 50% of the applicable park impact in-lieu fees for multi-family 5+ units in the Downtown Growth Area and allows for payment of park impact in-lieu fees to be delayed until issuance of the Certificate of Occupancy.

On August 24, 2014 the San Jose City Council adopted Resolution 77135 which required that a public hearing be conducted for any public subsidy over \$1,000,000 and that notice of such public hearing be in the form of a memorandum addressed to the City Council posted on the City's web site 28 calendar days in advance of the City Council meeting at which a public subsidy is to be considered. The Resolution required that the staff memorandum contain the information found in the first table in the Fiscal/Policy Alignment section of this memorandum. California Code Section 53083 (Assembly Bill 562) was also enacted in 2014 and requires local agencies to provide specified information to the public before approving an economic development subsidy over \$100,000. The state-required information is found in the second table in the Fiscal/Policy Alignment section of this memorandum.

ANALYSIS

Aviato @ North San Pedro is an 18-story mixed-used project, consisting of 302 residential dwelling units and 10,301 square feet of ground floor commercial space, with four levels of underground parking. The project is located just a few blocks away from San Pedro Square, in the North San Pedro development area.

To be eligible for the Downtown High-Rise Residential Incentive Program a project must:

- Be in the Downtown Growth Area as defined in the 2000 Downtown Strategy and 2040 General Plan.
- Be at least 12 stories in height.
- Secure a foundation permit by July 2018.
- Complete final inspection of 80% of the units by December 2020.
- Pay deferred fees and taxes prior to the final inspection of 80% of the units.
- Retain contractors licensed by the State of California for the construction of the project.
- Employ only construction workers who possess necessary licenses and certifications required by the State of California.

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Additionally, project developers should make a good faith effort to 1) comply with the State of California's apprenticeship program requirement and 2) ensure that 25% of those apprentices are identified as having an employment barrier.

The current Downtown High-Rise Residential Incentive Program includes a 50% reduction in park impact in-lieu fees and two of the City's construction taxes applied to residential development.

Park Impact In-lieu Fees

A residential project's "parkland obligation" is based on the requirements of two Municipal Code Chapters: 14.25 Park Impact ordinance (PIO) for non-subdivided properties (i.e. rentals) and 19.38 Parkland Dedication ordinance (PDO) for subdivided properties (i.e. "for sale" units). Both Chapters outline a residential project's requirement to provide land for new parks, trails, and community centers or to rehabilitate existing public recreational amenities to serve the new residents who will be living in the community. Essentially both ordinances are implemented identically and require a project to meet the objectives of the State Quimby Act.

The Quimby Act was adopted to provide a method for cities to obtain resources to mitigate the impact new population growth has on existing parks, open space, and other public recreational amenities. The City's park impact (PDO/PIO) requirement is based on a Quimby Act provision that new residential development provide three acres of land for every 1,000 people added to the community by a project. A project's parkland obligation can be met through the dedication of land, or payment of park impact in-lieu fees equivalent to the acreage of land required, or construction of new or rehabilitation of existing public recreational amenities. When land dedication is not feasible, the Department of Parks, Neighborhood and Recreational Services provides a mechanism to allow the developers to pay a park impact in lieu fee that is then used to build new or redevelop existing parkland, community centers, and trails.

On December 19, 2017 City Council adopted Resolution 78474 to set the current park impact in-lieu fee for multi-family 5+ units in the Downtown Growth Area at \$22,600 per unit.

Construction Taxes

The City's construction taxes include the Building and Structure Construction Tax (B&S) and the Commercial-Residential-Mobile Home-Park Building Tax (CRMP) also referred to as the Construction Excise Tax, both of which are based on the valuation of construction derived from the most current building valuation data table published by the International Code Council (ICC) or the developer's stated construction valuation, whichever is higher. The B&S tax rate on residential building construction valuation is 1.54%, and the CRMP tax rate on residential building construction valuation is 2.42%, for a combined tax of 3.96%. Proceeds are used to fund city-wide capital improvement projects such as repairs and redevelopment of existing recreational facilities and transportation-related projects and improvements, such as pavement maintenance, complete streets, pedestrian safety, and traffic calming projects.

Proposed Economic Subsidy

The proposed economic subsidy for this project is \$4,391,240: \$978,640 from the suspension of 50% of construction taxes and \$3,412,600 from the suspension of 50% of applicable park impact in-lieu fees.

EVALUATION AND FOLLOW-UP

City staff will execute a Project Completion Agreement with 199 Bassett, LLC, as required under Resolution 78079, and will monitor project construction to ensure the requirements of the Downtown High-Rise Residential Incentive Program are completed prior to the sunset date of December 31, 2020. The project must still comply with its parkland dedication obligations per its entitlement conditions.

PUBLIC OUTREACH

The memorandum will be posted on the City's website for the June 5, 2018 City Council agenda.

COORDINATION

This memorandum has been coordinated with the Department of Planning, Building and Code Enforcement, the City Attorney's Office, the City Manager's Budget Office, the Department of Transportation, the Department of Housing, and the Department of Parks, Recreation and Neighborhood Services.

COMMISSION RECOMMENDATION

No commission recommendation is associated with this action.

FISCAL/POLICY ALIGNMENT

The project aligns with the City's Economic Development Strategy to position Downtown as Silicon Valley's City Center to attract a diverse range of residents.

Benefits

- Estimated one-time revenue to the City: \$4,787,777
 - Construction Taxes: \$1,028,470
 - Park Impact In-Lieu Fees: \$3,412,600
 - Business Cooperation Program: \$346,707

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- Estimated recurring annual revenue to the City: \$353,630
 - Property Tax: \$231,138
 - Utility Tax: \$90,504
 - Business Tax: \$6,235
 - Sales and Transaction Tax: \$25,753

This project is within the Merged Redevelopment Project Area. Any incremental tax revenues generated by the project will be received by the Successor Agency for continued payment of enforceable obligations until completion in 2035. All residual tax increment revenue after payment of all enforceable obligations will be distributed to the taxing entities within the Merged Redevelopment Project Area. In June 2018, the City of San Jose will begin receiving 14% of the residual tax increment generated by Merged Project Area.

After 2035 it is anticipated that all the taxing entities will receive the normal distribution of property taxes. The City of San Jose receives 14% of one percent of assessed property value as property tax. The County of Santa Clara receives 18% of the property tax distribution. The corresponding school district (San Jose Unified School District) receives 44% of the property tax distribution. In addition, the corresponding school district will collect a fee of \$0.56/square foot of living space (including commercial space) on this development.

Although not part of the incentive program that is the subject of this memo, the rental project described in this memo may benefit from the Affordable Housing Impact Fee's Downtown High-Rise Exemption if the project meets all of the program criteria.

The table below addresses the requirements set forth in the City of San Jose's Resolution 77135 for publication of information related to an economic development subsidy of more than \$1,000,000.

<p>i. Accountability</p>	<p>The Downtown High Rise Incentive program suspends 50% of construction taxes for eligible developments and allows for payment of the taxes to be delayed until the issuance of the Certificate of Occupancy. The program also set the park impact fees at 50% of the applicable park impact fees and allows for payment of park impact fees prior to scheduling the first occupancy inspection for 80% of the residential units.</p>
<p>ii. Net fiscal impact</p>	<p>The project is estimated to generate one-time revenue of \$4,787,777 (Construction Taxes: \$1,028,470, park impact in-lieu Fees: \$3,412,600, Business Cooperation Program: \$346,707) and recurring annual revenue of \$353,630 (Property Tax: \$231,138, Utility Tax: \$90,504, Business Tax: \$6,235, Sales and Transaction Tax: \$25,753) to the City of San Jose. The construction tax revenue gained on this project is \$1,028,470 and the</p>

	construction tax revenue forgone is \$978,640. The park impact in-lieu fee gained on this project is \$3,412,600 and park impact fee forgone is \$3,412,600.
iii. Net job impact	This project is estimated to create approximately 1019 full-time construction jobs, with construction activities spanning approximately 18-24 months. 89 percent of jobs will generate an annual salary above \$80,000. Post construction, the project is estimated to create 30 permanent full-time equivalent positions on-site in management, service and retail functions.
iv. Housing impact	This project will deliver 302 new market rate (above 120% of Area Median Income) housing units (664 estimated residents) to Downtown. No new demand for Extremely Low Income housing units is expected to be generated by employees of this project.
v. Source of funds	The incentive does not provide funds directly to the project but is a suspension of 50% of construction taxes and a 50% reduction in park impact fees totaling \$4,391,240. The project is estimated to generate one-time revenue of \$4,787,777 and recurring annual revenue of \$353,630.
vi. Neighborhood impacts	No significant impacts are anticipated on traffic or public infrastructure.

The table below addresses the requirements set forth in the State of California AB 562 (Government Code 53083) for publication of information related to an economic development subsidy and a public hearing.

i. Name/address of benefiting business entity	199 Bassett, LLC 21710 Stevens Creek Blvd., Suite 200 Cupertino, CA 95014
ii. Start and end dates for the subsidy	Projects will become eligible for the subsidy per the current Downtown High-Rise Residential Incentive Program. The subsidy will become finalized upon payment of fees prior to the sunset date of the Downtown High-Rise Residential Incentive Program, subject to conditions therein.
iii. Description of the subsidy, estimated total amount of expenditure of public funds or revenue lost	The City shall suspend 50% of construction taxes on the high-rise constructed at 199 Bassett Street and shall allow payment of the non-suspended taxes to be delayed until the issuance of the Certificate of Occupancy. The City shall also set the park impact in-lieu fees charged for 199 Bassett Street at 50% of the applicable park impact in-lieu

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	fees for multi-family 5+ units and provide for payment of park impact fees at time of issuance of the Certificate of Occupancy. The estimated economic development subsidy is \$4,391,240
iv. Statement of public purpose	To encourage the development of high-rise residential in the Downtown Area, spurring increased retail amenities, attracting more employers, increasing transit use, and improving public life in San Jose. The aggregation of these factors will increase the economic vitality of the City's urban core and will translate to increased property tax and sales tax revenue to the City of San Jose.
v. Projected tax revenue	Estimated recurring tax revenue to the City of San Jose is \$353,630, of which \$231,138 is derived from property tax.
vi. Estimated number of jobs created, broken down by full time, part-time and temporary positions	This project is estimated to create approximately 1019 full-time construction jobs, with construction activities spanning approximately 18-24 months. 89 percent of jobs will generate an annual salary above \$80,000. Post construction, the project is estimated to create 30 permanent full-time equivalent positions on-site in management, service and retail functions.

CEQA

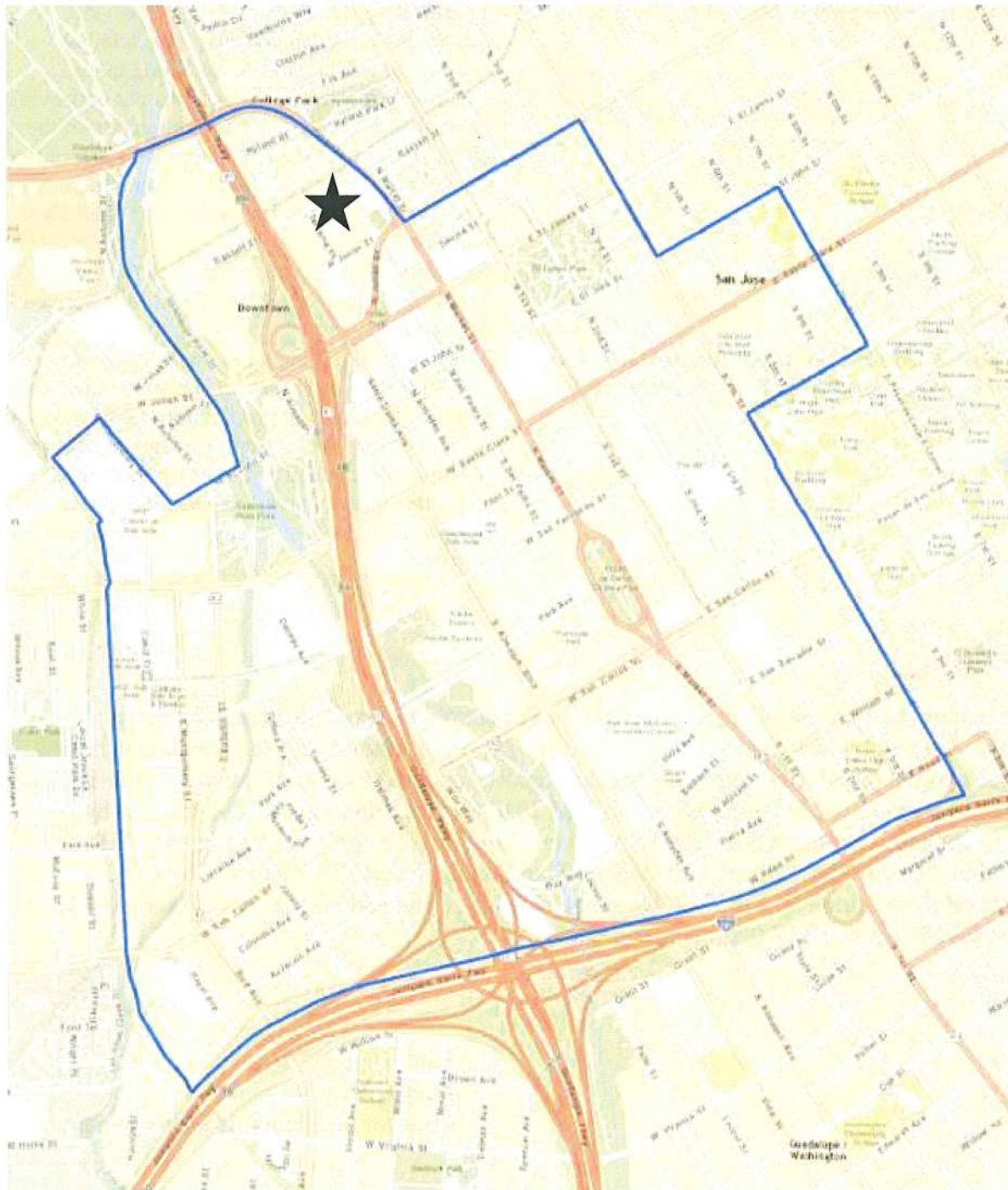
Addendum to "The Brandenburg Mixed Use Project/North San Pedro Housing Sites EIR," adopted by City Council Resolution No. 72170 on June 15, 2004; "The Downtown Strategy 2000 Final Environmental Impact Report," adopted by City Council Resolution No. 72767 on June 21, 2005; "Envision San José 2040 General Plan Final EIR," adopted by City Council Resolution No. 76041 on November 1, 2011; Supplemental Program EIR entitled, "Envision San José 2040 General Plan Supplemental EIR," adopted by City Council Resolution No. 77617 on December 15, 2015, and addenda thereto, Planning File Nos. SP17-023 and T17-026.

/s/
 Kim Walesh
 Deputy City Manager
 Director of Economic Development

For questions please contact Blage Zelalich, Downtown Manager at (408) 535-8172.

Appendix A: Downtown Boundary Map and Location of Project

Envision 2040 San Jose General Plan
Downtown Growth Area



Map Prepared by the City of San Jose Planning Division, November 2016



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Appendix B: Project Renderings



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