

COUNCIL AGENDA: 11/6/18
FILE: 18-1480
ITEM: 4.1

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kim Walesh

SUBJECT: SEE BELOW

DATE: October 9, 2018

Approved

Date

10/9/18

COUNCIL DISTRICT: 3

SUBJECT: APPROVAL OF DOWNTOWN HIGH-RISE RESIDENTIAL INCENTIVE FOR POST STREET TOWER AT 171 POST STREET

RECOMMENDATION

Conduct a Public Hearing regarding an economic development subsidy in connection with a reduction in construction taxes and parkland fees for a Downtown residential high-rise at 171 Post Street in the amount of \$2,910,324, 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 \$2,910,324 in conjunction with the Downtown High-Rise Residential Incentive Program, approved by City Council in December 2016, for the project at 171 Post Street in Downtown San José.

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 (parks-specific) and again in 2012 (parks and construction taxes). These programs resulted in the construction of 1,522 units.

The initial incentive expired in 2016 for new projects 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-Rise Residential Incentive Program on December 13, 2016 with the intent that the completion of

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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 construction taxes on high-rise developments in the Downtown Area (Appendix A) and allows for payment of the 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 Area and allows for payment of park impact in-lieu fees to be delayed until issuance of the Certificate of Occupancy. One Incentive Program requirement is that a project secure a foundation permit by July 31, 2018 and therefore the Post Street Tower will be the last project anticipated to come forward under the high-rise program extension approved by Council in December 2016.

On August 24, 2014 the San José City Council adopted Resolution 77135 which required that a public hearing be conducted for any 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 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

Post Street Tower is a 20-story Class A mixed-used project, consisting of 228 residential dwelling units and approximately 8,400 square feet of ground floor commercial space, with 215 parking stalls split between three levels of underground parking and two levels of above ground parking. The project is walking distance to amenity rich hubs such as San Pedro Square Market, City View Plaza, Market and First streets and Plaza de Cesar Chavez. Architecturally, the tower is a clean and modern design with many balconies, large windows, façade articulation and street level activation.

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

- Be in the Downtown 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 31, 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.

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 the park impact in-lieu fees and the City's two Construction Taxes applied to residential development. However, park impact fees for this project are assessed under the original Downtown High-Rise Incentive Program initially adopted in 2007, as amended.

Park Impact In-lieu Fees

The City's Parkland Dedication Ordinance (PDO), San José Municipal Code Chapter 19.38, and Park Impact Ordinance (PIO), SJMC Chapter 14.25 supports the development of neighborhood and community parks to serve new residents. These ordinances are intended to offset the impact of residents from new development on existing parks and to maintain the City's level of service for parks and recreation. There are several ways that projects can offset their parkland impacts, also known as the parkland obligation for a project; these include land dedication, turnkey park improvements, as well as park impact in-lieu fees. In the Downtown Core, with limited available land, park impact in-lieu fees are most common and are assessed on each new residential unit. The City's PDO and PIO programs are enabled through the California Quimby Act and Mitigation Fee Act, requiring the equivalent of three acres per 1,000 residents in parkland or equivalent in-lieu fees based upon current land values. These fees provide the City with the resources to secure and develop new parkland or rehabilitate existing park amenities serving new developments and their surrounding communities.

The adoption of the original High-Rise Incentive Program in 2007 (Resolution No. 73587), provided development incentives with reductions in park impact in-lieu fees for very high-density, high-rise residential development in the Downtown Core. These incentives, as with all park impact fees, varied over time with housing market conditions and land values. Eligibility for these incentives closed on July 15, 2016, for any new residential project, that had not executed a parkland agreement by that date.

On June 28, 2016, the developer, SIMEON Properties LLC, executed a parkland agreement with the City under the original High-Rise Incentive Program locking in the project's park impact in-lieu fees for 202 units at \$7,650 per unit. In 2016, the standard rate for multi-family units under the Parkland Schedule of Fees and Credits was \$19,000/unit (Resolution No. 77153). SIMEON Properties LLC will be required to pay the current high-rise residential rate of \$14,600/unit (Resolution No. 78733) for the additional 26 units being proposed for this project or \$379,600.

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), 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 project developer pulled a foundation permit for the Post Street Tower in July 2016 and paid the necessary permit costs, fees and taxes for the project at that time (20% of total project permit costs, fees and taxes). The economic subsidy proposed in this memorandum pertains to the remaining 80% construction tax balance.

The total economic subsidy for this project is \$617,624 from the suspension of 50% of 80% of construction taxes and \$2,292,700 from the reduction of applicable Parkland Fees.

EVALUATION AND FOLLOW-UP

City staff will execute a Project Completion Agreement with SIMEON Properties 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 November 6, 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/INPUT

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: \$2,781,744
 - Construction Taxes: \$655,244
 - Parkland In-Lieu Fees: \$1,924,900
 - Business Cooperation Program: \$201,600

- Estimated recurring annual revenue to the City: \$213,808
 - Property Tax: \$155,400
 - Utility Tax: \$32,665
 - Business Tax: \$4,755
 - Sales and Transaction Tax: \$20,988

This project is within a Redevelopment Agency Project Area, therefore approximately half of the tax increment revenue will go to the Successor Agency to the Redevelopment Agency to pay down Successor Agency enforceable obligations including bond debt. It is expected that all enforceable obligations and bond debt payments will be completed in 2035. However, because the Successor Agency is receiving a substantial amount of tax increment in the Project Areas and the bond debt has been refunded, the City is receiving an increasing portion of property tax increment revenue.

After 2035 all the taxing entities will receive the normal distribution of property taxes. The City of San José 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 receives 100% of its Certificates of Occupancy by June 30, 2021. The Post Street Tower could be exempt from paying approximately \$3,348,553 (based upon the estimated residential square footage of 179,067 and an Affordable Housing Impact Fee in Fiscal Year 2020-2021 of \$18.70/square foot).

The table below addresses the requirements set forth in the City of San José'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 current 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 2007 Downtown High-Rise Incentive allowed the 171 Post Street project to lock in a park impact fee of \$7,650/unit and provide for payment of this fee at the time of issuance of the Certificate of Occupancy.</p>
<p>ii. Net fiscal impact</p>	<p>The project is estimated to generate one-time revenue of \$2,781,744 (Construction Taxes: \$655,244, Parkland In-Lieu Fees: \$1,924,900, Business Cooperation Program: \$201,600) and recurring annual revenue of \$213,808 (Property Tax: \$155,400, Utility Tax: \$32,665, Business Tax: \$4,755, Sales and Transaction Tax: \$20,988) to the City of San José. The construction tax revenue gained on this project is \$655,244 and the construction tax revenue forgone is \$617,624. The park impact fee gained on this project is \$1,924,900 and park impact fee forgone is \$2,292,700.</p>
<p>iii. Net job impact</p>	<p>This project is estimated to create approximately 367 full-time equivalent construction jobs. 90% of these jobs will generate an annual salary above \$60,000 and 41% of these jobs will generate an annual salary above \$80,000. Post construction, the project is estimated to create 28 on-site FTE positions in management, service and retail.</p>

iv. Housing impact	This project will deliver 228 new market rate (above 120% of Area Median Income) housing units (501 estimated residents) to Downtown. No existing housing units will be demolished for the construction of this project. 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. The project is estimated to generate one-time revenue of \$2,781,744 and recurring annual revenue of \$213,808.
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	SIMEON Properties LLC 655 Montgomery Street, Suite 1190 San Francisco, CA 94111
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 171 Post Street and shall allow payment of the taxes to be delayed until the issuance of the Certificate of Occupancy. The City shall also set the park impact fees charged for 202 units in the project under the original High-Rise Incentive Program at \$7,650/unit and provide for payment of park impact fees at the time of issuance of the Certificate of Occupancy. The estimated economic development subsidy is \$2,910,324
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

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	property tax and sales tax revenue to the City of San José.
v. Projected tax revenue	Estimated recurring tax revenue to the City of San José is \$213,808, of which \$155,400 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 367 full-time equivalent construction jobs. 90% of these jobs will generate an annual salary above \$60,000 and 41% of these jobs will generate an annual salary above \$80,000. Post construction, the project is estimated to create 28 on-site FTE positions in management, service and retail.

CEQA

Addendum to the Downtown Strategy 2000 Final Environmental Impact Report (Resolution no. 72767), Envision San Jose 2040 General Plan Final Impact Report (Resolution no. 76041), the Envision San Jose 2040 General Plan Final Supplemental Environmental Impact Report (Resolution no. 77617), and addenda thereto.

/s/

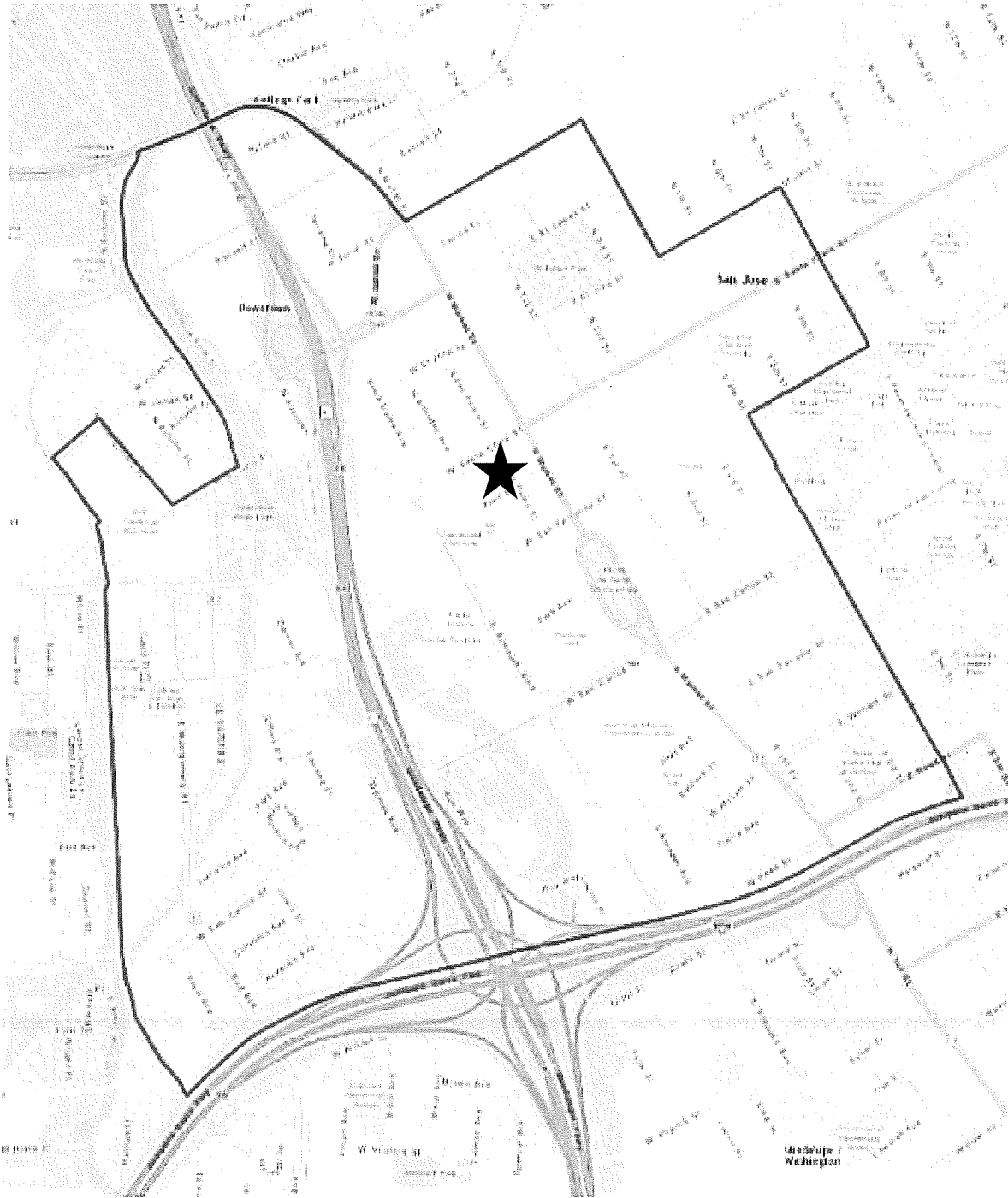
KIM WALESH
Deputy City Manager
Director of Economic Development

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

Attachment

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



Appendix B: Project Renderings



Arial view of Post Street facade



Ground floor view from Post Street

Appendix B: Project Renderings (cont'd)



Arial view from Santa Clara Street