



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jon Cicirelli

SUBJECT: SEE BELOW

DATE: October 13, 2020

Approved

Date

10/22/2020

COUNCIL DISTRICT: 3

**SUBJECT: ACTIONS RELATED TO THE PARKLAND AGREEMENT BETWEEN
SJSC PROPERTIES, LLC AND THE CITY OF SAN JOSE**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute an amendment to the Parkland Agreement between SJSC Properties, LLC and the City of San José to:

- (a) Incorporate an increase in residences to 630 residential units; and
- (b) Extend the payment of park impact in-lieu fees under the current Schedule of Parkland Fees to June 30, 2021.

OUTCOME

Approval of this resolution will authorize the City Manager to negotiate and execute an amendment to the Parkland Agreement with SJSC Properties, LLC ("Developer") allowing the project to comply with the Park Impact Ordinance (SJMC 14.25).

BACKGROUND

The SJSC Towers project ("Project") will be a 298-foot-tall building with two residential towers over four non-residential floors. It is currently under construction on the parcel of land located on the north side of East Santa Clara Street across from City Hall, between North 4th Street and North 5th Street (39 North 5th Street).

In 2017, the City granted permits¹ to allow construction of 610 residential rental units in two towers (298 units in the west tower and 312 units in the east tower). The homes are intended to be for rent. In 2018, an additional 20 units were added to the project² bringing the total unit count to 630 (six additional units in the west tower and 14 additional units in the east tower).

All 630 residential units are required to comply with the City's Park Impact Ordinance (SJMC 14.25) obligating the Developer to support the City's park system either by dedicating 2.85 acres of land to the City for recreational purposes, paying park impact in-lieu fees or some combination thereof.

In October 2017, the City entered into a Parkland Agreement with the Developer for the future payment of reduced park impact in-lieu fees under the 2017 Downtown High-Rise Incentive Program (City Council Resolution No. 78079, February 7, 2017) for the first 610 residential units. The Downtown High Rise Incentive Program provided a 50% reduction in park fees for developments that met certain criteria. The Parkland Agreement also documented the Developer's commitment to place 50% of the park impact fees to the St. James Park Fund. The 20 units permitted in 2018 are not considered in the existing 2017 agreement and are subject to pay fees under the current fee schedule.

To qualify for the Downtown High-Rise Incentive Program the Project is required to have a Certificate of Occupancy for at least 80% of units issued by the Director of Planning, Building and Code Enforcement on or before December 31, 2020.

The countywide COVID-19 Shelter-in-Place restrictions stopped construction of the Project between March 30, 2020 and May 31, 2020. Construction of the project was not able to fully resume until late June 2020. Additional precautions to minimize exposure to COVID-19 required quarantining of work forces when there was documented exposure and social distancing requirements that further limited and slowed down construction. Project construction was further delayed during the recent wildfires when unhealthy air quality levels prohibited people from working outside. These delays have limited the project's ability to meet December 31, 2020 deadline stipulated in their Parkland Agreement and are recognized as factors beyond the control of the Developer.

ANALYSIS

The Developer continues work on the Project and has adjusted the project schedule to reflect past delays and altered working conditions. As a result of the project delays the Developer cannot meet the requirements of the incentive program and therefore seeks to fulfill its parkland obligation by paying the required park impact in-lieu fees for 630 high rise residential units by a new deadline, June 30, 2021. This date provides sufficient time for construction completion and acquisition of the Certificate of Occupancy.

¹ Special Use Permit File No. SP17-009 and Tentative Map File No. T16-056

² Special Use Permit File No. SPA17-009-01

The current Schedule of Parkland Fees allows new downtown projects that are 12 stories or more to fulfill their parkland obligation under the Downtown Core High Rise fee category (Resolution No. 78474, December 19, 2017). This fee category was adopted by the City Council three months after the Project's Parkland Agreement was executed. Since this project is not able to meet the deadline to qualify for the incentive program, staff recommends amending the Parkland Agreement with the Developer so that the Project can comply with its parkland obligation under the current fee schedule.

Amendment of the parkland agreement will reflect the change in park fee, set a timeline for payment of the fees, and clarify payment of additional fees from the 20 unit increase with the Project. The proposed amendment will allow the developer to meet their obligation to the city and staff believes there is minimal risk to the city with this action.

CONCLUSION

Staff has determined an amended agreement is a reasonable approach for the Project to comply with the Park Impact Ordinance given the change in residential units and the challenges faced by the Developer. This approach poses little risk to the City. Flexibility in reassessing and renegotiating of the agreement for valid reasons sustains the City's ongoing commitment to encourage new residential development in downtown.

EVALUATION AND FOLLOW-UP

If approved staff will draft an amendment to the Parkland Agreement requiring the Developer to pay the park impact in-lieu fees in full by June 30, 2021.

CLIMATE SMART SAN JOSÉ

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the Budget Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

This recommendation aligns with the City's current Parkland Fee Schedule and is consistent with the intent of the Downtown High Rise Incentive Program and the adoption of the Downtown Core High Rise fee category.

COST SUMMARY/IMPLICATION

Per the existing Parkland Agreement the Developer owes \$6,527,000 in parkland fees. The additional 20 units require a fee of \$292,000.

Using the current schedule, the gross fee for the 630 high rise units would be \$9,198,000 and this will be reflected in the amended parkland agreement. Under the amended agreement the developer will be eligible to apply for private recreation credits for certain amenities that are included in the building design. These private recreation credits will reduce the fee owed to less than the \$9,198,000. The amount of the reduction will be determined upon detailed review of the plans by staff. Staff anticipates the net park fee under the amended agreement to be similar to the fee owed in the current Parkland Agreement.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

JON CICIRELLI

Director, Parks, Recreation and
Neighborhood Services Department

For questions, please contact Nicolle Burnham, Deputy Director, by email at:
nicolle.burnham@sanjoseca.gov.