

RESOLUTION NO. 73587

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE SETTING FORTH THE SCHEDULE OF IN-LIEU FEES CHARGED AND CREDITS ISSUED PURSUANT TO CHAPTERS 14.25 AND 19.38 OF THE SAN JOSE MUNICIPAL CODE

WHEREAS, the in-lieu fees charged pursuant to the Parkland Dedication Ordinance, San José Municipal Code ("SJMC") Chapter 19.38 ("PDO") and the Park Impact Ordinance, SJMC Chapter 14.25 ("PIO") have been under review by the City's Department of Parks, Recreation and Neighborhood Services, in conjunction with other City departments, various City Commissions, the residential developer community and interested members of the public since Summer of 2004; and

WHEREAS, before this review commenced, the in-lieu fees charged under the PDO and PIO had not been revised since 2002; and

WHEREAS, the current in-lieu fees charged under the PDO and PIO are not sufficient for the City to be able to obtain land for Park Facilities in accordance with the standard of 3.0 acres per 1000 new residents as established under both of these ordinances; and

WHEREAS, the Department of Parks, Recreation and Neighborhood Services, the Parks and Recreation Commission, the Planning Commission and the Housing Advisory Commission have concluded the review of the PDO and PIO and have made several recommendations to the Council regarding amendment of these ordinances; and

WHEREAS, the proposed amendments to the PDO and PIO will, among other things, expand the types of improvements eligible for public recreational credit, revise the time for payment of the in-lieu fees under certain circumstances and expand the use of the in-lieu fees to include recreational facilities; and

WHEREAS, this Resolution sets forth the proposed amendments to the Schedule of Fees and Credits to increase the amount of in-lieu fees to be imposed under the PDO and PIO to 100% of the 2005 Residential Land Value Study, to temporarily reduce the in-lieu fees for developments in the Downtown Core Area, and to revise the credits for private recreation improvements; and

WHEREAS, the City Council considered the proposed amendments to the Schedule of Fees and Credits included in this Resolution on December 12, 2006, but deferred action on it until January 9, 2007, and directed staff to return with revisions to the Resolution to: 1) change the western boundary of the Downtown Core Area to Highway 87; and 2) to revise the Resolution to allow developers of certain eligible projects in the

Downtown Core Area to take advantage of the fee deferral provision under the proposed Resolution; and

WHEREAS, this Resolution has been revised to reflect the direction given by the City Council on December 12, 2006, with respect to the definition of the Downtown Core Area and the deferral of fees for certain eligible projects in the Downtown Core Area;

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

SECTION 1. IN-LIEU FEES AND CREDITS FOR PROJECTS IN PROCESS.

The schedule of in-lieu fees and credits for private recreation improvements for "projects in process" as defined in the attached Exhibit A are set forth in Exhibit A.

SECTION 2. REVISED SCHEDULE OF IN-LIEU FEES AND CREDITS.

The revised schedules of in-lieu fees and credits are set forth in the attached Exhibit B. The schedules set forth in Exhibit B shall take effect as specified in Section 4 of this Resolution or as otherwise provided for in Exhibit B.

SECTION 3. ESP PROJECTS.

The provisions of this Resolution shall not apply to residential projects in the Evergreen Specific Plan Area ("ESP") if the developer of the ESP project has met all of the following conditions prior to filing an application for final map approval for projects subject to the PDO or prior to filing an application for a building permit for projects subject to the PIO:

- A. The residential project is subject to Community Facilities District No. 4 (Evergreen Improvements); or
- B. An agreement entitled: "Cooperation Agreement by and Between the City of San José, the Evergreen Specific Plan Property Owners Partnership and the Evergreen Specific Plan Area Developers," as amended ("Cooperation Agreement") and the parkland agreement required under the Cooperation Agreement have both been executed and are in effect for the ESP project.

SECTION 4. MISCELLANEOUS.

- A. This Resolution is effective February 10, 2007 unless otherwise provided for in this Resolution.
- B. If not otherwise defined in this Resolution, capitalized terms shall have the meanings set forth in SJMC Chapters 14.25 and 19.38.

- C. If any section, subsection, sentence, clause, or phrase of any provision of this Resolution, including its attachments, is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Resolution. Each and every section, subsection, sentence, clause or phrase of this Resolution, including its attachments, is severable from all other sections, subsections, sentences, clauses or phrases.

ADOPTED this 9th day of January, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CONSTANT, CORTESE, LICCARDO,
NGUYEN, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: DISTRICT 4, DISTRICT 6



CHUCK REED
Mayor

ATTEST:



LEE PRICE, MMC
City Clerk

EXHIBIT A

SCHEDULE OF IN-LIEU FEES FOR PROJECTS IN PROCESS

Section 1. Definitions.

"Projects in Process" shall mean those residential housing development projects that have obtained an approved Plan Development Permit (PDP), Conditional Use Permit (CUP), Site Development Permit, or Tentative Map (Map) no later than July 9, 2007.

Section 2. Applicable Fees and Credits Resolution.

Projects in Process are eligible to pay in-lieu fees in accordance with the rates set forth in Table 2 of Resolution No. 71180 (the "Previous Fees and Credits Resolution").

Section 3. Timing of Payment.

Payment of in-lieu fees for Projects in Process must be made by no later than January 31, 2009 in order to be eligible to pay the fees at the rates in Table 2 of the Previous Fees and Credits Resolution otherwise the project will be subject to the fees and credits in effect at the time of the payment of fees. The fees and credits specified in the Previous Fees and Credits Resolution shall have no force and effect after January 31, 2009.

Section 4. Eligible Credits.

Projects in Process are eligible to receive credits in accordance with the Resolution setting forth the Schedule of Fees and Credits in effect at the time of entering into a Parkland Agreement for the payment of in-lieu fees.

EXHIBIT B

REVISED SCHEDULE OF FEES AND CREDITS

Section 1. Schedule of In-Lieu Fees.

- A. The in-lieu fees charged pursuant to SJMC Chapters 14.25 and 19.38 as set forth in Table 1 are based on the value of land in the City of San José as set forth in the 2005 Residential Land Value Study, a copy of which is on file in the Department of Parks, Recreation and Neighborhood Services.
- B. For purposes of the valuation of land, the City of San José is divided into the Multiple Listing ("MLS") Zones set forth in Table 1 and depicted in Attachment 1 to this Resolution. The land value for each MLS Zone and the resulting in-lieu fee per type of residential unit are also set forth in Table 1.

TABLE 1

| MLS ZONE NUMBER | AREA COVERED | PRICE PER SQUARE FOOT (A) | FEE PER UNIT | FEE PER UNIT | FEE PER UNIT | FEE PER UNIT | FEE PER UNIT |
|--------------------------------|------------------------------------|---------------------------|------------------------|------------------------|----------------------|---------------------|--------------|
| | | | SINGLE FAMILY DETACHED | SINGLE FAMILY ATTACHED | MULTI-FAMILY 2-4 (B) | MULTI-FAMILY 5+ (C) | SRO UNIT (D) |
| 4 | Alum Rock | \$ 30.00 | \$13,600 | \$12,000 | \$12,550 | \$8,950 | \$3,900 |
| 2, 12 | Blossom Valley Santa Teresa | \$35.00 | \$15,850 | \$14,000 | \$14,650 | \$10,450 | \$4,550 |
| 3, 5, 14 | Berryessa Cambrian Evergreen | \$40.00 | \$18,150 | \$16,000 | \$16,750 | \$11,900 | \$5,200 |
| 11, 13 | Almaden Valley South San José | \$45.00 | \$20,400 | \$17,950 | \$18,850 | \$13,400 | \$5,800 |
| 7 (north and south of Hwy 237) | Alviso North San José | \$55.00 | \$24,950 | \$21,950 | \$23,050 | \$16,400 | \$7,100 |
| 9 | Downtown | \$60.00 | \$27,200 | \$24,000 | \$25,100 | \$17,900 | \$7,800 |
| 15 & 18 | West San José | \$65.00 | \$29,500 | \$25,950 | \$27,200 | \$19,400 | \$8,400 |
| 10 | Willow Glen | \$70.00 | \$31,750 | \$27,950 | \$25,100 | \$17,900 | \$7,800 |

Section 2. Fees for Highrise Multi-Family Residential Projects located in the Downtown Core Area.

A. Definitions.

1. The "Downtown Core Area" shall mean that area in the City of San José bounded by Coleman Avenue/Julian Street/St. James Street to the north, 4th Street and Civic Plaza to the east (Civic Plaza area is bounded by East St. John Street to the north, 7th Street to the east and San Fernando Street to the south), State Route 280 to the south, and Highway 87 to the west as depicted in Attachment 2 to this Resolution.
2. For purposes of this Section and Section 3, a story shall be defined per the California Building Code and shall include any above-grade podiums.

B. Reduced Fees – Eligibility and Application.

Notwithstanding the in-lieu fees set forth in Table 1, above, the in-lieu fees for multi-family units in residential projects of 12 stories or more which are located in the Downtown Core Area ("Downtown Units") shall be temporarily as specified in Table 2. Downtown Units for which in-lieu fees have been paid prior to February 10, 2007, or Downtown Units that are the subject of a Parkland Agreement for the payment of in-lieu fees that was originally entered into prior to February 10, 2007 by the developer or the developer's predecessor in interest, are not eligible to receive the temporary in-lieu fee reduction under this Section.

TABLE 2

| MLS ZONE NUMBER | AREA COVERED | PRICE PER SQUARE FOOT (A) | FEE PER UNIT | FEE PER UNIT |
|-----------------|--------------------|---------------------------|----------------------|---------------------|
| | | | MULTI-FAMILY 2-4 (B) | MULTI-FAMILY 5+ (C) |
| 9 | DOWNTOWN CORE AREA | \$60.00 | \$12,550 | \$8,950 |

C. Deferred Payment.

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 issuance of the first building permit for the project. The in-lieu fees shall be due and payable to the City prior to 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.

D. Private Recreation Credit.

Projects in the Downtown Core Area that are subject to the temporary in-lieu fee reduction set forth in this Section shall not be eligible to receive credit for private recreation improvements under Section 3 of this Exhibit.

E. Expiration of Temporary Reduction and Deferred Payment.

1. This Section shall expire automatically upon the issuance of the building permit for the 2500th Downtown Unit. Upon expiration of this Section, the fees and credits, imposed pursuant to Chapters 14.25 and 19.38, applicable to Downtown Units will be the fees and credits then in effect and except as provided in Chapters 14.25 and 19.38 of the SJMC or in subparagraph 2, below, payment of the in-lieu fees shall occur no later than the issuance of the first building permit for the project. For purposes of counting the 2500th Downtown Unit, in addition to any Downtown Unit for which a building permit is issued on or after February 10, 2007, any Downtown Unit for which a building permit was issued prior to February 10, 2007, but has not obtained a certificate of occupancy prior to February 10, 2007, will be included in the count for the 2500th Downtown Unit.
2. In the event that there is a project with a number of units that will cause the automatic expiration of this Section, the units up to and including the 2500th unit will be at the rates specified in Table 2. All other units within the project shall be subject to the fees and credits in effect after the expiration of this Section. Payment of all the in-lieu fees shall occur as specified in Subsection C, above.

F. Retroactive Application of Deferred Payment Provision.

1. Notwithstanding the February 10, 2007 effective date of this Resolution, projects in the Downtown Core Area that meet the eligibility requirements of this Section and for which a building permit was issued on or after December 12, 2006 ("Downtown Pipeline Projects"), are also eligible to defer the payment of in-lieu fees as provided in Subsection C, subject to the provisions of this Subsection F.
2. Developers of Downtown Pipeline Projects that are subject to Chapter 14.25 of the SJMC and that pay in-lieu fees between December 12, 2006 and February 9, 2007, may obtain a refund of in-lieu fees paid during that time period, subject to the payment of such fees in accordance with

Subsection C of this Section.

3. Prior to (i) obtaining a refund of in-lieu fees paid during the period between December 12, 2006 and February 9, 2007; or (ii) deferring payment as specified in Subsection C of this Section, developers of Downtown Pipeline Projects that are subject to a Parkland Agreement pursuant to Chapter 19.38 of the SJMC will first be required to enter into an agreement amending the payment provisions of the Parkland Agreement in order to specify the deferred payment of the in-lieu fees pursuant to Subsection C of this Section.
4. The provisions of this Section do not permit Downtown Pipeline Projects to pay the reduced in-lieu fees specified in Table 2.

Section 3. Schedule of Credits.

A. Eligibility.

1. In order to be eligible for credits, private recreation improvements must meet the credit requirements for private recreation improvements set forth in SJMC Chapters 14.25 or 19.38.
2. In addition, except as otherwise specified in this Section, in order to receive credit for private recreation improvements, the project must include at least one of the eight following elements ("Active Elements"):
 - a. tot lot and/or children's play area (play facility for children up to pre-teen age which includes active play structures or apparatus) that complies with California Playground Regulations (Cal. Code Regs. Tit. 22, Div. 4, Chap. 22), as may be amended; or
 - b. picnic area (facility containing benches, at least three tables, barbecue pits and trash receptacles); or
 - c. hard game court (hard paved surface dedicated for active recreation uses such as tennis, basketball, handball, racquetball, roller hockey, shuffleboard, bocce ball, or horseshoes) or soft game court (either real or artificial turf surfaces with required safety zones for badminton, croquet, lawn bowling, tennis or volleyball); or
 - d. turf playing field (uninterrupted contiguous turf facility to accommodate informal or formal active recreation activities such as field sports of at least 8,000 square feet); or
 - e. private plaza area of at least 900 square feet that is located adjacent to a public street, with seating equaling 75% of the

perimeter dimension of the plaza area site and which is open to the public at least 360 days a year; or

- f. private garden area of at least 900 square feet that is located adjacent to a public street, with seating equaling 30% of the perimeter dimension of the garden area site and which is open to the public at least 360 days a year; or
- g. private pet amenities areas of at least 300 square feet which shall be for the exclusive use of the residents; or
- h. private garden plot areas of at least 100 square feet per plot which shall be for the exclusive use of the residents.

B. Amount of Credit.

1. Credit will be issued based on the actual acreage of the Active Elements.
2. If, in addition to an Active Element, the project includes a swimming pool, spa, community room, or a recreation building or room(s), credit issued for these elements will be the lesser of:
 - a. The total square footage of the swimming pool, spa, community room, and/or the recreation building or room(s); or
 - b. The total square footage of the Active Elements included in the project.
3. If a project dedicates real property to the City for public park purposes pursuant to Chapters 14.25 or 19.38, then the project will not be required to install Active Recreation Elements within the project in order to be eligible to receive credit for swimming pools, spas, community rooms and/or recreation building or room(s) and the credit for the swimming pools, spas, community rooms and/or recreation building or room(s) will be the actual square footage of these improvements.
4. Credit for swimming pools may include surrounding decking/pad area and spas/jacuzzis. Community rooms and recreation buildings or room(s), in order to be eligible for credit, must be open and available on a daily basis to all project residents.
5. The credits issued are subject to the 50% cap set forth in SJMC Chapter 14.25 or 19.38.

C. Exclusions.

Common open space, landscape corridors, walkways, steep topography areas with a grade of 15% or more, riparian corridor set back areas, or environmental mitigation areas that preclude park and recreational activities are not eligible for credits under this Section.

D. Projects Over Five Stories.

1. Residential projects over five stories shall be excluded from the requirement that the project include at least one of the Active Elements described in this Section.
2. Credit for private recreation improvements included within residential projects over five stories shall otherwise be given in accordance with this Section.

E. Stormwater Detention Facilities.

1. Credit.

Credit for privately owned Stormwater Detention Facilities may be given if the Stormwater Detention Facility serves stormwater detention purposes as well as park or recreational purposes ("Dual Purpose") and meets all of the following requirements:

- a. The Stormwater Detention Facility meets applicable City requirements for management of peak stormwater runoff flow, volume and duration, and/or reduction of stormwater pollutant loading from Applicant's or Subdivider's residential project; and
- b. The Stormwater Detention Facility contains an Active Element as described in Section 3 of this Exhibit; and
- c. The Stormwater Detention Facility is a minimum of 8,000 square feet of uninterrupted flat contiguous turf having a grade suitable for active recreational purposes, excluding the area for vegetated swales, infiltration basins, or the intake area around the drain inlet of the Stormwater Detention Facility; and
- d. The Stormwater Detention Facility otherwise meets the requirements of the City for a Stormwater Detention Facility.

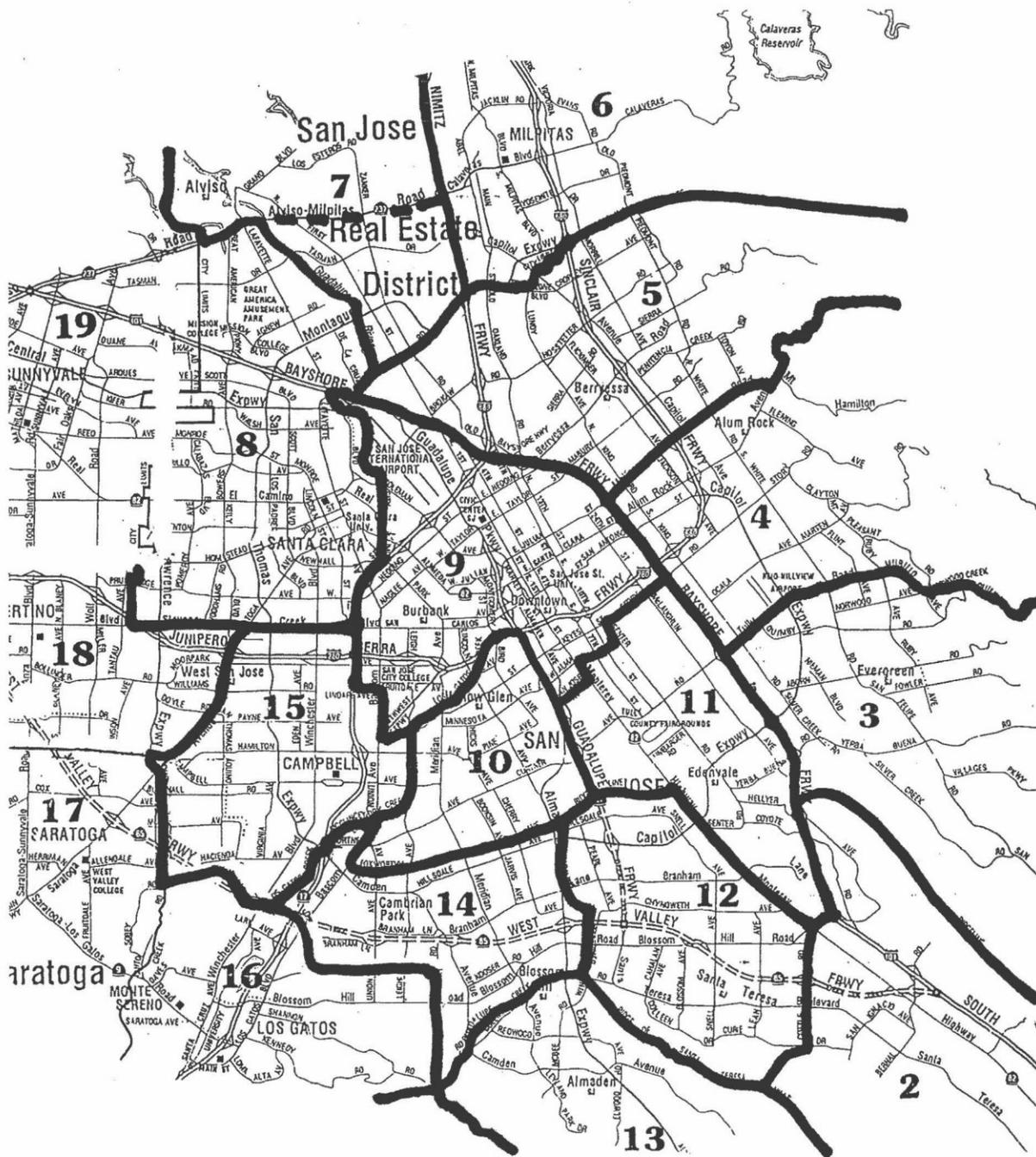
Section 4. Late Fees; Untimely Payment.

A late payment fee of Ten Dollars (\$10.00) per unit per month will be added to the in-lieu fee when an in-lieu fee is delinquent. In addition, interest at the rate of one half of one percent per month, pro rata, on the total unpaid balance, including late payment fees, shall be assessed from the date the payment of the fees becomes delinquent until the date that all past due amounts are paid to the City.

Section 5. Late Fees; Untimely Improvements.

A late payment fee of Ten Dollars (\$10.00) per unit per month will be assessed whenever improvements required to be constructed by a Parkland Agreement are not completed within the time required by the Parkland Agreement. In addition, interest at the rate of one half of one percent per month, pro rata, of the total amount credited for the improvements shall be assessed from the date the private recreation improvements were to be completed until the actual date of completion.

**ATTACHMENT 1
MLS ZONES**



| PDO - PIO MAP | | |
|-----------------------|---------------------|---------------------|
| 2 - Santa Teresa | 3 - Evergreen | 4 - Alum Rock |
| 5 - Berryessa | 7 - Alviso | 7 - North San Jose |
| 9 - Downtown | 10 - Willow Glen | 11 - South San Jose |
| 12 - Blossom Valley | 13 - Almaden Valley | 14 - Cambrian |
| 15/18 - West San Jose | | |

ATTACHMENT 2 DOWNTOWN CORE AREA

