

November 24, 2014

Mayor Chuck Reed and Councilmembers
San Jose City Hall
200 E. Santa Clara St, 18th Floor
San Jose, CA 95113

RE: Downtown High-Rise and Mid-Rise Park Fee Incentive Program

Dear Mayor Reed and Councilmembers,

At the Parks and Recreation Commission meeting on November 5, 2014, parks department staff presented the Commission with an update related to the High-Rise Incentive Program and their efforts in returning to council with policy recommendations. The Commission voted 10 to 1 to send a letter to you expressing our concerns about future action tied to this program. In our view it is imperative that maximum amount of funds be on hand and accessible if we are to purchase parkland for the inevitable influx of future residents. We do not support the diversion of Park Trust Funds to Operations and Maintenance.

Initially, the Commission expressed deep concern as to why the Council would seek to incentivize the building of projects by essentially giving away millions of dollars in “incentives” to developers. By our estimation the city has passed on the collection—and in fact given away—upward of \$11M from the Park Trust Fund which exists to advance the city’s attempt at achieving its adopted service level objective of 3.5 acres/1,000. Although this money is permanently lost we do not see a need to continue the practice, even if it takes a new form to soften the blow of money still being diverted and/or lost. Rough estimates suggest the council is set to forego the collection of approximately \$8M more totaling about \$20M when high-rise projects in the pipeline are completed. This is money that would otherwise go into the Park Trust Fund.

We assume the underlying assumption from Councilmembers supporting this program is that the program has and will provide incentives for developers to invest in the Central/Downtown Planning Area and that this incentive is necessary to maintain their interest in moving these projects forward. Although we support the Councils’ underlying interest in developing downtown and making it the thriving place we all know it can be, we do not feel that this revitalization should be at the expense of parkland for residents, especially when the folks getting the incentive are folks who could otherwise afford the fee. Additionally, assuming all projects slated to be built downtown get off the ground, what park will there be for the residents to enjoy if the money for purchasing said parks is being split: 50% of High-Rise projects fees to the Park Trust Fund and 50% to be paid over five years to a different pot which will likely be used for programming and maintenance; likewise, Mid-Rise projects will send 75% of the fees to

the Park Trust Fund but again, will send the remaining 25% of fees to another pot over five years for other purposes.

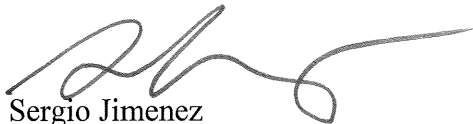
Some may argue that with this newly proposed funding structure the City is getting all the money due; this is only partially true. The developer is in fact paying the associated fees but as previously stated the money will be split which will diminish the efficacy to purchase new parkland and complete capital projects in downtown neighborhoods that support the Downtown Core. Furthermore, we all know that land is expensive in downtown and in our view it is imperative that the maximum amount of funds be on hand and accessible if we are to purchase parkland for the inevitable influx of future residents. How do we as Commissioners tell the residents who come before us that we as a city are living up to the very clearly stated goals as mentioned in the Envision 2040 General Plan, specifically, the section about providing an equitable park system. In addition, the General Plan states in PR-8.3 that we should *“Give priority to the purchase and land banking of properties as they become available for future park and recreation facility developments.”*

There have been occasions in past memos where the Parks Department has gone out of their way to explain the risks associated with using Mitigation Act and Quimby Act Fees for non-capital purposes and at that time—which involved a smaller amount of money—the warning was minimized with the statement “Yet nary a lawsuit has been filed.” The stakes in this new policy approach—we believe—are greater and have a greater potential to incite litigation. We therefore ask that you tread carefully.

With regard to the creation of a Parks Maintenance District, this may be a viable solution for future prospects of paying for maintenance and operation and one can surely find examples throughout cities in the United States that shows this works. The Commission has had minimal discussions on this topic but we look forward to hearing more about the policy recommendations and with providing you with our feedback.

On behalf of all Commissioners we appreciate your time and consideration and want to make certain you have all perspectives as you venture out on this potentially hazardous course.

Sincerely,



Sergio Jimenez

Chair

City of San Jose Parks and Recreation Commission