

**Council Meeting: May 15, 2012****SUBJECT: Approval of Budget Modification No. 36 to Appropriate Park Dedication Funds For Outside Counsel Services****DISCUSSION**

On April 26, 2011, Council approved an increase in the parkland dedication requirement for housing projects to up to 5 acres per 1,000 persons (RTC 11-083) over the course of three years.

The current park in-lieu fee was established by Resolution No. 486-11. Prior to adoption of this fee, Community Development staff researched the requirements and practices of other cities and met with the Executive Director of the Santa Clara County Chapter of the Building Industry Association (BIA) and several residential developers. Staff also contacted several other Sunnyvale developers and property owners, and discussed land values with Hulberg and Associates, Inc.

On September 23, 2011 BIA filed a complaint in Santa Clara County Superior Court challenging the validity of Sunnyvale's park dedication requirements and in-lieu fees. The City Attorney's Office retained the firm of Burke Williams & Sorensen to represent the City in the matter, and a significant portion of the complaint has been dismissed based on motions filed on the City's behalf. However, the litigation is continuing at this time.

Costs of litigation have been funded to date by the General Fund. It is appropriate to fund the costs of litigation for protecting the current park dedication requirements and fees from the Park Dedication Fund rather than the General Fund, as these litigation costs are directly related to providing for increased park acquisition funds.

**FISCAL IMPACT**

Anticipated litigation costs if this matter proceeds to trial are not expected to exceed \$250,000. Budget Modification No. 36 has been prepared to appropriate \$250,000 from the Park Dedication Fund reserve to cover the costs of the anticipated litigation. Based on the current balance in this fund's reserve, it is not anticipated that appropriating these monies will have a negative impact on any projects that are currently programmed for funding with Park Dedication Fee revenue. If, however, the challenge to the City's Park

Dedication Fee is successful, then future funding for park acquisition and development will be significantly reduced. Should that occur, staff will return to Council with an updated fiscal impact on projects planned for funding by this revenue source.

**Budget Modification No. 36  
 FY 2011/2012**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Park Dedication Fund</b>			
<u>Expenditures:</u>			
New Project – Park-In Lieu	\$0	\$250,000	\$250,000
Fee Litigation			
 <u>Reserves:</u>			
20-Year RAP	\$6,296,881	(\$250,000)	\$6,046,881

**PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

**ALTERNATIVES**

1. Approve Budget Modification No. 36 to appropriate Park Dedication Funds to provide funding for outside counsel services to advise and/or represent the City regarding the litigation in *Building Industry Association vs. City of Sunnyvale*, 1-11-CV-209799.
2. Do not approve Budget Modification No. 36.

**RECOMMENDATION**

Staff recommends approval of Budget Modification No. 36 to appropriate Park Dedication Funds to provide funding for outside litigation services to advise and/or represent the City regarding the litigation in *Building Industry Association vs. City of Sunnyvale*, 1-11-CV-209799.

Prepared and reviewed by:

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David E. Kahn, City Attorney

Reviewed by:

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Grace K. Leung, Director of Finance

Reviewed by:

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Gary M. Luebbbers, City Manager