



**Council Meeting: March 20, 2012**

**SUBJECT: Approval of Budget Modification No. 27 to Appropriate \$20,000 for Park Land Acquisition Due-Diligence**

### **BACKGROUND**

Sunnyvale Municipal Code Chapter 18.10, requires dedication of land or payment of an in-lieu fee for new residential development. Development activities may result in an offer of dedication of park land and related property to the City. It is in the City's best interests to conduct appropriate due diligence prior to accepting any property to reduce risk. Due diligence activities could include either conducting or reviewing site investigations. Site investigations may indicate presence of hazards or toxic substances, or other conditions that could pose risk, obligations, or cost to the City.

On February 12, 2007, the Planning Commission conditionally approved a residential development project located on Duane Avenue near Lawrence Expressway (#2006-0206); on September 25, 2007, the City Council approved the final map (Tract No. 9924 - RTC 07-311); and, on October 15, 2007, the "Offer of Dedication for the Parkland Reservation Areas" was recorded concurrently with the final map. The original developer stopped development during the 2008 economic downturn, and a new developer acquired the property and has renewed the park dedication discussions.

### **EXISTING POLICY**

Policy 2.2.A.8. Support the acquisition or joint use through agreements with partners of suitable sites to enhance Sunnyvale's open spaces and recreation facilities based on community need and through such strategies as development of easements and right-of-ways for open space use, conversion of sites to open space from developed use of land, and land banking.

Policy 2.2.C.2 Support public and private efforts in and around Sunnyvale to acquire, develop and maintain open space and recreation facilities and services for public use.

### **DISCUSSION**

The City may receive land/property (through Grant Deed) or lands may be offered to the City (through Offer of Dedication) for public park purposes. Prior to closing of escrow or acceptance of dedication, the City should perform due-diligence tasks. If the City has made a reasonable effort at obtaining

information about the land before conveyance it may qualify for the innocent land-owner defense. This would protect the City from claims resulting from the presence of hazardous materials that may be discovered at a later date. Otherwise, prior owners or responsible parties may claim that they have no further obligation to remedy contaminants.

Due-diligence tasks may include, but are not limited to the following:

- Investigate the land to ensure site conditions do not impose any current or future burden to the City;
- Review or conduct studies, such as geotechnical or hazardous materials reports;
- Acquire title reports and pay escrow fee and/or title insurance fees;
- Prepare or review legal descriptions of the land/property;

The City's due-diligence tasks associated with parkland acquisition are suitable for funding from the Park Dedication Fund. Any reimbursements owed from the developer or other parties could also accrue to this Fund, as appropriate.

The offer to dedicate parkland for Tract No. 9924 is still pending. Geotechnical reports for the project show the presence of hazardous materials above environmental screening limits. On June 13, 2011, the Planning Commission conditionally approved another adjacent residential development project (#2011-7104) with similar conditions associated with Park Dedication.

\$20,000 is requested to cover professional services associated with review and evaluation of reports provided by developers offering land for dedication, and to coordinate with the State regulatory oversight agencies. This amount would be to cover due diligence activities for Tract Nos. 9924 and the adjacent residential development that is pending.

### **FISCAL IMPACT**

This new project will be funded by the Park Dedication Fund. The \$20,000 appropriation required will be completely offset by unspent funds from FY 2010/11 projects that are now complete. Budget Modification No. 27 has been prepared to appropriate \$20,000 from the Park Dedication Fund reserve to fund this project.

**Budget Modification No. 27  
 FY 2011/2012**

	<b>Current</b>	<b>Increase/ (Decrease)</b>	<b>Revised</b>
<b>Capital Projects Fund</b>			
<u>Expenditures</u>			
New Project: Land Acquisition Due-Diligence	\$0	\$20,000	\$20,000
<b>Park Dedication Fund</b>			
<u>Reserves</u>			
20 Year RAP	\$2,825,603	(\$20,000)	\$2,805,603

**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 a capital project in the amount of \$20,000 for City's due diligence tasks associated with park land acquisition, and approve Budget Modification No. 27 to transfer \$20,000 from the Park Dedication Fund.
  
- 2) Do not approve a capital project for City's due diligence tasks associated with park land acquisition.

**RECOMMENDATION**

Staff recommends Alternative No. 1: Approve a capital project in the amount of \$20,000 for City's due diligence tasks associated with land acquisition, and approve Budget Modification No. 27 to transfer \$20,000 from the Park Dedication Fund.

Reviewed by:

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Prepared by: Mark Rogge, Assistant Director of Public Works/City Engineer

Reviewed by:

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Director, Finance Department

Approved by:

Gary M. Luebbers  
City Manager