

RESOLUTION NO. 2015-087

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA [1] APPROVING DEFERRAL OF THE APPLICABLE PARKLAND ACQUISITION AND DEVELOPMENT FEE, TRAFFIC SIGNAL, SALT CREEK SEWER BASIN, AND SEWER CAPACITY FEES, AND WAIVER OF THE RESIDENTIAL CONSTRUCTION TAX IN THE TOTAL ESTIMATED AMOUNT OF \$911,429; AND [2] AUTHORIZING THE CITY MANAGER TO EXECUTE FEE DEFERRAL AGREEMENTS AND RELATED SECURITY INSTRUMENTS BY AND BETWEEN THE CITY OF CHULA VISTA, AND A TO-BE-FORMED LIMITED PARTNERSHIP FOR MILLENIA MULTIFAMILY AFFORDABLE APARTMENTS

WHEREAS, to facilitate and materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for very-low-income, lower-income, and senior households, the City of Chula Vista (“City”) has adopted Chula Vista Municipal Code (“CVMC”) Section 19.90 - Affordable Housing Incentives consistent with Sections 65915 and 65917 of the California Government Code; and

WHEREAS, Chelsea Investment Corporation, utilizing a to-be-formed limited partnership of which Chelsea Investment Corporation will be a partner, the “Developer”, proposes to construct an 87 unit multifamily rental development, with 9 units affordable to very-low-income households at 50 percent (50%) of the Area Median Income (AMI) and 77 units affordable to low-income households at 60 percent (60%) of the Area Median Income (AMI), within the Otay Ranch Millenia Master Planned Community (“Multifamily Project”); and

WHEREAS, Developer is applying for an allocation of Multifamily Housing Revenue Bonds from the California Debt Limit Allocation Committee (CDLAC); and

WHEREAS, Developer is applying for four percent (4%) tax credits from the Tax Credit Allocation Committee (TCAC); and

WHEREAS, in accordance with CVMC §19.90.050, to close the financing gap, Developer has requested the deferral of applicable Parkland Acquisition and Development (PAD), Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity fees and waiver of the Residential Construction Tax (collectively known as “Development Charges”) in the total estimated amount of \$911,429 to reduce the development costs for the construction of the Multifamily Project for its financial feasibility and as allowed by the City’s Municipal Code to stimulate development of affordable housing and upon economic hardship; and

WHEREAS, the City's evaluation of the development budget, operating pro forma, and source and uses for the Project determined that additional financing is appropriate and necessary in order to make the Multifamily Project feasible; and

WHEREAS, CVMC §17.10.070 provides that the City Council may waive all or any portion of the park lands dedication or fee requirements upon finding that said waiver will stimulate the construction of housing for low- and moderate-income families; and

WHEREAS, in accordance with CVMC §3.45.010 (C), the City Council may waive or defer all or portion of the Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity fees based upon economic hardship or other injustice resulting to the applicant which outweighs, when balanced against, the need of the City revenue and the need for a uniform method of recovering same from those against whom it is imposed; and

WHEREAS, in accordance with CVMC §3.32.050, the City Council may waive all or a portion of the Residential Construction Tax for any dwelling-unit types constructed which would serve as housing for low- and moderate-income families; and

WHEREAS, the applicable Parkland Acquisition and Development (PAD), Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity fees and Residential Construction Tax (RCT), are due and payable upon application to the City for a building permit for the construction of any such dwelling units of the Multifamily Project; and

WHEREAS, the City wishes to defer for a fifteen year period, with an option to extend for an additional fifteen year period for any remaining unpaid balance, the applicable Parkland Acquisition and Development fee (PAD) (estimated at \$545,132), Traffic Signal fees (estimated at \$18,421), Salt Creek Sewer Basin (estimated at \$86,782) and Sewer Capacity fees (estimated at \$237,119) and waive the Residential Construction Tax (estimated at \$23,975) to assist in reducing the development costs for the construction of the residential units of the Multifamily Project in order to facilitate the development of housing for low- and moderate-income households; and

WHEREAS, the City's Housing Advisory Commission did, on the 20th day of November, 2014, hold a public meeting to consider said request for financial assistance; and

WHEREAS, the Housing Advisory Commission, upon hearing and considering all testimony, if any, of all persons desiring to be heard, and considering all factors relating to the request for financial assistance, recommended to the City that financial assistance be approved on the condition that all other necessary financing be secured for the Multifamily Project, and

WHEREAS, the Housing Advisory Commission found that the City's financial participation in the development of the Multifamily Project will be a sound investment based upon Developer's ability to effectively serve the City's housing needs and priorities as expressed in the Housing Element and Consolidated Plan and the cost effectiveness of the City's financial assistance based upon the leveraging of such sources and is necessary in order to facilitate the construction of the Multifamily Project; and

WHEREAS, on April 21, 2015 the City Council of the City of Chula Vista held a noticed public hearing on the proposed deferral of the associated Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity development fees applicable to the Multifamily Project; and

WHEREAS, the City Council of the City of Chula Vista reviewed and considered the deferral of the associated development fees applicable to the Multifamily Project, staff recommendations and reports both oral and written, and the testimony of all those wishing to be heard; and

WHEREAS, in accordance with the requirements of CEQA, the Environmental Review Coordinator has determined that the proposed project was adequately covered in previously adopted Final Second Tier Environmental Impact Report, EIR 07-01, and no further action by the City Council is necessary.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista that the Multifamily Project is consistent with the provisions of Chula Vista Municipal Code (CVMC) Section 19.90, wherein Developer will construct housing units to be restricted for occupancy by very-low and low-income households or senior citizens as set forth in CVMC §19.90.040.

BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista, that the deferral of applicable Parkland Acquisition and Development (PAD), Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity fees and waiver of the Residential Construction Tax in the total estimated amount of \$911,429 as requested by Developer, in accordance with CVMC §19.90.050, is necessary to provide for affordable rents and to achieve lower development costs. The Multifamily Project cannot be built without such assistance.

BE IT FURTHER RESOLVED that the City Council finds, based upon the recitals in this Resolution and evidence presented at the public hearing by staff and the public, that there is a peculiar economic hardship to applicant that outweighs, when balanced against, the need for City revenue and the need for uniform method of recovering same from those against whom it is imposed, and that the project furthers the City's and Housing Authority's goal for providing and developing affordable housing.

BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista, in accordance with CVMC §3.45.010 (C), that the payment of the Traffic Signal, Salt Creek Sewer Basin and Sewer Capacity fees would present an economic hardship to the Multifamily Project, given the limited revenue that can be generated from affordable rents and the Multifamily Project's development costs, and that the provision and benefits of affordable housing to the community outweighs, when balanced against, the need of the City revenue and the need for a uniform method of recovering same from those against whom it is imposed.

BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista, that it has determined that the waiver of the Residential Construction Tax in accordance with CVMC §32.50.050 is consistent with the City of Chula Vista Housing Element of the General Plan, will assist with reducing the development costs for the construction of the low income units of the Multifamily Project, and that the public necessity, convenience, general welfare and good planning practice support the waiver of this Tax.

BE IT FURTHER RESOLVED that the City Council of the City of Chula Vista, has determined that the deferral of the Parkland Acquisition and Development fee in accordance with CVMC §17.10.070 is consistent with the City of Chula Vista Housing Element of the General Plan, will assist with reducing the development costs for the construction of the low income units of the Multifamily Project, and that the public necessity, convenience, general welfare and good planning practice support the deferral of this fee.

BE IT FURTHER RESOLVED by the City Council of the City of Chula Vista, that it directs staff to prepare all necessary documents and any actions, as may be required for the waiver and deferral of the Development Charges and authorizing the City Manager, or his designee to execute a Fee Deferral Agreement (“Agreement”), Promissory Notes, Deeds of Trusts and all associated loan documents, and regulatory agreements, consistent with the City’s standard documents as reviewed and approved by the City Attorney’s office, necessary for the financing of the proposed Multifamily Project, securing repayment of said deferrals, and, at minimum, subject to the following terms and conditions:

1. Developer shall secure all other financing necessary for the acquisition and development of the Multifamily Project.
2. The repayment of fee deferrals will be secured by Deeds of Trust and Promissory Notes for the property in favor of the City of Chula Vista and recorded against the Multifamily Project property. The Fee Deferral deeds of trust will be subordinate to the bond financing and the deferred developer fees on each Multifamily Project.
3. The term of the Fee Deferral shall be fifteen (15) years. An extension of an additional 15 year deferral period may be granted by the City Manager or his designee, if necessary, for any remaining balance at the end of the first 15 year term. The term extension shall be granted upon a similar 15 year term extension of the affordability covenants.
4. The outstanding balance shall accrue simple interest at 3 percent per annum. Interest on the deferred fees shall begin to accrue as of the date of the Agreement.
5. Payment of principal and interest on the City’s Fee Deferrals shall be made out of a fund equal to fifty percent (50%) of the “Residual Receipts”, defined as the income which remains after the payment of the debt service on the permanent loan, payment on subordinate junior bonds, payment of the deferred developer fee, and reasonable operating expenses. Payments made by Developer from residual receipts will be allocated first to repayment of the deferred fees, until paid in full. Upon the extension of the initial Fee Deferral term, payment of the deferred fees shall be amortized over the 15 year extended term with payments made on an annual basis.
6. Developer will be required to operate the Multifamily Project consistent with the Regulatory Agreement required by the Multifamily Project’s bond and tax credit financing, the City’s Affordable Housing Program, and the Housing Authority’s financing, the covenants imposed by these Agreements, and any other project requirements.

7. The City assistance is based upon the assumptions presented within the sources and uses of funds, development budget, development proforma and other information filed with the Affordable Housing Review Application for the Multifamily Project as submitted and reviewed by the City's Development Services Housing Division. The City assistance is a maximum level of participation. It is expected that any substantive revisions in such financing assumptions which would lead to an increase in other resources available, would therefore reduce the level of City assistance.

Presented by

Approved as to form by

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Kelly G. Broughton, FASLA  
Director of Development Services

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Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 21st day of April 2015 by the following vote:

AYES: Councilmembers: Aguilar, Bensoussan and McCann

NAYS: Councilmembers: None

ABSENT: Councilmembers: Salas

ABSTAIN: Councilmembers: Miesen

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Mary Salas, Mayor

ATTEST:

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Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2015-087 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 21st day of April 2015.

Executed this 21st day of April 2015.

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Donna R. Norris, CMC, City Clerk