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**PDO/PIO Fee Study Task Force – Second Meeting  
Thursday, October 21, 2021 – 6:30 – 8:30 PM**

**Task Force Members in Attendance:** Rudy Flores, Peter given, Helen Chapman, Tasha Tenturier, Bob Levy, Chris Shay, Joe Head, Robert Braunstein, Michael Bertram, Rick Gosalvez, Jeannette Marsala, Olya Krasynkh

**Staff in Attendance:** Rebekah Ross, Nicolle Burnham, Zak Mendez, Leo Tapia, Marybeth Bowman, Darius Brown, Housing Department, Jared Ferguson, Housing Catalyst - EOD

**Others Attending:** Kyle Martinez (DTA), Nate Perez (DTA), Valerie Merlkin (DTA)

**Part One – General Business (25 Minutes)**

- **Welcome**

Rebekah Ross reviewed the general meeting protocols.

- **Purpose of this Meeting/Review Agenda**

Rebekah Ross reviewed the agenda and the purpose of tonight's meeting.

- **Introductions**

Introductions were focused on members who did not have an opportunity to introduce themselves at the first task force meeting in September. Mike Bertram introduced himself as a Task Force member representing District 4 and a former member of the North San José Task Force meeting. Robert Braunstein, representing District 10 and Vice President of the Montana Parks Association, also introduced himself. Jeannette Marsala, the newest task force member introduced herself as representing District 8. She is an estate planning attorney by trade and is very active in her community, most notably in her efforts to work with Councilmember Arenas on trying to get a children's playground at Groesbeck Hill Park.

Jerad Ferguson, with City of San José's Housing Catalyst Program, with the Office of Economic Development, introduced himself. Darius Brown, with the City's Housing Department also introduced himself.

- **Discussion Item: Connecting with your community**

Rebekah Ross presented two items addressing how the task force will connect with the community.

- **Council District Leadership Meetings and other non-City meetings: Be an Ambassador!**

Rebekah Ross reviewed a list of community engagement meetings at which she is presenting the PDO/PIO Fee Study. She encouraged task force members to attend these meetings. These meetings are posted on the [Task Force webpage](#).

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Rebekah encouraged Task Force members to be an ambassador and share information regarding the task force by:

- Introducing yourself as a task force member
- Sharing why the task force is important

She encouraged task force members to share about the task force with

- Neighborhood associations and business associations
- Community forums
- Leadership groups
- Advocacy groups
- Friends and family
- Neighbors
- Community events
- Homeowner’s associations.

She also encouraged members to become active with their council leadership groups and pointed to the Council Office as a source for locating neighborhood groups.

**ACTION ITEM:** Rebekah Ross will email each task force members contact information for their neighborhood leadership group.

Ms. Ross also reviewed the elements on the Task Force webpage:

- [Meet the Task Force](#)
- [Task Force Meetings: Agendas, videos, & Minutes](#) Webpage, where the meeting agendas, video recordings of the meetings, minutes, and recommended reading materials can be found.

**Questions for Discussion:**

Rebekah posed two questions to the task force centered around how the task force connects to the community and in determining the appropriate level of participation by the public in the task force meetings.

- **Should the Task Force Meetings be open to the public?**

Rebekah received a request to allow members of the public to listen in on task force meetings and have a public discussion period at the end of the meeting where people can comment on the topic.

**Benefit** – the value of community engagement and empowering the community as much as we’re empowering the task force. Pointed out the desire to be as transparent as possible.

**Drawback** – may likely extend the length of the task force meeting times, depending on the number of public participants.

- **Email the Task Force? How would you like the community to be able to contact you?**

Rebekah asked task force members how they would like to be contacted by members of the public and whether they had a preferred method of contact. She asked whether task force members would like a task force email to be generated for handling questions or if they would prefer to have staff field all questions and then share it with the task force.

She opened the meeting up for comment and discussion.

**Discussion:**

Ten task force members commented on the discussion items – Rick Gosalvez, Joe Head, Rudy Flores, Mike Bertram Chris Shay, Jeannette Marsala, Tasha Tenturier, Helen Chapman, Olya Krasynkh, and Peter Given.

**Level of Public Participation in Task Force Meetings**

Staff were asked whether they were aware of any other task force with meetings open to the public. Rebekah Ross stated that in her experience it varied. She pointed out that the task force is considered a working group that’s informing city staff and thus would not technically be covered by the Brown Act. Rebekah noted that the Google project task force allowed the public to comment at the end of the meeting. Nicolle Burnham noted that the public listened in on the PRNS Greenprint meetings.

All members that participated in the discussion were in favor of some level of public involvement and allowing members of the public access to the meeting minutes and recordings. Rebekah pointed out that both the meeting minutes and recordings will be publicly available via the task force webpage. Most members were concerned about a potential impact on the length of the meetings. Some liked the idea of allowing the public to comment via chat in order to minimize the impact on the length of the meeting. Others liked the idea of targeting some meetings for public engagement, where the public could listen in and a time for comments be allotted at the end of the meeting. A few pointed out that some form of public feedback could help to make sure that the task force is covering the full breadth of the issues.

**Method of Contacting the Task Force Members**

While a few members were open to having either a personal email address or a city-provided email address available to the public, most members preferred having city staff field email correspondences with the public.

**ACTION ITEMS:**

Staff heard the general desire for transparency and noted the following action items:

- City staff will look into the possibility of having a quarterly, live task force meeting open to the public
  - Continue to make the meeting recordings and minutes available to the public via the webpage
- City staff will field emails for the task force members
  - Determine the best method for doing so
  - Send an update regarding this for the next meeting

**Part Two – What is a Fee Study? Presented by DTA Consulting Firm (15 minutes – includes Q & A)**

Presented by Nate Perez, Managing Director and Valerie Merklin, Senior Associate

Valerie Merklin introduced herself and provided a summary of VTA, and what the task force can expect from the DTA's fee study report.

Nate and Valerie provided a brief review of DTA. DTA is focused on public finance and infrastructure. They have produced over 400 studies to date. Valerie pointed out that VTA is a local company.

Nate Perez provided a brief overview of the types of park fees and the state enabling legislation: Quimby Act fees and AB 1600 Mitigation Fee Act Fees. The Quimby Act is more commonly used as a mechanism for generating park fees and parkland, while the Mitigation Fee Act is typically used for a broader array of city and public agency impact fees, such as roads, fire, as well as parks. He explained that there are multiple means for municipalities to create parkland ordinances and that communities have varied in what legislation they chose to use as a mechanism. Some communities pick one enabling legislation, while others pick another, and some pick a combination of the Quimby Act and the Mitigation Fee Act. The path that you take, gives you a set of options and often determines the type of monitoring and compliance obligations. He pointed out that the task force will be looking at all the options available and that there will be two task force meetings dedicated to reviewing what legal mechanism is most appropriate for San José.

Next, he reviewed San José's structure and land valuation model. San Jose utilizes the Quimby act through Municipal Code 19.38, the Parkland Dedication Ordinance (PDO) and 14.25, the Park Impact Ordinance (PIO).

Valerie pointed out the importance of studying land valuation and that it is an issue since San José has not updated their fees. She explained that the City's land valuation is organized by MLS districts. She noted that the current rates are based on a 2012 Land valuation study and that rates from 2012 have only been escalated through to 2016. Nate argued that a big policy choice would involve trying to understand the land valuation of the Quimby act and how that plays out within zones of the City.

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Valerie compared how fees are calculated between Quimby and AB 1600. She explained how Quimby Act fees are calculated for land dedication and fee in-lieu calculations. Next, she discussed how AB 1600 fees are calculated.

Nate reviewed the three methodologies of calculating AB 1600 fees:

- Standards-based (levels of service)
- Plan-based
- Capacity Buy-In (not applicable to parks)

It was noted that DTA is working on an AB 1600 nexus study in order to determine the best methodology for San José. They're also looking at the possibility of applying park impact fees to non-residential development, which isn't allowed under Quimby but is applicable under AB 1600. They're working on the early stages of the study in coordination with staff. Their report will also evaluate where the city is at with meeting the acreage requirements. They envision that the report will present three optional scenarios:

- Quimby Only
- Quimby + AB 1600 Fee
- AB 1600 Fee Only

**Discussion:**

Five members participated in the Q & A session – Olya Krasynkh, Bob Levy, Jeannette Marsala, Peter Given, and Rick Gosalvez. One member asked where the acreage numbers come from and when that range became appropriate. DTA responded that San José's three-acre minimum requirement is outlined in the Quimby Act. They also explained that there is a potential range of three acres minimum to a five-acres maximum. Deciding on the appropriate minimum acreage is a policy decision by the city. Nate pointed out that the acreage requirement is specifically called out in the Envision 2040 General Plan. Another member pointed out that Mountain View utilizes a hybrid approach with AB 1600. Nate added that Mountain View uses a high density overlay where the valuation breaker is higher when the density spikes. One member questioned whether the city is collecting 75% of the money that it should since property values have increased while the fees have not. The member also asked whether the city would continue to fall behind as property values continue to rise. DTA agreed and noted that a lot of cities are behind on impact fee updates. He added that a lot of communities build in escalators to account for property value increases, while other communities reevaluate on an annual basis, which is easier done with Quimby. Another member asked whether the enabling legislations are exclusive or whether the city could mix and match methodologies. DTA explained that while the city can choose to mix and match methodologies, the city should exercise caution and first evaluate the core issues before considering a hybrid approach. He also noted that the task force will delve into all these issues further in future meetings, for instance, meetings will be focused on demographics, land valuation, and methodologies. Another member asked how other cities fall within the three options that DTA outlined. DTA responded that Palo Alto is a bit of mix, while Campbell is classic Quimby, and Santa Clara utilizes AB 1600. Rebekah pointed out that a future meeting will focus on looking at methodologies used by other jurisdictions. One member stated that it would be helpful to understand what parks are working and which ones aren't and to look at the demographics around that. Two

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members expressed an interest in finding out about the approaches taken by larger cities, outside of California. In the interest of time, Rebekah moved the meeting on to the next agenda item.

**Part Three – Staff Presentations (35 minutes)**

• **Credits toward the PDO/PIO Presentation (15 minutes), Presented by Zak Mendez**

Zak Mendez gave a presentation of how parkland obligations are fulfilled and how applicants can obtain credits. He first reiterated that parkland credits are taken against the parkland obligation. He explained that the city prioritizes land acquisition as the primary means of meeting the parkland obligation. When land dedication is not feasible, the obligation can be met by the payment of park impact in-lieu fees, by the construction or rehabilitation of public recreation amenities, or by a combination of both methods.

Zak Mendez presented the four types of credits and how they are calculated:

- Existing housing (credit is based on the housing type that is demolished)
- Affordable housing (for deed-restricted affordable units)
- Stormwater detention facilities (for facilities that can also serve as a recreational amenity)
- Private recreation

**Discussion:**

Four task force members participated in the Q & A discussion – Olya Krasynkh, Bob Levy, Chris Shay, and Mike Bertram. One member asked about credits for privately or publicly accessible open space. Rebekah pointed out that this issue will be discussed in the next presentation. Another member asked about where the city is at with meeting their housing goal of 10,000 units and what the difference is between dollars in terms of AMI. Rebekah responded that low income housing is up to 80% of AMI, while moderate income is 80 to 120% of AMI. Another member questioned the 50% credit for moderate income, when it includes people at 120% of the median income. One member raised a concern about a potential backfill of parks in affordable housing areas and questioned whether the city matches funds in those areas or whether those areas would be “park-starved.” Zak responded that the city does not match the park trust fund for gaps associated with affordable housing credits. He reiterated that all the parkland fees are generated through residential fees that are assessed. He agreed that there would potentially be less fees generated for parks in those areas. Nicolle Burnham shared a table showing the summary of affordable and private recreation credits the city has given per year since 2012. Rebekah reminded the task force that this table was shared in the previous task force meeting and that the data is incomplete. Another member asked how many of the 10,000 affordable housing units have been built. Jerad Ferguson responded that the city has a goal of 25,000 units and that the city is behind on meeting the goal. Since 2018, 15,000 market rate units and about 3,100 affordable units have been built. The target year for the 25,000 goal is 2023. Rebekah pointed out that Jerad will be attending the next task force meeting.

### **Private Recreation Credits**

Zak presented an overview of the private recreation credits. He explained that the program was built to allow “park like” amenities on the project site and that they are not required to be publicly accessible but must be accessible to all residents of the site.

Zak reviewed the details of private recreation credits:

- Up to 50% credit against their square footage.
- Zak reviewed the two type of private recreation elements that projects may provide:
  - “Active elements” (Mimic typical features found in public parks) or
  - “Inactive elements” (Provide a “community center” like recreational resource or community benefit)

Zak reviewed what does work well:

- Prescriptive language with clear guidance for private recreation credits.
- Ground-level requirements help to meet public access.
- A variety of amenities can qualify

He then described what doesn’t work well.

- Resolution language is convoluted, confusing, and ambiguous
- Unclear what is not acceptable
- Non-recreation uses listed as recreational benefits
- Unclear relationship between recreational space and commercial spaces (i.e. seating spaces for restaurants)

Rebekah shared credit approaches that other jurisdictions utilize. She also noted that it is challenging to compare jurisdictions.

- San Diego (most comparable credit program to San José)
- Alameda, Milpitas, and Mountain View offer private open space credits for privately owned, publicly accessible spaces
- Alameda and San Diego provide affordable housing credits
- Redwood City, Oakland, and Sacramento offer credits for private parks

### Part Three – Group Discussion (60 minutes)

- **Should the City offer credits toward the Parkland Obligation? (20 minutes)**
- **If credits for on-site recreational amenities are provided, should these areas be solely publicly accessible and/or have some limitations of use by private residents? (20 minutes)**
- **Should regulations be “Prescriptive” or “General”? (20 minutes)**

- **Should City regulated affordable housing units receive credits? (20 minutes)**

**Discussion:**

Eleven members participated in the Q & A discussion – Helen Chapman, Olya Krasynkh, Chris Shay, Mike Bertram, Bob Levy, Jeannette Marsala, Rick Gosalves, Joe Head, and Peter Given. A question was asked whether the city uses any metrics to track the amount of public use of private recreation amenities. Rebekah Ross responded that there is no metric for that because there is not enough staffing for follow-up and that the resolution is convoluted and vague. The city does an inspection. Another member asked whether the private recreation credits are additive for projects receiving a deed-restricted 50% affordable housing credit. She also asked what went into the ordinances to substantiate the credits. Staff explained that the intent of these types of credits is to incentivize different things. It also lessens the impacts on our parks. The city is also trying to incentivize the production of affordable housing. It was noted that the storm water provision is outdated and should be modernized. One member asked how the design/development community has reacted to the prescriptive nature of the private park program and whether that prevents innovative spaces from being developed. Zak said there has been a mixed response. The prescriptive amenities are easier to communicate what will be in the parkland agreement. It may limit creativity with the types of spaces, but it honors the intent of the credit. The same member stated a desire for more broad language because the prescriptive language is more limiting and discourages amenities. She explained that the more prescriptive the requirements get, the more it limits the options and opportunities for creative solutions. Two members asked about potential “universal fees” and a need for transparency for developers. Rebekah added that some developers take advantage of broad requirements. We don’t have the language to back that up. She also noted that the next task force meeting will talk about the cost of development and the development fee framework.

Several members raised concerns about the inequitable distribution of parks in lower income areas due to the adverse effect of the affordable housing credit. Rebekah recognized the correlation between affordable housing and the amount of recreation available in those areas. She pointed out that affordable housing tends to be higher density and therefore has a greater need for park space, however the affordable housing credit essentially means less park fees available in those areas.

Members working in affordable housing development explained the challenges of affordable housing in providing amenities. Because the money available for public housing is publicly sourced, it takes a long time to finance these projects, while the cost to build housing continues to increase. As a result, any additional costs hurt the project because of the way the housing regulations are set up. They are thus disincentivized from providing any square footage for common areas in affordable projects.

Others raised concerns regarding private recreation credits for amenities that are not publicly accessible. While they supported private recreation lessening the demands on park resources, they were concerned about developers using it to their advantage. They appreciated the benefit of privately owned, publicly accessible parks reducing the maintenance burdens on the city. One member pointed out that exclusive private amenities



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are not a replacement for community amenities, while another urged the city to encourage publicly accessible private recreation amenities in areas with limited access to parks.

Lastly, one member asked whether the fee study would provide a parallel fee structure or whether it would replace the existing fee structure. Rebekah responded that we don't know yet because it is still being studied. A fee study would be required to change each impact fee and the city is not proposing to do a nexus study.

**ACTION ITEMS/FOR FURTHER DISCUSSION:**

Several suggestions and potential solutions were brought up to address the issues raised during the discussion:

- Look into the possibility of partnering affordable and market-rate projects so that park fees can be more equitably distributed
- Determine how fees could be leveraged to develop public spaces for those in historically park-poor neighborhoods
- Determine whether a sliding scale of credits could incentivize privately maintained, but publicly accessible amenities over amenities that are not accessible to the general public