

ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized under its home rule powers to regulate the use and development of land; and

WHEREAS, it is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City; and

WHEREAS, on April 1, 1998, the City Council of the City (the "City Council") adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"); and

WHEREAS, pursuant to the Open Space Ordinance, the City's Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds (each, an "Open Space Fees Fund"), each Open Space Fees Fund corresponding to the Community Area (as defined in the Open Space Ordinance) in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected; and

WHEREAS, the City's Department of Planning and Development ("DPD") has determined that the Fee-Paying Developments built in the Avondale Community Area and the Logan Square Community Area (together, the "Communities") have deepened the already significant deficit of open space in the Communities, which deficit was documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 and appearing on pages 69309-69311 of the Journal of the Proceedings of the City Council of the same date; and

WHEREAS, DPD desires to use certain Open Space Fee proceeds to pay for certain costs in relation to the development of the Kimball and Wellington Plaza which will be constructed in the right of way on the southeast corner of the intersection of North Kimball Avenue and West Wellington Avenue and bounded on the southeast side by North Wisner Avenue in Chicago, Illinois, which is located in the Avondale Community Area, which is contiguous to the Logan Square Community Area (the "Project"); and

WHEREAS, the Open Space Ordinance requires that the Open Space Fee proceeds be used for open space acquisition or capital improvements, or both, which provide a direct and material benefit to the new development from which the Open Space Fees are collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fee proceeds be expended within the same or a contiguous community area from which they were collected after

a legislative finding by the City Council that the expenditure of the Open Space Fee proceeds will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, DPD has determined that the use of Open Space Fee proceeds to assist the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected in that the Open Space Fee proceeds used for the Project will come from the specific Open Space Fees Funds set up by DOF for the Communities in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, DPD has recommended that the City Council approve the use of Open Space Fee proceeds for the purposes through this ordinance; and

WHEREAS, DPD has recommended that the City Council make a finding that the expenditure of the Open Space Fee proceeds as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

SECTION 2. The City Council hereby finds that the expenditure of Open Space Fee proceeds will directly and materially benefit the residents of those Fee-Paying Developments from which the Open Space Fees were collected and approves the use of the Open Space Fee proceeds.

SECTION 3. Open Space Fee proceeds in an aggregate amount not to exceed \$400,000 from the Communities' Open Space Fees Funds, including up to \$265,810 from the Avondale Community Area and up to \$134,190 from the Logan Square Community Area, are hereby appropriated to DPD for the Project.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the Code, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 5. This ordinance shall take effect upon its passage and approval.