

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 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 West Town Community Area have deepened the already significant deficit of open space in the West Town Park Community Area, 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 has proposed to develop Goose Island Overlook on vacant City owned land at 1111 N. Elston Avenue, Chicago, Illinois (the "Property") in the West Town Community Area (the "Project"); and

WHEREAS, the Property was acquired from The Peoples Gas Light and Coke Company, an Illinois corporation (the "PGL"), in 2003 with the assistance of a grant from the Illinois Department of Natural Resources; and

WHEREAS, in 2003 the City and PGL entered into a settlement agreement ("2003 Settlement Agreement") which provided the City with \$1,000,000 to facilitate environmental remediation of the Property by the City; and

WHEREAS, the City used approximately \$400,000 of funds from the 2003 Settlement Agreement to cap the site and create Goose Island Overlook Garden, which has left

approximately \$600,000 of the funds provided by PGL to the City remaining unspent; and

WHEREAS, the City did not perform the environmental remediation of the Property and desires to return to PGL the \$1,000,000 that PGL provided to the City pursuant to the 2003 Settlement Agreement as set forth in an amended settlement agreement, as attached hereto as Exhibit A (the "Amended Settlement Agreement"), pursuant to which the City will be relieved of its obligation to remediate the Property and PGL will assume responsibility for performing any environmental remediation of the Property, including improvements to the failing dock wall; and

WHEREAS, in order to return the entire \$1,000,000 amount to PGL pursuant to the Amended Settlement Agreement, an additional approximately \$400,000 is required to be combined with the unspent \$600,000 still held by the City; 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 agreed to use the Open Space Fee proceeds to pay for site preparation costs relating to the Project; and

WHEREAS, DPD has determined that the use of the 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 funds set up by DOF for the corresponding Community Areas in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

WHEREAS, DPD has recommended that the City Council approve the use of the Open Space Fee proceeds for the purposes set forth in this ordinance and authorize the Amended Settlement Agreement; 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 the 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 amount not to exceed \$800,000 from the West Town Community Area are hereby appropriated to DPD for the Project, including an amount not to exceed \$400,000 for DPD to perform further site preparation and an amount not to exceed \$400,000 to be granted to PGL in accordance with the terms of the Amended Settlement Agreement.

SECTION 4. The Commissioner of Planning and Development and the Chief Sustainability Officer are authorized to enter into the Amended Settlement Agreement with PGL in substantially the form as attached as Exhibit A hereto and return funds in an amount not to exceed \$600,000 to PGL for environmental remediation of the Property, which when combined with the \$400,000 in funds authorized under Section 3 of this ordinance will constitute the entire \$1,000,000 amount to be returned and granted to PGL pursuant to the Amended Settlement Agreement.

SECTION 5. 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 6. This ordinance shall be in full force and effect from and after the date of its passage and approval.