

ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, 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 Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees" or "Open Space Fee") 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 Open Space Ordinance requires that the Open Space Fee proceeds: (i) 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 fees are collected, and (ii) 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 Fees will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, the Department of Planning and Development (the "Department") has determined that the Fee-Paying Developments built in the Rogers Park Community Area have deepened the already significant deficit of open space in the Rogers Park Community Area, which deficit was documented in the comprehensive plan entitled "The City Space Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998; and

WHEREAS, the Board of Education of the City of Chicago, a body politic and corporate (the "Board"), has proposed certain improvements including, but not limited to, the development of a new naturalized play area (the "Project") at Kilmer Elementary School located at 6700 North Greenview Avenue, Chicago, Illinois, 60626; and

WHEREAS, the Department wishes to make available to the Board Open Space Fee proceeds collected by DOF in an amount not to exceed Four Hundred Eighty-Six Thousand Three Hundred Seventy-One and No/100 dollars (\$486,371) for the purpose of funding a portion of the Project which will provide open space and recreational facilities for the benefit of the residents of the Rogers Park Community Area; and

WHEREAS, the Department and the Board have agreed to enter into an intergovernmental cooperation agreement in substantially the form attached hereto as Exhibit 1 (the "Agreement") whereby the Department shall pay for or reimburse the Board for a portion of the Project costs; and

WHEREAS, the Board has agreed to use Open Space Fee proceeds for capital improvements relating to the Project subject to the terms and conditions specified in the Agreement; and

WHEREAS, the Department has determined that the use of the Open Space Fee proceeds to assist with 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 fund set up by DOF for the Rogers Park Community Area in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

WHEREAS, the Department has recommended that the City Council (i) approve the use of the Open Space Fee proceeds for the purposes set forth in this ordinance; (ii) 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; and (iii) authorize the Department to enter into the Agreement; 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 for the purpose of funding the Project 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 for the Project.

SECTION 3. The Commissioner of Planning and Development (the "Commissioner") is hereby authorized to provide Open Space Fee proceeds to the Board in an amount not to exceed Four Hundred Eighty-Six Thousand Three Hundred Seventy-One and No/100 dollars (\$486,371) from the corresponding fund to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. The Commissioner or a designee of the Commissioner are each hereby authorized, with the approval of the City's Corporation Counsel, to negotiate, execute and deliver the Agreement in substantially the form attached hereto as Exhibit 1 and made a part hereof, and such other documents as may be necessary to carry out and comply with the provisions of the

Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Agreement on the part of the Department.

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 take effect upon its passage and approval.