



THE CITY OF SAN DIEGO

**SMALL BUSINESS ADVISORY BOARD
MEETING MINUTES**

January 26, 2005

Executive Complex, Training Conference Room
1010 Second Avenue, 4th Floor
San Diego, CA 92101

BOARD MEMBERS PRESENT	BOARD MEMBERS ABSENT
Auday Arabo Faith Bautista George Chandler Scott Cummins Judy Preston Warren Simon Richard Sims Spencer Skeen Chi Tran	Kurt Chilcott Jesse Navarro

CITY STAFF
Steven Bal, Office of Small Business Kelly Broughton, Development Services Department Meredith Dibden Brown, Office of Small Business Patsy Chow, Planning Department Russ Gibbon, Economic Development Division Gary Halbert, Development Services Department Ron Halbritter, Development Services Department Lt. Hurt, San Diego Police Department Lynette Jones, Office of Small Business Jeff Kavar, Economic Development Division Sgt. James Kistner, San Diego Police Department Marcia Samuels, Neighborhood Code Compliance Department Adam Wexler, Councilmember Zucchet's Office, District Two Janet Wood, Office of Small Business

OTHERS PRESENT

Alexander Benjamin, Cornerstone Strategies
Art Castanares, Cornerstone Strategies
Debra Kelley, American Lung Association of San Diego
Scott Kessler, Business Improvement District Council
Ron Millar, La Maestra Job Center
Mike Nagy, San Diego Regional Chamber of Commerce
Blake Tucker, Walmart Stores
Jay Turner, North Park Main Street
John Ziebarth, Ziebarth Associates

Introduction

- Mr. George Chandler called the meeting to order at 8:23 a.m.

Approval of Minutes

- The minutes of November 5, 2004 were voted upon and unanimously approved.

Public Comment

- Mr. Ron Millar presented information on the La Maestra Job Center. Their agency received a Federal grant that rewards employers who hire refugees or asylees from their job development program. La Maestra would pay the wages from 1 to 6 months for 1 or more hires, including gross pay, employer taxes and employee benefits. La Maestra will match the candidate to the job and can present more than one candidate for the job. For further information, please contact La Maestra Job Center at (619) 285-8133 or by email at ronm@lameastra.org.

Business Improvement District (BID) Council Report: Warren Simon, Hillcrest Association

- Mr. Simon reported that officials from the City and County of San Diego have agreed to incorporate the BID system into their emergency planning.

Proposed Ordinance for Big Box Retailers: Patsy Chow, Planning Department

Ms. Chow reported the following information:

- Action on the proposed ordinance was tabled at the November 5, 2004 meeting until SBAB members could review the recommendations from both the BID Council and the Community Planners Committee (CPC). The January 18, 2005 memo to the SBAB from Ms. Coleen Clementson of the Planning Department provides information on both recommendations.
- On October 28, 2004, the BID Council adopted a position pertaining to large retail development. The motion adopted is: The BID Council supports a City ordinance precluding the development of superstores within San Diego, with a superstore defined as a store with over 1.) 90,000 square feet, 2.) Over 30,000 stock keeping units (sku's), and 3.) Selling over 10 percent non-taxable items. If the three criteria are exceeded, an economic impact report will be required.

- On September 28, 2004, the CPC voted to support the Planning Department's recommendation, with the following modifications: 1) Eliminate the 150,000 square feet building size limitation; 2) Establish discretionary review (SDP Process Four) at 75,000 square feet, instead of 100,000 square feet recommended by staff in the Commercial-Community zones and planned districts; and 3) Require a discretionary review (NDP Process Two) instead of Process One recommended by staff at 50,000 square feet of building size.
- On December 16, 2004, the Planning Commission unanimously motioned to recommend to City Council that they approve the Planning Department's recommendations with the exception of Item No. 2 as submitted in the December 9, 2004 memo, limiting the size of large retail establishments to 150,000 square feet except in the Commercial-Regional zones and the Centre City Planned District Ordinance; the inclusion of the design requirements as illustrated in Table I of the December 9, 2004 memo with two exceptions: 1) The economic impact report should not be included as part of the ordinance and 2) Requirement that 25 percent of required parking be provided in parking structures for buildings over 150,000 square feet apply to the CC zones only.
- The proposed ordinance is scheduled to go in front of the Land Use and Housing Council Committee (LU&H) on March 9, 2005. The ordinance will then be brought to the full City Council and finally to the California Coastal Commission.
- Ms. Chow clarified that the difference between the BID Council and City staff's recommendations is that staff's recommendation pertains to the size, design, and character of the building and does not include any provisions pertaining to sku's and non-taxable sale items. She added that there currently is no ordinance that regulates square footage of commercial buildings.
- Mr. Sims inquired if there was an economic impact report that illustrates how the flow of customers and their dollars to a large retail store would impact the existing communities, including small businesses. Ms. Chow commented that the economic impact report prepared by Mr. Russ Gibbon of the Community and Economic Development Department used methodologies from prior studies to illustrate the economic impact of large retail stores upon communities and small businesses.
- Mr. Jay Turner of North Park Main Street stated that there is a substantial disagreement with staff's recommendation. Staff is looking at it as a planning issue, whereas small businesses are looking at it as an economic development issue. Staff can look at zoning where there is available land, but they also need to consider the impact of large retail stores upon adjacent areas. The intent of large retail stores is to dominate a region and to fulfill the majority of customers shopping needs so there is no need to shop elsewhere. The BID Council adopted language from the City of Los Angeles, which approved their ordinance in August 2004.
- Mr. Spencer Skeen asked if the limit on sku's was constitutional. Mr. Turner replied that to his knowledge, the sku issue has not yet reached the courts. However, when a big box ordinance was introduced in other municipalities, one of the largest retail stores has always threatened legal action. Mr. Skeen stated that the square footage issue could be handled from a planning perspective and would be more difficult to challenge as opposed to placing a restriction on sku's.
- Mr. Art Castanares of Cornerstone Strategies representing the Joint Labor Management Committee, comprised of employee and employer groups throughout California commented that they have been working on the sku ordinance in San Diego since July 2004. He stated that ordinances almost identical to the ordinance proposed for San Diego have been adopted in other municipalities and none of them have been overturned by the courts. The opinion from the City

of Los Angeles City Attorney's Office stated that there was no constitutional issue based upon limits on sku's. Mr. Castanares stated that supercenters are stand alone one stop shops on their own parcel of land. He explained that having limits on sku's and 10 percent non-taxable items is important, because size alone doesn't capture the economic and land use impact that one supercenter will have. A recent court decision in Fresno stopped the development of a supercenter, because when the operator obtained the permits, they didn't state that it would be for a supercenter. The court's decision was that when an Environmental Impact Report (EIR) isn't reviewed as a potential supercenter site, the EIR is invalid, because a supercenter has a different impact. He added that the case is going before the Supreme Court.

- Mr. John Ziebarth of Ziebarth Associates commended staff for their design criteria. Staff needs to look at the impact of commercial regional shopping centers upon neighborhood and community centers, adding that there needs to be a right mix. If they are located too close to each other, there will be an adverse impact. He proposed that the economic analysis should be done as part of the General Plan. He voiced concern over the BID Council's proposal pertaining to the sku limit and whether it addresses the impact on small businesses. He observed that some locations have a Vons and Walmart adjacent to each other. He asked what the difference is between having them under the same roof or located next to each other in the same shopping center. The larger issue for the BIDs was Walmart itself, whether it is a supercenter or not.
- Mr. Turner responded that they are discussing a market decision that is substantially different from the past, i.e. having everything at one location and then hooking up with Westfield's to bring it into a mall. The intent is to capture as much retail business as possible. Mr. Kessler echoed that it is the capture rate of the superstores that threatens small businesses.
- Ms. Blake Tucker on behalf of Walmart stated that the CPC recommendation is the best one for San Diego. She stated that small businesses currently do compete with Walmart and are doing fine. Walmart stores already have optometrists and nail salons in them and a supercenter would only be adding a grocery store to them. They believe that supercenters will produce more traffic for small businesses. Overall, they believe a free market is the best choice for San Diego.
- Mr. Kessler commented that the SBAB may endorse the Planning Department and/or Planning Commission's recommendation, which addresses design elements and also endorse the BID Council's suggestion for an economic impact report which will address supercenters.
- **Mr. Sims motioned for the SBAB to support the BID Council's proposal for a large retail development ordinance limiting store size and merchandise to 90,000 square feet, 10 percent non-taxable items, and 30,000 sku's and which would require an economic impact report if the three criteria are exceeded. The motion was voted upon and unanimously approved.**
- **Mr. Sims motioned for the SBAB to support the Planning Department's recommendation, which specifies the criteria for design and development of big box stores. The motion was voted upon and unanimously approved.**
- Office of Small Business (OSB) staff will prepare two separate letters and they will be submitted to Mr. Chandler for review and signature. The letters will be distributed to LU&H, the Mayor and Council, and City Manager.

Mr. Sims presented the following information:

- At the November 5, 2004 meeting, the SBAB was approached by a group that was in the process of crafting an ordinance to address the selling of tobacco to minors, since there were a number of retailers that were violating the law. Their proposal included having a flat fee on tobacco retailers, which would provide funding to the San Diego Police Department (SDPD) to hire staff for the purpose of enforcement. SBAB members expressed concern at the meeting, since there had been no involvement from the small business community.
- Mr. Kessler from the BID Council, and Mr. Simon and Mr. Sims from the SBAB volunteered to participate in the stakeholders group process and attended several meetings (Mr. Auday Arabo from the SBAB was also involved in the stakeholder process). Their position was not to support any additional flat fees upon small businesses.
- A tentative budget was developed and a number of funding ideas were identified by the stakeholders group. The stakeholders group came to consensus on using Master Settlement Agreement (MSA – tobacco settlement) funds. They will approach the City Council stating that additional enforcement is required to protect youth and that MSA funds should be utilized for that purpose. Other ideas are under consideration as they prefer to have a range of options.
- The ordinance is being developed by the City Attorney’s Office. Lt. Hurt of SDPD is working on finalizing the budget details. Also, they need to obtain absolute consensus on the funding source. They are working on how to articulate the proposal to the Public Safety and Neighborhood Services Council Committee (PS&NS).
- Ms. Debra Kelley of the American Lung Association and a member of the tobacco stakeholders group thanked the SBAB for sending representatives to their stakeholders group. She commented that there was substantial consensus on the context of the ordinance. They have been advocating for years that the City use the MSA funds for enforcement activities and they have lost every battle. The small business community will need to strongly advocate for the use of MSA funds. They will need to go to Council with funding alternatives.
- Mr. Sims stated that the bottom line is that there was consensus among all the stakeholders that they would work together in the political process to pursue using MSA funds for the ordinance. The small business community is opposed to the flat fee on retailers. If the MSA funds are not available, then the recommendation will be to not support the ordinance.
- Lt. Hurt commented that if the ordinance is adopted, the SDPD is ready to enforce it, irrespective of the funding source.
- **Mr. Simon motioned for the SBAB to support the use of MSA funds to provide the staffing levels needed for the SDPD to administer and enforce the tobacco ordinance. The SBAB is also strongly opposed to a flat fee imposed upon small retail businesses. The motion was voted upon and unanimously approved, with Mr. Arabo abstaining.**
- OSB staff will prepare a letter for Mr. Chandler’s review and signature. The letter will be distributed to PS&NS and appropriate City staff.

Proposed License Cost Recovery Fee: Sergeant James Kistner, San Diego Police Department

Mr. Kistner reported the following information:

- In November 2000, the City Council adopted a resolution granting the SDPD the authority to determine public convenience or necessity for new alcoholic beverage licensing, pertaining to off-sale licenses (primarily liquor stores where individuals buy the alcohol to go) and certain on-sale licenses (bars and taverns).
- As part of the proposal, they established an application cost recovery fee, so the SDPD could recover the costs associated with conducting investigations. Mr. Kistner learned when he took over his current position in February 2004 that the section authorizing the cost recovery fee had never been implemented. The cost is now covered in their general operating budget.
- The SDPD proposed that a cost recovery fee of \$220 per new application be implemented to offset the cost of determining public convenience or necessity. The fee amount was derived by calculating the personnel and non-personnel costs associated with conducting the investigations. It basically covers 2 hours of a police sergeants time, 1 hour of an association management analyst (crime analyst) and ½ hour for a public information clerk for collecting the fee and processing the new application.
- Mr. Simon asked Mr. Kistner if he could include an inquiry from the BID. Mr. Kistner replied that under the public convenience or necessity process, there is no mechanism in place for community input at that point. The community input occurs during the State's Alcohol Beverage Control Department (ABC) process, since they require that the owner do a notification mailing.
- Mr. Kistner reported that in 2003 there were 50 applications and in 2004 there were 69 applications. For 2005, he has done 4 investigations so far. Approximately 90 percent of the applications are approved. If the investigation has been triggered by either high crime and/or over concentration and if it doesn't meet one or both criteria, then the public convenience or necessity determination is made by the ABC, not the SDPD.
- Mr. Sims asked if the fee represents the actual costs and whether the fee would increase with inflation. Mr. Kistner replied that it did reflect the actual costs and they did not foresee a fee increase in the near future. There is an annual review of permit fees at the City Manager's level.
- **Mr. Skeen motioned for the SBAB to support the \$220 cost recovery fee to offset the cost of determining public convenience or necessity. The motion was voted upon and unanimously approved.**

Development Services Department (DSD) Report: Kelly Broughton, DSD

Mr. Broughton provided the following report:

- Staff was directed at the last PS&NS meeting to develop an ordinance to require conditional use permits (CUP's) for on-sale premises. They will need to conduct outreach to interest groups and formulate the ordinance. They will bring it back before the SBAB, but there is no timeline yet.
- Provided updated copies of the Small Business Service Improvement Action Plan, noting that many tasks/issues have been completed. There are some areas that they are still working on.

Several of the biggest issues remaining are the issues pertaining to the land development code update and policy and regulation.

- Distributed draft copies of the Potential Land Development Code (LDC) Amendment Issues, which listed all the code changes proposed to them by staff, design professionals, and community groups. Over the next two months, he would like to send questionnaires to small businesses to obtain their input on regulatory issues they have had and to learn what areas they would like DSD to work on. He is soliciting input from the SBAB on code changes that they would like to see. There is a survey form on the back that members may complete and submit to DSD. He will be working with DSD's public information officers to compile a package for distribution and asked for input from the SBAB on ways he can outreach to small businesses.
- Mr. Sims suggested that a small group (comprised of representatives from the BID Council, BID's and SBAB) could look at the land codes that impact the small business community and develop a short list of priorities. Mr. Broughton commented that the priorities from the group would really help him. The group would present their priorities to the SBAB.
- Mr. Broughton stated that DSD is finally getting to a staffing level where they are able to turn the work around in the timeframes that his customers are expecting. The emphasis on training is starting to show some signs of a culture change around customer service, since he is getting a lot of positive comments from customers on the service they are receiving. They have also moved all their projects onto their tracking system.
- DSD's inspectors now have access to their network so they can update inspection results and they will soon be able to issue invoices and accept credit card payments in the field.
- Their vacant budgeted positions have been filled, with the exception of maybe one or two positions. They are actually hiring additional staff as a result of Council policies and priorities.
- Ms. Jones asked about the scheduling of inspections and meeting those deadlines. Mr. Broughton responded that the statistics are showing that they are going up to a rate of between 90 and 95 percent. There has been a little turnover in a couple of their inspection segments and they are recruiting to fill those vacancies.

New Business

- Ms. Jones announced that the SBAB Annual Community Outreach meeting will be held on February 23 from 8:30 a.m. to 10:30 a.m. at the Metro Career Center at 39th and University.
- Mr. Arabo asked if there was assistance available for small businesses on the Americans with Disabilities Act (ADA). Mr. Ron Halbritter from DSD stated that he could assist them and that they cover ADA when providing information to new businesses in their early assistance meetings. Ms. Jones added that there were a series of free ADA seminars last year. Ms. Marcia Samuels of Neighborhood Code Compliance Department (NCCD) stated that Ms. Michelle Nickols-Jordan of NCCD could assist them, including providing a free consultation inspection. She could also make informational presentations at a BID Council or BID meeting.

Meeting Adjournment

- The meeting was adjourned at 10:10 a.m.