

DATE ISSUED: December 9, 2004

REPORT NO. PC-04-235

ATTENTION: Planning Commission
Agenda of December 16, 2004

SUBJECT: Proposed amendment to the City's Land Development Code (and Local Coastal Program) to clarify the definition of "Applicant" and "Application Process"

APPLICANT: Redevelopment Agency of the City of San Diego

SUMMARY:

THE PROPOSED AMENDMENT WOULD CLARIFY THE LAND DEVELOPMENT CODE'S DEFINITION OF "APPLICANT" AND "APPLICATION PROCESS" TO ENSURE THAT REDEVELOPMENT PROJECTS CAN START THE PERMIT ENTITLEMENT REVIEW PROCESS IF THERE IS AN APPROVED AND EXECUTED DISPOSITION AND DEVELOPMENT AGREEMENT (DDA).

STAFF RECOMMENDATION:

Recommend to the City Council approval of the proposed amendment to the Land Development Code to clarify that the definition of "Applicant" (Land Development Code Section 113.0103) and "Application Process" (Land Development Code Section 112.0102) includes any redevelopment proposal with an approved and executed Disposition and Development Agreement (DDA).

ENVIRONMENTAL REVIEW:

The proposed amendment to the Land Development Code does not constitute a "project" and is therefore exempt from the California Environmental Quality Act pursuant to section 15060(c)(3) of the State CEQA Guidelines.

FISCAL IMPACT:

No direct fiscal impact on the City. However, it is anticipated that the proposed amendments to the Land Development Code could result in significant cost savings for redevelopment projects by providing more predictability in project submittal, and permit entitlement processing. These cost saving could lead to a reduction in the need for public subsidies on some redevelopment projects.

BACKGROUND:

Under the City's existing Land Development Code (LDC), an applicant cannot "begin" (i.e. submit application for) the permit entitlement process with the Development Services Department until they can demonstrate they have "a legal right, interest, or entitlement" to all parcels / properties inclusive of a proposed development plan (LDC §113.0103). As this definition is currently worded, it is unclear whether a proposed redevelopment project proposal with an approved / executed Disposition and Development Agreement (DDA) would meet the requirements of the LDC. As a result, several redevelopment projects (including affordable housing projects) are facing extreme delays, because staff does not have clear authority to start reviewing the projects for their entitlements.

Staff is proposing an amendment to the LDC (Attachment 1) , which would clarify the definition of "Applicant", thereby allowing redevelopment projects to begin the entitlement review process, as long as the Agency Board has approved and executed a DDA for the project. The amendment would not change any of the requirements for the approval of entitlements – projects would still need to come before the Hearing Officer, Planning Commission and/or City Council for approval, as they currently do.

DISCUSSION

The proposed LDC amendment is intended to address redevelopment projects where some degree of land assembly is required. In many cases, the Agency may wish to support a redevelopment project, but the developer of the project has not finished acquiring all of the property necessary to build the project. After holding a public hearing, the Agency Board may elect to enter into a Disposition and Development Agreement (DDA) to assist the project with financial subsidies and/or with assembling property.

As part of the DDA, the Agency would typically agree to use its best efforts to complete land assembly for the project, in the event that the developer is unable to buy the properties. Thus, by entering into a DDA, the Agency and the developer have a high degree of certainty that they will be able to acquire the property needed for their project.

However, even with Agency assistance, the process of land assembly can take years to complete. During this time, it is crucial for the project to begin the public review process for their project, so that:

- (1) The costs and feasibility of the proposed project can become more clearly understood.
- (2) The city has a chance to identify and address potential issues (e.g., traffic, offsite improvements, environmental mitigations) associated with the proposed project.
- (3) The public has an opportunity to provide valuable, timely input on proposed project designs.

As previously noted, the LDC's existing definition of "Applicant" does not clearly address the situation where an Applicant has obtained a DDA (which will allow them to complete land assembly in the future) but has not yet completed land assembly. Experience has shown that this lack of clarity in the definition of "Applicant" can result in extreme delays for redevelopment project

processing, primarily because the project may not be able to start the City's permit entitlement review process until after the last parcel has been acquired.

These delays are particularly damaging to projects that include affordable housing, especially from the standpoint of timing and processing costs for such projects. Affordable housing projects typically rely on funding from local, state, or Federal programs (e.g., the California Tax Credit Allocation Committee "TCAC" programs) that have stringent deadlines. Thus, delays to the entitlement review process can force an affordable housing program to miss these deadlines, which in turn may endanger funding for the entire project.

Furthermore, the timely review and approval of development entitlements are critical in an environment of rapidly rising land and construction costs. In redevelopment projects, increased project costs will generally result in a direct increase in the need for public subsidies.

From a technical standpoint, the proposed amendment to the Land Development Code will consist of the following section changes:

- (1) Change the definition of "Applicant" (LDC §113.0103) to include "any redevelopment project proposal with an approved and executed Disposition and Development Agreement with the San Diego Redevelopment Agency"(Attachment 1); and
- (2) Clarify the "Application Process" (LDC §112.0102) to allow applicants to begin the entitlement review process if they have obtained "an approved and executed Disposition and Development Agreement with the San Diego Redevelopment Agency" (Attachment 2).

It should be noted that the proposed LDC amendment would not change any of the requirements for the approval of entitlements. It simply would provide the clear legal authority to start the entitlement review process sooner. A developer would still have to obtain ownership of the site before any building permits could be issued. Projects that would benefit from the proposed clarification of the LDC would still need to come before the Hearing Officer, Planning Commission, and/or Agency Board for approval, as they currently do.

The proposed LDC amendment would offer the following public benefits:

- The public review of redevelopment projects (including affordable housing projects) could start much earlier in the process than what is presently being realized.
- City staff would have an earlier opportunity to identify planning, design, and environmental issues. This, in turn, would allow the Redevelopment Agency and developer more time to adequately address such issues.
- There would be significant cost savings because the Agency and developer would be able to determine the costs and feasibility of their project sooner and more accurately. The resulting cost savings could translate into a reduction in the need for public subsidies.

- The permit entitlement review process would be fully funded by the developer, so there would be no risks borne by the City or the Redevelopment Agency.

Local Coastal Program Amendment:

The proposed amendment could potentially affect existing properties located within the City's coastal zone boundaries. As such, the proposed action will also require approval of an amendment to the City of San Diego's Local Coastal Program. Final approval of the proposed Land Development Code Amendment is subject to certification by the California State Coastal Commission. As such, the amendment will not become effective within the City's recognized coastal zone boundaries until final certification by the Coastal Commission has occurred.

CONCLUSION

Redevelopment Agency staff is requesting Planning Commission support for the proposed amendment to sections 112.0102 and 113.0103 of the Land Development Code relative to providing clarity to the current definitions of "Applicant" and "Application Process". The proposed LDC amendment would allow redevelopment projects to begin the permit entitlement review process as long as the Agency Board has approved and executed a DDA for such projects.

In preparation for this public hearing, staff sent a public notice to the members of all recognized community planning groups, as well as to the chairs of all redevelopment Project Area Committees (PACs).

Pursuant to obtaining a formal recommendation(s) from the Planning Commission, the proposed amendment to the LDC will be forwarded to the City Council (via a noticed public hearing) for their consideration and approval, and then finally on to the California State Coastal Commission for final certification, as appropriate.

Respectfully submitted,

Hank Cunningham
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City of San Diego Redevelopment Agency

Attachments:

1. Proposed Amendment to Land Use Development Code Section 113.0103
2. Proposed Amendment to Land Use Development Code Section 112.0102
3. Map of Redevelopment Areas