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REPORT TO THE HONORABLE MAYOR AND COUNCILMEMBERS

PROPOSED MIDWAY RISING PROJECT ON SPORTS ARENA BOULEVARD

INTRODUCTION

On November 9, 2026, the San Diego City Council (Council) will consider approval of a Disposition and Development Agreement (DDA) between the City of San Diego and Midway Rising, LLC, a Delaware limited liability company (Midway Rising),[1] along with various land use entitlements for a proposed mixed-use redevelopment project (Project) on the City-owned real property located at 3500, 3250, 3220, and 3240 Sports Arena Boulevard (Property) and resolution of intent to form an enhanced infrastructure financing district (EIFD) that will support the Project. The Project involves demolition of the existing sports arena and several other commercial buildings on the Property to make way for the construction of a new 15,200 to 16,000-seat arena (Entertainment Center), 2,250 units of market rate housing, 2,000 affordable housing units, 123,500 to 130,000 square feet of commercial/retail space, and approximately 14.6 acres of public space and parks that will be open to the public.

This Report does not restate or attempt to explain the detailed descriptions of the lease rent structures and other financial terms in the DDA and other Project documents contained in written reports from City staff and the Independent Budget Analyst, including their presentations and verbal explanations during the October 16, 2026 meeting of the Land Use and Housing Committee. This Report provides legal guidance related to the Project and focuses on the City's rights and remedies under the proposed DDA and its attached ground lease forms, and potential legal risks associated with the Project that could prevent it from moving forward as planned.

[1] The developer of the Project is referred to as "Midway Rising" in this Report. In the DDA, Midway Rising is referred to as "Master Developer." Under the DDA, Midway Rising may transfer some or all of its legal rights or obligations under the DDA to other entities. For purposes of this Report, "Midway Rising" refers to any such future transferee as well.

DISCUSSION

I. OVERVIEW OF REAL PROPERTY DOCUMENTS

The main documents describing the real property transaction between Midway Rising and the City include the following:

A. Disposition and Development Agreement

The DDA is the overarching contract between the City and Midway Rising, establishing the conditions under which the City and Midway Rising will enter into a series of long-term ground leases of the Property to facilitate phased construction of the Project. Three of the 26 attachments to the DDA are long-term ground lease forms. These forms do not include a ground lease form for development of affordable housing, which will be negotiated within 180 days after the effective date of the DDA. *See* DDA, Attachments 11, 15, and 16, and § 34.11. Under the terms of the DDA, City staff is to request that an affordable housing lease form be docketed for Council consideration within 90 days after City staff and Midway Rising conclude negotiations on this form.

B. Horizontal Ground Lease

The Horizontal Ground Lease form is Attachment 11 to the DDA.[2] Upon its commencement, the Horizontal Ground Lease will give Midway Rising property rights as a tenant for the entire Property. The Horizontal Ground Lease enables Midway Rising to: (a) complete a three-phased construction of the Horizontal Improvements[3] to support future construction of the Vertical Improvements;[4] (b) create individual development parcels on which the Vertical Improvements will be constructed; and (c) operate the existing sports arena on the Property until the new Entertainment Center is operational.[5] Before signing the Horizontal Ground Lease, the City and Midway Rising must negotiate a performance schedule, which will include the anticipated completion date of all Horizontal Improvements. The Horizontal Ground Lease will remain in effect until all the Horizontal Improvements are completed.

C. Vertical Ground Leases

The DDA contemplates that the Vertical Improvements will be completed in five phases over approximately 20 years.[6] Each Vertical Ground Lease will have a term of 85 years. The Vertical Ground Lease forms for the Entertainment Center and the market rate residential and

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[2] All Attachments referenced are Attachments to the DDA unless otherwise specified.
[3] The Horizontal Improvements include utilities, access, and other infrastructure, including parks and public spaces.
[4] The Vertical Improvements include the Entertainment Center, market rate housing and commercial/retail space, and the affordable housing units.
[5] The existing sports arena stops operating and producing revenue for the City when the Entertainment Center opens.
[6] Development of the Vertical Improvements may take longer if an unavoidable delay occurs. Section 177 of Attachment 1 defines "Unavoidable Delay" to generally include any delay in either party's performance of any obligation under the DDA arising from any cause beyond the party's reasonable control.

commercial/retail are Attachments 16 and 15, respectively. Provisions that must be included in the affordable housing lease form are in Attachment 17. As Midway Rising completes construction of the Horizontal Improvements needed to support construction of the Vertical Improvements on a particular development parcel, that development parcel will be removed from Horizontal Ground Lease, and the City and either Midway Rising or another Vertical Developer to which Midway Rising assigns the development parcel lease rights under the DDA will enter into a Vertical Ground Lease for that development parcel. Each Vertical Ground Lease requires the tenant to construct and operate the specified Vertical Improvements on the development parcel at its sole expense.

The Entertainment Center lease is the first Vertical Ground Lease contemplated by the DDA. Parks constructed under the Horizontal Ground Lease will become part of the Entertainment Center lease premises and will be managed and maintained by the Entertainment Center lease tenant for the full 85-year lease term.

The subsequent Vertical Ground Leases will include a series of affordable housing ground leases for the construction and operation of affordable housing units and market rate housing/retail ground leases. The DDA requires Midway Rising to construct 2,000 affordable housing units on the Property with the affordable housing units constructed on each development parcel having a weighted average affordability level not exceeding 60 percent of the area median income. *See* DDA § 15. The DDA generally requires the affordable housing units to be built in proportion to the market rate housing units.[7] *See* DDA § 15.3.

D. Master Rent Administration Agreement

Concurrent with the escrow closing for the first market rate housing/retail lease, the City and Midway Rising will enter into the Master Rent Administration Agreement. DDA, Attachment 21. This agreement is a customized arrangement necessitated by the unique rent structure under the market rate housing/retail leases. Each market rate housing/retail lease will require its tenant to pay the greater of the tenant's portion of the aggregate minimum annual rent due to the City for all the market rate housing/retail leases on the Property or the percentage rent once percentage rent becomes due under these leases.[8] The amount each tenant pays for its portion of the aggregate minimum annual rent is not a fixed amount and must be calculated by Midway Rising each year. The requirement to pay aggregate minimum annual rent commences the year following the first year that the City receives $500,000 in total percentage rent from the market rate/retail leases on the Property.

[7] The phasing of affordable housing unit construction is subject to a temporary postponement in phases 2 or 3 if the City agrees, in its reasonable discretion, that the affected Vertical Developer is unable to secure Gap Financing for construction of its planned affordable housing units in the original phase.

[8] Percentage rent commences under market rate housing/retail leases after the tenant recovers its equity investment in the initial construction of the Vertical Improvements.

II. OVERVIEW OF IMPORTANT CONTRACTUAL RIGHTS AND REMEDIES

A. Remedies for Default and Liquidated Damages

DDA section 36 identifies the remedies available to the City and Midway Rising in the event of a default by the other. Under the DDA, a default could include a failure to pay a monetary amount owed or a failure to timely perform an obligation in the performance schedule. Under the DDA, the City and Midway Rising will each have an opportunity to cure any asserted default within a specified number of days after receiving written notice of the default. The cure period varies depending on the type of default. In the event of an uncured default by the City, Midway Rising must elect one of two remedies: (a) file a legal action against the City for specific performance of its obligations under the DDA; or (b) terminate the DDA and file a legal action against the City to recover up to a maximum of $1 million in damages, exclusive of certain recoverable legal costs. DDA § 36.1.

If Midway Rising defaults under the DDA before the escrow closes for the Horizontal Ground Lease and does not timely cure the default, the City may either: (a) pursue all available equitable remedies; or (b) terminate the DDA and cancel the Horizontal Ground Lease escrow before the Horizontal Ground Lease escrow closing occurs, then recover liquidated damages of $1 million from Midway Rising. DDA § 36.2. If a Vertical Developer defaults under the DDA before the escrow closes for its Vertical Ground Lease and does not timely cure the default, the City may either: (i) pursue all available equitable remedies; or (ii) terminate the DDA with respect to the subject Vertical Ground Lease and cancel the applicable Vertical Ground Lease escrow before the Vertical Ground Lease escrow closing occurs, then recover liquidated damages of $2 million from the Vertical Developer. DDA § 36.3.

Under the lease forms, the tenant has an opportunity to cure any asserted default within a specified number of days after receiving the City's written notice of the default. The tenant's cure period will vary depending on the type of default. If the tenant does not timely cure the default, the City may pursue the typical remedies available to a commercial landlord in California. The default of one Vertical Ground Lease tenant will not impact the rights or obligations of any other Vertical Ground Lease tenant. For example, if an affordable housing ground lease tenant defaults, it will not impact the Entertainment Center tenant's ability to operate the Entertainment Center.

B. Defense and Indemnity Obligations

The DDA (mainly in Section 38) and the lease forms include strong defense and indemnification provisions in the City's favor, generally requiring Midway Rising to defend and financially compensate the City for claims brought by a third party as a result of Midway Rising's activities at the Property. The claims for which Midway Rising is required to indemnify the City Parties[9] arise from various causes specified in the DDA, such as Midway Rising's intentional or negligent acts, Midway Rising's construction and operation of the Project, adverse

[9] The City Parties include the City and its employees and representatives.

prevailing wage actions by the state or federal government, and all newly occurring environmental conditions affecting the Property. Midway Rising's duty to indemnify the City Parties excludes claims arising solely from the established active negligence or willful misconduct of a City Party. The DDA and the lease forms do not require the City to indemnify or defend Midway Rising or any other Vertical Developer.

C. Acceptance of Property in Current Condition

Midway Rising will accept the condition of title to the Property as shown in the Preliminary Report in Attachment 3, which is a written report generated by Chicago Title Company identifying the legal description of the Property and all exceptions to title that are known at the time of the transaction. Midway Rising will also accept the current physical condition of the Property and acknowledge the feasibility of the Project. DDA §§ 12.1, 12.2.

Moreover, Section 6 of each lease form contains several broadly worded protections of the City's interests pertaining to the condition of the applicable development parcel. For example, each tenant will accept possession of the development parcel in its "as-is" condition, waive and release all claims against the City relating to the condition of the development parcel, and acknowledge that the development parcel may contain hazardous substances. If hazardous substances are identified, the tenant is responsible for removing, managing, remediating, or containing them at its cost. Although each tenant is responsible for these costs, the general potential for hazardous substances on the Property to be greater or different than anticipated poses some risks to the Project, including significantly increased costs if remediation is more extensive than anticipated or delays in obtaining necessary clearances to construct any affected portion of the Project.

D. Transfers and Assignments

The DDA prohibits Midway Rising's transfer or assignment of its rights and obligations under the DDA without the City's prior written approval, which can be withheld for any reason, subject to two exceptions. DDA § 40.3. First, Midway Rising may transfer or assign its rights without City approval to another entity that is controlled by either Midway Rising or any entity that is part of the ownership of Midway Rising. Second, Midway Rising may transfer its rights to a particular development parcel if the City, in its reasonable discretion, approves the transfer after evaluating various information and document submittals by Midway Rising and the proposed Vertical Developer transferee. DDA § 40.4. The City's evaluation is intended to substantiate the readiness of the development parcel for construction of the applicable Vertical Improvements and the financial capability of the Vertical Developer transferee to complete the construction.

Additionally, each lease form generally prohibits the tenant's transfer or assignment of its rights and obligations under the applicable lease without the City's prior written approval, which can be withheld for any reason, subject to several exceptions. The City's prior approval is not required for transfers to entities controlled by either the tenant or any entity that is part of the

ownership of the tenant, certain transfers related to permitted leasehold secured financing, eligible subleases,[10] and certain "Use Agreements."[11]

E. Impasse Resolution Process

The DDA includes a process intended to resolve an impasse if the City and Midway Rising fail to agree on any of the following matters: alternative financing if the EIFD formation conditions are not met; the content of the Horizontal Improvements Financing Plan or any Vertical Improvements Financing Plan; the Vertical Improvements to be constructed on a particular development parcel; the content of the affordable housing lease form; and the existence or continued existence of an unavoidable delay. DDA § 39. Upon either the City's or Midway Rising's request, they will be required to pursue impasse resolution through good-faith negotiations during a period of 30 days at a minimum, followed by non-binding mediation in front of an impartial, qualified mediator, before either of them may commence a legal action to resolve the impasse. The City and Midway Rising will each bear their own legal costs during the impasse resolution process. To the extent that the impasse resolution process delays performance of an obligation, the pertinent deadline in the DDA Performance Schedule will be extended accordingly. The lease forms do not include the impasse resolution process because they do not require the parties to the leases to reach agreement on the same types of issues. Disputes under the leases are generally dealt with through the default provisions in the leases.

F. Recovery of Legal Costs and Fees

DDA section 40.7 is a customized provision by which the prevailing party in litigation between the parties to the DDA that arises from the DDA will be entitled to recover a capped amount of its legal costs, with interest, from the other party. The initial cap is $250,000, with the cap increasing by three percent each year. Each lease form contains this same customized provision for recovery of legal costs under the lease.[12]

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[10] In the market rate housing/retail leases and the affordable housing leases, eligible subleases will generally include subleases of the individual dwelling units. Subleases of retail or commercial space will require City approval. In the Entertainment Center lease, subleases of 10,000 square feet or less will not require City approval.

[11] Each lease has unique provisions establishing which Use Agreements (defined in the lease) require City approval. These provisions generally require that Use Agreements with the potential to impact the City's revenue under the lease are subject to City approval, while Use Agreements that are more operational in nature do not require City approval.

[12] The Development Agreement is a separate agreement from the DDA. The Development Agreement does not contain a capped amount of legal costs in the event of a legal dispute. Development Agreement § 14. The Development Agreement contains a hierarchy provision, however, that states when different documents address the same subject, the more specific language controls. Development Agreement § 24.

III. OVERVIEW OF IMPORTANT PROPERTY TRANSACTION ISSUES

A. Project Phasing

The Development Phasing Plan in Attachment 8, combined with the Horizontal Ground Lease and Vertical Ground Lease structure under the DDA, presents the possibility that the Entertainment Center and some market rate housing units could be built, but then the Project stalls and no affordable housing units are ever constructed. The Project could stall for a number of reasons, including unanticipated spikes in material costs, unavailability of financing, or unforeseen conditions on the Property. Further, the phasing of the affordable housing units under DDA Section 15 makes it possible that if the Project stalls after completion of phase 3, for example, as many as 1,165 affordable housing units may not be constructed.

B. Conditions Precedent to Each Lease Closing

The documents contain a variety of conditions that must be achieved or waived by the City or Midway Rising before the next step of the Project can progress. In other words, agreeing to the DDA is step one in a multi-decade transaction between the City and Midway Rising. For example, the City and Midway Rising will not enter into the Horizontal Ground Lease until, among other things, certain actions related to the EIFD are complete,[13] the City approves Midway Rising's Horizontal Improvements Financing Plan, and Midway Rising obtains all required government approvals to construct the first phase of Horizontal Improvements.[14] If these conditions are not met within the required time, the DDA may be terminated, and the entire Project would not move forward.

If the City and Midway Rising do not enter into the Horizontal Ground Lease on or before June 30, 2028, subject to extension in limited scenarios, either the City or Midway Rising may terminate the entire DDA. If the DDA is terminated in this manner, neither the City nor Midway Rising will have any resulting liability to the other party, unless the termination is due to the default of the City or Midway Rising. DDA § 33.9.

The DDA contains similar provisions with respect to entering into each Vertical Ground Lease, except that the termination right only applies to the particular development parcel that is the subject of the proposed Vertical Ground Lease, not to the entire DDA. Midway Rising will still be able to continue pursuing the Project on the remaining development parcels.

Additionally, the rights of a tenant under a Vertical Ground Lease that has been entered into will not be affected by a default of Midway Rising under the DDA or the Horizontal Ground Lease, even if Midway Rising is the tenant under one or more Vertical Ground Leases that have been entered into.

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[13] These steps are discussed in the Overview of the EIFD Issues section below.

[14] Likewise, the City will not enter into a Vertical Ground Lease with Midway Rising or the applicable Vertical Developer until all conditions precedent to the lease closing specified in the DDA are satisfied or waived.

C. Participation in Business Cooperation Program

The DDA fosters participation in the City's Business Cooperation Program under Council Policy 900-12. DDA § 23. All eligible sales and use tax is required to be allocated to the City on all taxable materials, fixtures, machinery, and equipment purchased, acquired, installed, or furnished in connection with construction on the Property under the Horizontal Ground Lease and all Vertical Ground Leases. Each lease form imposes a similar obligation on the tenant. The growth in sales and use tax revenues will be earmarked for the City's Infrastructure Fund through June 30, 2042, under San Diego Charter (Charter) section 77.1. City Att'y MS 2017-23 (Sept. 21, 2017). However, upon the Mayor's request each fiscal year, Charter section 77.1(g) enables the Council to suspend the Infrastructure Fund requirements and instead allocate the growth in sales and use tax revenue to the General Fund for that fiscal year. The Council has opted to suspend these requirements in several prior fiscal years.

D. Parks

The "Parks" described in the DDA will be private parks that are leased, maintained, and operated by Midway Rising under the Entertainment Center lease. The Parks will be subject to the Parks management and maintenance requirements contained in an exhibit to both the Horizontal Ground Lease and the Entertainment Center lease. These requirements generally require that the public have access to the Parks, but also allow the Parks to be closed to the public for certain events for up to five days at a time. Additionally, the DDA does not require the Parks to be developed to the same physical standards required for City public parks, and the Development Agreement waives the requirement for Midway Rising to provide a General Development Plan for the Parks and public spaces or comply with any other provision of Council Policy 600-33.

E. Waiver of Council Policy 700-10

Council Policy 700-10 provides guidelines for the disposition of City-owned real property. The Council is being asked to waive Council Policy 700-10 because the structure of the real property transaction for the Project is unique, and the DDA and the attached lease forms vary from the requirements of Council Policy 700-10 in a number of ways. For example, the rent amounts under the leases are not supported by appraisals, the City will not receive 50 percent of the sublease revenue, and the City may not be entitled to any portion of the net proceeds from a refinancing where the tenant receives proceeds from the refinancing. This is not an exhaustive list of the deviations from Council Policy 700-10. However, these deviations in particular affect the financial terms of the transaction. Based on the financial terms, the Council should determine whether the Project serves valid public purposes or if it will assist in creating economic opportunity under the pertinent economic opportunity statutes in California Government Code sections 52200 through 52203.[15]

[15] Charter section 93 prohibits gifts of public funds, which include both expenditures and the ability to use a City resource that benefit a private party without the City receiving adequate consideration in exchange and that does not

F. Review of Market Conditions as Part of City's Periodic Review

Both the proposed 85-year Entertainment Center lease and the proposed 85-year market rate housing/retail lease forms provide for a periodic review of the rent amount in years 56 and 71. The leases allow for an adjustment of rent based on an appraisal; however, the adjustment is capped at 17 percent and 35 percent of the original rent in years 56 and 71, respectively. The capped adjustments may prevent the City from being able to adjust the rent to reflect market conditions in years 56 and 71.

G. Master Rent Administration Agreement

The Master Rent Administration Agreement, discussed above, provides for Midway Rising to calculate aggregate minimum annual rent each year and allocate a portion of the minimum annual rent to each individual market rate housing/retail lease tenant according to a prescribed formula. If any tenant provides incorrect information to Midway Rising, this calculation will be incorrect and will require recalculation of the proportionate shares for each tenant. In the event of an incorrect calculation, the City must refund any overpayment received from a tenant, and each tenant must pay any additional amounts due to the City if the tenant underpaid based on Midway Rising's original calculations. The City's obligation to refund overpayments is not contingent on the City receiving any amounts that were underpaid by another tenant. Collecting underpaid rent (or any other rent that is not paid) may require the City to enforce available lease remedies against the defaulting tenant to attempt to collect underpaid amounts directly from that tenant. The Master Rent Administration Agreement does not require Midway Rising to participate or engage in these enforcement measures. As a result of this arrangement, the City could incur additional administrative burdens and financial risks related to the collection of underpaid rent under the market rate housing/retail leases.[16]

H. Affordable Housing Receiver Site and Surplus Land Act Compliance

Several provisions of the San Diego Municipal Code (Municipal Code or SDMC) allow housing developers to comply with the City's affordable housing requirements by providing affordable housing units at an off-site receiver location. These Municipal Code provisions may allow all or a portion of the 2,000 affordable housing units in the Project to satisfy other developments' affordable housing requirements (Off-Site Affordable Housing Requirements), reducing the net number of new affordable housing units provided by Midway Rising.

The DDA currently prohibits use of the Property to satisfy other developments' Off-Site Affordable Housing Requirements, unless the City approves such use in writing after the

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serve a public purpose. The determination of what constitutes a public purpose lies with the legislative body, and the Council's determination will generally be upheld unless it is totally arbitrary. *See Mannheim v. Superior Court*, 3 Cal. 3d 678, 691 (1970); *Cmty. Mem'l Hosp. v. Cnty of Ventura*, 50 Cal. App. 4th 199, 207 (1996).

[16] Because the minimum annual rent structure is unique, it is also possible that future lenders to the Project may have concerns about the fluctuation in each tenant's minimum annual rent obligations, which will not be known from year to year and depend on other tenants' performance. This rent structure could inhibit future financing necessary for the market rate housing/retail leases.

Developer notifies the City that it is unable to obtain Gap Financing. DDA § 15.4. It is unclear whether approving use of the Property as an affordable housing receiver site for another development is consistent with the Surplus Land Act (SLA), California Government Code sections 54220-54234. The SLA declares that a shortage of sites available for housing for low and moderate income persons and families is a barrier to addressing urgent statewide housing needs, and that surplus land should be made available for affordable housing. Cal. Gov't Code § 54220. The SLA requires that the City give priority to the entity proposing the greatest number of qualifying affordable units in response to the City's Notice of Availability (NOA), and that the City engage in good faith negotiations with entities that submit a notice of interest in response to the City's NOA. Cal. Gov't Code §§ 54223, 54227(a). If the City approves use of the Property as a receiver site under DDA Section 15.4, Midway Rising could produce less than the 2,000 net new affordable housing units represented in Midway Rising's response to the NOA.

IV. OVERVIEW OF IMPORTANT LAND USE ISSUES

In addition to the property documents that provide for the construction, operation, and financial aspects of the Project, the Council will consider the following land use documents: Certification of the Midway Rising Project Final Subsequent Environmental Impact Report, Project No. 1106734, SCH No. 2023120451 (SEIR)[17] and numerous land use-related matters, including the Midway Rising Specific Plan, a Development Agreement, a Site Development Permit, Vesting Tentative Map, a Variance to the Inclusionary Affordable Housing Regulations for an alternative phasing plan, and the Entertainment District Ordinance (collectively, the Land Use Documents).[18] As with the property documents, the Office of the City Attorney refers the reader to the explanations of these documents in the report provided by City staff. This portion of the Report addresses legal considerations for the Council to weigh when deciding whether to approve the Land Use Documents.

A. Density Bonus Waivers and Incentives

California density bonus law allows development project applicants to build affordable housing above the current density allowed by the zone and requires the local land use authority to grant incentives and concessions in exchange for the additional affordable housing units. Cal. Gov't Code §§ 65915-65918 (Density Bonus Law). Density Bonus Law incentives and concessions may include a waiver or incentive that allows a qualifying development to exceed an established height limit.

[17] As part of the certification of the SEIR, the Council will also be asked to adopt the Findings of Fact and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program.

[18] The Land Use Documents also include a rezone, an amendment to the Midway-Pacific Highway Community Plan, and an amendment to the Municipal Code to remove the site from the Community Plan Implementation Overlay Zone.

The Property is located in the Coastal Height Limit Overlay Zone, which imposes a 30-foot height limit established by a citizens' initiative.[19] The City twice attempted to remove the 30-foot height limit from the Property through ballot measures approved by City voters. While City voters approved two different measures, both attempts were subsequently overturned by the courts; therefore, the Property remains subject to the 30-foot height limit for new development.

Relying on an architect's analysis, Midway Rising asserts that the Project is physically precluded by the height limit. Under Density Bonus Law, the affordable housing portions of the Project can exceed the height limit.[20] However, Midway Rising contends that the entire Project qualifies as a single "housing development" under Density Bonus Law meaning other components of the Project, including the market rate residential and retail development, the Entertainment Center, and several signs may also exceed the height limit pursuant to Density Bonus Law. The Land Use Documents and the DDA contemplate that, to the extent permitted by law, the maximum structure height on the Property will generally be 105 feet. The Entertainment Center may have a maximum height of 165 feet and up to ten percent of the surface area of the Property (excluding the Entertainment Center) may have a maximum height of 250 feet.

Whether Density Bonus Law applies to the entire Project is a matter of state law. It requires a fact specific analysis based on the scope of the Project and how its component parts interact. A "housing development" is defined as a development project for five or more residential units, including mixed-use developments. The residential units must be on one contiguous site and be the subject of one development application. Cal. Gov't Code § 65915(i). The current definition of "housing development" for density bonus purposes is vague and has not been the subject of a legal challenge.[21] The requirement that the residential units be on contiguous sites that are the subject of one development application suggests that the affordable housing units must be located within the boundaries of a single and geographically continuous development.

Based on facts provided by Midway Rising and City staff, the California Department of Housing and Community Development provided a Technical Assistance Letter to the City indicating that, as presented, Density Bonus Law would allow the entire Project to rely on density bonus waivers and incentives to exceed the height limit. However, the courts remain the final arbiters of statutory meaning, and while they will give weight and respect to the

[19] On November 7, 1972, the citizens of the City approved Proposition D which limits the height of buildings and additions to buildings within a defined coastal zone to no more than 30 feet, except in the downtown area. Proposition D is currently codified at section 132.0505 of the Municipal Code.

[20] Senate Bill 713 (2023 – 2024 Reg. Sess.) amended Density Bonus Law to explicitly allow incentives or concessions to be used to deviate from development regulations established by citizens' initiatives.

[21] In a somewhat analogous case, the appellate court applied Density Bonus Law to a 338-acre master-planned residential community that included a variety of housing types integrated with a golf course and associated recreational facilities, construction of a business village with office space, and retail and commercial use, among other things. *Friends of Lagoon Valley v. City of Vacaville*, 154 Cal. App. 4th 807 (2007). The court allowed Density Bonus Law to be applied to the development project as a whole. However, the applicable statutory definition of "housing development" for the project was broader. The Legislature narrowed the definition in 2009 after the court issued this decision. The legislative history of the amendment does not indicate why the definition was narrowed.

construction of a law by an agency charged with enforcement, they will also independently interpret clear legislative mandates. *New Commune DTLA, LLC v. City of Redondo Beach*, 115 Cal. App. 5th 111, 136 (2025). If a court finds that the entire Project does not qualify for waivers or incentives under Density Bonus Law, the market rate housing, retail and commercial uses, Entertainment Center, or other components of the development exceeding 30 feet could not move forward as currently planned.

B. California Environmental Quality Act (CEQA) and Senate Bills 344 and 958

On September 29, 2026, Governor Newsom signed Senate Bill 344 (SB 344) and Senate Bill 958 (SB 958), both of which potentially impact the Project. SB 344 is specific to the Project. It adds California Public Resources Code section 21080.77, which makes certain findings and declarations related to the Project and how it will be accomplished. It also provides that the SEIR[22] is deemed sufficient, adequate, and complete for full compliance with CEQA, and can be relied on conclusively for compliance with CEQA. Finally, SB 344 requires that all mitigation measures adopted by the City, including the Mitigation Monitoring and Reporting Program, shall be conditions of approval of the Project. This is not typical of CEQA exemptions adopted by the Legislature in the past. This Office is only aware of one prior instance where the Legislature determined that an environmental impact report for a specific project complied with CEQA; however, that legislation only became effective January 1, 2026, and has not been challenged. *See* Cal. Pub. Res. Code § 21080.81(e).

SB 958 also amends the California Public Resources Code, adding section 21080.82, which provides that environmental impacts of a project that are associated with increased building height alone, including air circulation, noise and light refraction or reflection, shadow, or the potential to attract wildlife, shall not be considered significant impacts if a project meets certain conditions. Those conditions include that there is a certified environmental impact report analyzing the use and density of the project, the project is on a previously graded infill site, there are not sensitive biological resources physically present on the site, the project is not an industrial use project, and the project is consistent with local airport land use plans.

If the adequacy of the SEIR is challenged, the court will likely review SB 344 first to establish whether SB 344 limits the court's ability to consider the adequacy of the SEIR under CEQA. If a court finds SB 344 does not limit the court's ability to consider the SEIR's adequacy and finds that the SEIR is not adequate, the Project would not be able to proceed until the City completes any additional analysis required to comply with CEQA.

C. Deviations from the City's Sign Regulations

The City's sign regulations in Chapter 14, Article 2, Division 12 of the Municipal Code (Sign Regulations) apply to all signs within the City unless otherwise specifically regulated.

[22] The version of the SEIR addressed by SB 344 is the version considered by the City's Planning Commission, including technical corrections or clarification that do not affect the comprehensive mitigation measures recommended by the Planning Commission.

SDMC § 142.1205. The Sign Regulations prohibit the posting of signs on public property and in the public right-of-way, and regulate and limit the size, location, and type of signs permitted. *See id.* at §§ 142.1205, 142.1206. The Sign Regulations are intended to protect the public and the City's aesthetic character. *Id.* at § 142.1201. In 1981, the United States Supreme Court upheld the Sign Regulations based on the City's stated objectives of increasing traffic safety and improving aesthetics. *Metromedia, Inc. v. City of San Diego,* 453 U.S. 490, 508-10, 512 (1981); *see also Get Outdoors II, LLC v. City of San Diego*, 381 F. Supp. 2d 1250 (S.D. Cal. 2005), *aff'd*, 506 F.3d 886 (9th Cir. 2007); *Architectureart, LLC v. City of San Diego*, 231 F. Supp. 3d 828, 839 (S.D. Cal. 2017).

Signs at the Project will be subject to Appendix B of the Specific Plan, which includes a sign approval process for identified signs and additional signs in the future. Appendix B lists some specific sign types permitted in the Specific Plan area with size, location, sign copy, and copy area specifications that deviate from the Sign Regulations. The deviations from the Sign Regulations include allowing signs that exceed the height and square footage limits, are within or visible from the public right-of-way, contain potential off-premises messages,[23] contain automatic changing copy without the requisite permit, or are a type of sign (e.g., video boards) that is not allowed under the Sign Regulations.

In addition to the deviations related to sign size, area, location, content, and sign type authorized by Appendix B of the Specific Plan, the Specific Plan Ordinance includes uncodified provisions exempting the Project from various Municipal Code provisions, including sections 122.0107(b) (prohibiting the establishment of new decision processes or permit types in a Specific Plan), 141.1103, 141.1105, and 142.1260 (requiring a Comprehensive Sign Plan and Neighborhood Use Permit (NUP) for Sign Regulation exceptions), and 142.1210 (requiring an NUP for signs with automatic changing copy, prohibiting flashing copy or lights, and establishing square footage limits for animated copy). The Specific Plan Ordinance includes findings that Appendix B, and the signs and sign approval process identified therein, preserve the City's safety and aesthetic interests in several specified ways.

If the Council finds that the Specific Plan Sign Regulation exceptions further a substantial governmental interest greater than the City's safety and aesthetic interests, support its aesthetic and safety goals, or do not affect those goals, the Council may adopt the uncodified Specific Plan Ordinance to approve the exceptions to the Sign Regulations. *See, e.g., World Wide Rush, LLC v. City of Los Angeles*, 606 F.3d 676, 684 (9th Cir. 2010); *Metro Lights, L.L.C. v. City of Los Angeles*, 551 F.3d 898, 911 (9th Cir. 2009).

[23] Midway Rising's financial projections contemplate off-premises advertising and sponsorship revenues derived from the sale of signage on outdoor marquee displays, facility naming rights, and sponsorship agreements that will extend beyond the Entertainment Center and include assets within the proposed Midway Rising Entertainment District to yield additional revenues. The undefined signage and agreements are potentially inconsistent with the Sign Regulations prohibition on off-premises advertising and limited exceptions (e.g., SDMC § 142.1210(a)(1)(C) sponsor recognition on public interest signs).

V. OVERVIEW OF EIFD ISSUES

The third matter before the Council is a resolution of intent to form an EIFD and a resolution creating the Midway EIFD Public Financing Authority (PFA), which would govern the proposed EIFD. Several steps are required to form the EIFD. Notice must be provided to all landowners and the County of San Diego (County). After the required public hearings, the PFA, the City, and the County must adopt an Infrastructure Financing Plan. The PFA, Midway Rising, and the City must also enter into an acquisition agreement identifying the infrastructure eligible for reimbursement by the EIFD under California Government Code sections 53398.50 through 53398.88 and establishing the reimbursement process.

The EIFD is an important source of funding for the Horizontal Improvements needed for the Project. Under the DDA, if the EIFD is not formed or the acquisition agreement is not approved within one year after the DDA takes effect, Midway Rising has two options: (a) it may terminate the DDA; or (b) it may propose alternative financing within 120 days after the City gives notice that the EIFD formation period has ended. If the City and Midway Rising cannot agree on an alternative financing plan, either of them may terminate the DDA. DDA § 27.

CONCLUSION

This Report provides a high-level overview of the DDA, the Project phasing, and several other specific topics addressed in the DDA, as well as issues related to the Land Use Documents and the EIFD. This Report is not intended to serve as a comprehensive description or analysis of each provision of the DDA, the Land Use Documents, or the EIFD. The Council is encouraged to complete a careful review of all the documents it is being asked to approve related to the Project, including all attachments and exhibits, and to pose questions to the City's negotiating team or legal team before or during the public meeting.

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