



The City of San Diego

Staff Report

DATE ISSUED: 5/14/2019
TO: City Council
FROM: Planning Department
SUBJECT: Baxamusa et al and San Diegans for Open Government (SDOG) Litigation Settlement Implementation

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Council District(s): 3

OVERVIEW:

This item proposes revisions to agreements, planning documents, and the San Diego Municipal Code to return all planning, permitting, and parking functions from Civic San Diego to the City of San Diego.

PROPOSED ACTIONS:

This item implements the terms of the *Murtaza Baxamusa and San Diego County Building & Construction Trades Council, AFL-CIO v. Civic San Diego and City of San Diego*, San Diego Superior Court Case No. 37-2015-00012092 (*Baxamusa et al*) settlement and *San Diegans for Open Government v. Civic San Diego and City of San Diego*, San Diego Superior Court Case No. 37-2018-00008326 (*SDOG*) settlement ("Settlements"). Amendments and revisions to operating agreements, the Downtown Community Plan/General Plan and Local Coastal Program, the San Diego Municipal Code and Local Coastal Program, and a rezone are proposed to implement changes to the planning and permitting functions for the Downtown Community Plan area within the City of San Diego. A list of the actions to implement the Settlements and bring the land use approval process levels into conformance with Citywide land use approval processes include the following:

ORDINANCE amending the Restated Articles of Incorporation of Civic San Diego (Articles) and the Amended and Restated Bylaws of Civic San Diego (Bylaws); approving the Operating Agreement Between the City of San Diego and Civic San Diego to Provide Successor Agency and Housing Successor Services (Operating Agreement); approving the Assignment and Assumption Agreement (Assignment Agreement); and terminating of the Agreement for Consulting Services By and Between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, the Downtown Community Parking District and Economic Development Services (Agency Agreement); and

ORDINANCE amending the Downtown Community Plan/General Plan and the City's certified Local Coastal Program designating land use districts, floor area ratios, and height limits in the Marina neighborhood of the Downtown Community Plan area; and

ORDINANCE amending the City's Municipal Code and Local Coastal Program by amending Chapter 15, Article 6, Division 3, and Figures A-H and J-L of the Centre City Planned District Ordinance; and

ORDINANCE amending the City’s Municipal Code by amending Chapter 15, Article 7, Division 1; Chapter 15, Article 7, Division 2; Chapter 15, Article 7, Division 3; Chapter 15, Article 7, Division 4 of the Gaslamp Quarter Planned District Ordinance; and

ORDINANCE amending the City’s Municipal Code and Local Coastal Program by repealing Chapter 15, Article 11, Division 1; Chapter 15, Article 11, Division 2; Chapter 15, Article 11, Division 3; and Chapter 15, Article 11, Division 4 of the Marina Planned District Ordinance; and

RESOLUTION repealing the Marina Urban Design Plan and Development Guidelines; and

ORDINANCE rezoning land within the Marina neighborhood consistent with the Centre City Planned District Ordinance.

DISCUSSION OF ITEM:

This item implements the terms of the Settlements related to the planning and permitting responsibilities in the Downtown Community Plan area.

Background

The City first contracted with the Centre City Development Corporation (CCDC) to perform the planning and project entitlement services in the Downtown Community Planning area on behalf of the City in 1992. Civic San Diego, CCDC’s successor entity, continued performing these services since 2012 after the dissolution of redevelopment agencies in the State of California. Over the past 27 years, CCDC and Civic San Diego have been involved and have overseen many significant transformations in Downtown including, but not limited to:

- The entitlement and construction of over 210 development projects (including those under construction) which produced 22,000 residential units (over 2,600 affordable), over a million square feet of both office and retail space, and 6,800 hotel rooms;
- Public infrastructure, property acquisition, environmental remediation, and disposition and development agreements for the ancillary development associated with the Petco Park redevelopment in East Village;
- Streetscape and neighborhood improvements such as the India Street pedestrian enhancements in Little Italy and Gaslamp Quarter pedestrian enhancements; the design and construction of public open spaces such as Outfield Park, Fault Line Park, Cortez Hill Park (Tweet Street Park), and the upcoming East Village Green park and Children’s Park enhancement project;
- The Downtown Community Plan update in 2006 which doubled the development capacity in Downtown and created innovative programs such as the utilization of floor area ratios (FARs) rather than typical density restrictions, FAR bonus programs for public amenities and benefits, and the use of program environmental impact reports to address environmental impacts and mitigation on a community-wide basis, and;
- The Downtown San Diego Mobility Plan in 2016 which is creating a network of protected bike lanes and greenway improvements throughout Downtown.

Under the current Agency Agreement and Operating Agreement governing the relationship between the City and Civic San Diego, the performance of planning and permitting functions by Civic San Diego on behalf of the City is set to expire in March 2022.

The *Baxamusa et al* lawsuit was filed in 2015 by the San Diego Building & Construction Trades Council and former Civic San Diego board member Murtaza Baxamusa against the City and Civic San Diego claiming that the City did not properly oversee Civic San Diego’s functions with regards to the planning and permitting of private development in Downtown San Diego. The *SDOG* lawsuit was filed in February 2018 raising similar claims. The City and Civic San Diego deny all allegations made in both cases.

On December 5, 2017 the City Council provided City staff and the City Attorney's Office direction to attempt to settle the first case. The *Baxamusa et al* settlement negotiations lasted over one year and involved extensive review of the relevant agreements, ordinances, and plan amendments by both the plaintiffs and the City. On March 19, 2019, the *Baxamusa et al* and *SDOG* cases were considered by the San Diego City Council in a Closed Session hearing and the City Council approved settlement of the cases contingent on the following Open Session approvals included in this proposed item:

- Civic San Diego Articles and Bylaws: The proposed amendments to remove planning and permitting functions for the Downtown Community Plan area apply to the Article and Bylaws. Proposed revisions to the Bylaws and Articles provide the purpose of Civic San Diego and remove the City of San Diego as a sole member of the corporation, thereby making Civic completely independent and separate from the City of San Diego.
- Operating Agreement between Civic San Diego and the City of San Diego: The new Operating Agreement establishes a new five-year term limited to supporting the City of San Diego in its role as the successor agency and housing successor agency. The Compliance with the City's General Terms and Provisions are included as a new Exhibit A to the Operating Agreement. In addition, the City of San Diego would assume functions for parking district administration under a new Assignment Agreement.
- Agency Agreement between Civic San Diego and the City of San Diego: The Agreement for Consulting Services By and Between the City of San Diego and Civic San Diego for Administration of Certain Planned Districts, the Downtown Community Parking District and Economic Development Services (Agency Agreement) would be terminated.
- Downtown Community Plan: The proposed revisions for the Downtown Community Plan and Local Coastal Program are intended to merge the Marina neighborhood into the Centre City Planned District Ordinance. Amendments to the Downtown Community Plan for Figures 3-4, 3-9, 3-10, 3-11, 3-12, and 5-2 remove references to the boundaries of the Marina Planned District and add the specific land use districts, floor area ratios, and height limits for the Marina neighborhood consistent with the Centre City Planned District Ordinance and to make them consistent with current land uses in the Marina neighborhood. These updates would not change permitted land uses, intensity of land uses, or circulation patterns.
- Planned District Ordinances: The proposed revisions to the City's Municipal Code include the planned district ordinances for Centre City and Gaslamp. Proposed code amendments would remove all references to Civic San Diego and update the land use approval process related to project reviews and approvals to be administered by the City of San Diego. The review processes for projects in the Downtown Community Plan area would be subject to conformance with Citywide reviews, specifically Processes 1-5 consistent with the Land Development Code. The process related to the Downtown Design Guidelines and special design review process would also be updated to indicate the land use approval process and functions will be administered by the City of San Diego. The Marina Planned District Ordinance would be repealed, and the Marina neighborhood of the Downtown Community Plan area would be merged into the for Centre City Planned District. The Centre City Planned District Ordinance would cover the Downtown Community Plan area, except the Gaslamp Quarter Planned District, which is retained due to its status as a National Historic District.
- Marina Urban Design Guidelines: As part of repealing the Marina Planned District Ordinance, the Marina Urban Design Guidelines, adopted in 1988, would also be repealed. The Marina neighborhood would be covered by the Downtown Design Guidelines, the Centre City Planned District Ordinance, and the Land Development Code.
- Rezone: The proposed amendments also include rezoning the Marina neighborhood consistent with the Centre City Planned District Ordinance. Properties formerly located in the Marina Planned District would be rezoned into the Centre City Planned District. The Centre City Planned District zones include similar permitted land uses, allowing the same uses as the existing zoning. There is no change in density or intensification of permitted uses. The Marina neighborhood would now be subject to the same development standards as the rest of Downtown Community Plan area, except the Gaslamp Quarter, with the Centre City Planned District Ordinance.

The proposed item would implement the full terms in the Settlements. The Settlements do not end Civic San Diego. Civic San Diego will continue to assist the City with the wind-down of the former Redevelopment Agency under a new five-year contract and will continue to serve low-income communities through its community investment and economic development programs.

Implementation

Following City Council adoption of the proposed item, the City will take the following actions to implement the changes:

- The proposed May Revision to the Fiscal Year 2020 budget includes actions necessary to transfer the permitting and planning, and parking programs functions from Civic San Diego to the Smart & Sustainable Communities Branch. The addition of 9.00 FTE positions in the Smart & Sustainable Communities Branch will allow City to perform the planning, permitting, and parking programs and functions currently performed by Civic San Diego staff. The permitting and planning functions include Community Plan implementation and development entitlement services, including review of new discretionary project applications and discretionary use permits. Parking programs include investing in and managing public parking assets within downtown San Diego, with the objective of reducing congestion, encouraging walking and biking, providing pedestrian safety improvements, and improving community appearance in the Downtown area.
- The amended Downtown Community Plan, Centre City and Gaslamp Quarter Planned District Ordinances, and Rezone (outside the Coastal Zone) will take effect 30 days after the Mayor signs the ordinances following the City Council's second reading of this proposed item. The second reading of the ordinances is anticipated to occur on June 18, with the ordinances expected to take effect on approximately July 19.
- The Planning Department will submit the amended Downtown Community Plan, Centre City and Gaslamp Quarter Planned District Ordinances, and Rezone inside the Coastal Zone for Coastal Commission certification.

City Strategic Plan Goal(s)/Objective(s): N/A

Fiscal Considerations: The estimated fiscal impacts were included as part of the Fiscal Year 2020 budget process. Any additional changes required to integrate the planning, permitting, and parking functions would be addressed in future budget documents.

Charter Section 225 Disclosure of Business Interests: N/A

Environmental Impact:

The activities include the removal of Civic San Diego from the land use approval process for projects that fall within the Centre City and Gaslamp Quarter Planned Districts and returns those functions to the City of San Diego, and therefore result in a change in the decision-making functions of such land use approvals within the Downtown Community Plan area and not changes in the land use regulations. Such activity is not a project pursuant to CEQA Guidelines Section 15378(b)(5), and, therefore, is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3) because it involves organization and administrative functions of the City that will not result in direct or indirect physical changes to the environment.

In addition, the activities include the elimination of the Marina Planned District Ordinance and Marina Urban Design Plan and incorporate the Marina neighborhood into the Centre City Planned District, applying the appropriate land use zones and land use and development regulations, including floor area ratios and height limits, for the neighborhood consistent with the previous Marina Planned District land use and development regulations. The activities also include amendments to the Downtown Community Plan by removing references to the Marina Planned District Ordinance and adding land uses, floor area ratios, and height limits to applicable figures. The elimination of the Marina Planned District and Marina Urban Design Plan and amendments to the Downtown Community Plan and Centre City Planned District Ordinance result in no substantive changes in permitted land uses, development regulations, or land use intensities. The land use and development regulations for development within the Downtown Community Plan area have been fully evaluated in previously certified environmental documents including the following documents, all referred to as the "Downtown FEIR": Final Environmental Impact Report

(FEIR) for the San Diego Downtown Community Plan, Centre City Planned District Ordinance, and 10th Amendment to the Centre City Redevelopment Plan, certified by the former Redevelopment Agency (“Former Agency”) and the City Council on March 14, 2006 (Resolutions R-04001 and R-301265, respectively); subsequent addenda to the FEIR certified by the Former Agency on August 3, 2007 (Former Agency Resolution R-04193), April 21, 2010 (Former Agency Resolution R-04510), and August 3, 2010 (Former Agency Resolution R-04544), and certified by the City Council on February 12, 2014 (City Council Resolution R-308724) and July 14, 2014 (City Council Resolution R-309115); and, the Final Supplemental Environmental Impact Report for the Downtown San Diego Mobility Plan certified by the City Council on June 21, 2016 (Resolution R-310561). Development within the Downtown Community Plan area is also covered under the following documents, all referred to as the “CAP FEIR”: FEIR for the City of San Diego Climate Action Plan (CAP), certified by the City Council on December 15, 2015 (City Council Resolution R-310176), and the Addendum to the CAP, certified by the City Council on July 12, 2016 (City Council Resolution R-310595). The Downtown FEIR and CAP FEIR are both “Program EIRs” prepared in compliance with California Environmental Quality Act (CEQA) Guidelines Section 15168. The proposed amendments were adequately addressed in the Downtown FEIR and CAP FEIR, and would not result in any land use or development regulations that would result in any new significant environmental impacts.

Additionally, the activities would continue to require future development approvals, the environmental effects of which would be appropriately analyzed at that time, and is therefore not a “project” as defined in CEQA Guidelines Section 15378 because it involves execution of a contract which, on its own accord, will not cause a significant environmental impact. As such, this activity is not subject to CEQA pursuant to Section 15060(c)(3). This determination is predicated on Section 15004 of the guidelines, which provide direction to lead agencies on the appropriate timing for environmental review.

Equal Opportunity Contracting Information (if applicable): N/A

Previous Council and/or Committee Actions: The settlement terms related to the Settlements were approved in a Closed Session hearing on March 19, 2019.

Key Stakeholders and Community Outreach Efforts: N/A

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