

ORIGINAL

RULES GOVERNING PARTICIPATION BY PROPERTY OWNERS
AND
PREFERENCE FOR BUSINESSES TO REENTER IN THE
NORTH BAY REDEVELOPMENT PROJECT

REDEVELOPMENT AGENCY OF THE CITY OF SAN DIEGO

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Section 1. GENERAL PREAMBLE

These rules ("Rules") are promulgated pursuant to Sections 33339.5 and 33345 of the California Community Redevelopment Law to implement the Redevelopment Plan for the North Bay Redevelopment Project in the City of San Diego and to comply with Sections 33339, 33339.5, 33340, 33380, 33381, 33394 and other sections of the Community Redevelopment Law relating to the participation in the redevelopment of property in the Project Area by owners of such property and the preferences to be extended persons engaged in business to reenter the Project Area.

These Rules also set forth the alternative provisions for redevelopment of the property if the owners fail to agree to participate in the Redevelopment Plan. These Rules are to be interpreted to carry out and implement the requirements imposed by law on the Agency and not to create or provide rights or privileges in addition thereto.

To the extent that these Rules are ambiguous or incomplete, the Agency shall have the right to administratively interpret and implement them in accordance with the following principles:

Owners shall be afforded a reasonable opportunity to participate in the redevelopment of the Project Area as set forth below. Persons engaged in business in the Project Area shall be extended reasonable preference to reenter in business within the redeveloped area if they otherwise meet the requirements of the Redevelopment Plan and these Rules.

However, the primary purpose and duty of the Agency is to carry out and implement the Redevelopment Plan to eliminate blight in the interest of the health, safety and welfare of the community and the State of California.

The ultimate decisions as to the proper implementation of the Redevelopment Plan and the appropriateness of any particular activity shall always lie in the judgment and discretion of the Agency. Such decisions are by necessity based upon the Agency's judgment as to the usefulness and timeliness of a proposal; the studies and plans being undertaken by the Agency; the possibility of other proposals or alternatives for development; the fact that the Agency may not possess sufficient information, studies or plans upon which to make a present judgment; the resources available to the Agency; or upon other considerations. Therefore, the Agency shall not be obligated to agree to undertake any activity or to enter into any agreement with any participant

unless the Agency in its discretion elects to do so.

Notwithstanding that the Agency may choose not to enter into an agreement for redevelopment with any potential participant, nothing contained in these Rules shall be construed to prevent an owner from otherwise enjoying, using, or developing its own property under the laws, controls, and restrictions (including the Redevelopment Plan) applicable to its property.

Section 2. PARTICIPATION DEFINED

A. Participation by Owners of Property

Participation occurs by entering into and fulfilling a written agreement with the Agency respecting the rehabilitation, renovation, or complete redevelopment of property pursuant to the Redevelopment Plan, applicable Design for Development, or other standards established by the Agency.

Participation may include remaining in substantially the same location either by retaining all or portions of the property or by retaining all or portions of the property and purchasing adjacent property from the Agency. An owner who participates in the same location may be required to rehabilitate or demolish all or part of its existing building(s), or the Agency may acquire the building(s) only and then remove or demolish the building(s). Participation also may include the Agency acquiring land and improvements at fair market value from existing owners and offering other land within the Project Area for purchase and redevelopment. See Section 6 of these Rules below.

B. Participation by Persons Engaged in Business in the Project Area

Persons who are engaged in business within the Project Area may participate in redevelopment by reentering into business within the Project Area. The Agency shall extend a reasonable preference for reentry to such persons by encouraging the development of suitable relocation opportunities (which otherwise meet the requirements of the Redevelopment Plan), by affording reasonable notice of such opportunities for reentry or by other appropriate means. See Section 7 of these Rules below.

C. No Participation without an Agreement with the Agency

A review of plans for a development for the purpose of determining whether or not the plans conform to the Redevelopment Plan or a statement of concurrence that plans conform to the Redevelopment Plan shall not be an agreement to participate in redevelopment with the Agency to which the Agency shall be contractually bound.

The presentation to the Agency of a Statement of Interest or a development proposal shall not require the Agency to select such or any proposal or to proceed with any redevelopment activity. The Agency shall be required to undertake any redevelopment activity only if it is subject to a binding agreement into which it has entered pursuant to these Rules.

If the Agency does enter into a participation or development agreement for the redevelopment of a property, it shall not be construed to mean that the Agency is waiving or surrendering its right of eminent domain concerning that property, that the Agency is binding itself to any limitation that would eliminate the Agency's ability for future planning concerning the property, or that the Agency may not in the future further undertake to redevelop the property. The Agency shall not be bound to any agreement except as expressly set forth in the participation agreement which has been approved by the Agency Board. These Rules are not intended to be contractual; unilateral actions taken pursuant to these Rules by any owner without a participation agreement shall not bind the Agency.

Section 3. GENERAL LIMITATIONS ON PARTICIPATION

Opportunities to participate shall necessarily be subject (without limitation) to such factors as:

- a. Changes in land uses in the area and elimination of land uses inimical to the redevelopment of the Project Area;
- b. Availability, capacity, removal, relocation, or installation of public utilities, infrastructure, and facilities;
- c. Market conditions and project feasibility;
- d. Necessity for reduction in the number of parcels in the Project Area, land assembly and the possibility of resubdivision of land area;
- e. Long term land planning and Agency resources;
- f. Allocation and application of Agency funds and staff;
- g. Ability of community resources to support an activity;
- h. The impact of a proposed development on the community and its environment;
- i. Conformance to the Redevelopment Plan and the implementation plans of

the Agency;

- j. The relationship of a proposed development to the surrounding community, its quality, configuration, appearance, and service of community needs;
- k. The contribution of the proposed development to the tax base of the community; and
- l. The experience and financial capability of the participant.

Section 4. PROCEDURES FOR PARTICIPATION

Any owner who desires to participate in the redevelopment of the Project Area shall make such desire known to the Agency. Such person has the obligation to:

- a. Identify itself, the property it owns, if any, and advise the Agency of its interest.
- b. Describe to the extent possible the redevelopment which the proposed participant desires to undertake in sufficient detail that it can be evaluated by the Agency and/or its staff, including such items as:
 - 1. a proposed scope of development and proposed uses;
 - 2. proposed schedule of performance;
 - 3. any proposed Agency action or involvement, e.g., property to be acquired, financial assistance requested, terms of any purchase of property to be acquired from the Agency, any variances from City codes or redevelopment plan controls;
 - 4. the development experience of the proposed participant;
 - 5. the financial ability to complete the activity and references;
 - 6. disclosure of the proposed participant's intent as to whether the developed property is to be used for speculation or for long term investment; and
 - 7. any other pertinent information that would help in the evaluation of the proposal.

c. Cooperate with the Agency in supplying such information as the Agency may request and in meeting with the Agency staff to explore and discuss the proposal. Opportunity will be given to discuss proposals with the Agency staff and to make adjustments.

Section 5. CONFLICTS IN DEVELOPMENT PROPOSALS

If conflicts develop between the desires of an owner to redevelop its own property and other proposed participants, between any proposed participants, or between other developers and an owner, the Agency is authorized to establish priorities and to select a solution that the Agency deems in the best interest of fulfilling its purposes and powers. The Agency shall, in accordance with these Rules, make a good faith effort to afford the owner of a property the opportunity to submit a Statement of Interest for a development that involves the redevelopment of the owner's property and to aid and encourage that owner in preparing whatever presentation the owner desires to make to the Agency Board. The Agency shall have the right to select a proposal from among those available to it, however formal or informal it may be, for approval or further negotiation or to elect not to take further action at that time. Once the Agency has selected the developer with whom it desires to negotiate or agree, the Agency shall not be under a continuing obligation to reoffer the redevelopment opportunity to any proposed participant not selected, including an owner of the property proposed to be redeveloped. An owner's opportunity to participate under these rules shall not be construed to constitute a right of first negotiation or a right of first refusal of any other proposal or agreement.

Section 6. SPECIAL RULES RELATING TO OWNERS OF PROPERTY TO BE REDEVELOPED

A. In order to participate under these Rules, an owner desiring to participate by rehabilitating, renovating or completely redeveloping property owned by it must demonstrate to the satisfaction of the Agency that:

1. If the activity is proposed by the owner, that the proposed activity is suitable for the most advantageous present and future use and redevelopment of the property, and that the owner has the ability to timely plan, implement, finance, and complete the proposed activity;
2. If the activity is proposed by the Agency or another party, that the owner is as qualified or better qualified and able to timely plan, implement, finance, and complete the proposed activity as others who are not owners and who are proposing to undertake the redevelopment activity.

B. An owner may at any time evidence its interest in redeveloping its property with the involvement of the Agency upon the owner's own initiative. An owner shall advise the Agency of such interest in writing by submitting to the Agency a Statement of Interest containing the information specified in Section 4 above. The Agency shall prepare and make available on request forms for such purpose.

If the Agency submits a Statement of Interest to an owner and requests a response, and the owner does not respond to such request in writing to the Agency within thirty (30) days after transmittal thereof (or such other reasonable period as the Agency may specify in such request), then that owner shall be deemed to have failed or refused to accept an opportunity to participate or to agree to participate in the redevelopment of its property in conformity with the Redevelopment Plan.

C. Except in cases where circumstances do not permit or an urgency would make it inappropriate, the Agency shall request an owner to submit a Statement of Interest as early as possible in the planning process and before the Agency enters into an agreement either (a) for a specific redevelopment activity, or (b) to negotiate an agreement for a redevelopment activity with another party which would require the acquisition of the owner's property.

The request for a Statement of Interest from the Agency shall contain, if known to the Agency, a general description of the development proposed by the other party or which the Agency is proposing. If the owner does not submit a written Statement of Interest to the Agency within the time specified in Section 6.B. above, then the Agency shall have no further obligation under these Rules to the owner regarding that property, and the owner shall be deemed to have failed to participate or to agree to participate in the redevelopment of its property in conformity with the Redevelopment Plan.

D. A redevelopment activity proposal may be the result of a proposed Agency action at any one of a number of planning stages, including:

1. A Request for Proposal;
2. A Request for Qualifications;
3. An Agreement to Negotiate with a proposed developer;
4. A Disposition and Development Agreement or an Owner Participation Agreement;
5. A Request for Preliminary Concept Design; and
6. A decision to acquire property, easements, access, or other

accommodations to support the completion or expansion of redevelopment activities already agreed to or in progress.

Issuing a Request for Proposal or a Request for Qualifications to the owner solely or together with such requests being made to others shall constitute a request by the Agency to the owner to submit a Statement of Interest, and no further request shall be required.

E. In certain instances, some of which are referred to in item 6. of Section 6.D. above, an owner's property (or portion of it) may be needed as a necessary element or adjunct of another activity in which the Agency is already involved and concerning which the Agency decides it is inappropriate to deal with the owner to become the redeveloper of its own property for such purposes. In such instances, if the owner is unable to continue beneficial use of its own property due to the Agency's actions and submits a Statement of Interest, the Agency will make reasonable efforts to try to accommodate the owner with other possible redevelopment locations in the Project Area.

F. Participation by an owner pursuant to these Rules shall be implemented only by a written participation agreement with the Agency. The Agency shall not be bound to any agreement unless it is acceptable to the Agency, has been authorized or approved by the Agency Board (and, if necessary, by the City Council or as may otherwise be required by law), and has been executed by an authorized officer of the Agency. The participation agreement shall contain all the terms and provisions to which the Agency is bound. The participation agreement shall contain provisions necessary to assure that the property will be redeveloped and used in a timely manner in accordance with the development and uses agreed to by the Agency and that the agreement of the Agency will be used for development and not for speculation. The agreement will require the participant to cause the recordation of such documents as the Agency requires in order to assure compliance with the agreement.

Section 7. SPECIAL RULES FOR REENTRY INTO THE PROJECT AREA BY PERSONS ENGAGED IN BUSINESS

If a person engaged in business in the Project Area is displaced from his or her location by Agency action and immediate relocation within the Project Area is either infeasible or unsatisfactory to the displacee, then said displaced business person may request the Agency to notify her or him of opportunities to reenter into the Project Area. The Agency shall maintain a list of all such displaced persons who have submitted in writing such a request for notice. The Agency shall prepare a form for such a Request for Notice of Opportunity to Reenter, which shall indicate the nature of the use displaced and the address to which the Notice of Opportunity to Reenter is to be directed. It is the responsibility of the business person desiring reentry to so notify the

Agency and to inform the Agency of any changes of address for notification purposes.

If the Agency becomes involved with any redevelopment activity through entering into an Owner Participation Agreement or Disposition and Development Agreement, into which a displaced business might relocate, the Agency shall send a Notice of Opportunity to Reenter to those displaced business persons of the same land use who have previously requested in writing such notice. The notice shall include the location of the development or activity, the time it is estimated to be available for occupancy, and the name of the developer for further inquiries. Provision of this Notice of Opportunity to Reenter shall not obligate the Agency to negotiate or intercede in any way on behalf of any person receiving said notice. Further, the Agency's obligation to send a Notice of Opportunity to Reenter shall terminate for each person requesting notice upon the sooner occurrence of (a) reentry into the Project Area, whether or not through this Section; (b) delivery of three (3) notices describing different opportunities; (c) the expiration of one (1) year from the date of the original displacement of the business person requesting Notice of Opportunity to Reenter.

Section 8. THE AGENCY'S RIGHT TO ACQUIRE PROPERTY PENDING PARTICIPATION

A. Acquisition of an owner's property by the Agency may take place prior to the time the Agency has determined the redevelopment it desires for such property. Acquisition of an owner's property and offering the owner the opportunity to participate under these Rules are not concurrent or mutually dependent actions or events. The fact that the Agency has not formulated specific plans for the redevelopment of the property or is not currently proposing to enter into a negotiation or development agreement for redevelopment of the property shall not prevent the Agency from acquiring the property if the Agency otherwise determines that acquisition of the property is necessary for the purposes of assembly, replanning, subdividing, rehabilitation, demolition, clearance, improvement, or any other redevelopment purpose.

Notwithstanding the foregoing, as long as Section 33394 of the Health and Safety Code is in effect, the Agency shall not, without the consent of the owner, acquire property of an owner on which an existing building is to be continued on its present site and in its present form and use unless such building requires structural alteration, improvement, modernization, or rehabilitation; or the site or lot on which the building is situated requires modification in size, shape or use; or it is necessary to impose upon such property any of the standards, restrictions, and controls of the Redevelopment Plan, and the owner fails or refuses to agree to participate in the Redevelopment Plan.

B. Before the Agency determines to acquire an existing building which the Agency plans to be continued on its present site and in its present form and use, the Agency shall notify the owner in writing of the following:

1. Where the determination is that the structure requires alteration, improvement, modernization, or rehabilitation, a description of the limitations, deficiencies, or problems in the structure; or its uses causing such requirements.
2. Where the determination is that the site or lot on which the building is situated requires modification in size, shape, or use, a description of the factors causing the need for such modification and, if known to the Agency, the modifications or alternatives that may correct the limitations, deficiencies, or problems.
3. Where the determination is that it is necessary to impose standards, restrictions, or controls of the Plan, a description of the standards, restriction, or controls to be imposed.
4. Where the Agency has determined any specifics of any actions it proposes be taken, a description of such specific actions.

C. If the owner desires to agree to resolve, correct, or fulfill such requirements, the owner shall submit a Statement of Interest containing sufficient information and detail to enable the Agency to evaluate the owner's proposal, and the owner shall offer to agree to enter into a participation agreement containing provisions assuring to the Agency's satisfaction that the requirements shall be fulfilled in a timely manner. If the owner does not submit a Statement of Interest within the time specified in Section 6.B of these Rules; fails to supply sufficient information and detail to the Agency; does not enter into a participation agreement; or having entered into a participation agreement is in breach of its agreement, then the owner shall be deemed to have failed or refused to participate in the Redevelopment Plan with reference to such property.

Section 9. ALTERNATIVE PROVISIONS FOR REDEVELOPMENT

If an owner does not comply with these Rules, or if the Agency determines that the redevelopment proposal presented by such owner is not in the best interest of the Agency and the community (whether on the basis of the proposed terms and conditions of the Agency's participation in the proposal, the qualifications of the owner, the financial ability of the owner, or any other reason), the Agency may proceed to redevelop or cause the redevelopment of the owner's property or, alternatively, to refrain, temporarily or otherwise, from undertaking the redevelopment of the property by using such powers and rights as it may have and by other means and methods and by contracting with other parties.

Section 10. GRIEVANCE PROCEDURE

The Agency requires that it be informed by any person of any grievance that such person may have under these Rules, and that the Agency have the opportunity to review and correct or ameliorate, if the Agency in its discretion deems it necessary, any such grievance. Each person has the obligation to make its grievance known to the Agency.

A person having any grievance shall submit such grievance in writing to the Agency to the attention of the Executive Director of the Agency. Such submission shall set forth, in sufficient detail so that it may be evaluated and investigated, the basis of the grievance and shall contain:

- a. the identity of the person and the property which is the subject of the grievance;
- b. the nature of the grievance;
- c. the actions, non-actions, treatment, or lack of consideration complained of;
- d. a representation as to whether or not the aggrieved person has submitted a Statement of Interest or Request for Notice of Opportunity to Reenter and, if one has been submitted, a copy (if available) of such submission;
- e. copies of pertinent correspondence, if any, to and from the Agency and Agency staff regarding the subject of the grievance; and
- f. the action or other remedy desired by the aggrieved person.

Upon receipt of such grievance, the Executive Director (or his or her designee) shall undertake such inquiry as the Executive Director (or his or her designee) deems appropriate.

A written response to the grievance shall be prepared by or on behalf of the Executive Director (or his or her designee) and sent to the aggrieved person within forty-five (45) days of the date the Agency receives the grievance.

If the aggrieved person is not satisfied with such response, she or he may request the opportunity to present the substance of the grievance at a regularly scheduled meeting of the Agency Board. The request to appear before the Agency Board must be made in writing and delivered at least ten (10) days in advance of the Agency meeting. On the meeting date, the aggrieved person may appear and present the grievance. The Agency Board shall respond in writing to said grievance within fourteen (14) days.

Nothing contained in this procedure shall require any action by the Agency, nor shall the Agency be required to refrain from any action due to the pendency of the grievance, it being the purpose of this procedure to advise the Agency of the grievance for such actions as Agency may desire to take and not to create any rights of redress in any person.

Section 11. AMENDMENT OF RULES

The Agency may amend these Rules at any meeting held after their adoption. Any amendments after the filing of Statements of Interest and Requests for Notice of Opportunity to Reenter shall be made only after notice has been given to the persons who have filed such Statements of Interest and Requests for Notice of Opportunity to Reenter. Such notice shall be posted by mail at least fourteen (14) days before the date of the meeting at which the proposed amendment will be considered.