

RESOLUTION NUMBER R- 313362  
DATE OF FINAL PASSAGE NOV 17 2020

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO ADOPTING A VARIANCE TO THE  
INCLUSIONARY AFFORDABLE HOUSING REGULATIONS TO  
ALLOW FOR AN ALTERNATIVE PHASING PLAN FOR THE 430  
ON-SITE AFFORDABLE HOUSING DWELLING UNITS,  
RELATED TO THE RIVERWALK PROJECT.

WHEREAS, SD RIVERWALK LLC, a Delaware Limited Liability Company, Owner and Permittee, applied for a variance to the Inclusionary Affordable Housing Regulations to allow for an alternative phasing plan for the 430 on-site affordable housing dwelling units for the property located at 1150 Fashion Valley Road;

WHEREAS, the site is legally described as: Parcel 1: (APN #437-240-03, 26 & 27) That portion of Pueblo Lot 1104 of the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State Of California, according to miscellaneous Map No. 36, filed in the Office of the County Recorder of San Diego County November 14, 1921, lying southerly of the southerly boundary of those portions of Friars Road as described in Deed to the City of San Diego, recorded December 12, 1968 as file No. 217429 of official records; Parcel 2: (APN#437-240-28 & 29) Lot 1 of Pueblo Lot 1105, in the City Of San Diego, County of San Diego, State Of California, according to Referee's Partition Map thereof made in the action entitled "Thomas J. Daley vs. Arpad Haraszthy, ET AL.", under Superior Court Civil Case No. 1029 on file in the Office of the County Clerk of San Diego County; Excepting therefrom that portion lying Southerly of the Northerly Boundary of land described in Deed to the State of California Recorded October 27, 1955 In Book 5846, Page 414 of Official Records; Parcel 3: (APN#436-611-06, 29 & 30; and 436-650-14) Ten acre Lots 3 and 4 of the subdivision of Pueblo Lot 1103,

according to the plan of lots in Mission Valley belonging to Joseph Reiner and Recorded January 28, 1858 in Book 1, Page 184 of Deeds of San Diego County and that portion of Pueblo Lot 1103 of the Pueblo Lands of San Diego according to miscellaneous Map No. 36, Filed in the Office of the County Recorder of San Diego County November 14, 1921 lying Northerly of said 10 acre Lots 3 and 4 and lying Easterly of the Easterly Line of what is now known as Goshen Street as shown on Bayview Addition, according to Map thereof No. 271, filed in the Office of the County Recorder of San Diego County, July 23, 1887; Excepting therefrom those portions lying Northerly of the Southerly boundary of Friars Road as described in Deed to the City of San Diego, recorded December 12, 1968, as File No. 217429 of Official Records; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, on October 22, 2020, the Planning Commission of the City of San Diego considered the variance to the Inclusionary Affordable Housing Regulations, and pursuant to Resolution No. 5112-PC, voted to recommend approval of the variance; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on November 17, 2020, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to the variance to the Inclusionary Affordable Housing Regulations;

**VARIANCE TO THE INCLUSIONARY AFFORDABLE HOUSING REGULATIONS (SDMC) SECTION 142.1308(a)**

Former SDMC Section 142.1305(b)(1) and the City's Inclusionary Affordable Housing Implementing and Monitoring Procedures ("Affordable Housing Manual") are applicable to the Project due to its vested rights (similar to current San Diego Municipal Code ("SDMC") Sections 142.1304(e)(1) and 142.1311). These procedures generally require a development project to construct affordable housing units no later than the date the market rate units receive final inspection unless the project obtains a variance for an alternative development schedule/phasing plan in accordance with former SDMC Section 142.1307 and SDMC Section 142.1308(a) (Findings).

**1. Special circumstances unique to that development, justify granting the variance, waiver, adjustment, or reduction.**

While simultaneous development of market rates units and affordable housing units is common for a single building or single phase project, the Affordable Housing Manual recognizes there are special circumstances unique to a project when it proposes to be constructed in phases and encourages the Owner/Permittee and San Diego Housing Commission to enter into an affordable housing agreement with an alternative phasing schedule. The Project is particularly unique because it is a very large 4,300-dwelling-unit multi-phased project constructing 10% of the total units as affordable housing units (430 dwelling units) pursuant to a Development Agreement and Specific Plan. Most projects processed by the City are not this large, do not have a Development Agreement, and do not propose 430 affordable housing dwelling units. Through the Development Agreement, the Project provides approximately \$75 million in extraordinary benefits. The financial burden of providing the extraordinary benefits along with the large number and percentage of affordable units, justify the variance, because it would not be feasible for the Project to meet the timing requirements of former SDMC Section 142.1305 (b)(1). Therefore, consistent with the policies in the Affordable Housing Manual, special circumstances justify granting a variance for an alternative phasing plan for this large, multi-phase project.

**2. The Project would not be feasible without the modification.**

The Project would not be feasible without a variance to follow the phasing plan described in the Master Affordable Housing Agreement (MAHA) included in the Development Agreement for several reasons. First, as described in the Development Agreement, the project includes approximately \$75 million in extraordinary benefits, which are part of the Project. The

Owner/Permittee only agrees to provide extraordinary benefits through the Development Agreement in exchange for the vested rights and flexibility described in the Development Agreement, including this phasing plan. The Owner/Permittee would not provide the extraordinary benefits if the City would not grant flexibility in the timing of providing affordable housing. Accordingly, the Project, including its extraordinary benefits, would not be feasible without the variance. Second, without this variance, the development would be required to provide 430 affordable housing dwelling units at the time of issuance of the first Certificate of Occupancy for any market rate units. This would be contrary to the Affordable Housing Manual's policy of allowing large multi-phase projects to build the affordable dwelling units in accordance with an alternative phasing plan. Each of the reasons above independently support the finding.

**3. A specific and substantial financial hardship would occur, if the variance, waiver, adjustment, or reduction were not granted.**

Without this affordable housing variance, the Project would face a specific and substantial financial hardship. The first hardship is that the Project and its benefits would not occur without the variance. As described in the Development Agreement, the project includes approximately \$75 million in extraordinary benefits, which are part of the Project. The Owner/Permittee only agrees to provide extraordinary benefits through the Development Agreement in exchange for the vested rights and flexibility described in the Development Agreement, including this phasing plan. The Owner/Permittee would not provide the extraordinary benefits or move forward with the Project if the City will not grant flexibility in the timing of providing affordable housing. Second, providing 430 affordable units prior to issuance of Certificate of Occupancy for the first market rate unit would create substantial financial hardship for the Owner/Permittee. The City commissioned an economic analysis from Keyser Marston and Associates in advance of recent amendments to the City's Inclusionary Housing Ordinance, which noted a 10% affordable housing set-aside at 65% AMI generated a moderate impact on a San Diego multi-family projects' feasibility, but increasing the affordable housing set-aside to 15% or 20% generated a high impact on a San Diego multi-family project causing a greater than 25% decrease in residual land value, which the economist noted "may result in a financially infeasible project." [Table 2A, Scenario B.1, "Feasibility of Alternative Inclusionary Set-Asides: Economic Feasibility Analysis: San Diego Housing Commission." (Keyser Marston October 25, 2018).] The MAHA's phasing plan is consistent with this study because it requires the Owner/Permittee to provide 10% of the 955 total units (96 affordable units) within a period of time following the first 955-unit phase. However, without the variance, the project would be required to provide 430 affordable units within the first 955-unit phase, which is 45% of the units and far above the 10% the City's economic expert found to be feasible for multi-family development in the City. Accordingly, a specific and substantial financial hardship would occur if the variance were not granted. Each of the reasons above independently support the finding.

**4. No alternative means of compliance are available that would be more effective in attaining the purposes of this Division than the relief requested.**

The alternative phasing plan described in the Project's MAHA, attached as Exhibit E to the Development Agreement and incorporated by reference, is the most effective alternative

phasing plan for attaining the purposes of the Inclusionary Affordable Housing Regulations, which includes the creation of diverse and balanced neighborhoods with housing available for households of all income levels. Instead of requiring 45% of the units in the first 955-unit phase to be affordable, this phasing plan requires only 10% of the first phase to be provided as affordable and then 10% of each of the subsequent phases to be provided as affordable. This phasing plan is the most effective means of compliance because by providing 10% with each phase, it allows the Owner/Permittee to spread the affordable units out among the phases and create diverse and balanced neighborhoods. If all 430 affordable units were in one part of the development in the first phase, then the rest of the neighborhoods would lack income diversity and balance. Moreover, a phasing plan that allows 10% of each phase to be affordable is aligned with the City's existing economic analysis of a feasible percentage of affordable units for a multi-family project. In order for a phasing plan to be effective, it has to be feasible and not create an undue financial hardship. Finally, as part of the negotiated alternative phasing plan, the San Diego Housing Commission included requirements in the MAHA for the Owner/Permittee to provide security so the San Diego Housing Commission may construct the required affordable housing on its own if the Owner/Permittee does not comply with the phasing plan. For all these reasons, this variance allows the parties to enter into the Development Agreement and the MAHA, where the phasing plan is assured to be effective in providing the purposes of the Inclusionary Affordable Housing Regulations. A different phasing plan in an agreement without adequate security or that required an infeasible percentage of affordable units within a phase would not be as effective in attaining the purposes of the Inclusionary Affordable Housing Regulations. Each of the reasons above independently support the finding.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that, based on the findings hereinbefore adopted by the Council of the City of San Diego that the variance to the Inclusionary Affordable Housing Regulations is granted to SD Riverwalk LLC, a Delaware Limited Liability Company, Owner and Permittee, under the terms and conditions set forth in the Ordinance O- 21267, adopting the Site Development Permit No. 2046682 and Conditional Use Permit No. 2046683, and contingent upon final passage of O- 21266, adopting the Development Agreement; and

BE IT FURTHER RESOLVED, by the Council of the City of San Diego, that it grants the variance to the Inclusionary Affordable Housing Regulations, a copy of which is on file in the office of the City Clerk as Document No. RR- 313362.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Corrine L. Neuffer  
Corrine L. Neuffer  
Deputy City Attorney

CLN:als  
10/26/2020  
Or.Dept:DSD  
Doc. No.: 2507963

Passed by the Council of The City of San Diego on 11/17/2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 17 2020.

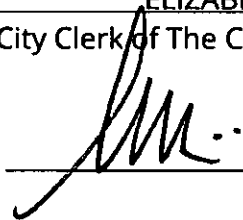
**(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)**

AUTHENTICATED BY:

(Seal)

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 313362