

ORDINANCE NUMBER O- 21641 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 01 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE USE OF DEVELOPMENT IMPACT FEE CREDITS FOR THE PURCHASE OF THE NORTH CENTRAL SQUARE PARK SITE IN THE DOWNTOWN COMMUNITY PLANNING AREA AND APPROVING A RELATED EXEMPTION FROM SAN DIEGO MUNICIPAL CODE REQUIREMENTS REGARDING THE PAYMENT OF DEVELOPMENT IMPACT FEES.

WHEREAS, Bosa California LLC, a California limited liability company (Bosa), owns certain real property in the Downtown Community Planning Area bordered by B Street on the north, C Street on the south, Eighth Avenue on the west, and Ninth Avenue on the east; and

WHEREAS, Bosa intends to construct a private development project on the northerly half of this downtown property and a public park on the southerly half of this downtown property (Park Site); and

WHEREAS, the public park to be constructed on the Park Site is designated as Park Project No. P-8 in the Downtown Public Facilities Financing Plan and is known as the North Central Square Park (Park); and

WHEREAS, the City of San Diego (City) and Bosa have negotiated certain proposed agreements related to the Park Site, including a proposed Real Property Purchase and Sale Agreement (Purchase Agreement) and a proposed Reimbursement and Park Development Agreement (Reimbursement Agreement); and

WHEREAS, copies of the Purchase Agreement and the Reimbursement Agreement are attached to the staff report accompanying this Ordinance, and the Reimbursement Agreement is included as Exhibit C to the Purchase Agreement; and

WHEREAS, the Purchase Agreement envisions that, if certain specified conditions are met (including the City's approval of its physical inspection of the completed Park), the City will acquire the Park Site from Bosa for the purchase price of \$13,827,000; and

WHEREAS, the Purchase Agreement states that the City's payment of the purchase price for the Park Site will not be in the form of cash, but instead in the form of Development Impact Fee (DIF) credits in the total amount of \$13,827,000 (DIF Credits), available after the closing of the sale transaction, allowing Bosa or its affiliated entities to apply the DIF Credits against DIF imposed by the City on specified future development projects; and

WHEREAS, the availability of the DIF Credits is conditioned on and subject to the City Council's adoption of this "DIF Credit Ordinance," or an "Alternative Ordinance" deemed acceptable to Bosa, as defined and described in Section 3 of the Purchase Agreement; and

WHEREAS, Sections 3.2 and 3.4 of the Purchase Agreement contemplate that this Ordinance will allow Bosa and the Seller Affiliates (i.e., any entities controlling, controlled by, or under common control with Bosa), as defined in Section 3.4.1 of the Purchase Agreement, to apply the DIF Credits against DIF imposed by the City on the Seller Projects, as defined in Section 3.4.3 of the Purchase Agreement; and

WHEREAS, more specifically, Section 3.4.3 of the Purchase Agreement defines the Seller Projects to include five specified development projects located at Eighth Avenue and B Street, First Avenue and Island Avenue, Tenth Avenue and Market Street, Eleventh Avenue and Market Street, and Pacific Coast Highway and West E Street, as well as any other residential development project owned by Bosa or a Seller Affiliate in the Downtown Community Plan Area, whether acquired before or after the effectiveness of the Purchase Agreement, in which

Bosa or a Seller Affiliate has elected, in writing, to utilize Unused DIF Credits, as defined in Section 3.4.3 of the Purchase Agreement; and

WHEREAS, Section 3.2 and 3.5.2 of the Purchase Agreement contemplate that this Ordinance will confirm the DIF amount for the Seller Projects will be fixed at a total of \$8,560 per residential unit, not including Regional Transportation Congestion Improvement Program fees, and will not be subject to annual increases of any kind until the aggregate amount of DIF Credits applied in satisfaction of the DIF obligations of Seller Projects has reached a total of \$13,827,000; and

WHEREAS, the City's agreement to fix the DIF amount for the Seller Projects will require the City Council to approve an exemption from two provisions in the San Diego Municipal Code, including: (1) section 142.0640(b), which normally requires the DIF amount payable by a developer to be determined based on the DIF schedule in effect either on the date when the development application is submitted or the date when the fees are paid, whichever amount is lower; and (2) section 142.0640(c), which normally requires the DIF amount to be increased annually on July 1 based on the one-year change in the Construction Cost Index for Los Angeles as published in the Engineering News-Record; and

WHEREAS, the exemption from these two provisions in the San Diego Municipal Code is warranted because Bosa is agreeing under Section 3.3 of the Purchase Agreement to fix the purchase price for the Park Site at \$13,827,000 on the basis of a November 2020 appraisal, regardless of any future increases in the value of the Park Site that may occur before the City acquires the Park Site under the Purchase Agreement; and

WHEREAS, San Diego Charter section 99 (Section 99) generally provides that no contract, agreement, or obligation creating City indebtedness and extending for a period of more

than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, this Ordinance authorizes the use of DIF Credits for the City's payment of the purchase price under the Purchase Agreement, which is a contractual obligation that may extend for a period of more than five years and, therefore, is subject to the ordinance requirement in Section 99; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that the information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. In accordance with Section 3 of the Purchase Agreement, the Council authorizes the use of DIF Credits in the amount up to \$13,827,000 as full and adequate consideration for the sale of the Park Site, with the understanding that the City will have no obligation to make any cash payment in consideration for the sale of the Park Site.

Section 2. In accordance with Section 3.2 of the Purchase Agreement, the Council approves the application of Unused DIF Credits, as defined in Section 3.4.2 of the Purchase Agreement, by Bosa or the Seller Affiliates for all or any portion of the Seller Projects, as defined in Section 3.4.3 of the Purchase Agreement.

Section 3. In accordance with Section 3.3 of the Purchase Agreement, the Council approves that the DIF imposed on the Seller Projects will be fixed at a total of \$8,560 per residential unit (including \$5,891 for park, \$1,252 for fire, \$0 for library, and \$1,416 for transportation) and will not be subject to annual increases of any kind until the aggregate amount

of DIF Credits applied in satisfaction of the DIF obligations of Seller Projects has reached a total of \$13,827,000.

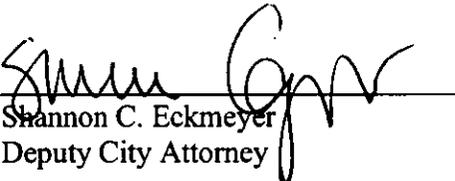
Section 4. In connection with the City's obligations under the Purchase Agreement related to the calculation and application of DIF Credits for the Seller Projects, the Council approves an exemption from the normal requirements of sections 142.0640(b) and 142.0640(c) in the San Diego Municipal Code.

Section 5. The Mayor or designee is authorized to sign all additional documents, and take all additional actions, necessary to implement the terms and conditions of this Ordinance.

Section 6. A full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 7. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
Shannon C. Eckmeyer  
Deputy City Attorney

SCE:sc  
03/07/2023  
Or.Dept: Planning  
Doc. No.: 3243149  
Comp. to O-2023-130

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of APR 25 2023.

DIANA J.S. FUENTES  
City Clerk

By Connie Patterson  
Deputy City Clerk

Approved: 5/1/23  
(date)

Todd Gloria  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 25 2023, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<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"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 01 2023

AUTHENTICATED BY:

TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 11 2023, and on MAY 01 2023.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Kristell Medina, Deputy  
for Connie Patterson

Office of the City Clerk, San Diego, California  
Ordinance Number O- 21641