
COUNCIL COMMITTEE CONSULTANT ANALYSIS
LU&H 07-04

<u>Agenda Item #</u>	<u>Description</u>
3	Redevelopment Restructuring recommendations

RECOMMENDATION

It is my recommendation that the LU&H Committee direct the Mayor to bring to the Redevelopment Agency Board a proposal on restructuring the Redevelopment Agency by establishing a Redevelopment Commission, and directly hiring Redevelopment Agency staff, independent of the City's civil service system, as allowable by California Redevelopment Law (California Health and Safety Code Section 33201a).

BACKGROUND

The City of San Diego has actively reviewed its Redevelopment organizational structure since 2005, pending the implementation of Proposition F (Strong Mayor form of governance - passed by voters in November 2004). The Mayor, City Council and then City Manager realized the need to clarify and define the role of the Mayor related to redevelopment activities, as it was not specified under Proposition F. The structure of the Redevelopment Agency (RDA, or the Agency) was to be maintained or restructured during the Strong Mayor transition period, with final approval from City Council/Redevelopment Agency Board.

In order to rectify inconsistency between the Agency Bylaws, and the new City Charter, the Agency amended its bylaws on October 25, 2005 to allow "the Mayor and or such person or persons as may be designated by the Agency" to be appointed as the Executive Director. Since January 1, 2006, the Mayor has been appointed as the interim Executive Director of the RDA by the Council sitting as the Redevelopment Agency Board on three separate occasions. The Mayor's current term of this appointment expires on December 31, 2007. It is anticipated in early December 2007 the Mayor's staff will bring forward to the RDA a motion to again reappoint the Mayor as the interim Executive Director of the RDA.

The Land Use and Housing Committee (LU&H) should utilize its Nov. 7th, 2007 meeting to gather consensus on what the Mayor's long term role in a reorganized Redevelopment Agency should involve, and consequently provide policy direction to the Mayor and staff on what Redevelopment Agency organizational model to bring to the Agency Board.

The full City Council/Agency Board has not yet had the opportunity to weigh in on the Restructuring of the Redevelopment Agency, whether it should remain status quo with

some enhancements, if it should be reorganized into a new structure such as a Redevelopment Commission, and whether Agency employees (currently City employees “on loan” to the Agency) should serve at the pleasure of the Mayor while under contract for the Agency.

After two years of discussion at the Committee level on Agency restructuring, the LU&H Committee should forward a recommendation of restructuring the RDA to the City Council/ Agency Board for review and direction within the next 45 days. While the Mayor’s previous reports have offered two options (Redevelopment Commission and direct Mayoral control), the current proposal does not include presenting a restructured Agency option to the RDA Board. It has been expressed by several Councilmembers in two different Committees over the last two years that Redevelopment restructuring needs consideration in order to improve the City’s redevelopment practices. Thus, the LU&H Committee should exercise their authority to request such option be presented by the Mayor to the full City Council/RDA Board for review and possible adoption, as granted to them under the San Diego City Charter, outlined in the Mayor’s duties (Article XV, Section 265, Article 14):

“(14) To cooperate fully with the Council and the Office of the IBA, including but not limited to, supplying requested information concerning the budget process and fiscal condition of the City to the City Council and the office of the IBA;”

RESTRUCTURING OPTIONS

It is not the goal of this consultant report to outline the advantages and disadvantages and distinct differences between the various types of organizational structure legally allowed by California Redevelopment Law (CRL). They have been outlined in previous reports prepared by City Staff, the IBA, the prior LU&H Committee Consultant, as well as meticulously detailed in the Clarion/Waronzof consultant reports on Redevelopment Restructuring Options (November 2006). Clarion analyzed potential organizational structures that included:

- 1) Retaining the Redevelopment Division within the City structure with enhancements.
- 2) Establishing an independent city agency with a separate board – transfer City staff from the City to an agency structure outside the City structure.
- 3) Establishing a Redevelopment Commission – similar to an independent agency, but a hybrid model with additional authority relating to community development.
- 4) Establishing a non profit corporation in the CCDC, SEDC model.

Of these options, the establishment of a Redevelopment Commission, and changing Agency staff to be directly employed under the Agency as a separate legal entity, are explored here and specifically recommended.

REDEVELOPMENT COMMISSION

Similar to the structure of the San Diego Housing Commission, a shift to a Redevelopment Commission model could potentially address past concerns expressed by Councilmembers and City staff (such as pace of project implementation and personnel expertise) related to reform. The Redevelopment Commission model would allow for increased community involvement, through direct contact with the Agency staff, the Redevelopment Commission and the Agency. It would also allow for increased contracting flexibility, which would help speed up transactions or procurement of professional services.

As authorized in CRL, this variation allows the RDA Board to establish a Redevelopment Commission and to delegate to it numerous redevelopment responsibilities and providing day to day administration. Yet final authority and responsibility remains vested with the Redevelopment Agency Board. Delegation of legislative and budgetary authority from the Agency to the Commission would need Agency review and direction. The Agency may delegate (although no specific recommendations are made herein) the following responsibilities to the Redevelopment Commission, as long as the City Council remains the Agency Board:

(1) adopting redevelopment plans, (2) approving any agency bond issue, (3) establishing any redevelopment revolving loan fund, (4) approving any agency expenditure on public improvements for commercial or industrial property, (5) approving the sale of redevelopment agency-owned real property to a private party and (6) making all legislative decisions with regard to a redevelopment project.

The San Diego Housing Commission provides an adequate model of a possible new Redevelopment Commission structure.

It is my recommendation that under the Redevelopment Commission structure, the Redevelopment Agency continue to operate with its two non-profit redevelopment corporations, SEDC and CCDC, and with the 11 other project areas managed separately.

The Mayor has been supportive in the past of the Commission model. In the Report to the City Council No. 06-190, issued to the LU&H committee for the November 2006 meeting, the Mayor's staff identifies the establishment of a Redevelopment Commission as a feasible model on Page 3.

“OPTION TWO – ESTABLISH REDEVELOPMENT COMMISSION - This alternative option would result in the creation of a new seven member redevelopment commission made up of six City Council appointees and the chair, who would be the Mayor's Deputy Chief Operating Officer for Land Use and Economic Development as well as the Agency Executive Director. The Commission would be expected to be a panel of experts and would be authorized to make decisions on redevelopment projects allowed by-right and

contracts under a certain threshold amount. The Redevelopment Agency (City Council) would make decisions on redevelopment projects requiring discretionary approvals and contracts above the threshold amount, with recommendations from the Commission.

The Director of the CP&CI department would be the Assistant Executive Director and would also continue to oversee City Planning functions. Staff to the Agency could either remain within the City *or be removed to be independent of the City's civil service system*. Under this system the Commission would enter into a Memorandum of Understanding with the City to allow for City Planning to provide planning services to the Agency. This option would remove some direct authority from the City Council, but would provide an opportunity to provide additional technical expertise to the Agency review process, such as the underwriting review panel described earlier in this report.”

Note that in the above Mayoral recommendation on the make up of the Commission, the Mayor still controls the executive staff of the Agency by employing the Mayor's COO for Land Use and Economic Development, and the CP&CI Department Director in the two top positions (Executive Director, and Assistant Executive Director). If the Council desires to continue to relinquish their authority to the Mayor, this would be the appropriate way to go. This report does not recommend this approach.

If the model were to be adopted as described above, essentially the RDA would add a new Commission that the Mayor's office would control via Mayoral top staff as the both the Chair of the Commission and Executive Director of the Agency. Policy recommendations in this model would likely originate from the Mayor's perspective. There is nothing in the City Charter or the Agency bylaws that prescribes this recommendation; this is a policy decision that can only be made by the RDA Board.

Conversely, the existing San Diego Housing Commission (HC) model shows us a successful model of a Commission not directly controlled by the Mayor's office. The Housing Commission, authorized by City Ordinance, reports to the Housing Authority. The Mayor appoints the Housing Commissioners (and confirmed by the Housing Authority), and the City Council/Housing Authority selects the Executive Director. The HC CEO reports first to her Commission on a daily basis, then to Housing Authority members who hired her. That brings true accountability where it matters most.

The Mayor does not have staff serving as Housing Commissioners, nor as staff in the Housing Commission. This model distinguishes itself by truly being a separate legal entity, with separate budgets, separate retirement programs, separate certified annual financial reviews, and separate staff, not City employees contracted out by the HC. Most notably during the City's fiscal issues of the last several years, it has been because of this model that bonding has continued for critical housing projects throughout the City while the City itself has been more limited to issue debt.

The Redevelopment Commissioners should absolutely be nominated by the Mayor, as he is a citywide elected official. The Mayor will likely want a member of his senior staff to sit as a Commissioner. But the Agency Executive Director should not serve as the Commission Chair AND be a member of Mayoral staff because it would present a conflict on who the Executive Director reports to – the Agency Board, or the Mayor? It would be an ambiguous, dual reporting situation. It is recommended that the Agency Board hire its own Executive Director rather than the position remain within the office of the Mayor. This would require the Executive Director to be accountable to the RDA board as a whole, and not solely to the Mayor.

It is critical to have an independent Executive Director hired by the Agency Board. The independence of this person is significant because the needs of the City will at some point compete with the needs of a redevelopment area or neighborhood- and without an independent person; there is no autonomy in this role. The need could be related similarly to the Council's success with the Independent Budget Analyst in the Strong Mayor form of government.

Consistent procedurally with other Boards and Commissions, the Mayor should make appointments to the Redevelopment Commission, to be confirmed by the RDA Board. Whenever the Mayor does not appoint a member within 45 days after vacancy occurs, the RDA Board shall make such appointment.

A determination will need be made as to how many members should comprise the Redevelopment Commission. CRL requires at minimum seven (7) Commissioners be appointed. The Mayor's staff recommended six members and a chair. The RDA Board may want to give consideration to Redevelopment area acreage per Council District when determining number of appointees to be nominated.

The Commissioners should be diverse in ethnicity and professional background, with a strong level of expertise in redevelopment and land use, and demonstrate a commitment for neighborhood revitalization and the removal of blight.

AGENCY STAFFING ISSUES

While the Redevelopment Agency (RDA) of San Diego is a separate legal entity from the City, City staff are "on loan" to the RDA to provide the services necessary to operate. This in itself has its advantages and disadvantages. In this structure, the RDA staff report to the Mayor, for as long as the RDA continues to contract with the City by resolution, and the Executive Director continues to be the Mayor. If the RDA personnel were to be directly employed by the Agency, outside of the City workforce (comparable to how the Housing Commission operates) it would assist in the budgetary and managerial distinction between the Agency and the City. City staff has been utilized in this structure from 1975 until the present.

Currently, the Redevelopment Division must propose its budget to the Mayor prior to the Agency review. In the last budget cycle, the Redevelopment Division management

internally requested to the Mayor that seven new positions be added to this division of the Agency. However, when the Mayor proposed his budget to the City Council/Agency Board, the number of new staff recommended by the Mayor for the Redevelopment Division was only one position. Although Redevelopment has its own revenue source separate and distinct from the General Fund, the City's budget crisis and staff reductions impacted the RDA through the Mayor's proposal of limiting the number of new positions to support Redevelopment. Though it is recognized that the Agency Board members do have the final approval on the budget recommendations, the Agency Board may not have been aware that additional positions for Redevelopment were desired.

In the Mayor's report to the City Council No. 06-190, it states, "Staff to the Agency could either remain within the City *or be removed to be independent of the City's civil service system.*" It is recommended that this committee direct staff to bring this option to the City Council/Agency Board for review. One of the primary issues identified as a reason for moving RDA staff outside of the City and Civil Service Commission structure is to remove the RDA from the more stringent personnel regulations imposed by the City and increase the financial autonomy to make personnel and salary decisions. The premise exists that through this model, the RDA could further incentivize employee performance and the RDA's ability to quickly recruit experienced and entrepreneurial staff. CRL section 33126 states, "The agency shall adopt personnel rules and regulations applicable to all employees. Such rules shall contain procedures affecting conflicts of interest, use of funds, personnel procedures on hiring and firing including removal of personnel for inefficiency, neglect of duties, or misconduct in office."

It is important to note that under existing CRL, the RDA does not need to alter its structure to a Commission or non-profit Corporation status in order to directly hire its own employees outside the City structure, as the City's Housing Authority uses existing state law to function. The RDA is a legal entity under state law with the full authority to hire and fire, to contract for legal and other professional services and to conduct its affairs separately from the City of San Diego. This committee may want to consider this option independent of choosing a new structure.

Under State law, the Agency has the authority to hire its own legal Counsel, and does not need to contract with the City Attorney unless it so desires. Currently, if there is satisfaction in the legal counsel for Redevelopment, an SLA with the City Attorney for that attorney in that Division could be retained.

ADMINISTRATION

According to RDA staff, "the Redevelopment Division manages eleven redevelopment project areas, and one survey area. The division also performs general administration for the Redevelopment Agency, coordinating budget and State reporting requirements and maintaining the Agency's meeting docket, official records, and website. Administration expenses include staff and non-personnel expenses. For City

Redevelopment project areas, administration also includes fees for consultant services, payments to the City for General Government Services, City Attorney and Auditor Services, as well as City staff charges related to the Planning and Development Services Departments for their work related to Redevelopment Agency projects. The Agency funds reimburse the City for Redevelopment staff services, and SEDC and CCDC cover a portion of the administration expenses incurred by City Redevelopment for coordinating Agency-wide activities, and also pay their respective portions for work done on their behalf by other City departments”.

The LU&H Committee members may want to consider the fiscal impacts of the RDA directly hiring its own staff. The total RDA FY 2008 budget includes \$19.56 million for administrative purposes. Of this amount, \$3.7 million is budgeted for administration of the Redevelopment Division (including 28.00 positions covering 11 project areas). The administration budget category for the Redevelopment Division includes an additional \$3.9 million, which provides funding for legal and planning efforts, and payments for support from several City departments.

As a comparison, \$9.4 million is budgeted for the administration of CCDC (including 45.00 positions covering two project areas). An additional \$700,000 is budgeted for payment to the City for services provided to CCDC. SEDC’s administration budget for FY 08 was \$2.5 million (including 14.5 positions covering four project areas).

Project Areas	Acreage	Number of staff	FY08 Admin Budget	% of total budget
CP&CI Redevelopment Div.- 11 project areas	7,613 acres total	28.0	\$7.6 million	6
CCDC- 2 project areas	1,490 acres total	55.0	\$10.1 million	5
SEDC- 4 project areas	1,055 acres total	14.5	\$2.5 million	7

This demonstrates how few staff members actually perform the functions of the CP&CI Redevelopment division over such a large area. Neighborhoods would greatly benefit

from more redevelopment professionals out working in the 11 project areas that are plagued with blight and the need for economic revitalization.

It is possible that efficiencies could be achieved by the RDA transferring the administration of the eleven project areas and one study area managed by the CP&CI Redevelopment Division outside the City. The City imposes significant overhead charges (117% in 2003, currently 73.7%) on the City staff performing Agency functions. The additional overhead charged by the City would be avoided by direct Agency employment. However, additional expenses may be incurred if payment is required for the provision of overhead-type services from an entity other than the City, if the Agency were to separate.

Additional areas for fiscal consideration include the service level agreements between the Agency and the Auditor, the City Attorney, Financing Services, and Real Estate Assets. Involvement from these departments would likely need to continue for the preparation and review of actions and financial information by the City Council, and for any projects involving the City as partner.

The true fiscal impacts to the City and to the Agency have never been comprehensively presented to this committee or the Agency boards for review. It is recommended that this committee request this information be presented by RDA staff when Redevelopment Restructuring options are brought to the Council/Agency Board for full review.

From a budgetary perspective, the RDA should be distinctive and separate from the City. Redevelopment is a tool created to promote revitalization and economic development during times of economic downturn in the neighborhoods that need it most. It does not make sense to limit the RDA's ability to perform and make change (through hiring freezes, salary freezes, and limiting training opportunities) when it is needed most because the City, a separate legal entity from the RDA, is having financial difficulty. For example, in Fiscal Year 2007, the Redevelopment Agency approved a salary freeze for CCDC and SEDC to correspond with the lack of salary increases in the City of San Diego. Additionally, the Redevelopment Division may be required to fill a vacant position with someone who is not a redevelopment professional during Mayoral imposed staff reductions. The Agency cannot be as effective as it can possibly be when subject to such constraints.

In the past, the Housing Commission was asked to evaluate the feasibility of merging the administration of the Redevelopment Division and the Housing Commission, as was evaluated in the Clarion report. Administratively this model could make sense for services such as IT, HR, and training etc. The current Redevelopment Division employs fewer than 30 people, and the SDHC can provide these services on a fee for service basis. While in the past the SDHC was asked only to look at merging administration, yet

staff there noted they could potentially contact out to the RDA for project activities that RDA carries out such as affordable housing negotiations as well.

The Commission Model, as reviewed in the Clarion report and noted in the Mayor's Report No. 06-190, could operate to provide integrated services, including Economic Development and Community Development activities. These services are all currently under the Mayor. At this time, this type of integrated model has not been fully evaluated, and therefore is not being recommended. It is however a possibility for the future and the committee should direct staff to provide more information on consolidating these functions into one agency if so desired.

MAYOR'S ROLE

Determining what the Mayor's role should include in a restructured Redevelopment Agency is necessary. It is not recommended that the Mayor continue to operate as the Executive Director of the Agency. This model, which has continued in an "interim" capacity for almost two full years, needs to be changed. Consider if the Police or Fire Chief resigned, and the Mayor decided to appoint himself into that position, as well as doing the full time job as Mayor. It is unlikely the City Council be supportive of this action.

According to the California Redevelopment Association, "CRA recommends that Agencies, as legally separate from the local legislative bodies that establish the Agencies, provide for professional, rather than political, administration. The reason for this is that the redevelopment law is itself complicated and technical, and redevelopment transactions are necessarily conducted in a tension between public disclosure and confidentiality. Professionalism at the administrative level ensures oversight at the policy level. "(Jenkins 7/27/07 letter to Charter Review Committee)

If a Commission model is selected by the Agency, the Mayor should appoint the Redevelopment Commissioners, pending Agency confirmation. The Agency members could provide input to the Mayor as to whom they would nominate for the Mayor to appoint.

An additional role to be contemplated for the Mayor is an Ex-Officio capacity. The Committee should provide input as to whether it would please them to have the Mayor to serve the Agency Board as an Ex-Officio. The Mayor, no longer sitting as a member of the legislative body with the authority to cast a vote, could still provide policy recommendations and input as part of any RDA Board discussion. Given that Council convenes itself as the RDA when needed during Council/RDA meetings, it may be unrealistic to expect the Mayor to participate in person in the meetings. However, the Mayor's staff could prepare a report for the Agency's review, as they do currently. This would only be different from the current process if the Agency staff were no longer City employees.

According to Clarion, questions remain as to how the intended “Strong” Mayor will influence decisions made by a governing body that does not include him. It would seem from the Council’s perspective; the question remains how the Agency (with its legal authority) influences redevelopment policy decisions when the RDA administrative staff presents to the Agency the Mayor’s Policy perspectives?

CHARTER

Recognizing the Strong Mayor form of government is in a five year trial period which expires in 2010, the Charter Review Committee’s final report (pg. 24-25) recommends amending the City Charter to institutionalize the Mayor’s role as Executive Director to the Redevelopment Agency.

“During the Proposition F transition, the City Council wrestled with the prospect that the RA’s Executive Director and its City staff would report to the Mayor rather than to the City Council acting as RA. The solution they adopted was to designate the Mayor as the RA’s Executive Director. This was permitted because the RA’s bylaws allowed the designation of someone other than the City Manager as Executive Director. Naming the Mayor to this position prevented creation of an ambiguous, dual reporting situation for both the City Manager and any City staff loaned out, contracted or partly employed by the RA. For that reason, the majority of the Committee believed the Charter should require that the Council’s solution to the problem be used. The Charter should be changed to institutionalize it.”

“In principle, the Committee indicated that the Mayor is the only policymaker elected by the whole City and should not be left out of the redevelopment process.”

It seems premature to amend the Charter to designate the Mayor as the RDA Executive Director prior to the full Council/RDA Board hearing the redevelopment restructuring issue. The legality of amending the Charter to designate the Mayor as the Executive Director of the RDA has yet to be determined, because the City Charter does not govern the Redevelopment Agency. The San Diego Redevelopment Agency is a legally separate entity from the City of San Diego, not governed by the City Charter. A redevelopment agency is an instrumentality of the State and is governed by State law. The City Council, as San Diego’s legislative body, has determined that the members of the Council shall serve as the Agency Board, as permitted by State law. Despite the overlap of the membership of the Council and Agency Board, the two entities are legally separate and distinct.

According the August 4, 2005 report to the Strong Mayor Transition Committee by the City Attorney, “there is no statute that restricts a strong mayor from assuming the office of Executive Director...”. However, if the Mayor were to serve as the chief administrative officer of both the City and the Agency, he could be placed in a foreseeable conflict of interest. (It should be noted that the same idea applies to the

City Attorney serving as Agency Legal Counsel.) The City Attorney notes that a charter amendment requiring the Mayor to serve as the Executive Director of the RDA is a drawback, as it may remove the Agency's ability to adopt an alternative governing structure, as is currently being contemplated. (City Attorney RC-2005-23 9/28/05).

The Agency's authority to appoint an Executive Director, either the Mayor or a qualified person other than the Mayor, is not in question. The conflict between the Charter and the Agency bylaws of what the Mayor's role is legally under Strong Mayor has lead the Agency amend its bylaws, and to (re)appointment Mayor three times on a temporary basis as Executive Director of the Agency. This outstanding issue will be resolved when the Council acting as the Redevelopment Agency Board decides on what changes should be made to the organizational structure, and what the Mayor's role should be in Redevelopment. This should be done sooner, rather than later in order to resolve any ambiguity.

NON PROFIT CORPORATION MODEL

There has been demonstrated support from outside interests for redevelopment reform efforts to result in the Agency adopting a non-profit corporation model, such as CCDC. However, an issue discussed at the LU&H meeting of November 2006 was noted as somewhat insurmountable by more then one Committee member. In a corporation structure, non-profit corporation board members (who are unpaid, appointed professionals) would have their fiduciary obligation to the corporation for which they serve, and not the Agency or the City. This essentially results in the Agency relinquishing its policy control to a board with private interests. According to Clarion, this could lead to a disconnect from overall planning policies. While the immense success of CCDC makes it an enviable model, much of its financial success can be attributed to its geographic location, discretionary planning powers, and the growth of the downtown real estate market of the last 15 years, not just its corporate structure.

CONCLUSION

It is my recommendation that the LU&H Committee direct the Mayor to bring to the Redevelopment Agency Board a proposal on restructuring the Redevelopment Agency by establishing a new San Diego Redevelopment Commission, and directly hiring Redevelopment Agency staff, independent of the City's civil service system.

Redevelopment, a critical tool for neighborhood revitalization, has been reviewed regularly at public meetings during the last two years. PS&NS, LU&H, Redevelopment Project Area Committees, and City staff have held numerous public hearings on RDA restructuring. The Housing Commission, several individual members of the public, many industry groups including the Chamber of Commerce, the League of Women Voters, the BID Council, CPI and the Small Business Advisory Board, in addition to expert Redevelopment consultants (Clarion Associates) hired by the Agency, have all provided input on Redevelopment restructuring.

While Clarion does not provide a specific recommendation in their Restructuring options final report, they make a salient point on the dichotomy of issues (such as speed of project implementation and strong public involvement) faced by the Agency Board. "San Diego's decision-makers will have to make some hard decisions or craft techniques to balance these competing strengths." While reorganization of RDA structure will not guarantee success, it will help provide transparency to current structure, further community involvement and an increase in accountability in a system which the public often finds confusing and convoluted.

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Appendix 1- A summary of relevant past reports distributed, actions taken, and public meetings held on the Redevelopment Restructuring issue since June 2005