

MEMORANDUM OF LAW

DATE: May 7, 1999

TO: Council Members Juan Vargas and Byron Wear

FROM: City Attorney

SUBJECT: Centre City Development Corporation's Responsibility Regarding the Imperial Plaza Project

QUESTIONS PRESENTED

1. What is the Centre City Development Corporation's [CCDC] authority and jurisdiction regarding the determination on a proposed Disposition and Development Agreement [DDA], the Conditional Use Permit [CUP] process, and administration of redevelopment projects after City Council and Redevelopment Agency of The City of San Diego [Agency] approval?
2. Can the Council or Agency authorize City staff, as opposed to CCDC, to oversee the administration of the Imperial Plaza Project, including the CUP process, as a term of approving the redevelopment project?

SHORT ANSWER

1. Pursuant to the Operating Agreement between the Agency and CCDC, a copy of which is on file in the office of the Secretary to the Agency as Document No. 862 [Agreement], CCDC is responsible for negotiating, preparing, and administering all DDAs within the Centre City Redevelopment Project [Centre City] area of San Diego. Under the San Diego Municipal Code and the Centre City Planned District Ordinance [PDO], the administration of the PDO, including CUP approval, is vested in the Executive Vice President of CCDC.
2. While the Agreement contains broad language which gives the Agency the authority to have City staff oversee the administration of a specific redevelopment project, the provisions of the Code do not allow such flexibility. Rather, the Code requires that the Executive Vice President of CCDC administer the provisions of the PDO, approve or deny CUPs, and enforce the provisions of any CUP issued pursuant to the provisions of the PDO.

DISCUSSION

I. CCDC's Authority and Jurisdiction

A. CCDC's Authority and Jurisdiction over the Determination of a Proposed DDA

DDAs are agreements between the Agency and a developer for the sale and development of property in a redevelopment project area. Under the terms of the Agreement, CCDC is obligated to “conduct negotiations with developers; prepare disposition agreements; [and] supervise developers’ performance under disposition and participation agreements” *Agreement* 201(i). While the Agreement obligates CCDC to perform certain negotiation, preparation, and supervisory services it has no authority or jurisdiction over the *determination* of a proposed DDA. Since it is the Agency, rather than CCDC, that is a party to the DDA, the Agency, not CCDC, has the final authority and jurisdiction over the determination of a proposed DDA.

B. CCDC's Authority and Jurisdiction over the CUP Process

CCDC's authority and jurisdiction over the CUP process is governed by the PDO. San Diego Municipal Code 103.1901 - 103.1925. Code section 103.1904(A) requires that the provisions of the PDO be administered by the Executive Vice President of CCDC. The Code goes on to say that “[t]he Development Services Department, Sign Code Administration, or Engineering Department shall not issue any permit . . . until approval of a Centre City Development Permit by the Executive Vice President has been obtained” San Diego Municipal Code 103.1904(B)(5). Finally, Code section 101.1904(G)(2) states that “the Executive Vice President shall be the decision maker for the purpose of granting conditional use permits within the boundaries” of the planned district. As the above sections make clear, the authority and jurisdiction over the CUP process in the Centre City area of San Diego is vested exclusively in the Executive Vice President of CCDC.

C. CCDC's Role in Administering Redevelopment Projects After Approval

CCDC's role in administering redevelopment projects after their approval is similar to its role in these projects before approval. Both before and after approval, CCDC's obligations and responsibilities are governed by the terms of the Agreement. Specifically, as stated above, CCDC is contractually obligated under the terms of the Agreement to supervise developers' performance under DDAs in the Centre City area of San Diego.

II. Council/Agency Ability to Transfer Oversight of the Imperial Plaza Project to City Staff

A. Redevelopment Aspects

The Agreement provides that CCDC "shall be under the direction of the Agency, and shall abide by actions taken, directives given, and policies adopted with respect to" redevelopment projects within Centre City. *Agreement* 2.01(c). The broad language of the Agreement allows the Agency the discretion to direct City staff to oversee and administer the redevelopment aspects of the Imperial Plaza Project, and obligates CCDC to abide by that direction. Therefore, the Agency could direct City staff, as opposed to CCDC, to oversee the administration of the redevelopment aspects of the Imperial Plaza Project.

Notwithstanding this broad discretion, the Agency, if it chose to delegate the administration of the Imperial Plaza Project to City staff, would be required to seek input from CCDC. Under the Agreement the Agency is required to "refer to [CCDC] all matters, involving Agency's participation in providing for redevelopment in the Project area and that the advice and recommendations of [CCDC] will be considered by Agency in formulating its policies concerning such matters." *Agreement* 3.04.

B. Conditional Use Permit

Although the Agreement provides the Agency with rather broad latitude to delegate to City staff those redevelopment roles usually performed by CCDC, its flexibility in the CUP process is far more limited.

While the redevelopment role of CCDC is governed by an Agreement between CCDC and the Agency, the role of CCDC in administering the provisions of the PDO and approving CUPs is a statutory requirement codified in the provisions of the Code. Unlike the terms of the Agreement, there are no provisions in the Code that permit the Council to delegate these duties to City staff. Therefore, under the provisions of the Code, CCDC, and not City staff, is required to administer the provisions of the PDO, including those related to granting or denying CUPs.

CONCLUSION

CCDC is responsible for implementing and administering redevelopment projects within the Centre City Redevelopment Project area. In addition, it acts as permitting authority under the Centre City PDO. While the Agency could, under the terms of the Agreement, assign CCDC's

redevelopment duties to City staff, the Code does not provide any provision which would similarly allow the permitting responsibilities of CCDC to be transferred to City staff.

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