

EUNICE C. CHAN
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO
MICHAEL J. AGUIRRE
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1100
SAN DIEGO, CALIFORNIA 92101-4100
TELEPHONE (619) 533-5800
FAX (619) 533-5856

February 27, 2006

Mr. Jose Lopez
4916 Lantana Drive
San Diego, California 92105

Dear Mr. Lopez:

City Heights Project Area Committee Member Composition

This letter is in response to your request for a legal opinion from the City Attorney's Office with respect to your concerns about the member composition of the City Heights Project Area Committee.

I. California Redevelopment Law

As you may know, the authority to establish a redevelopment agency and the authority for a redevelopment agency to function as an agency, adopt a redevelopment plan, and implement the plan is granted by the California Redevelopment Law (Cal. Health and Safety Code § 33000 et seq.) ("CRL"). The CRL also includes specific sections on the formation of project area committees ("PACs") and the procedure for the election of PAC members, including, but not limited to, the following:

- a) The legislative body shall, by resolution, adopt a procedure pursuant to this section for the formation of the project area committee. The procedure shall include, but not be limited to, all of the following . . . (6) The number of community organizations and the method of selection, which may include election, appointment or both. Cal. Health & Safety Code, § 33385(b)(6).
- b) The PAC shall only include, when applicable, elected representatives of residential owner occupants, residential tenants, business owners, and existing organizations within the project area. Each group must be adequately represented. Each organization represented pursuant to this subdivision shall appoint one of its members to the project area committee. No project area committee member may be appointed by the legislative body or the redevelopment agency or any member of either body. The members of the committee shall serve without compensation. Cal. Health & Safety Code, § 33385(c).

- c) The election of a representative PAC shall be held in each project area within 100 days after the project area is selected. The legislative body should adopt, after a duly noticed public hearing, community wide procedures for election, publicizing an election, holding an election and for reviewing disputed elections, filling vacated seats, and other matters related to the electoral process. These procedures shall prohibit crossover voting between categories of residential owner occupants, residential tenants, and business owners to ensure, for example, that a business owner cannot vote for a tenant representative. However, if the legislative body determines that the method of selection of community organizations shall include election, the legislative body shall determine the appropriate electorate and may authorize crossover voting in the election of community organizations. Cal. Health & Safety Code, § 33385(d).

Therefore, the CRL authorizes the City Council to adopt a procedure for the formation of the PAC, eligibility requirements for PAC candidates and voters and the method of selection, which may include election, appointment, or both, and other matters related to the electoral process. While crossover voting is not permitted between categories of residential owner occupants, residential tenants, and business owners, it is permitted in the election of community organization(s). Cal. Health & Safety Code § 33385(d).

II. Procedure for Formation of a Project Area Committee for the City Heights Redevelopment Project

The current Procedure for the Formation of a Project Area Committee (PAC) for the City Heights Redevelopment Project ("Procedure") was adopted by the San Diego City Council on September 14, 1999, by Resolution No. R-292185, and was amended by the San Diego City Council on July 15, 2003, by Resolution No. R-298199. Please find enclosed herewith a copy of the Procedure for your review. Sections 600 through 601 of the Procedure establish the City Heights PAC membership categories, as follows:

"VI. [§ 600] **PAC MEMBERSHIP CATEGORIES**

A. [§ 601] Categories

The PAC shall have a total of Twenty members selected according to the following categories (and numbers):

- a) Four Residential Tenants
- b) Four Residential Owner Occupants
- c) One Business Owner with businesses located north of Polk Avenue.
- d) One Business Owner with businesses located south of Polk Avenue.
- e) Four Community Organizations – At-large (Must be residents).

Six additional members will be designated in the following categories (and numbers):

- a) One Normal Heights Planning Committee representative.
- b) One Kensington – Talmadge Area Planning Committee representative.
- c) One City Heights Area Planning Committee representatives.
- d) One City Heights Business Improvement District representative appointed by the City recognized group that represents University Avenue businesses.
- e) One El Cajon Boulevard Business Improvement District representative appointed by the City recognized group that represents El Cajon Boulevard businesses.
- f) One City Heights Town Council representative.

Members designated from the following organizations must also be residents within their organizational boundary: One City Heights Area Planning Committee and One City Heights Town Council.

Members designated from the following organizations must have a business located within the City Heights Redevelopment Project Area: One City Heights Business Improvement District and One El Cajon Boulevard Business Improvement District.

Redevelopment Law allows for the designation of other community-based organizations to ensure broad-based participation in the redevelopment process.”

Accordingly, fourteen (14) members are elected and six (6) members are appointed to the City Heights PAC. This breakdown of member seats is consistent with the provisions of the CRL. The Procedure also reiterates the CRL provision that crossover voting between categories of Residential Owner Occupants, Residential Tenants, and Business Owners is prohibited. Procedure, § 708.

III. Voting Rights Act of 1965

The cases you cite that address alleged violations of the Voting Rights Act of 1965, which prohibits voting practices or procedures resulting in a denial or abridgement of a right to vote on account of race or color, are inapposite here. 42 U.S.C. § 1473. The City Heights PAC Procedure, with respect to the selection of PAC members, was not adopted with the intent to discriminate nor does it produce discriminatory results. Furthermore, the Act expressly does not establish a right to have members of a protected class elected in numbers equal to their

proportion in the population. 42 U.S.C. § 1973(b). Therefore, there is no requirement that the PAC member composition equate to a certain percentage of the area population.

III. Project Area Committee Formation

Your letter improperly states that the CRL requires low and moderate income people to be members of the PAC. There is no such requirement in the CRL. Rather, the CRL provides that the City Council shall call for the formation of a PAC in either of the following situations:

- a. a substantial number of low-income persons or moderate-income persons, or both, reside within the project area, and the redevelopment plan as adopted will contain authority for the agency to acquire, by eminent domain, property on which any persons reside, or
- b. the redevelopment plan as adopted contains one or more public projects that will displace a substantial number of low-income persons or moderate-income persons, or both.

Cal. Health & Safety Code, § 33385(a).

In sum, the City Attorney's Office has determined that the City Heights PAC Procedure is consistent and in conformity with the provisions of the California Redevelopment Law with respect to the member composition of the City Heights PAC. We hope that this response adequately addresses your concerns. If you should have any further questions or comments, please do not hesitate to contact me.

MICHAEL J. AGUIRRE, City Attorney

By



Eunice C. Chan
Deputy City Attorney

ECC:nda
Enclosure

CITY OF SAN DIEGO REDEVELOPMENT AGENCY

**PROCEDURE FOR FORMATION OF A
PROJECT AREA COMMITTEE (PAC)
FOR THE
CITY HEIGHTS REDEVELOPMENT PROJECT**

Adopted by the San Diego City Council
On September 14, 1999
Resolution No. R-292185

Amended by the San Diego City Council
On July 15, 2003
Resolution No. R-298199

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PROCEDURE FOR THE FORMATION OF PROJECT AREA COMMITTEE

I. [§ 100] **GENERAL**

A. [§ 101] Purpose

The purpose of this document is to set forth a Procedure, as required by the Community Redevelopment Law, California Health & Safety Code Sections 33000 et seq. (The "Law") relating to the formation of a project area committee in connection with the amendment of the redevelopment plan for the City Heights Redevelopment Project. The City Council of the City of San Diego has determined that a substantial number of low and moderate income families may be affected and/or displaced by the proposed redevelopment project, and it has directed the Redevelopment Agency of the City of San Diego to form a project area committee. The Agency shall comply with this Procedure to form and select the project area committee.

B. [§ 102] Authority

This Procedure has been adopted by resolution of the City Council of the City of San Diego, pursuant to Section 33385 of the Law.

II. [§ 200] **DEFINITIONS**

Whenever the following terms are used in this Procedure, unless otherwise defined, such terms shall have the meaning ascribed to them in this Article 200.

A. [§ 201] Agency

"Agency" means the Redevelopment Agency of the City of San Diego and any officers, employees, contractors and agents, including those City departments, who may be assigned the duties and responsibilities for implementing this Procedure.

B. [§ 202] Business

"Business" means any lawful activity conducted by a for-profit entity within the Project Area whose overall function and purpose are primarily:

- (1) For the purchase, sale, lease, or rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
- or (2) For the sale of services to the public.

C. [§ 203] Business Owners

"Business Owner" means any person or legal entity which owns and operates a business from a facility within the Project Area, or which owns property in the Project Area for investment and not for occupancy.

D. [§ 204] City

"City" means the City of San Diego, California.

E. [§ 205] City Council

"City Council" means the legislative body of the City.

F. [§ 206] Existing Community Organization

"Existing Community Organization" means any existing nonprofit association of persons and/or entities which has its headquarters or a site office within the Project Area, or a substantial number of whose constituents are persons and/or entities within the Project Area, and which association is generally recognized within the Project Area as a community organization.

G. [§ 207] Project Area

"Project Area" means the area designated in the City Heights Redevelopment Plan adopted by Council by Ordinance No. 0-17768 adopted on May 11, 1992, and amended by the City Heights Redevelopment Plan Amendment No. 1 adopted by Ordinance No. 0-18294 April 16, 1996.

H. [§ 208] Project Area Committee

"Project Area Committee" or "PAC" means the committee formed and selected pursuant to Section 33385 of the Law and in accordance with this Procedure.

I. [§ 209] Redevelopment Project

"Redevelopment Project" means the City Heights Redevelopment Project as adopted on May 11, 1992 and amended on April 16, 1996.

J. [§ 210] Resident

"Resident" means any person who owns, leases or rents a residential dwelling unit within the Project Area and occupies the same as his or her residence.

K. [§ 211] Residential Owner Occupant

"Residential Owner Occupant" means any Resident who owns all or substantial fee interest in the dwelling unit which he or she occupies.

L. [§ 212] Residential Tenants

"Residential Tenant" means any Resident who occupies his or her dwelling unit by right under a lease, rental agreement or other arrangement with owner of the dwelling unit.

III. [§ 300] **PUBLICIZING THE OPPORTUNITY TO SERVE ON THE PROJECT AREA COMMITTEE**

The Agency shall publicize the opportunity to serve on the PAC. The Agency may take any or all of the following actions to publicize the opportunity to serve on the PAC :

A. [§ 301] Posting Notice

The Agency may post notice of the opportunity to serve on the PAC in conspicuous locations throughout the Project Area. Such notices may also be posted in the following locations:

- (1) Office of the City Clerk;
- (2) Foyer of the City Administration Building; and
- (3) Public buildings in the Project Area.

B. [§ 302] Display Advertisement

The Agency may place notice of the opportunity to serve on the PAC in a display advertisement in a newspaper of general circulation within the City.

C. [§ 303] Public Announcement

The Agency may make an announcement to the general public at any of its regular meetings held prior to any public meetings, hearings or plebiscites required by this Procedure, announcing the opportunity to serve on the PAC.

D. [§ 304] Published and Mailed Notice

The Agency may include notice of the opportunity to serve on the PAC in any published and/or mailed notice which Agency gives in accordance with the Law and this Procedure to notice any meeting, hearing, or plebiscite relative to the formation and selection of the PAC.

E. [§ 305] Other Mechanisms to Publicize Opportunity to Serve on PAC

The Agency may produce radio advertisements, distribute flyers, or undertake such other action as it deems necessary or advisable to further publicize the opportunity to serve on the PAC.

F. [§ 306] Foreign Languages

The Agency may, if it determines it is necessary or advisable to effectively carry out the purpose of this Procedure, translate any of the notices or announcements required by this Procedure into another language.

IV. [§ 400] **MEETINGS, HEARINGS AND PLEBISCITES**

The Agency shall conduct meetings, hearings and plebiscites as necessary or appropriate to explain and form the PAC.

A. [§ 401] Public Meeting to Explain the PAC

The Agency shall conduct a minimum of one (1) public meeting to explain the establishment of, function of, and opportunity to serve on the PAC.

At such public meeting, the Agency shall distribute copies of the following documents:

- 1) This Procedure;
- 2) The City Heights Redevelopment Plan, or any pertinent portions thereof, and
- 3) Any other materials the Agency determines would be useful.

In addition to the materials listed above, the Agency, upon request, may distribute copies of the following documents:

- 1) Sections 33385 through 33388, inclusive, of the Law; and
- 2) Candidate Information Forms, as defined in Section 703 of this Procedure.
- 3) Any other materials the Agency determines would be useful.

The number of copies to be made available at the meeting shall be sufficient to meet the estimated number of attendees anticipated. Additional copies of the materials shall be available to the public at a place or places designated by the Agency.

The Agency may limit the number of documents to be distributed to any one person or entity to one (1) set, in order to avoid excessive and unnecessary costs. Any person or entity may request additional copies of the documents at a reasonable duplication cost.

B. [§ 402] PAC Formation Meeting

After the Agency conducts the public meeting to explain the PAC required in Section 401 of this Procedure, the Agency shall hold such other meeting or meetings as may be necessary to complete the formation and selection of the PAC. The purpose of such meeting or meetings shall be to hold an election for the PAC membership seats in accordance with the requirements of this Procedure.

C. [§ 403] Presentation of PAC to City Council

After the formation and selection of the PAC, the results shall be presented to the City

Council at a public meeting. Notice of the date of presentation of the results to the City Council shall be announced at the meeting or meetings, and notice shall be provided to residents and businesses in accordance with Article 500 of this Procedure. During such meeting, the public shall be given the opportunity to make any comments or objections to the election process or any action of the Agency in carrying out this Procedure.

V. [§ 500] **NOTICE OF MEETINGS, HEARINGS AND PLEBISCITES**

The Agency shall provide notice of all meetings, hearings, or plebiscites conducted by, or on behalf of, the Agency or City Council relative to the formation and selection of the PAC.

A. [§ 501] Publication

The Agency shall provide published notice of all meetings, hearings or plebiscites conducted by, on behalf of, the Agency or City Council relative to the formation and selection of the PAC.

Each notice may be published at least one (1) time in a newspaper of general circulation within the City at least ten (10) days prior to the date established for the applicable, meeting, hearing or plebiscite, and in the manner required by the Law.

In lieu of publishing separate notice for each meeting, hearing or plebiscite, the Agency may publish combined notices setting forth all or some of the dates, times and locations of such meetings, hearings and plebiscites.

B. [§ 502] Notice by Mail

The Agency shall provide written notice to all residents and businesses in the Project Area of all meetings, hearings, or plebiscites conducted by, or on behalf of, the Agency or City Council relative to the formation and selection of the PAC. The mailed notice requirement shall only apply when mailing addresses to all the individuals and businesses, or to all occupants, are obtainable by the Agency at a reasonable cost.

The notice shall be mailed by first class mail, but may be addressed to 66 occupant." In lieu of providing separate notice for each meeting, hearing or plebiscites, the Agency may provide combined notices pursuant to this section stating all or some of the dates, times, and locations of such meeting, hearing and plebiscites.

If the Agency has acted in good faith to comply with the notice requirements of this section, the failure of the Agency to provide the required notice to residents or businesses unknown to the Agency or whose addresses could not be obtained at a reasonable cost, shall not, in and of itself, invalidate the formation or actions of the PAC.

C. [§ 503] Other Forms of Notice

The Agency may post notices, distribute flyers or undertake such other actions as it

deems necessary or advisable in order to further inform Residential Owner Occupants, Residential Tenants, Business Owners, and Existing Community Organizations within the Project Area of the formation and selection of the PAC.

VI. [§ 600] **PAC MEMBERSHIP CATEGORIES**

A. [§ 601] Categories

The PAC shall have a total of Twenty members selected according to the following categories (and numbers):

- a) Four Residential Tenants
- b) Four Residential Owner Occupants
- c) One Business Owner with businesses located north of Polk Avenue.
- d) One Business Owner with businesses located south of Polk Avenue.
- e) Four Community Organizations - At-large (Must be residents).

Six additional members will be designated in the following categories (and numbers)

- a) One Normal Heights Planning Committee representative.
- b) One Kensington - Talmadge Area Planning Committee representative.
- c) One City Heights Area Planning Committee representatives.
- d) One City Heights Business Improvement District representative appointed by the City recognized group that represents University Avenue businesses.
- e) One El Cajon Boulevard Business Improvement District representative appointed by the City recognized group that represents El Cajon Boulevard businesses.
- f) One City Heights Town Council representative.

Members designated from the following organizations must also be residents within their organizational boundary: One City Heights Area Planning Committee and One City Heights Town Council.

Members designated from the following organizations must have a business located within the City Heights Redevelopment Project Area: One City Heights Business Improvement District and One El Cajon Boulevard Business Improvement District.

Redevelopment Law allows for the designation of other community-based organization to ensure broad-based participation in the redevelopment process.

B. [§ 602] Community Organizations

Community organizations include non-profit organizations, such as the following:

1. Social Service Organizations, and Civic/Cultural Organizations.

- a. "Social Service Organizations" are charitable organizations that have as their focus

the provision of support services within the Project Area such as shelter, food and clothing, counseling, and medical assistance;

b. "Civic/Cultural Organizations" are:

1. Civic organizations that have as their focus, the betterment of all or a portion of the Project Area by the promotion of activities and events regarding planning, business conditions, or quality of life.
2. Cultural Organizations - organizations that have as their focus the preservation of ethnic culture, historical preservation, music, theater, dance, art and similar programs within the Project Area.

Community Organization representatives shall be elected by all individual voters as well as voters voting on behalf of community organizations.

C. [§ 603] Vacancies in Membership Categories

Should there be an insufficient number of candidates elected to each category of the membership of the PAC, such seats may remain vacant until qualified candidates apply to the PAC, and are nominated and appointed by a majority vote of PAC members present. The existence of vacancies shall not prevent the PAC from carrying out its duties as required by the Law.

VII. [§ 700] **ELECTION PROCESS**

City Council approval of a one-year PAC extension is required prior to the actual election date.

City Council approval for the annual PAC election is required prior to noticing and conducting the election.

Any person eligible to be a candidate in more than one membership category must choose one of the membership categories. Proof of eligibility must be provided for the category chosen.

A. [§ 701] Eligibility Requirements for Residents

Eligibility requirements for candidates are the same as for voters.

Candidates and voters in the Residential Owner-Occupant category must present proof that they own the property on which they reside and that they are 18 years of age or older.

Proof of eligibility for Residential Owner-Occupant category may include any of the following documents and materials, as applicable:

- 1) Property tax bill
- 2) Mortgage payment statement
- 3) Mortgage payment book
- 4) Current County Assessor property owner listing.
- 5) Any other documents or materials which the Agency may deem acceptable.

Candidates and voters in the Residential Tenant category must present proof that they are 18 years of age or older and rent or lease their residence in the Project Area.

Proof of eligibility for resident tenants may include any of the following documents and materials, as applicable:

- 1) California Driver's License
- 2) California identification card
- 3) Housing Commission or rental assistance contract
- 4) Utility (other than water) bill
- 5) Any other documents or materials which the Agency deems acceptable.

Eligibility documentation must be current and must indicate the correct name of the individual and the qualifying address of her/his residence, as appropriate.

B. [§ 702] Eligibility Requirements for Business/Property Owners

Eligibility requirements for candidates are the same as for voters.

Candidates and voters in the Business/Property Owner category must present proof that she or he is 18 years of age or older and owns a business/property located within the Project Area. Proof of eligibility for business owners require two (2) forms of proof with at least one including any of the following documents and materials, as applicable:

- 1) Business Tax Certificate
- 2) Property tax bill
- 3) Water utility bill
- 4) Current County Assessor property owner listing
- 5) Lease
- 6) Deed to property
- 7) Any other documents proving business activity is conducted at the address indicated on the Business Tax Certificate or materials the Agency may deem acceptable.

Eligibility documentation must be current and must indicate the correct name of the individual and the qualifying address of his or her' business, as appropriate.

No more than one stockholder or officer of a corporation may be registered as a voter or

candidate on behalf of that corporation. Owners of multiple businesses and properties within the Project Area shall cast one ballot only.

A business or property owner (BUSINESS category) may either vote by him/herself or may designate in writing (with appropriate documentation) one person, who is an employee, to vote as proxy on behalf of that business or property. The business or property designating a person to vote as proxy must submit the authorization, in writing and with appropriate documentation, at least 72 hours prior to the election.

C. [§ 703] Eligibility Requirements for Community Organization Representatives

Each community organization shall be entitled to designate one person to: (a) vote on its behalf and (b) be a candidate to represent the organization on the PAC.

In order to determine the eligibility of a representative from a community organization for membership on the PAC, a person must present proof that she or he is 18 years of age or older and must submit the following:

- 1) Existence of the organization at least two years prior to any PAC election for which they are a candidate;
- 2) Existence and active operation within the Project Area, as such articles of incorporation, by-laws, non-profit certification, business license or such other documentation;
- 3) A resolution or minutes of the organization's legislative or executive body designating its representative and authorizing such person to act on its behalf, and
- 4) Such other documentation which the Agency may deem necessary to carry out the intent of this Section.

Eligibility requirements for candidates are the same as for voters.

D. [§ 704] Candidate Information Forms

In order to facilitate the election of a representative PAC, any person desiring to serve must complete and provide the Agency with a "Candidate Information Form" no later than the time set by the Agency, which shall be no less than ten (10) days after the public meeting to explain the PAC as provided in Section 401 of this Procedure.

Copies of the "Candidate Information Forms" will be made available at the PAC formation meeting(s) and will otherwise be available by the Agency on request.

The Candidate Information Forms will call for the following information:

- 1) The name and address of the candidate; including "qualifying address", if different;

- 2) The membership category for which the candidate is running; and
- 3) A brief statement of the candidate's qualifications to be made available for the election meeting.

All candidates must submit a signed Candidate Information Form and proof of eligibility to serve on the PAC at least 72 hours prior to the election, furthermore no write-in candidates shall be allowed.

E. [§ 705] Registration to Vote

Prior to the election, any person desiring to vote must complete a "Certification of Eligibility to Vote" form and provide proof of eligibility to vote as described in Sections 701 and 702 of this Procedure. Eligible voters will be given one ballot which will contain all the categories.

F. [§ 706] Candidate Speeches

All candidates from each membership category shall be given a reasonable opportunity to make a speech at the regularly scheduled or special public meeting of the PAC prior to the election. The Agency shall establish the period of time allowed for each speech, taking into consideration the number of candidates and other circumstances surrounding the election.

G. [§ 707] Campaigning Restrictions

No Campaigning shall take place within 100 feet of the polling place the day of the PAC elections. The restriction does not apply to the opportunity for candidates to make speeches as provided for in Section 706, prior to the polls opening.

H. [§ 708] Balloting

Crossover voting between categories of Residential Owner Occupants, Residential Tenants, and Business Owners is prohibited.

Each voter will receive ballot (s) in the categories in which she or he is eligible to vote.

The following ballots shall be provided:

1. Residential Tenant
2. Residential Owner Occupant
3. Business Owner with business located north of Polk Avenue
4. Business Owner with business located south of Polk Avenue
5. Community Organizations

All persons other than those selected to vote on behalf of community organizations will be allowed to cast votes in a total of two categories, one in the chosen category and one in the Community Organization category. Voters will vote for as many candidates as there are seats open in the category. Persons selected to vote on behalf of a community organization will be allowed to cast a vote only for that category unless they are also registered in another category as an individual.

Voting shall be conducted by secret ballot. The Agency may set up private booths, but such booths are not required. The Agency shall make a reasonable effort to insure private voting. Simply folding the ballot and passing it to an authorized election assistant will suffice. No Absentee voting is allowed.

The tallying of ballots shall occur at the meeting, but in a manner so as not to disturb the rest of the election meeting. The public shall be invited to observe, but there shall also be representative from the City Clerk's office to provide official verification.

I. [§ 709] Results

The Agency shall announce the winners of each membership category as soon as reasonably possible after balloting is completed and the election is officially closed. The candidates with the highest number of votes in each membership category shall be elected. In the event of a tie vote a representative from the City Clerk's office will administer a coin toss in order to resolve the tie vote.

The Agency staff shall announce that the election results (including ballots) will be kept for presentation to the City Council, in order to address any challenges. Any challenges to the election of any member to the PAC must be made in writing and submitted to the City Council within fifteen (15) day after the election. Any challenge must be directed to the propriety of the election itself, and not to the results (except in so far as the election procedures affected the results). The City Council shall use its reasonable discretion to resolve any questions presented by the challenges. The decision of the City Council shall be final.

VIII. [§ 800] **GENERAL PROVISIONS**

A. [§ 801] Implementation

The Agency is authorized to formulate and take all actions necessary or appropriate to implement this Procedure consistent with the Procedure and the Law.

B. [§ 802] Agency Costs

The Agency may charge fees to persons purchasing or leasing property from the Agency in the Project Area and to persons participating in redevelopment of the Project Area under an

owner participation agreement to defray any cost to the Agency of the City Council of complying with this Procedure.

C. [§ 803] Compensation of PAC Members

The members of the PAC shall serve without compensation.

IX. [§ 900] **AMENDMENT OF PROCEDURE**

The City Council may amend this Procedure to make any necessary adjustments or changes to effectively form and select a representative PAC.