

DATE ISSUED: January 18, 2005

REPORT NO. 05-011

ATTENTION: Honorable Mayor and City Council
Agenda of January 25, 2005

SUBJECT: Proposed amendments to the City's Land Development Code and Local Coastal Program.

REFERENCE: Planning Commission hearing of December 16, 2004, Report No. 04-235

SUMMARY:

Issue – Should the City Council approve a proposed amendment to the Land Development Code to change the definition of “Applicant” and “Application Process” to ensure that Redevelopment Projects with approved Disposition and Development Agreements can start the permit entitlement review process.

Manager's Recommendation:

Approve the proposed Land Development Code Amendment and Local Coastal Program.

Other Recommendations: On December 16, 2004, the Planning Commission unanimously (6-0-0) recommended approval of the proposed amendment to the Land Development Code to clarify that the definition of “Applicant” and “Application Process” includes any redevelopment proposal with an approved and executed Disposition and Development Agreement (DDA).

Environmental Review: The proposed amendment to the Land Development Code does not constitute a "project" and is therefore exempt from the California Environmental Quality Act pursuant to section 15060(c)(3) of the State CEQA Guidelines.

Fiscal Impact: No direct fiscal impact on the City. However, it is anticipated that the proposed amendments to the Land Development Code could result in significant cost savings for redevelopment projects by providing faster schedules and more predictability in project submittal and permit entitlement processing. Additionally, these cost savings could lead to reductions in the need for public subsidies on some redevelopment projects.

BACKGROUND:

Under the City’s existing Land Development Code (LDC), an applicant cannot “begin” (i.e. submit application for) the permit entitlement process with the Development Services Department until they can demonstrate they have “a legal right, interest, or entitlement” to all parcels / properties inclusive of a proposed development plan (LDC §113.0103). As this definition is currently worded, it is unclear whether a proposed redevelopment project proposal with an approved / executed Disposition and Development Agreement (DDA) would meet the requirements of the LDC. As a result, several redevelopment projects (including affordable housing projects) are facing extreme delays, because staff does not have clear authority to start reviewing the projects for their entitlements.

Given the preceding circumstances, an amendment to the LDC (Attachment 1), is proposed to clarify the definition “Applicant”, thereby allowing redevelopment projects to begin the entitlement review process, as long as the Agency has approved and executed a DDA for the project. The amendment would not change any of the requirements for the approval of entitlements – projects would still need to come before the Hearing Officer, Planning Commission and/or City Council for approval, as currently required.

DISCUSSION

The proposed LDC amendment is intended to address redevelopment projects where some degree of land assembly is required. In many cases, the Agency Board may wish to support a redevelopment project, but the developer of the project has not finished acquiring all of the property necessary to build the project. After holding a public hearing, the Agency Board may elect to enter into a Disposition and Development Agreement (DDA) to assist the project with financial subsidies and/or with assembling property.

As part of the DDA, the Agency would typically agree to use its best efforts to complete land assembly for the project, in the event that the developer is unable to buy the properties. Thus, by entering into a DDA, the Agency and the developer have a high degree of certainty that they will be able to acquire the property needed for their project.

However, even with Agency assistance, the process of land assembly can take years to complete. During this time, it is crucial for the project to begin the public review process, so that:

- (1) The costs and feasibility analysis of the proposed project can become more clearly understood.
- (2) The City has a chance to identify and address potential issues (e.g., traffic, offsite improvements, environmental mitigations) associated with the proposed project.
- (3) The public has an opportunity to provide valuable and timely input on proposed project designs.
- (4) The project can apply for other State and/or Federal funding assistance in a timely manner.

As previously noted, the LDC’s existing definition of “Applicant” does not clearly address the situation where an Applicant has obtained a DDA (which will allow them to complete land assembly in the future) but has not yet completed land assembly. Experience has shown that this lack of clarity

in the definition of “Applicant” can result in extreme delays for redevelopment project processing, primarily because the project may not be able to start the City’s permit entitlement review process until after the last parcel has been acquired.

These delays are particularly damaging to projects that include affordable housing elements, especially from the standpoint of timing and processing costs for such projects. Affordable housing projects typically rely on funding from local, State, or Federal programs (e.g., the California Tax Credit Allocation Committee “TCAC” programs) that have stringent deadlines. Thus, delays to the entitlement review process can force an affordable housing program to miss these deadlines, which in turn may endanger funding for the entire project.

Furthermore, the timely review and approval of development entitlements are critical in an environment of rapidly rising land and construction costs. For many redevelopment projects, increased project costs will generally result in a direct increase in the need for public subsidies and/or the required removal of design enhancements or public amenities.

From a technical standpoint, the proposed amendment to the Land Development Code will consist of the following section changes:

- (1) Change the definition of “Applicant” (LDC §113.0103) to include “any redevelopment project proposal with an approved and executed Disposition and Development Agreement with the San Diego City Council / Redevelopment Agency”(Attachment 1); and
- (2) Clarify the “Application Process” (LDC §112.0102) to allow applicants to begin the entitlement review process if they have obtained “an approved and executed Disposition and Development Agreement with the Redevelopment Agency of the City of San Diego” (Attachment 2).

It should be noted that the proposed LDC amendment would not change any of the requirements for the approval of entitlements. It simply would provide the clear legal authority to start the entitlement review process sooner. A developer would still have to obtain ownership of the development site, or receive written approval from all property owners, before any building permits could be issued. Projects which would benefit from the proposed clarification of these sections of the LDC would still need to come before the Hearing Officer, Planning Commission and/or City Council for approval, as they currently do.

Local Coastal Program Amendment:

The proposed amendment could potentially affect existing properties located within the City’s coastal zone boundaries. As such, the proposed action will also require approval of an amendment to the City of San Diego’s Local Coastal Program. Final approval of the proposed Land Development Code Amendment is subject to certification by the California State Coastal Commission. As such, the amendment will not become effective for those areas within the City’s recognized coastal zone boundaries until final certification by the Coastal Commission has occurred.

CONCLUSION

It is recommended that the City Council approve the proposed amendment to sections 112.0102 and 113.0103 of the Land Development Code relative to providing clarity to the current definition of “Applicant” and “Application Process”. The proposed LDC amendment would allow redevelopment projects to begin the permit entitlement review process as long as the Agency Board has approved and executed DDA’s for such projects.

In preparation for this public hearing, staff sent a public notice to the members of all recognized community planning groups (City-wide), as well as to the chairs of all Redevelopment Project Area Committees (PACs).

Pursuant to obtaining City Council approval of the requested code clarification, the proposed amendment to the LDC will be forwarded to the California State Coastal Commission for final certification.

ALTERNATIVE

Do not approve the LDC Amendment. This alternative is not recommended because it could lead to significant delays, cost increases, increased need for public subsidies and increased chance of failure for Redevelopment Agency projects.

Respectfully submitted,

Hank Cunningham
Assistant Executive Director,
Redevelopment Agency of the City of San Diego

Bruce Herring
Deputy City Manager

Note: Attachments are not available in electronic format. A copy for review is available in the Office of the City Clerk.

Attachments:

1. Proposed Amendment to Land Use Development Code Section 113.0103
2. Proposed Amendment to Land Use Development Code Section 112.0102
3. Map of adopted Redevelopment Project Areas (City of San Diego)