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REPORT TO THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

SDSU WEST CAMPUS RESEARCH CENTER, STADIUM AND RIVER PARK INITIATIVE

INTRODUCTION

At the request of the Mayor and several City Councilmembers, the Office of the City Attorney conducted a review of a citizen's initiative titled the "SDSU West Campus Research Center, Stadium and River Park Initiative" (SDSU West Initiative or Initiative).[1] The Initiative proposes the sale of approximately 132 acres of City-owned real property, which includes the SDCCU (formerly Qualcomm) Stadium (Existing Stadium Site or Site),[2] to "San Diego State University, a California State University, with authority delegated by the Board of Trustees of the California State University, which is the State of California acting in its higher education capacity; and any SDSU auxiliary organization, entity, or affiliate. As defined, SDSU is a public university; and as such, acts in its capacity as a state public agency."[3] Initiative, § 3, 22.0908(x)(12), p. 11.

This Report distinguishes between San Diego State University, the State public governmental agency with authority delegated by the Board of Trustees of the California State University (State Board of Trustees), and SDSU auxiliary organizations, entities, or affiliates, because they are distinct bodies with different rights and responsibilities. *See* note 3. Any reference to "SDSU, et al." includes all potential purchasers to whom the Site may be sold as defined in the Initiative. A reference to "SDSU" means the state public agency only.

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[1] The Initiative is on file in the Office of the City Clerk for the City of San Diego (City Clerk).

[2] The map attached to the Initiative as Section 8, Exhibit A (page A-1) shows the property proposed to be sold. A copy of the map is attached as Attachment 1 to this Report.

[3] Courts have held that auxiliary organizations of the California State University system are non-governmental entities, which are not part of the State body they aid or assist. *See California State University v. Superior Court*, 90 Cal. App. 4th 810 (2001); *Coppernoll v. Board of Directors*, 138 Cal. App. 3d 915, 918 (1983); *Wanee v. Board of Directors*, 56 Cal. App. 3d 644, 648-49 (1976). California Education Code section 89901 defines "Auxiliary Organization" of the California State University system to include many types of entities. There are currently four identified SDSU Auxiliary Organizations: Associated Students, Aztec Shops, San Diego State University Foundation, and The Campanile Foundation. This Office could not locate definitions for an SDSU entity or affiliate in the Initiative, statutes, or case law.

On October 9, 2017, the Initiative proponents[4] submitted a notice of intent to circulate a petition to the City Clerk.[5] The Initiative proponents state that the Initiative's purpose and intent is to "[a]dopt a new legislative policy of the City of San Diego (City) authorizing, directing, and providing the means for the sale of" the Existing Stadium Site to SDSU, et al., "for Bona Fide Public Purposes," and to "[i]mplement this legislative policy by amending the San Diego Municipal Code to add Section 22.0908" to Chapter 2, Article 2, Division 9.[6] Initiative, § 2(A)(1) and (2), pp. 1-2.

On January 16, 2018, the Initiative proponents submitted the Initiative petition to the City Clerk. On February 15, 2018, the San Diego County Registrar of Voters and City Clerk certified that the petition had sufficient signatures to qualify for a ballot. SDMC § 27.1034.[7] The petition will be presented to the San Diego City Council (Council), which will decide either to adopt the Initiative outright as written, or reject it and submit it to voters. *Id.* The Council may not amend the Initiative. *Id.* The Charter states that a citizen's initiative that qualifies for the ballot is to be submitted to City voters at the next citywide general election on which the measure legally can be placed (in this case, November 2018) or at a citywide special election held prior to that election if the Council desires. San Diego Charter § 23.[8] At an election, the Initiative would require a majority vote to pass. SDMC § 27.1043.

On June 29, 2017, the Council voted to declare its intention to submit the San Diego River Park and Soccer City Initiative (Soccer City Initiative) to voters on the November 2018 ballot.[9] This Office strongly recommends that the Council not adopt the SDSU West Initiative outright, and instead place it on the same ballot as the Soccer City Initiative to ensure fair consideration of both initiatives by the electorate. This Office is reviewing the legal implications if both initiatives were to pass at the November 2018 election.[10]

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[4] The proponents of the Initiative are Jack McGrory and Stephen P. Doyle, who signed the Statement of Reasons included in the Initiative petition. San Diego Municipal Code (Municipal Code or SDMC) §§ 27.1008 and 27.1010. SDSU is not the Initiative proponent.

[5] An initiative petition may not be circulated for signatures until the proponent has published a notice of intention to do so in at least one daily newspaper of general circulation. SDMC § 27.1002.

[6] The Statement of the Reasons for the Proposed Action as Contemplated in the Petition is attached as Attachment 1 to this Report.

[7] The San Diego Charter (Charter) requires the Council to adopt an election code ordinance providing procedures to govern municipal elections, including initiatives. San Diego Charter §§ 8, 23. The City's procedures regarding initiatives are set forth in Municipal Code sections 27.1001 through 27.1051.

[8] The term "general election" refers to November elections, not those held in June. San Diego Charter § 10.

[9] The resolution expressing this intent did not operate to actually place the Soccer City Initiative on the November ballot. The Council will need to adopt an ordinance placing the Soccer City Initiative on that ballot after the November election has been called by separate ordinance.

[10] Both the SDSU West Initiative and the Soccer City Initiative state that they should not be interpreted to operate in conjunction with any conflicting initiative, if two initiatives pass. *See, e.g.*, SDSU West Initiative, § 5, p. 12; Soccer City Initiative, § 12, p. 32. In addition, if both initiatives are approved by the voters, and the initiative that receives the higher number of votes is later held to be invalid, both initiatives require that the second place initiative be "given immediate effect and full force of law." *See* SDSU West Initiative, § 5, p. 12; Soccer City Initiative, § 12, p. 32. The legal effect of that clause requires further evaluation.

This Report explains the SDSU West Initiative and follows the same format as our prior Report dated May 23, 2017, concerning the Soccer City Initiative (Soccer City Report).[11] This Office attempted to answer all of the same questions that were addressed in the Soccer City Report. However, not all questions were applicable based on the different content of the initiatives.[12] In place of the omitted questions, this Office added the following new questions to fully analyze the SDSU West Initiative: "I. Will adoption of the Initiative require the Site to be sold to SDSU?", "IV. How will development on the Site be determined?", and "V. Will adoption of the Initiative require that the development outlined in the Initiative be built?"

This Report contains an overview of the main terms of the Initiative.[13] Therefore, this Office recommends that the Initiative be read in its entirety. Nothing contained in this Report should be interpreted to indicate support for or opposition to the Initiative.

BACKGROUND

As a preliminary matter, the Initiative is difficult to analyze because there are many uncertainties, including:

- the purchaser of the Existing Stadium Site, which could be either SDSU or a non-governmental entity;[14]
- the terms of a Purchase and Sale Agreement that would be negotiated between the City and the purchaser;[15]
- what development plan will be adopted for the Site after the sale;[16]
- the content of the environmental review for the proposed development, including project impacts and mitigation measures;[17]
- the remedies available if the purchaser does not comply with the terms of the Initiative; and
- whether the State's development regulations and processes would apply to the Site after the sale, rather than the City's.[18]

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[11] *See* City Att'y Report 2017-1 (May 23, 2017).

[12] The following questions were deleted: "I. Will adoption of the (Soccer City) Initiative bring Major League Soccer to San Diego?", "X. What rights does the (Soccer City) Initiative give to San Diego State University?", and "XI, Would a new (stand-alone National Football League) football stadium be built?"

[13] The Initiative includes novel and untested issues, as well as seemingly contradictory provisions. If the Initiative is adopted, there will be many details to clarify and resolve during the implementation, and the parties to a Purchase and Sale Agreement or a court will need to interpret some of the terms.

[14] *See* Initiative, § 3, 22.0908(x)(12), p. 11.

[15] *See* Initiative, § 3, 22.0908(z), p. 11.

[16] *See* Initiative, § 3, 22.0908(f), (r), and (x)(12), pp. 7, 8, 9, and 11.

[17] The Initiative itself will not be reviewed pursuant to the California Environmental Quality Act (CEQA) prior to its presentation to the Council. Ordinances enacted by initiative, whether directly or by election, are not subject to CEQA review. *Tuolumne Jobs & Small Bus. Alliance v. Superior Court*, 59 Cal. 4th 1029, 1040-42 (2014). The Initiative states that SDSU would prepare an environmental impact report (EIR) during the Campus Master Plan revision process, but that statement does not bind the decision of the State Board of Trustees, which would determine the appropriate type and content of the CEQA review. *See* Initiative, § 2(B)(5), § 3, 22.0908(f) and (x)(12), pp. 3, 7, and 11. *See* Question IV.

[18] The extent of potential City jurisdiction cannot be fully analyzed until the purchaser of the Site is known. If the Site is purchased by SDSU, the Site would be developed pursuant to State law, and the City's development

In brief summary, the Initiative is a City of San Diego-wide initiative proposed by private individuals, not SDSU. The language in the Initiative does not bind SDSU. *See* note 24. While the new Municipal Code section would govern the City's actions regarding the sale of the Existing Stadium Site to SDSU, et al., it could not require SDSU to take any particular actions. If the Existing Stadium Site is sold to SDSU, the State Board of Trustees will determine the use of the Site in its sole discretion.[19] The Initiative allows SDSU, et al., to develop any "good faith or genuine use or uses for public or government purposes" on the Site, subject to State requirements. *See* note 25. The City has no jurisdiction over SDSU now or as a result of the Initiative. Therefore, if the Existing Stadium Site is sold to SDSU, the City's development regulations and processes would not apply, regardless of the terms of the Initiative.

Under the Initiative, the City of San Diego would adopt a "new legislative policy" to authorize, direct, and provide the means for the sale of the Existing Stadium Site to SDSU, et al., "for Bona Fide Public Purposes." Initiative, § 2(A)(1), p. 1; *see* note 25. This new "policy" states that the City "shall sell" the Existing Stadium Site to SDSU, et al., in accordance with the Charter, but only if the sale is in compliance with the conditions established in the Municipal Code provision to be added by the Initiative. Initiative, § 3, 22.0908, p. 5. The sale "shall be at such price and upon such terms as the Council shall deem to be fair and equitable and in the public interest."[20] Initiative, § 3, 22.0908(a), pp. 5-6.

The Initiative states that the "sale shall provide for the development of":

- a new Joint Use Stadium with approximately 35,000 seats;
- a River Park, public trails and open space;
- recreation space and parks;
- practice and recreation fields; and
- facilities for educational, research, entrepreneurial and technology programs constructed in phases and comprised of:
    - academic and administrative buildings and classrooms;
    - commercial, technology, and office space;
    - retail uses;
    - hotels;
    - faculty and staff housing;
    - graduate and undergraduate student housing;
    - apartment-style homes for the local community;
    - other market-rate, workforce and affordable homes; and
    - trolley and other public transportation uses and improvements.

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regulations and processes would not apply. *See* Cal. Gov't. Code §§ 53090, 53091. However, if the Site is purchased by or transferred to an SDSU auxiliary organization, entity, or affiliate, further research would be required to determine whether the City's development regulations and processes would apply. *See* note 3.

[19] The Initiative language appears to track the State requirements for planning and development of California State University facilities.

[20] Because any sale of the Existing Stadium Site is subject to the Council's discretionary approval, appropriate CEQA review is required before the City sells the Site. *See, e.g.*, Cal. Pub. Res. Code § 21065; Cal. Code Regs. title 14, §§ 15004, 15357, 15378. This review is not discussed in the Initiative, but would be required by State law, in addition to the CEQA review performed for the Campus Master Plan revision.

Initiative, § 3, 22.0908, pp. 6-7.[21, 22]

The Initiative does not contain a Specific Plan that will control the development of the Existing Stadium Site.[23] Instead, the Initiative states that after the sale, "the Existing Stadium Site shall be comprehensively planned through an SDSU Campus Master Plan revision process." Initiative, § 3, 22.0908(f), p. 7. The Campus Master Plan is the blueprint that guides the future development of SDSU facilities, based on academic goals and projected student enrollment levels for an established time period. Initiative, § 3, 22.0908(x)(2), pp. 9-10; *see* Cal. Educ. Code § 67504(c)(1). According to the Initiative, the Campus Master Plan revision process "requires full compliance with" CEQA and California Education Code section 67504, subdivisions (c) and (d). Initiative, § 3, 22.0908(f), p. 7. These California Education Code provisions govern the California State University master planning process.

The Initiative further states that the planning process will provide "ample opportunities for public participation, including but not limited to input from the Mission Valley Planning Group." *Id.* Although "not required by the SDSU Campus Master Plan revision process, SDSU shall use the content requirements of a Specific Plan, prepared pursuant to California Government Code section 65451, subdivision (a)." Initiative, § 3, 22.0908(g), p. 7.

Once completed, the Campus Master Plan revision must be approved by the State Board of Trustees.[24] *See* Cal. Educ. Code § 66606. The State Board of Trustees is vested with full power and responsibility for the construction and development of any California State University campus, and any buildings or other facilities or improvements connected with the California State University system. *Id.* Therefore, the final development plan for the Existing Stadium Site will not be known until the Campus Master Plan revision process is complete, CEQA review has been performed, and the State Board of Trustees grants its approval.

DISCUSSION

I. WILL ADOPTION OF THE INITIATIVE REQUIRE THE SITE TO BE SOLD TO SDSU?

No. The stated purpose and intent of the Initiative is to "[a]dopt a new legislative policy of the City of San Diego." Initiative, § 2(A)(1), p. 1. The "legislative policy" does not require that the City sell the Existing Stadium Site under any and all conditions, and expressly authorizes a sale to parties other than SDSU. Initiative, § 3, 22.0908(x)(12), p. 11. The Initiative authorizes, directs, and provides the means for the sale of the Existing Stadium Site "for Bona Fide Public Purposes"[25] and "at such price and upon such terms and timing as the City Council shall deem to

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[21] The Initiative does not define or explain the term "shall provide for the development of."

[22] Numerous provisions of the Initiative are included in multiple places. Citations in this Report to the Initiative will not include every place where a term is mentioned.

[23] The Initiative does not adopt or amend any zoning ordinance or any other similar document (e.g., general plan or community plan). Initiative, § 2(B)(19), p. 5.

[24] Nothing in the Initiative "abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University." Initiative, § 3, 22.0908(x)(12), p. 11.

[25] The Initiative defines "Bona Fide Public Purposes" as "a good faith or genuine use or uses for public or government purposes such as public university uses or facilities; institutional uses or facilities; offices; buildings;

be fair and equitable and in the public interest." Initiative, § 2(A)(1), p. 1. This "policy" would be implemented by adding Section 22.0908 to Chapter 2, Article 2, Division 9 of the San Diego Municipal Code. Initiative, § 2(A)(2), p. 2.

The new Municipal Code section provides that the City "shall sell" the Existing Stadium Site to SDSU, et al., in accordance with the Charter, but only if the sale is in compliance with the 26 conditions included in the new Municipal Code section, attached as Attachment 2 to this Report. Initiative, § 3, 22.0908, pp. 5-11.[26] The Initiative does not mandate that SDSU, et al., purchase the Existing Stadium Site within a certain time period, or at all. If the Council approves the sale of the Existing Stadium Site to SDSU, et al., the action would be subject to veto by the Mayor. San Diego Charter § 280.

II. HOW WOULD THE TERMS FOR A SALE OF THE SITE BE DETERMINED?

Normally, the Mayor determines whether a particular City-owned property is needed for current or future City needs. *See* Council Policy 700-10; San Diego Charter §§ 28, 260, 265. If the Mayor determines that a particular property is not needed for municipal uses, the Mayor then determines whether the property should be leased or sold. *Id.* If the Mayor determines that a sale is appropriate, the Mayor markets the property, negotiates with potential purchasers, and requests authorization from the Council to sell the property.[27] *Id.* Generally, the Council must authorize sales of City-owned real property, and in some instances a vote of the electorate is required.[28] *See* San Diego Charter §§ 219, 221; SDMC §§ 22.0902, 22.0904, 22.0907.

If adopted, the Initiative would amend the Municipal Code to add Section 22.0908 to Chapter 2, Article 2, Division 9, titled "Sale of Real Property to SDSU," which would provide for the City to sell the Existing Stadium Site to SDSU, et al., if the sale is in compliance with the conditions in the Initiative. Initiative, § 3, 22.0908, pp. 5-11; *see* Attachment 2. The new section

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stadium, park, open space, trail, and recreation uses and facilities; academic uses and facilities; public parking; faculty, staff, student and residential market-rate and affordable housing; hotel uses and facilities to support university goals and objectives; and public-private partnership support uses and facilities, including but not limited to commercial, neighborhood-serving retail, research, technology, development, entrepreneurial, and residential uses, because all such uses, individually and cumulatively, promote or facilitate SDSU's higher education mission, goals, and objectives." Initiative, § 3, 22.0908(x)(1), p. 9.

[26] While the Initiative states that its purpose is to establish a "legislative policy," it also contains a statement that the "People of the City of San Diego desire to exercise their reserved power of initiative under the California Constitution and the City Charter to sell the Existing Stadium Site to SDSU." Initiative, § 2(B)(6). The Initiative does not address whether the City could sell the Site to an entity other than SDSU, et al., if an agreement is not reached, if the Council does not determine that the terms of the sale are fair and equitable and in the public interest, or if the Mayor vetoes the Council's action approving the sale. The Initiative cannot be amended without a vote of the people until 20 years after its adoption, which could prevent any development of the Site for 20 years if it is not sold to SDSU, et al. Initiative, § 7, p. 12. If the City has the authority to sell the Existing Stadium Site to an entity other than SDSU, et al., that sale would not be subject to the new section of the Municipal Code, which only applies to the sale to SDSU, et al. Initiative, § 3, 22.0908(aa), p. 11.

[27] The Council may either authorize the sale of the property generally, at or above a minimum sale price, prior to a specific Purchase and Sale Agreement being negotiated, or the Mayor may request that the Council authorize the terms and conditions of a specific Purchase and Sale Agreement.

[28] The Municipal Code authorizes the City Attorney to settle eminent domain cases under $50,000.00 without obtaining Council approval. SDMC § 22.0907.

would only be applicable to the sale of the Existing Stadium Site to SDSU, et al. Initiative, § 3, 22.0908(aa), p. 11.

The new Municipal Code section would alter the standard procedures for the sale of the Existing Stadium Site because the sale would not be subject to existing provisions in the Municipal Code pertaining to the sale of City-owned property. Initiative, § 3, 22.0908(b) and (aa), pp. 6, 11. Pursuant to the new section, the sale shall proceed without advertising for competitive bids. *Id.* Further, the new section requires that the Purchase and Sale Agreement include specific terms for the sale, and fixes the "fair market value" of the Existing Stadium Site as of October 9, 2017, regardless of when the Site is sold. Initiative, § 3, 22.0908, pp. 5-11; *see* Attachment 2.

The new section provides that the Mayor may negotiate a Purchase and Sale Agreement in compliance with the Initiative's terms. Initiative, § 3, 22.0908(z), p. 11. In some respects, the Initiative requires different terms than the City's standard Purchase and Sale Agreement. Although each Purchase and Sale Agreement is individually tailored to the sale, as appropriate, the City's standard agreement includes the purchase of the property "as is," and provides indemnification language to protect the City from liability. The Initiative does not include any City indemnification, and may subject the City to liability for any environmental contamination discovered on the Existing Stadium Site during development. *See* Question XIV. These issues could be addressed during the negotiation of a Purchase and Sale Agreement for the Site.

The Initiative states that the sale shall provide for the development of certain specified facilities on the Existing Stadium Site, but does not specify how that would occur. Initiative, § 3, 22.0908(c), pp. 6-7. The City and the purchaser would need to explore legal options to obtain that result during negotiation of the Purchase and Sale Agreement.[29] At this point, this Office cannot predict the terms of the Purchase and Sale Agreement.

Once a Purchase and Sale Agreement is negotiated, if the Council determines that the price and other terms of the sale are fair and equitable and in the public interest, the Council would then approve the sale by ordinance. San Diego Charter § 221. The Council approval would be subject to veto by the Mayor. San Diego Charter § 280. If the sale is to a non-governmental agency such as an SDSU auxiliary organization, the ordinance would require ratification by a public vote.[30] San Diego Charter § 221. A Purchase and Sale Agreement between the City and SDSU would be binding on the parties when approved by the Council and

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[29] For example, the City and SDSU, et al., could consider conditioning the sale on the development specified in the Initiative, and recording restrictive use covenants against the Site.

[30] Charter section 221 requires that the sale of more than 80 contiguous acres to a governmental agency for a bona fide governmental purpose be authorized by ordinance. If those terms are met, no public vote is required. If the sale is to a non-governmental agency or to a governmental agency for purposes other than a bona fide governmental purpose, the sale must first be authorized by ordinance, and then ratified by a vote of the electorate. This Office previously addressed the definition of "bona fide governmental purpose" for purposes of Charter section 221. *See* City Att'y MS 2017-19 (August 10, 2017). The Initiative states that "[t]he People find that [the purposes listed in the initiative] also constitute bona fide governmental purposes under City Charter section 221." Initiative, § 2(B)(6), p. 3. The legal effect of that clause requires further evaluation. If the Initiative's definition of Bona Fide Public Purposes is found to be inconsistent with the Charter, a second public vote on the sale to SDSU may be required.

the State Board of Trustees. This Office cannot predict how long it would take for these approvals to occur.[31]

III. HOW MUCH WOULD THE PURCHASER PAY TO THE CITY FOR THE SITE?

The Initiative does not establish the actual amount the City would be paid for a sale of the Existing Stadium Site. If the Initiative is adopted, the City would be required to determine a "fair market value" for the Existing Stadium Site. Initiative, § 3, 22.0908(x)(5), p.10. The Site's value must be determined as of October 9, 2017, the date the Notice of Intent to Circulate the Petition was filed, regardless of when the sale actually occurs. *Id.* The "fair market value" of the Site is not intended to include any increases in the Site's value caused by the passage of the Initiative or the passage of time. *Id.*

There are several factors included in the Initiative that the City may consider in making the "fair market value" determination of the Site. *Id.* These include independent appraisal(s) that consider the physical condition of the Site, the zoning of the Site, and other permits and approvals for development existing on October 9, 2017. *Id.* The Initiative also identifies a number of "factors, adjustments, deductions, and equities" that the City "may fairly consider" in determining the purchase price including, but not limited to, costs for demolition and removal of the Existing Stadium; costs associated with addressing current flooding concerns; costs of existing contamination; costs for revitalizing and restoring the adjacent River Park; and costs of avoiding, minimizing, and mitigating impacts to biota and riparian habitat. Initiative, § 3, 22.0908(d), p. 7.

IV. HOW WILL DEVELOPMENT ON THE SITE BE DETERMINED?

As discussed above, the Initiative does not contain a Specific Plan that will control the development of the Existing Stadium Site. Instead, the Initiative creates a new Municipal Code section that includes requirements for the sale and uses of the Site.[32] Initiative, § 3, pp. 5-11. The Initiative does not designate a specific number of acres that must be dedicated to each potential use on the Site, except to state that the "Existing Stadium Site shall reserve and improve an additional minimum of 22 acres as publicly-accessible active recreation space." Initiative, § 3, 22.0908(i), p. 8.[33]

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[31] It is unclear whether the City may consider the timing of the sale when determining whether the sale is fair, equitable, and in the public interest. The Initiative's Purpose and Intent section states "[s]uch sale shall be at such price and upon such terms *and timing* as the City Council shall deem to be fair and equitable and in the public interest." Initiative, § 2(A)(1), p. 1 (emphasis added). However, the Findings and new Municipal Code section do not mention timing. *See* Initiative, § 2(B)(1), p. 2, § 3, 22.0908(a), pp. 2, 5-6. The legal effect of those differences would require further evaluation.

[32] For example, the Initiative states that the sale shall require development within the Site to comply with certain requirements in the City's Municipal Code such as development impact fees, parkland dedication, housing impact fees, and affordable housing requirements. Initiative, § 3, 22.0908(l), p. 8. The Initiative also states that the sale and ultimate development would comply with the City's greenhouse gas (GHG) emission reduction goals. Initiative, § 3, 22.0908(m), p. 8.

[33] This 22 acres is in addition to the "34-acre San Diego River Park south of the Existing Stadium Site to be revitalized and restored." Initiative, § 3, 22.0908(i), p. 8. The 34-acre San Diego River Park would not be included in the sale of the Existing Stadium Site, and therefore would not be part of the SDSU Campus Master Plan revision process. *See* Question VIII.

The new Municipal Code section states that after the sale of the Existing Stadium Site to SDSU, et al., the Site "shall be comprehensively planned through an SDSU Campus Master Plan revision process, which process requires full compliance with" CEQA and the California Education Code. Initiative, § 3, 22.0908(f), p. 7. The Initiative also states that the planning process will include "ample opportunities for public participation, including but not limited to input from the Mission Valley Planning Group."[34] *Id.* Although "not required by the SDSU Campus Master Plan revision process, SDSU shall use the content requirements of a Specific Plan, prepared pursuant to California Government Code section 65451, subdivision (a)."[35] Initiative, § 3, 22.0908(g), p. 7.

However, if the Site is sold to SDSU, it will become State property, and the development process would be governed by State law, not the City's development regulations or processes. *See* note 18. As a result, while the Initiative would add new requirements to the Municipal Code, the City could not enforce those requirements against the State.[36]

SDSU is governed by the State Board of Trustees. Cal. Educ. Code § 66600. Nothing in the Initiative "abrogates, or is intended to abrogate, the authority of the Board of Trustees." Initiative, § 3, 22.0908(x)(12), p. 11. Therefore, the State Board of Trustees will make the ultimate use and development determinations for the Existing Stadium Site, in compliance with State law. The City would have no control over the SDSU Campus Master Plan process, or the CEQA review completed for the Master Plan.[37, 38]

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[34] The Mission Valley Planning Group is one of the City's local advisory Community Planning Groups. Applicants processing developments through the City are strongly encouraged to attend the local Community Planning Committee to obtain a recommendation. City of San Diego, Development Services Department, Information Bulletin 620 (Oct. 2016). That practice would not apply to projects processed through the State. This Office is not aware of the extent to which the State would consider local Community Planning Group input during the Campus Master Plan revision process.

[35] The Initiative does not reference California Government Code section 65451(b), which requires a statement of the relationship of the Specific Plan to the General Plan.

[36] The purchaser of the Existing Stadium Site may have the authority to negotiate compliance with these provisions as part of the Purchase and Sale Agreement. However, auxiliary organizations of the California State University system do not appear to have such authority, and it is unclear whether an SDSU entity or affiliate would possess such authority. *See* note 3. The terms of the Purchase and Sale Agreement cannot be known at this time, and will not be known until after adoption of the Initiative. The legal enforceability of any statements made by the Initiative proponents or SDSU before an election is unclear.

[37] If the CEQA review for the Campus Master Plan revision is legally inadequate, the City or any interested party could file a lawsuit. For example, when SDSU's Campus Master Plan was revised in 2005 to expand the campus and the State Board of Trustees declined to contribute its fair share of the costs to mitigate for off-campus traffic impacts, the City and other local agencies filed a lawsuit challenging the EIR prepared for the expansion. The California Supreme Court ultimately ruled in the City's favor. *City of San Diego v. Board of Trustees of the California State University*, 61 Cal. 4th 945 (2015).

[38] The Initiative states that the "sale shall require SDSU and the City to negotiate fair-share contributions for feasible mitigation." Initiative, § 3, 22.0908(s), p. 9; *see also* 22.0908(h), p. 7. California Education Code section 67504(d)(1) also addresses the mitigation by the California State University of off-campus impacts ("[i]t is the intent of the Legislature that the California State University take steps to reach agreements with local public agencies regarding the mitigation of off-campus impacts related to campus growth and development"). As part of the approval of an EIR concluding that the development in the Campus Master Plan revision would have significant impacts, the State Board of Trustees would be required to make findings regarding feasible mitigation. *See* Cal. Code Regs. title 14, § 15091. CEQA requires that project impacts be mitigated to the extent feasible. Cal. Pub. Res. Code § 21002; Cal. Code Regs. title 14, § 15126.4.

V. WILL ADOPTION OF THE INITIATIVE REQUIRE THAT THE DEVELOPMENT OUTLINED IN THE INITIATIVE BE BUILT?

No. There are several steps that must occur before the development outlined in the Initiative potentially could be built. In general, those steps are:

- the City would need to sell the Site to SDSU, et al., on the terms in new Municipal Code section 22.0908, which would include:
  - the Mayor negotiating a Purchase and Sale Agreement, including the sale price;
  - the completion of appropriate environmental review for the sale; and
  - the Council deeming the price and terms to be fair and equitable and in the public interest, and approving the sale.

- if SDSU purchases the Site:
  - SDSU must complete a Campus Master Plan revision process;
  - SDSU must complete environmental review pursuant to CEQA; and
  - the State Board of Trustees must approve the Campus Master Plan revision and the environmental review.

- if an SDSU auxiliary organization, entity, or affiliate purchases the Site:
  - further research into that specific body would be required to determine whether the City's development regulations and processes would apply;[39]
  - the appropriate regulations and processes must be followed, including environmental review pursuant to CEQA; and
  - if a non-governmental agency purchases the Site, the sale must be ratified by a public vote, pursuant to Charter section 221.

This Office cannot estimate how long those steps would take or when construction on the development ultimately approved by the State Board of Trustees could begin.

VI. DOES THE INITIATIVE REQUIRE A NEW STADIUM TO BE BUILT?

No. The Initiative says that "[t]he People of the City of San Diego desire a Joint Use Stadium, comprised of approximately 35,000 seats . . ." and "[t]he construction of the Joint Use Stadium shall be completed not later than seven years from the date of execution of the sales agreement." Initiative, § 2(B)(9), p. 4. The Initiative provides no time frame within which the sales agreement must be executed. The Initiative states that "[s]uch sale" of the Existing Stadium Site "shall provide for the development of [a] new Joint Use Stadium," but does not specify how that would occur. Initiative, § 3, 22.0908(c)(1), p. 6. As stated earlier, the planning process and CEQA review for the development of the Site will not occur until after the sale to SDSU, and the Initiative does not abrogate the authority of the State Board of Trustees as SDSU's governing board. Initiative, § 3, 22.0908(x)(12), p. 11. Therefore, the State Board of Trustees will make the ultimate use and development determinations for the Site, pursuant to State law.

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[39] *See* Background Section, pp. 3-4.

VII. WHAT HAPPENS IF A STADIUM IS NOT BUILT?

The City cannot compel SDSU, et al., to build a new Joint Use Stadium. As stated in the answer to Question IV, if the Site is sold to SDSU, development of the Site will not be governed by the City's development regulations and processes. There is no remedy included in the Initiative if a Joint Use Stadium is not built within seven years, or at all.[40]

VIII. DOES THE INITIATIVE REQUIRE THE PURCHASER TO BUILD THE RIVER PARK?

No. The Initiative states that "[t]he People of the City of San Diego desire revitalization and restoration of the San Diego River Park south of the Existing Stadium Site as envisioned by past community planning efforts . . ." and that the "River Park improvements [will] be made at no cost to the City General Fund and completed not later than seven years from the date of execution of the sales agreement." Initiative, § 2(B)(7), p. 3. There is no timeframe within which the sales agreement must be executed. The Initiative states that "such sale" of the Existing Stadium Site "shall provide for the development of" a River Park, although the Initiative does not specify how that would occur. Initiative, § 3, 22.0908(c), p. 6. The Existing Stadium Site to be sold to SDSU, et al., does not include the land for the River Park, which would remain under City ownership. *See* Initiative, § 2(B)(3), p. 3; Attachment 1. Therefore, the River Park would require separate planning and environmental review. *Id.* The Initiative does not address who would plan, build, and maintain the River Park, who would obtain any required permits, and how construction and other costs would be funded. There is no remedy in the Initiative if the River Park is not constructed within seven years, or at all. *See* note 40.

IX. DOES THE INITIATIVE REQUIRE THE PURCHASER TO BUILD THE OTHER PARKS?

No. The Initiative states that "[t]he People of the City of San Diego also desire the reservation and improvement of an additional minimum of 22 acres within the Existing Stadium Site as publicly-accessible active recreation space." Initiative, § 2(B)(8), p. 3. Further, the Initiative states that the sale of the Site shall provide for the development of "[p]assive and active recreation space, community and neighborhood parks," although the Initiative does not specify how that would occur, or when or where the parks must be built. Initiative, § 3, 22.0908(c)(3), p. 6. As stated above, if the Site is sold to SDSU, it would become State property, and the Board of Trustees would determine the use and development of the Site in its sole discretion. There are no remedies included in the Initiative if the parks are not built. *See* note 40.

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[40] It is not unusual to negotiate remedies as part of a Purchase and Sale Agreement. However, the Initiative makes no provision for the reversion of the Site to the City in the event that the development listed in the Initiative is not accomplished. Further, the Initiative also contains a provision that states "[S]uch sale and ultimate development shall not impair or preclude SDSU from engaging in SDSU-private partnerships with other entities or affiliates to finance, construct, and operate the resulting building and facilities on the Existing Stadium Site for a defined period of time." Initiative, § 3, 22.0908(o), p. 8. This provision may affect the remedies available to be negotiated.

X. WILL DEVELOPMENT OF THE RIVER PARK COMPLY WITH THE SAN DIEGO RIVER SUBDISTRICT REGULATIONS IN THE MUNICIPAL CODE?

Presumably yes. The Existing Stadium Site to be sold to SDSU, et al., does not include the land for the River Park. *See* Question VIII. Because the River Park property will remain under City ownership, any development in that area must comply with the Municipal Code, including the San Diego River Subdistrict regulations.

XI. WILL THE DEVELOPMENT INCLUDE AFFORDABLE HOUSING?

That is unclear. The Initiative states that the sale of the Site shall provide for the development of "affordable homes," and that such sale and ultimate development shall require compliance with the City's "housing impact fees/affordable housing requirements." Initiative, § 3, 22.0908(c)(5)(H) and (l), pp. 6-8. However, as stated above, if the Site is sold to SDSU, it will become State property, and will not be governed by the City's development regulations and processes. Therefore, the Municipal Code requirements for housing impact fees/affordable housing would not be applicable. While the Initiative would add new requirements to the Municipal Code, the City could not enforce those requirements against the State. *See* note 36.

XII. WILL THE DEVELOPMENT COMPLY WITH THE APPLICABLE AIRPORT LAND USE COMPATIBILITY PLANS?

Development of the Site must comply with the appropriate laws regarding airport land use compatibility. However, State buildings or State-owned property are subject to a different review process than projects subject to local agency approval. For example, according to the California Department of Transportation, Division of Aeronautics (DOT) website, one of the factors DOT evaluates before the State acquires property for a State building is consistency with adopted airport land use plans, if the proposed building is located within a certain range from an airport runway. *See California Dept. of Transportation, Division of Aeronautics, School & State Building Evaluations, General Considerations,* http://dot.ca.gov/hq/planning/aeronaut/documents/GeneralConsiderations.htm (last visited Feb. 8, 2018). The exact location of the Montgomery-Gibbs Executive Airport runways in relation to the potential development will need to be considered by the State during the planning process, along with other Federal and State laws, such as those regulating safety and noise. *See, e.g.*, 14 C.F.R. § 77.5; 2016 Cal. Bldg. Code, title 24, part 2, vol. 1, § 1207.4 (2017).

XIII. CAN THE COUNCIL CHANGE THE INITIATIVE OR REQUIRE THE DEVELOPMENT TO GO THROUGH THE PUBLIC HEARING PROCESS?

No. The language of the Initiative included in the Notice of Intent to Circulate Petition published in the newspaper on September 30, 2017, defines the Initiative's terms. *See* SDMC §§ 27.1001-27.1051. Under the City's elections ordinance, the Council must adopt or reject the Initiative as presented, but may not amend it. SDMC § 27.1034. If the Initiative is adopted either by the Council or the voters, no provisions can be changed before the 20th anniversary of the

adoption of the Initiative without a majority vote of the people. Initiative, § 7(A), pp. 12-13.[41] As stated above, if the Site is sold to SDSU, it is expected that SDSU will go through the Campus Master Plan revision process. No City public hearings would be required in connection with Site development.[42] The City has no jurisdiction over SDSU, now or as a result of the Initiative.

XIV. WOULD THE INITIATIVE REQUIRE CITY TAXPAYER FUNDS?

That is unclear.[43] The Initiative states that the City would not pay for any stadium rehabilitation costs, demolition or removal costs, cost overruns, or Joint Use Stadium operating costs, maintenance, or capital improvement.[44] Initiative, § 3, 22.0908(n), p. 8. Additionally, the Initiative states that it "will not raise or impose any new or additional taxes on City residents." Initiative, § 2(B)(17), p. 5.

The Initiative also states that "River Park improvements [will] be made at no cost to the City General Fund," but does not preclude the use of other City funds. Initiative, § 2(B)(7), p. 3. The Initiative does not state who will pay for the River Park improvements, which will be made on City-owned property. The Initiative does not specifically mention whether payment for the "improvements" would include the costs of developing plans and obtaining permits for the River Park, including the costs of CEQA review. At a minimum, the River Park anticipated in the Initiative will require City staff review (e.g., permitting, inspections, and project management). Normally, a private developer would pay the City for staff time spent processing its development, in accordance with Municipal Code sections 112.0201 and 112.0202. The Initiative makes no provision for the reimbursement of City staff time. Similarly, the Initiative does not address the costs of paying for the maintenance of the River Park, which will be located on City-owned property.

The Initiative also appears to anticipate that either the City or a third party (Kinder Morgan) would be responsible for any remediation required to address environmental contamination discovered on the Existing Stadium Site during development.[45] Initiative,

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[41] The Initiative further limits changes to those that do not impair the contractual or vested rights conferred by a lease, option agreement, or development agreement. Initiative, § 7(B), p. 13.

[42] *See* Question IV for a discussion of the State development and approval process described in the Initiative.

[43] If the measure is referred to the ballot, the Independent Budget Analyst, the Mayor or his designee, and the City Auditor will jointly prepare the official fiscal impact analysis for the ballot in accordance with the Municipal Code. SDMC § 27.0506.

[44] Until the Existing Stadium is demolished, the City is responsible for ongoing operation and maintenance costs, in the approximate annual amount of $12,000,000 (which would decrease once the Existing Stadium agreements expire in 2018 or if the City decided to close the Existing Stadium after the agreements ended). Regardless of whether the Existing Stadium is demolished, the City is responsible for paying off the outstanding bonds that were issued to fund improvements to the Existing Stadium. According to City staff, the outstanding amount of principal on the bonds is $36,965,000 as of June 30, 2017, and the final maturity date is in 2027.

[45] The Initiative states that it "will not alter any obligations under existing settlement agreements that pertain to [existing contamination on] the Existing Stadium Site and the San Diego River Park." Initiative, § 2(B)(14), p. 5; *see also* § 3, 22.0908(p), p. 8. These references appear to be to a Settlement Agreement and General Release that the City entered into with Kinder Morgan in June 2016 related to soil and groundwater contamination on the Existing Stadium Site from Kinder Morgan's Mission Valley Terminal, an aboveground tank farm facility located adjacent to the Existing Stadium Site. Settlement Agreement and General Release (June 30, 2016) (Kinder Morgan Agreement).

§ 2(B)(14), § 3, 22.0908(p), pp. 4-5, 8. Although the Regional Water Quality Control Board has issued "no further action" letters with respect to groundwater and soil contamination on the Site, it is possible that additional contamination remains. If contamination is discovered during development of the Site, it is not certain that the City could require Kinder Morgan to perform or fund any required remediation under the Kinder Morgan Agreement. This uncertainty could lead to litigation between SDSU, et al., and the City, as well as between the City and Kinder Morgan. Even if the City ultimately prevailed, the litigation costs could be significant. If the City did not prevail, it could be faced with the costs of remediating any environmental contamination discovered on the Site, along with the payment of attorney's fees. Absent SDSU, et al., agreeing to indemnify, defend, and hold the City harmless for all of the costs, damages, and claims associated with the environmental issues related to the Site, City taxpayer funds would be required to pay for these costs.

Additional City costs could include:

- costs to complete environmental review for the sale of the Existing Stadium Site, which cannot be estimated until the Planning Director determines the appropriate type of review;[46]

- election costs, if the sale of the Existing Stadium Site required that the ordinance approved by the Council be ratified by a vote of the electorate, either because it was to a non-governmental agency, or because it was to a governmental agency for non-bona fide governmental purposes; and

- costs triggered by the sale of the Existing Stadium Site (e.g., appraisal costs, closing costs, legal defense costs if the Initiative, or any actions taken by the City in furtherance of the Initiative such as approving a Purchase and Sale Agreement, are challenged in court).

City staff also reports that a sale of the Existing Stadium Site could potentially cause the City to lose substantial lease revenue and property tax revenue. In addition, the City could lose the ability to use a ground lease as collateral for lease revenue bonds.[47]

XV. WHAT WOULD HAPPEN IF A COURT HELD THAT PART OF THE INITIATIVE WAS ILLEGAL?

The Initiative provides that if any portion of the Initiative is determined by a court to be invalid, the remaining portions remain valid. Initiative, § 6, p. 12. Similarly, if any portion of the Initiative is declared invalid, the Council is instructed to cure the deficiencies and reenact those provisions, consistent with the intent of the Initiative. *Id.* However, because of the complexity of

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[46] Municipal Code section 128.0103 requires the Planning Director to conduct environmental reviews, including determining the type of environmental document required. Generally, the project applicant would pay the costs of the review. SDMC §§ 112.0201, 112.0202.

[47] The City may wish to commission a study of the financial impacts to the City if the Site is sold. Those issues are beyond the scope of this Report.

the Initiative, if any portion is deemed invalid, a court may need to determine the appropriate scope of any legal remedy.

XVI. CAN THE PURCHASER TRANSFER ITS INTERESTS IN THE SITE?

Yes. If the Initiative is adopted, "[s]uch sale shall not prohibit SDSU from leasing, selling, or exchanging any portion of the Existing Stadium Site to an entity or affiliate as part of a SDSU-private partnership/arrangement, or to an SDSU auxiliary organization." Initiative, § 3, 22.0908(r), pp. 8-9. Also, the "sale and ultimate development shall not impair or preclude SDSU from engaging in SDSU-private partnerships with other entities or affiliates to finance, construct, and operate the resulting buildings and facilities on the Existing Stadium Site for a defined period of time." Initiative, § 3, 22.0908(o), p. 8. The State Board of Trustees will make the ultimate use and development determination for the Existing Stadium Site, including whether the Site will be sold to a third party.

CONCLUSION

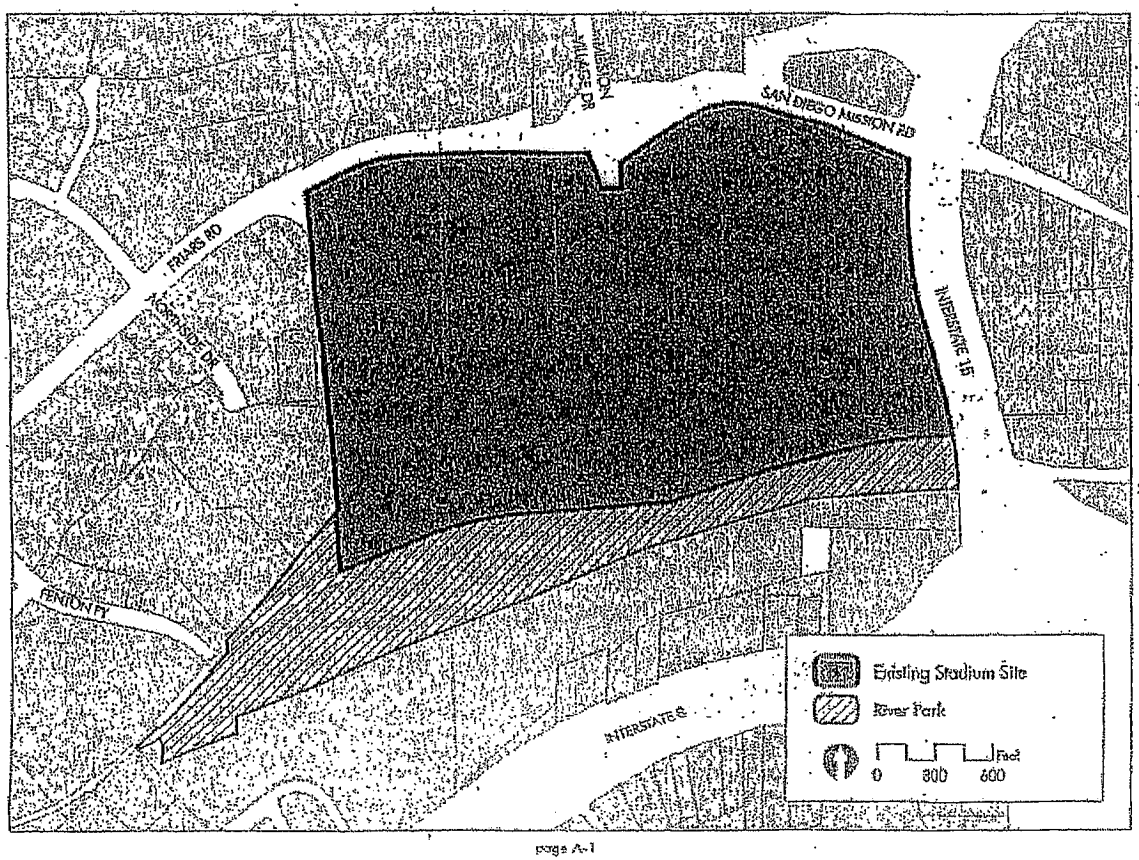
This Report provides an overview of the SDSU West Campus Research Center, Stadium and River Park Initiative, and responds to questions this Office has received from the Mayor and Councilmembers to date. Adoption of the Initiative would authorize, direct, and provide the means for selling approximately 132 acres of City-owned real property to SDSU, et al. Because of the complexity and significant provisions included, this Office recommends that the Initiative be read in its entirety.

MARA W. ELLIOTT, CITY ATTORNEY

By *___/s/ Leslie A. FitzGerald___*
Leslie A. FitzGerald
Senior Chief Deputy City Attorney

LAF:nja
RC-2018-1
Doc. No. 1667688
Attachments
cc: Andrea Tevlin, Independent Budget Analyst

Exhibit A - Site Map



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A STATEMENT OF THE REASONS FOR THE PROPOSED ACTION AS CONTEMPLATED IN SAID PETITION IS AS FOLLOWS:

San Diego State University (SDSU) is a critical component of the region's higher education system, and has been a catalyst for the City's growth by offering first class education to residents. SDSU's existing campus cannot accommodate significant additional growth. In order for SDSU to meet the region's future higher education needs, additional land is needed.

This initiative authorizes the sale of the Existing Stadium Site to SDSU based on a determination of fair market value. It requires SDSU to comprehensively plan the Existing Stadium Site to provide facilities for educational, research, entrepreneurial and technology programs within a mixed-use campus village and research park.

This initiative also requires SDSU to revitalize and restore the San Diego River Park south of the Existing Stadium Site as designated parkland, including walking and biking trails, a river buffer of native vegetation, and requires River Park improvements be made at no cost to the City General Fund.

This initiative also requires SDSU to construct a Joint Use Stadium, comprised of approximately 35,000 seats, for SDSU football and other potential sports partners, including professional soccer, and adaptable for the NFL, and further requires that SDSU, not the City, pay for any stadium rehabilitation costs, demolition or removal costs, cost overruns, operating costs, maintenance, or capital improvement expenses.

This initiative contributes significant public benefits to the City and region, and requires a thorough CEQA environmental review as part of an open and transparent master plan process.

This Initiative will not raise or impose any new or additional taxes on City residents.

INITIATIVE PROPONENTS' NAMES, SIGNATURES, ADDRESSES

9-29-17

Proponent Signature Date

Jack McGrory
7383 Remley Place
La Jolla, CA 92037

Stephen F. Doyle 9/29/17

Proponent Signature Date

Stephen F. Doyle
3311 Harbor View Drive
San Diego, CA 92016

Attachment 1

Attachment 2

SECTION 3. Amendment to the San Diego Municipal Code.

A new section is added to Chapter 2 (Government), Article 2, Division 9, of the San Diego Municipal Code as follows (new language to be inserted into the San Diego Municipal Code is shown as underlined text):

§ 22.0908 Sale of Real Property to SDSU

The Existing Stadium Site belonging to the City is needed for Bona Fide Public Purposes by SDSU, a public agency, and for that reason, the City shall sell such property to SDSU in accordance with the City Charter, but only if such sale is in compliance with the conditions herein established.

(a) Such sale shall be at such price and upon such terms as the Council shall deem to be fair and equitable and in the public interest; and the City may fairly consider various factors, including but not limited to: adjustments, deductions, and equities in arriving at a Fair Market Value.

(b) Such sale shall proceed without advertising for bids and shall not be subject to any of the provisions of this Code pertaining to the sale of City property, including but not limited to Sections 22.0902, 22.0903, and 22.0907.

(c) Such sale shall provide for the development of:

(1) A new Joint Use Stadium for SDSU Division 1 collegiate football and other Potential Sports Partners including but not limited to professional, premier, or MLS soccer and adaptable for the NFL;

(2) A River Park, public trails, walking and biking paths or trails, and associated open space for use by all members of the public;

(3) Passive and active recreation space, community and neighborhood parks;

(4) Practice, intramural, intermural, and recreation fields;

(5) Facilities for educational, research, entrepreneurial, and technology programs within a vibrant mixed-used campus village and research park that is constructed in phases and comprised of:

(A) Academic and administrative buildings and classrooms;

(B) Commercial, technology, and office space, compatible and synergistic with SDSU's needs, to be developed through SDSU-private partnerships, and with such uses contributing to sales tax and possessory interest tax, as applicable, to the City;

(C) Complementary retail uses serving neighborhood residents and businesses while also creating an exciting college game- day experience for SDSU football fans and other Potential Sports Partners, and with such retail uses contributing to sales tax and possessory interest tax, as applicable, to the City;

(D) Hotel(s) to support visitors to campus and stadium-related events, provide additional meeting and conference facilities, and serve as an incubator for graduate and undergraduate students in SDSU's L. Robert Payne School of Hospitality and Tourism Management; and with such uses contributing to sales taxes, possessory interest taxes, and transient occupancy taxes, as applicable, to the City;

(E) Faculty and staff housing to assist in the recruitment of nationally recognized talent, and with such uses contributing to sales and possessory interest taxes, as applicable, to the City;

(F) Graduate and undergraduate student housing to assist athlete and student recruitment, and with such uses contributing to sales and possessory interest taxes, as applicable, to the City;

(G) Apartment-style homes for the local community interested in residing in proximity to a vibrant university village atmosphere, and with such uses contributing to sales and possessory interest taxes, as applicable, to the City;

(H) Other market-rate, workforce and affordable homes in proximity to a vibrant university village atmosphere, and with such uses contributing to sales and possessory interest taxes, as applicable, to the City; and

(I) Trolley and other public transportation uses and improvements to minimize vehicular traffic impacts in

the vicinity.

(d) Such sale shall be based on the Fair Market Value of the Existing Stadium Site, and the City may fairly consider various factors, adjustments, deductions, and equities, including, but not limited to: the costs for demolition, dismantling, and removal of the Existing Stadium; the costs associated with addressing current flooding concerns; the costs of existing contamination; the costs for revitalizing and restoring the adjacent River Park and the costs of avoiding, minimizing, and mitigating impacts to biota and riparian habitat.

(e) Such sale shall be at such price and upon such terms as are fair and equitable, including without limitation payment terms, periodic payments, payment installments, and other payment mechanisms.

(f) After such sale, the Existing Stadium Site shall be comprehensively planned through an SDSU Campus Master Plan revision process, which process requires full compliance with the California Environmental Quality Act (Pub. Resources Code commencing with section 21000), the State CEQA Guidelines (14 Cal. Code Regs., commencing with section 15000), and Education Code section 67504, subdivisions (c) and (d), along with ample opportunities for public participation, including but not limited to input from the Mission Valley Planning Group.

(g) Though not required by the SDSU Campus Master Plan revision process, SDSU shall use the content requirements of a Specific Plan, prepared pursuant to California Government Code section 65451, subdivision (a), in completing the SDSU Campus Master Plan revision contemplated by this section.

(h) The environmental commitment set forth in subdivision (f) shall include the requirements arising under CEQA for SDSU to: (i) take steps to reach agreements with the City of San Diego and other public agencies regarding the payment of fair-share mitigation costs for any identified off-site significant impacts related to campus growth and development associated with the Existing Stadium Site; and (ii) include at least two publicly noticed environmental impact report (EIR) scoping meetings, preparation of an EIR with all feasible alternatives and mitigation measures, allowance for a 60-day public comment period on the Draft EIR, preparation of written responses to public comments to be included in the Final EIR, and a noticed public hearing.

(i) Such sale shall cause the approximate 34-acre San Diego River Park south of the Existing Stadium Site to be revitalized and restored as envisioned by past community planning efforts so as to integrate the Mission Valley's urban setting with the natural environment; the River Park will incorporate active and passive park uses, 8- to 10-foot wide linear walking and biking trails; a river buffer of native vegetation, and measures to mitigate drainage impacts and ensure compliance with water quality standards. River Park improvements shall be made at no cost to the City General Fund and completed not later than seven years from the date of execution of the sales agreement. The City shall designate or set aside for park purposes the River Park pursuant to City Charter Section 55. In addition, the Existing Stadium Site shall reserve and improve an additional minimum of 22 acres as publicly-accessible active recreation space.

(j) Such sale shall result in the demolition, dismantling, and removal of the Existing Stadium and construction of a new Joint Use Stadium. The construction of the Joint Use Stadium shall be completed not later than seven years from the date of execution of the sales agreement.

(k) Such sale shall facilitate the daily and efficient use of the existing underutilized Metropolitan Transit System's Green Line transit station, accommodate a planned Purple Line transit station, and enhance a pedestrian connection to the existing light rail transit center.

(l) Such sale and ultimate development shall require development within the Existing Stadium Site to comply with the City's development impact fee requirements, parkland dedication requirements, and housing impact fees/affordable housing requirements.

(m) Such sale and ultimate development shall require development within the Existing Stadium Site to comply with the City's greenhouse gas (GHG) emission reduction goals.

(n) Such sale, upon completion, shall ensure that the City does not pay for any stadium rehabilitation costs, stadium demolition or removal costs, stadium cost overruns, Joint Use Stadium operating costs, Joint Use Stadium maintenance, or Joint Use Stadium capital improvement expenses; and that the City be reimbursed for reasonable costs incurred by the City in providing public safety and traffic management-related activities for games or other events at the Existing Stadium Site.

(o) Such sale and ultimate development shall not impair or preclude SDSU from engaging in SDSU-private partnerships with other entities or affiliates to finance, construct, and operate the resulting buildings and facilities on the Existing Stadium Site for a defined period of time.

(p) Such sale and ultimate development shall not impair the City's ability to

continue its plan of environmental remediation of the Existing Stadium Site and River Park based on its existing agreements with responsible parties.

(q) Such sale shall not raise or impose any new or additional taxes on City residents.

(r) Such sale shall not prohibit SDSU from leasing, selling, or exchanging any portion of the Existing Stadium Site to an entity or affiliate as part of a SDSU-private partnership/arrangement, or to an SDSU auxiliary organization.

(s) Such sale shall require SDSU and the City to negotiate fair-share contributions for feasible mitigation and applicable taxes for development within the Existing Stadium Site.

(t) Such sale shall not change or alter any obligation under any existing lease regarding the use of Existing Stadium Site, or any portion thereof, that continues in effect until approximately 2018 and that could be extended until approximately 2022 or thereafter.

(u) Such sale shall acknowledge that portions of the Existing Stadium Site are currently owned by the City's Public Utilities Department, which has reserved rights to extract subsurface water, minerals, and other substances (excluding those under permanently erected structures) and that such department has received, and may continue to receive, compensation for its portion of the Existing Stadium Site. If the Initiative is approved, the sale shall acknowledge said department's entitlement, if any, to receive compensation for its portion of the Existing Stadium Site at a price that is fair and equitable, in the public interest, and commensurate with prior compensation actually received.

(v) Such sale shall require the City and SDSU to cooperate to modify or vacate easements or secure lot line adjustments on the Existing Stadium Site (other than easements of the City or any utility department of the City for which the City retains its full regulatory discretion), so that development of the Existing Stadium Site is facilitated.

(w) Such sale shall require SDSU or its designee to pay prevailing wages for construction of the Joint Use Stadium and other public improvements, provided that the construction occurs on state-owned property or involves the use of state funding. To the extent possible under state law, all building and construction work shall be performed by contractors and subcontractors licensed by the State of California, who shall make good faith efforts to ensure that their workforce construction hours are performed by residents of San Diego County. With respect to the new Joint Use Stadium, SDSU will use good faith efforts to retain qualified employees who currently work at the Existing Stadium.

(x) For the purpose of this division, the following definitions shall apply:

(1) "Bona Fide Public Purposes" means a good faith or genuine use or uses for public or government purposes such as public university uses or facilities; institutional uses or facilities; offices; buildings; stadium, park, open space, trail, and recreation uses and facilities; academic uses and facilities; public parking; faculty, staff, student and residential market- rate and affordable housing; hotel uses and facilities to support university goals and objectives; and public-private partnership support uses and facilities, including but not limited to commercial, neighborhood-serving retail, research, technology, development, entrepreneurial, and residential uses, because all such uses, individually and cumulatively, promote or facilitate SDSU's higher education mission, goals, and objectives.

(2) "Campus Master Plan" means an SDSU physical master plan, or any revisions to such plan, to guide future development of SDSU facilities, based on academic goals for an established time horizon.

(3) "Existing Stadium Site" means the approximate 132-acre real property situated in the City of San Diego at 9449 Friars Road, between Interstate 15 (I-15) and Interstate 8 (I-8), as reflected on the site map attached hereto as Section 8, Exhibit A (page A-1).

(4) "Existing Stadium" means the existing "SDCCU Stadium," formerly known as Qualcomm Stadium and Jack Murphy Stadium, located on the Existing Stadium Site, as of Initiative Effective Date.

(5) "Fair Market Value" means the value of the Existing Stadium Site with a date of value that is the date of the "Initiative Notice Date," defined below. This determination is intended to be based on a value of the Existing Stadium Site that does not consider any later effect on value caused by adoption of this Initiative. In determining the appropriate factors to use, the City may consider an independent appraisal or appraisals of the Fair Market Value of the Existing Stadium Site, which considers the physical condition of the Existing Stadium Site and other above-identified factors, adjustments, deductions, and equities as of the Initiative Notice Date, together with the zoning for such property and other permits and approvals for development, as of the Initiative Notice Date. Any and all such appraisals, including any prepared for SDSU, shall be made available to the public upon submittal to the City.

(6) "Initiative" means the "SDSU West Campus Research Center, Stadium and River Park Initiative" adopted on the Initiative Effective Date.

(7) "Initiative Effective Date" means the date that the Initiative becomes effective.

(8) "Initiative Notice Date" means the date the Notice of Intent is first published signaling the intent to circulate the Initiative.

(9) "Joint Use Stadium" means a quality multi-use outdoor stadium comprised of approximately 35,000 seats for collegiate and professional sports, including use for SDSU Division 1 football, National Collegiate Athletic Association Football Bowl Subdivision Division 1 programs, the National Football League, professional, premier, or Major League Soccer, collegiate and professional football bowl games, other sports, and other events, including without limitation concession areas, restaurants, bars, clubs, retail stores, kiosks, media facilities, athletic training and medical facilities, locker rooms, offices, meeting rooms, banquet facilities, ticketing facilities, on- and off-site signage, scoreboards, and other ancillary and support uses and facilities customarily made part of a stadium of the quality necessary to house collegiate and professional or premier sports, civic events, conventions, exhibitions, concerts and other outdoor events. SDSU also can explore, and proceed with, a phased build-out of such stadium that will allow SDSU to add on to such stadium at a later point to facilitate SDSU growth and acquisition of Potential Sports Partners.

(10) "Potential Sports Partners" means collegiate or professional sports leagues including but not limited to football, soccer, esports, or other high level or premier sports leagues, clubs, or franchises.

(11) "River Park" means approximately 34-acres of land south of the Existing Stadium Site to be revitalized and restored as envisioned by past community planning efforts so as to integrate the Mission Valley's urban setting with the natural environment (see Site Map, attached hereto as Section 8, Exhibit "A"); the River Park will incorporate active and passive park/recreation uses, 8- to 10-foot wide linear walking and biking trails; a river buffer of native vegetation, and measures to mitigate drainage impacts and ensure compliance with water quality standards.

(12) "SDSU" means San Diego State University, a California State University, with authority delegated by the Board of Trustees of the California State University, which is the State of California acting in its higher education capacity; and any SDSU auxiliary organization, entity, or affiliate. As defined, SDSU is a public university; and as such, acts in its capacity as a state public agency.

Nothing in this Initiative abrogates, or is intended to abrogate, the authority of the Board of Trustees of the California State University.

(y) This section shall be liberally construed in order to effectuate its purpose, intent and findings. No error, irregularity, informality, and no neglect or omission of any officer, in any procedure taken under this division which does not directly affect the jurisdiction of the City to order the work, contract, or process shall void or invalidate such work, contract, or process done thereunder.

(z) Nothing in this section abrogates, or is intended to abrogate, the Mayor's administrative and executive authority, particularly with regard to engaging in good faith contract negotiations, including purchase and sales agreements for the City. The section does not mandate, dictate, or impede the Mayor's administrative or executive authorities; instead, the section makes clear the City's legislative policy is to sell the Existing Stadium Site to SDSU for Bona Fide Public Purposes consistent with the purpose, intent, findings, and conditions set forth above in this section.

(aa) The sale of the Existing Stadium Site to SDSU, and its other related provisions, shall be independent of, and shall not be subject to, any previously enacted City ordinance or resolution pertaining to the sale of property owned or controlled by the City, including but not limited to Sections 22.0902 (sales of real property), 22.0903, and 22.0907 (sales of real property to public agencies) of the San Diego Municipal Code.