

# 526  
6/30/2020

(O-2020-123)

ORDINANCE NUMBER O- 21205 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 30 2020

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO (i) APPROVING THE SDSU MISSION VALLEY AFFORDABLE HOUSING IMPLEMENTATION AND MONITORING PROCEDURES, (ii) FINDING THAT THE REQUIREMENTS UNDER THE CITY'S INCLUSIONARY AFFORDABLE HOUSING REGULATIONS ARE NOT APPLICABLE TO THE DEVELOPMENT OF AFFORDABLE HOUSING UNITS ON THE SDCCU STADIUM SITE IN MISSION VALLEY, AND (iii) OTHERWISE CONFIRMING ITS INTENTION TO APPROVE A VARIANCE FROM, OR A WAIVER OF, SUCH REQUIREMENTS.

WHEREAS, the City of San Diego (City) and the Board of Trustees of the California State University, the State of California acting in its higher education capacity, on behalf of San Diego State University (CSU), have negotiated the terms and conditions of a proposed Purchase and Sale Agreement (PSA), by which the City will sell to CSU, and CSU will purchase from the City, approximately 135.12 acres of land commonly known as the Mission Valley SDCCU stadium site (Acquisition Site); and

WHEREAS, unless otherwise specified, all capitalized terms in this Ordinance have the same meaning ascribed to them in the PSA, a copy of which is including as Attachment A to the staff report accompanying this Ordinance (Staff Report); and

WHEREAS, the City and CSU (collectively, Parties) negotiated the PSA pursuant to Measure G, a local citizens' initiative approved by the City's voters on November 6, 2018, and most of the content of Measure G is now codified in San Diego Municipal Code (Municipal Code) section 22.0908; and

WHEREAS, the PSA provides that, upon the Closing of the Sale Transaction, the City will convey to CSU fee title ownership of the Acquisition Site by Grant Deed, and various

documents will be recorded in the Official Records (i.e., the County of San Diego's land records) to memorialize the Parties' agreement with respect to CSU's development of a vibrant mixed-use campus village on the Acquisition Site and the adjacent River Park Property in Mission Valley to be used and operated by San Diego State University (SDSU) to support SDSU's education, research, entrepreneurial, technology, and athletics programs and to provide parks, recreation, and open space areas for the local community's benefit (collectively, Project); and

WHEREAS, one of the documents to be recorded in the Official Records upon the Closing will be in the form of Attachment 22 to the PSA – the Declaration of Covenants, Conditions, and Restrictions Regarding Affordable Housing Development on SDSU Mission Valley Property (Master Affordable Housing Covenant); and

WHEREAS, unless otherwise specified, all capitalized terms in this Ordinance that refer to the provisions of the Master Affordable Housing Covenant have the same meaning ascribed to them in the Master Affordable Housing Covenant; and

WHEREAS, in addition to the City and CSU; the San Diego Housing Commission (Housing Commission) is a named party to the Master Affordable Housing Covenant, and Housing Commission will rely upon the adoption by the San Diego City Council (Council) of this Ordinance and a separate ordinance approving the PSA (including the Master Affordable Housing Covenant), as the basis for the Housing Commission's signature and implementation of the Master Affordable Housing Covenant; and

WHEREAS, the Master Affordable Housing Covenant generally sets forth CSU's commitment to cause the construction of Affordable Housing Units on the Acquisition Site in accordance with the Affordable Housing Phasing Plan, which consists of four Building Phases

under which the phased timing of construction of Affordable Housing Units generally corresponds to the phased timing of construction of Market Rate Units in the Project; and

WHEREAS, the Master Affordable Housing Covenant also sets forth CSU's commitment to cause at least ten percent (10%) of the total Dwelling Units constructed on the Acquisition Site upon full build-out of the Project to be restricted as Affordable Housing Units; and

WHEREAS, the Master Affordable Housing Covenant states that the Affordable Housing Units will consist of either: (i) Affordable Housing Rental Units, to be made available for rental occupancy by an individual or family earning not more than sixty percent (60%) of the then-current AMI (i.e., average median income), as adjusted for family size, provided that CSU may elect to provide for a range of affordability levels up to the AMI affordability threshold of one hundred percent (100%) for individual units as long as, on average, the 60% AMI affordability threshold is met for the totality of the Affordable Housing Rental Units; or (ii) Affordable Housing For-Sale Units, to be restricted for initial sale to, and occupancy by, an individual or family earning no more than one hundred percent (100%) of the then-current AMI; and

WHEREAS, Section 3.2 of the Master Affordable Housing Covenant requires CSU to obtain a signed, recordable declaration of long-term affordability covenants from each Affordable Housing Developer before such developer is permitted to construct any Affordable Housing Rental Units, but contains no such requirement with respect to Affordable Housing For-Sale Units and instead states that, before commencing a program for the sale of Affordable Housing For-Sale Units, CSU will consult with the Housing Commission and develop the governing documents and related policies and procedures with respect to such program; and

WHEREAS, Measure G, at Municipal Code section 22.0908(I), states that the “sale and ultimate development [of the Project] shall require development within the [Acquisition Site] to comply with the City’s . . . affordable housing requirements”; and

WHEREAS, the City’s affordable housing requirements are contained primarily in the City’s Inclusionary Affordable Housing Regulations, at Chapter 14, Article 2, Division 13 of the Municipal Code; and

WHEREAS, the Master Affordable Housing Covenant refers to the City’s Inclusionary Affordable Housing Regulations, reflecting only the content in effect as of January 1, 2020 (City Affordable Housing Ordinance); and

WHEREAS, notwithstanding the plain language of Municipal Code section 22.0908(I), Section 10 of the Master Affordable Housing Covenant states a legal conclusion that CSU, as a State entity with State sovereignty and general immunity from local laws, is not subject to the City Affordable Housing Ordinance and further states that, if this legal conclusion is incorrect, then the Council, by approving the PSA and the Sale Transaction, finds that the City Affordable Housing Ordinance is not applicable to CSU’s development of the Project; and

WHEREAS, the Master Affordable Housing Covenant refers to CSU’s compliance with the SDSU Mission Valley Affordable Housing Implementation and Monitoring Procedures (Affordable Housing Procedures) with respect to the future administration of the constructed Affordable Housing Units, and a copy of the Affordable Housing Procedures is included as Attachment J to the Staff Report; and

WHEREAS, the Affordable Housing Procedures state that CSU, as a State agency, is not subject to the City’s regulatory authority, but has agreed to comply with its contractual

obligations related to the Affordable Housing Units in accordance with the PSA and the Master Affordable Housing Covenant; and

WHEREAS, the stated purpose of the Affordable Housing Procedures is to provide additional detail regarding CSU's implementation and administration of the affordable housing program for the Project; and

WHEREAS, the Affordable Housing Procedures state that they are subject to CSU's future modifications to reflect various identified factors, although CSU's future modifications may not conflict with the Master Affordable Housing Covenant unless the Housing Commission approves such modifications; and

WHEREAS, the Master Affordable Housing Covenant and the Affordable Housing Procedures are inconsistent in several respects with the City Affordable Housing Ordinance and the Housing Commission's standard practices and contract templates for the administration of local affordable housing projects; and

WHEREAS, through its concurrent adoption of a separate ordinance, the Council has approved the PSA, including the Master Affordable Housing Covenant; and

WHEREAS, under San Diego Charter section 280(a)(2), this Ordinance is not subject to veto by the Mayor because this matter requires the Council to act as a quasi-judicial body and where a public hearing was required by law implicating the due process rights of individuals or entities affected by the decision and where the Council was required by law to consider evidence at the hearing and to make findings based on the evidence presented; and

WHEREAS, the Council has held a public hearing, and has reviewed and considered the written and verbal testimony and evidence presented at or before the public hearing, regarding the subject matter of this Ordinance; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. The Council approves the Affordable Housing Procedures and acknowledges that CSU, not the Housing Commission (unless CSU otherwise elects in the future), will implement the Affordable Housing Procedures in connection with CSU's administration of the Affordable Housing Units in the Project.

Section 2. The Council finds that the City Affordable Housing Ordinance is not applicable to CSU's development of the Project, for the reasons set forth in Section 10 of the Master Affordable Housing Covenant and on page 1 of the Affordable Housing Procedures, including CSU's position that CSU, as a State entity with State sovereignty and general immunity from local laws, is not subject to the City Affordable Housing Ordinance.

Section 3. In the event that a court determines the Council lacks the legal authority in light of Measure G (or for any other reason) to make a finding that the City Affordable Housing Ordinance is not applicable to CSU's development of the Project, then the Council affirms its intention through the adoption of this Ordinance to approve a variance from, or a waiver of, the City Affordable Housing Ordinance with respect to the Project in accordance with Municipal Code sections 142.1307 and 142.1308, as follows:

(a) Notwithstanding paragraphs (f) and (g) of Municipal Code section 142.1303, which states that the City Affordable Housing Ordinance is not applicable to a residential development project that contains at least ten percent of the dwelling units as affordable to and occupied by targeted rental households at sixty-five percent (65%) of AMI, CSU will be allowed under the Master Affordable Housing Covenant to cause the development of the Affordable Housing Rental Units as affordable to and occupied by targeted rental households at sixty percent (60%) of AMI, and to elect to provide for a range of affordability

levels up to the AMI affordability threshold of one hundred percent (100%) for individual units as long as, on average, the 60% AMI affordability threshold is met for the totality of the Affordable Housing Rental Units.

(b) Notwithstanding Municipal Code sections 142.1303 and 142.1304, which require a developer to choose at the outset of a residential development project between either building onsite affordable housing units that comply with the inclusionary and income eligibility requirements of the City Affordable Housing Ordinance or pay the Inclusionary Affordable Housing Fee to the City, CSU will be allowed to elect at a later date under the Master Affordable Housing Covenant and Attachment 21 to the PSA to pay the Inclusionary Affordable Housing Fee to the City if CSU defaults on its obligation under the Master Affordable Housing Covenant to cause the requisite number of Affordable Housing Units to be constructed in the Project.

(c) Notwithstanding Municipal Code section 142.1305(b)(3), which requires the equity in a for-sale affordable housing unit to be shared between the unit owner and the Housing Commission in a prescribed amount based upon the length of ownership at the time of the first resale, the Master Affordable Housing Covenant does not set forth this equity-sharing arrangement in the Housing Commission's favor and instead states that CSU merely needs to consult with the Housing Commission before CSU develops a potential future program for the sale of any Affordable Housing For-Sale Units in the Project.

(d) Notwithstanding Municipal Code section 142.1309, which requires the Housing Commission to be responsible for determining affordability standards and occupant standards for affordable housing units and to monitor each developer's compliance with affordable housing requirements subject to the developer's payment of a reasonable administration fee to the Housing Commission, CSU will be allowed under the Master

Affordable Housing Covenant and the Affordable Housing Procedures to serve as, or designate, the administrator of the Affordable Housing Units within the Project.

(e) Notwithstanding Municipal Code sections 142.1307(a) and 112.0509, which provide for a Planning Commission hearing and recommendation before the Council considers the approval of a variance or waiver related to the City Affordable Housing Ordinance, the Council waives the requirement for a Planning Commission hearing and recommendation in connection with the Council's approval of variances and waivers pursuant to this Ordinance.

(f) CSU will be allowed to depart from the Housing Commission's standard practices and contract templates with respect to the administration of local affordable housing projects, including the use of the Master Affordable Housing Covenant, which is inconsistent in numerous ways with the Housing Commission's standard template.

(g) Consistent with Municipal Code section 142.1308(a)(1), the Council finds that special circumstances, unique to CSU's development of the Project, including the Affordable Housing Units, justify granting the variances and waivers set forth in this Section 3 for the reasons set forth in Section 4 of this Ordinance.

(h) The Council waives application of the finding under Municipal Code section 142.1308(a)(2) that CSU's development of the Project would not be feasible without CSU's ability to follow modified affordable housing requirements.

(i) The Council waives application of the finding under Municipal Code section 142.1308(a)(3) that a specific and substantial financial hardship would occur if the variances or waivers confirmed in this Ordinance were not granted.

(j) The Council waives application of the finding under Municipal Code section 142.1308(a)(4) that no alternative means of compliance are available which would be



more effective in attaining the purposes of the City Affordable Housing Ordinance than the relief requested by CSU with respect to the Project.

Section 4. The Council's approval of variances from, or waivers of, the City Affordable Housing Ordinance with respect to the Project pursuant to Section 3 of this Ordinance is based upon the following:

(a) Once the Sale Transaction is consummated pursuant to the PSA, the City anticipates that CSU's development of the Project will confer various public benefits upon the local community, including the Additional Public Benefits as defined and provided for in the PSA. In exchange for obtaining those public benefits through the PSA, the Council is willing to accept CSU's position that CSU, as a State entity with State sovereignty and general immunity from local laws, is not subject to the City Affordable Housing Ordinance, notwithstanding the plain language of Municipal Code section 22.0908(l).

(b) The Council finds that CSU possesses experience in administering affordable housing units at or in close proximity to existing CSU campuses throughout the State. The Council further finds that the Master Affordable Housing Covenant and the Affordable Housing Procedures are reasonably designed to cause CSU to achieve the same general objective with respect to construction, operation, and administration of the Affordable Housing Units as would be the case if CSU actually complied with the City Affordable Housing Ordinance and the Housing Commission's standard practices and contract templates for the administration of local affordable housing projects. For instance, the Master Affordable Housing Covenant unequivocally requires CSU to cause at least ten percent (10%) of the overall Dwelling Units constructed in the Project to be restricted as Affordable Housing Units.

Section 5. A full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 6. This Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By     /s/ Kevin Reisch      
Kevin Reisch  
Senior Chief Deputy City Attorney

KJR:jdf  
6/12/2020  
Or.Dept: Real Estate Assets  
Doc. No.: 2399158  
Companion to: R-2020-605  
                  R-2020-606  
                  R-2020-607  
                  O-2020-124

Passed by the Council of The City of San Diego on JUN 30 2020, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUN 30 2020.

AUTHENTICATED BY: KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JUN 17 2020, and on JUN 30 2020.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 21205