



Legislation Details (With Text)

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Title: USS MIDWAY MUSEUM AND NAVY PIER: ADOPT RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING, A PAYMENT AGREEMENT, AND A PARK MAINTENANCE AGREEMENT BETWEEN THE DISTRICT AND USS MIDWAY MUSEUM FOR THE CONVERSION AND DEVELOPMENT OF A PUBLIC PARK WITH ANCILLARY PARKING ON NAVY PIER

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Date	Ver.	Action By	Action	Result
4/12/2022	1	Board of Port Commissioners	adopted	Pass

DATE: April 12, 2022

SUBJECT:

USS MIDWAY MUSEUM AND NAVY PIER: ADOPT RESOLUTION AUTHORIZING A MEMORANDUM OF UNDERSTANDING, A PAYMENT AGREEMENT, AND A PARK MAINTENANCE AGREEMENT BETWEEN THE DISTRICT AND USS MIDWAY MUSEUM FOR THE CONVERSION AND DEVELOPMENT OF A PUBLIC PARK WITH ANCILLARY PARKING ON NAVY PIER

EXECUTIVE SUMMARY:

After many years of collaborative effort, the District and USS Midway Museum (Midway) have agreed on a plan to fully implement the conversion of Navy Pier (Attachment A - Location Map) to a public park as envisioned in the Port Master Plan (PMP). This plan to build "Freedom Park" on Navy Pier is made possible by the allocation of \$11.7 million of District Economic Recovery Program funding made available through the American Rescue Plan Act, as well as Midway's commitment of not less than \$30 million to the project. This project aims to not only create a new world class park on the North Embarcadero waterfront but also to address critical infrastructure repairs to Navy Pier as well as the demolition of the unsightly headhouse - all within five years of the issuance of a Coastal Development Permit (CDP) from the California Coastal Commission (Coastal), which is anticipated to be issued in early 2024.

Staff has memorialized these commitments in a Memorandum of Understanding (MOU) with Midway (Attachment B - MOU between District and Midway) which outlines the project and planning features, financial commitments and timeline for the planned conversion and development of a public park on Navy Pier. The project contemplated by the MOU will include the demolition of the headhouse on

Navy Pier, structural and pile improvements to Navy Pier and a park with associated amenities such as parking, pedestrian pathways, around the perimeter and through the park, landscaping, benches, signage and restrooms. Also incorporated into the MOU are two separate agreements to be executed concurrently with the MOU: one that obligates Midway to reimburse the District for certain third-party costs incurred associated with project (see Exhibit E to MOU - Phase II Payment Agreement); and one that provides for the sharing of the costs to maintain the completed Freedom Park between the District and Midway (see Exhibit F - Park Maintenance Agreement).

This project is made possible by the District's strong partnership with Midway, which has exceeded expectations since its arrival on the waterfront. Midway is willing to make a significant financial commitment to a world class waterfront park, the District is making a substantial financial commitment made possible by the American Rescue Plan Act, and Coastal has indicated its general support of the project.

RECOMMENDATION:

Adopt Resolution authorizing a Memorandum of Understanding, a Payment Agreement, and a Park Maintenance Agreement between the District and the USS Midway Museum for the conversion and development of a public park with ancillary parking on Navy Pier.

FISCAL IMPACT:

Approval of this agenda item will obligate the District to perform maintenance and construct improvements and reinforce the pilings supporting Navy Pier at an estimated cost of \$11.7 million. \$11.7 million of District Economic Recovery Program funds made available through the American Rescue Plan Act have been allocated for this project.

Upon completion of the public park on Navy Pier, the District will be responsible for one half of the cost of maintaining the new public park and parking lot on Navy Pier. This expense will be budgeted as needed in future budgets, subject to Board approval.

COMPASS STRATEGIC GOALS:

This agenda item supports the following Strategic Goal(s).

- A Port that the public understands and trusts.
- A Port that is a safe place to visit, work and play.

DISCUSSION:

Background

Navy Pier

In 1928, Navy Pier was originally constructed as an L-shaped pier approximately 0.65 acre and in 1941, its length was extended to the U.S. Pierhead Line, resulting in an approximately 5.7-acre pier as it stands today. At the foot of the pier stands a structure that is commonly referred to as the headhouse. In the late 1990s, the District began a planning process to bring the Midway to the North Embarcadero. In August 2003, the United States Navy (Navy) conveyed Navy Pier to the District and on September 30, 2007, consistent with the terms of the conveyance, the Navy vacated the

headhouse on Navy Pier.

NEVP PMPA

In the 1990s, the North Embarcadero Alliance, consisting of the District, County of San Diego, City of San Diego, Centre City Development Corporation, and Navy embarked on a planning exercise for the larger North Embarcadero area, resulting in the “North Embarcadero Alliance Visionary Plan” (NEVP). Implementation of the portion of NEVP within the District’s jurisdiction required a Port Master Plan Amendment (PMPA). The PMPA included, among other items, re-designating land uses throughout North Embarcadero, an access program and the addition of the Midway Museum to the “project list.”

On April 25, 2000, the Board approved the PMPA and directed staff to submit it to Coastal for its consideration and to resolve issues with Coastal staff, including adequacy of parking, timing and phasing of a Parking Management Program for the entire PMPA. A component of the proposed PMPA included berthing of the Midway on the south side of Navy Pier. However, the District did not own Navy Pier at the time. Therefore, Navy Pier was excluded from the PMPA and was left within Coastal’s Coastal Act permitting jurisdiction. Accordingly, until Navy Pier is incorporated into the Port Master Plan, any development or uses on Navy Pier must be approved by Coastal.

During the PMPA process, Coastal staff found that because the Midway would be up to 190 feet in height and located on west of Harbor Drive, which includes low-scale development, it would depart from the existing scale of most of the surrounding development and would severely impact public views. After much discussion between the agencies and Midway representatives, Coastal certified the PMPA in March 2001. As part of Coastal’s certification process to address visual impacts from the Midway, language was added to the PMP to make conversation of Navy Pier to a park a specific planning goal of the District, among other requirements.

USS Midway Museum

Midway leases from District approximately 288,500 square feet of water area directly adjacent to Navy Pier as well as 31,436 square feet of land area located on Navy Pier under a 38 year and two-month lease that commenced on October 1, 2005. Uses allowed under the lease include operation of a non-profit museum and related activities as well as special events and gift shop and snack bar. Midway pays the District 4% of gross income generated from food and beverage sales and no other rent in consideration of its status as a non-profit museum. Pursuant to the lease, Midway is required to continuously have a minimum of 279 parking spaces available on weekdays and 348 parking spaces available on weekends, which has historically been satisfied by the public parking lot on Navy Pier and in the future would be satisfied by surrounding public parking lots. Since its arrival, the Midway has far exceeded visitorship expectations and continues to be a top attraction on the waterfront in San Diego.

Proposed MOU

Staff has negotiated a proposed MOU with Midway that establishes commitments and a timeline to develop a public park on Navy Pier within five years of the approval of the MOU and issuance of a CDP by Coastal for the project. The reinforcement of the pilings supporting Navy Pier will be completed by the District, and the park’s design and construction will be directed by the District with input and funding provided by Midway. The park project contemplated by the MOU, which will be named “Freedom Park” at the request of Midway, will include the following features:

- Reinforcement of the pilings supporting Navy Pier;

- Demolition of the headhouse on Navy Pier;
- Reinforcement of the pier structure in the vicinity of the demolished headhouse;
- Pier entry improvements including above-grade utility boxes, wet/dry utility relocation and/or upsizing required to service the Midway Museum and public park, signage, landscape, boardwalk, and trash enclosures;
- Completion of a public park with areas of the pier maintained for public parking;
- Usable, well-connected public park spaces with pathways around the perimeter of the pier;
- Signage to invite and welcome the public to access the public park;
- Landscaping and other park-like amenities (e.g., benches, shading, etc.);
- Movable furniture/landscape features in areas to be reserved in support of water-dependent berthing functions;
- Reservation of areas to support other waterside amenities (e.g., water-based transit points, activating features, etc.);
- Public restroom/comfort station; and,
- A relocated Scenic Vista Area from Midway’s public view deck to the west end of the pier.

The MOU also establishes timelines, funding responsibilities, maintenance responsibilities, planning commitments, park naming rights and specific parking rates on the Navy Pier. Attached to the MOU are two ancillary agreements, one for District reimbursement of project costs from Midway and a maintenance agreement which effectively splits the cost of park maintenance between the District and Midway. The following chart summarizes the commitments included in the MOU and accompanying ancillary agreements:

Responsible Party	Midway	District
<i>Construction Responsibilities</i>		Prior to June 30, 2024: • Structural pile improvements Within 2 years of MOU approval and CDP: • Demolish headhouse • Pier reinforcement Within 5 years of CDP: • Full park buildout
<i>Investment Requirements</i>	• Except for structural pile improvements and District internal costs, hard and soft costs to complete the remainder of the park, including, but not limited to, headhouse demolition, pier reinforcement, full park buildout, and costs incurred by District for applicable construction requirements noted above to be paid by Midway (see Exhibit E to MOU - Phase II Payment Agreement)	• Structural pile improvements: (expected cost of \$11.7M)

<p><i>Planning Commitments</i> (subject to BPC approval with respect to PMPU and Coastal approval with respect to CDP)</p>	<ul style="list-style-type: none"> • Support parking rate increase on Navy Pier as well as activating uses 	<ul style="list-style-type: none"> • Designate Navy Pier as Recreational Open Space in the PMPU, as well as designate Navy Pier and surrounding park areas as Freedom Park • Include activating uses such as kiosks and pavilions • Support relocation of publicly accessible Scenic Vista Area from the bow of the ship to the western end of Navy Pier
<p><i>Maintenance Obligations</i></p>	<ul style="list-style-type: none"> • ½ of on-going park maintenance (see Exhibit F to MOU - Park Maintenance Agreement) 	<ul style="list-style-type: none"> • ½ of on-going park maintenance (see Exhibit F to MOU - Park Maintenance Agreement)
<p><i>Park Naming</i></p>	<ul style="list-style-type: none"> • May be monetized for project fundraising (subject to Executive Director's approval) 	<ul style="list-style-type: none"> • Must be pre-approved by Executive Director

Conclusion

Approval of the proposed MOU and the supporting ancillary agreements would represent a major milestone in the conversion of Navy Pier to a public park, which has been a planning goal of the District since 2001. The confluence of the Midway museum’s tremendous success since its arrival at Navy Pier in the early 2000’s, the allocation of \$11.7 million of District Economic Recovery Program funding made available through the American Rescue Plan Act, Midway’s commitment of not less than \$30 million to the project and anticipated support from Coastal provide a rare window to take a major step toward delivering an exciting new public park on the North Embarcadero.

General Counsel’s Comments:

The Office of the General Counsel has reviewed this agenda sheet and the attachments as presented to it and approves the same as to form and legality.

Environmental Review:

The proposed Board action to authorize a MOU between the District and the Midway does not constitute an “approval” or a “project” under the definitions set forth in the CEQA Guidelines Sections 15352 and 15378 because no direct or indirect changes to the physical environment would occur. CEQA requires that the District adequately assess the environmental impacts of discretionary projects within its jurisdiction and reasonably foreseeable activities that may result from projects prior to the approval of the same. Additionally, under the Coastal Commission’s certified regulatory program, the Coastal Commission issues an equivalent CEQA environmental analysis prior to issuance of a Coastal Development Permit (CEQA §21080.5(c); CEQA Guidelines §15250). Any project developed, such as a park, resulting in a physical change to the environment will be analyzed in accordance with CEQA prior to such approval. CEQA review may result in the District or CCC, in their sole and absolute discretion, requiring implementation of mitigation measures, adopting an

alternative, including without limitation, a “no project alternative” or adopting a Statement of Overriding Consideration, if required. The current Board direction in no way limits the exercise of this discretion. Therefore, no further CEQA review is required.

The project complies with Section 87 of the Port Act, which allows for the construction, reconstruction, repair, maintenance, and operation of parks, playgrounds, and public recreation facilities. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, while the proposed MOU does not constitute an approval of a park, it nonetheless is consistent with the Public Trust Doctrine.

The subject site is located outside of the District’s Coastal Act permitting jurisdiction. However, the proposed Board action does not allow for “development,” as defined in Section 30106 of the California Coastal Act. Therefore, issuance of a Coastal Development Permit or exclusion is not required at this time.

Diversity, Equity, and Inclusion Program:

This agenda sheet has no direct DEI impact on workforce or contract reporting at this time.

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Attachment(s):
Attachment A: Location Map
Attachment B: MOU between District and Midway