



Legislation Text

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SUBJECT:

RESOLUTION AMENDING BOARD OF PORT COMMISSIONERS POLICY NO. 360 - REQUEST FOR PROPOSALS - TO ADD LANGUAGE TO REDUCE RISKS OF DELAYS TO NEW HOTEL CONSTRUCTION AND OPERATIONS AND RELATED DIRECTION TO STAFF

EXECUTIVE SUMMARY:

At the December 11, 2018, Board meeting, staff presented an economic analysis during the agenda item "Presentation On The Economic Considerations Related To Tidelands Real Estate Development And Causes And Impacts Of Project Delays" (Attachment A, December 11, 2018, Agenda Sheet) that analyzed and attempted to quantify the risks to District development projects into three primary risk categories: schedule delays, cost increases, and performance failures. Several conclusions were drawn from the analysis and the District's experience with real estate development:

- Project delays cost the District and the region both directly and indirectly.
- Risk mitigation strategies may reduce delays and lead to successful projects.
- A well-qualified, experienced development partner is critical to success.
- Reducing risk up front saves time and resources over the project lifecycle.
- Broad stakeholder support results in fewer regulatory and legal challenges

Following that presentation, the Board instructed staff to identify potential policy changes based on that analysis and return to the Board. In response to the Board's direction, staff reviewed existing Board of Port Commissioners (BPC) policies and identified BPC Policy No. 360 "Request for Proposals" (see Attachment B, BPC Policy No. 360) as one potential alternative that could meet the Board's direction. BPC Policy No. 360 Redline, attached as Attachment C, is a proposed draft that incorporates some of the policy considerations previously discussed by the Board on December 11, as well as additional clarifications and amendments as follows:

- Existing tenants redeveloping their leaseholds pursuant to BPC Policy No. 355 - Real Estate Leasing Policy - are not subject to BPC Policy No. 360.
- Development proposals that result in a real estate agreement with a term of five years or less are not subject to BPC Policy No. 360 since staff already has the authority to enter into real estate agreements of five years or less without obtaining Board approval.

- The negotiation process begins as soon as a development proposal is submitted by a prospective developer, thereby increasing the District's negotiating leverage.
- Staff may use third-party consultants during the competitive process as needed to evaluate development proposals.

Further, as mentioned by a member of the Board during commissioner comments at the December 11, 2018, staff presentation, staff also reviewed Exhibit #4 to the Chula Vista Bayfront Master Plan Settlement Agreement (Exhibit #4), which is attached as Attachment D.

Staff's presentation reflects the direction received to return to the Board with a proposed policy.

RECOMMENDATION:

Resolution Amending Board of Port Commissioners Policy No. 360 - Request for Proposals - to Add Language to Reduce Risks of Delays to New Hotel Construction and Operations and Related Direction to Staff.

FISCAL IMPACT:

This agenda item has no fiscal impact.

Compass Strategic Goals:

This agenda item is part of the reporting system to promote communications with the community and supports the following Strategic Goal(s).

- A Port that the public understands and trusts.

DISCUSSION:

At the December 11, 2018, Board meeting, staff presented an analysis of the economic considerations related to tidelands real estate development and causes and impacts of project delays (Attachment A). Following the presentation, the Board instructed staff to identify existing Board policies that might incorporate risk mitigation alternatives based on that analysis.

For discussion and consideration by the Board, staff drafted amendments to BPC Policy No. 360 - Request for Proposals (Attachment B, Attachment C). The draft amendments incorporate policy measures that reflect preferences for development proposals that reduce the risks associated with development, as described by staff during the December 11, 2018, presentation. In addition, the draft policy specifies development transactions where BPC Policy No. 360 does not apply (including the redevelopment of existing leaseholds under BPC Policy No. 355 and leases of five years or less), identifies when the negotiation process formally begins, and affirms staff's ability to use third-party consultants to analyze development proposals.

Risk Reduction Policy Language

Based on experience and staff's analysis, new projects proposed with a hotel component located on

previously unleased land or land now available for lease after the expiration of an existing lease tend to face the greatest number of development risks. As such, one policy mechanism that may reduce, but not eliminate, risks that cause delays could be to establish that for development proposals with one hundred (100) hotel rooms or more, for which staff has determined that the District possesses sufficient Proprietary Interest, that the District give considerable preference to respondents that commit to engage in efforts to reduce the risk of labor strife (Attachment C, BPC Policy No. 360 Redline, section 2.e.1) and to give considerable preference to proposals that commit to providing employment opportunities within the “Local Area” (San Diego and Imperial Counties) and “Priority Zip Codes” (established by average household income, unemployment rate, and college graduation rates) (Attachment C, BPC Policy No. 360 Redline, section 2.e.2).

These proposed amendments are also designed to advance environmental justice in the region by providing significant employment opportunities to residents in the Local Area and Priority Zip Codes. As of 2018, about 3.6 million people live in the Local Area. Nearly 1.4 million of those people live in a zip code that meets all three of the Priority Zip Code criteria, and nearly 2.5 million people live in a zip code that meets at least one of the criteria. These Priority Zip Codes encompass many of the low-income and minority populations that can be disproportionately burdened by or less able to prevent, respond, and recover from adverse environmental impacts related to operations on the Tidelands; the proposed local hiring preferences provide those populations with a more equitable share of the benefits being generated on the Tidelands. Attachment E, Zip Codes is a table listing the Priority Zip Codes in the Local Area and a map of the Priority Zip Codes within San Diego County.

Another policy mechanism is a stated preference for experienced developers with a proven record in taking actions to minimize risk. This includes experience working in San Diego (Attachment C, BPC Policy No. 360 Redline, section 2.e.3) and within the Coastal Zone (Attachment C, BPC Policy No. 360 Redline, section 2.e.9), as well as a commitment to conduct early public outreach (Attachment C, BPC 360 Redline, section 2.e.5), experience with conducting that public outreach (Attachment C, BPC Policy No. 360 Proposed Redline, section 2.e.8) and demonstrated experience in taking actions to avoid pre-entitlement challenges to development proposals (Attachment C, BPC Policy No. 360 Redline, section 2.e.10). Another advantageous policy mechanism could be a stated preference for developers that have a contractor-prequalification process to ensure use of reputable contractors and subcontractors (Attachment C, BPC Policy No. 360 Redline, section 2.e.4).

Another amendment would require that developers demonstrate an understanding of project risks through a detailed risk management plan (Attachment C, BPC Policy No. 360 Redline, section 2.e.6) and a willingness to update the Board on risk management throughout the project lifecycle (Attachment C, BPC Policy No. 360, Redline, section 2.e.7). These plans should reflect risk-management best practices, as explained in the International Standards Organization Risk Guide (ISO31000), and risk management plans should include:

1. An identification of one-time and ongoing risks to the project(s), including but not limited to:
 - pre-entitlements challenges to the development;
 - unanticipated increases in costs, including construction costs; and
 - delays associated with labor disruptions during construction and operations;
2. A quantification of the severity, likelihood, and potential delays or financial cost of the risk(s) if

realized;

3. A list of risk treatment measures and the changes in risk from implementing those measures; and
4. A plan to monitor and update the Board on risks deemed as higher-severity based on likelihood or cost.

Clarifying Policy Language

If the Board decides to amend BPC Policy No. 360, then other potential changes would make administering the policy more effective for staff as follows:

1. Tenants redeveloping their leaseholds pursuant to BPC Policy No. 355 - Real Estate Leasing Policy - are not subject to BPC Policy No. 360.
 - BPC Policy No. 360 only applies to new development, not redevelopment of a leasehold by an existing tenant. Tenant redevelopment is governed by BPC Policy No. 355 and as such it is not recommended that such redevelopment be subject to BPC Policy No. 360. BPC Policy No. 360 is intended to only apply to solicitations for new hotel development issued by the District.
2. Development proposals that result in a real estate agreement with a term of five years or less are not subject to BPC Policy No. 360.
 - Staff already has the authority to enter into real estate agreements of five years or less administratively, without obtaining Board approval. In order to align BPC Policy No. 360 with staff's current level of authority, it is important to clarify that BPC Policy No. 360 does not apply to development proposals that result in a real state agreement with a term of five years or less.
3. The negotiation process begins as soon as a development proposal is submitted by a prospective developer.
 - The District's negotiating leverage is maximized by commencing negotiations as soon as a development proposal is submitted by the developer. This enables staff to negotiate price and terms of payment with the respondent(s) immediately and simultaneously; negotiate with one, or some, or all of the respondents; terminate the competitive process and reject all development proposals; and seeking best and final proposals from one or more respondents. At any time during the competitive process, staff may seek negotiating direction from the Board.
4. Staff may use third-party consultants during the competitive process as needed to evaluate development proposals.
 - Staff may engage third party consultants to conduct additional analysis of the proposals or participate on a selection panel, or any other capacity which may benefit the process. This ensures that staff has the most knowledgeable experts at their disposal throughout

the solicitation process.

Conclusion

At the December 11, 2018, meeting, the Board instructed staff to identify ways in which existing Board policies could incorporate risk mitigation strategies for future development projects. The proposed amendments to BPC Policy No. 360 would constitute an avenue to implement those strategies as policy considerations in selecting successful respondents to District RFPs for new hotel development.

General Counsel's Comments:

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

Environmental Review:

The Board direction or action, including without limitation amending BPC Policy No. 360, does not constitute an "approval" or a "project" under the definitions set forth in California Environmental Quality Act (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 projects and reasonably foreseeable activities that may result from projects prior to the approval of the same. Any project developed as a result of Board's action or direction that requires the District or the Board's discretionary approval 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, in its 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.

In addition, the proposed Board action complies with Sections 21 and 35 of the Port Act, which allow for the Board to pass resolutions and to do all acts necessary and convenient for the exercise of its powers. The Port Act was enacted by the California Legislature and is consistent with the Public Trust Doctrine. Consequently, the proposed Board action is consistent with the Public Trust Doctrine.

The proposed Board direction or action does not allow for "development," as defined in Section 30106 of the California Coastal Act, or "new development," pursuant to Section 1.a. of the District's Coastal Development Permit (CDP) Regulations because they will not result in, without limitation, a physical change, change in use or increase the intensity of uses. Therefore, issuance of a Coastal Development Permit or exclusion is not required. However, development within the District requires processing under the District's CDP Regulations. Future development, as defined in Section 30106 of the Coastal Act, will remain subject to its own independent review pursuant to the District's certified CDP Regulations, PMP, and Chapters 3 and 8 of the Coastal Act. The Board's direction or action in no way limits the exercise of the District's discretion under the District's CDP Regulations. Therefore, issuance of a CDP or exclusion is not required at this time.

Equal Opportunity Program:

Not applicable.

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Attachments:

Attachment A: December 11, 2018, Agenda Sheet

Attachment B: BPC Policy No. 360

Attachment C: BPC Policy No. 360 Redline

Attachment D: Chula Vista Bayfront Master Plan Settlement Agreement Exhibit #4

Attachment E: Zip Codes