



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 17, 2016

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Revised Waterfront Hotel Development Agreement And Amendment To Chapter 28.95 Of The Zoning Ordinance

RECOMMENDATION: That Council:

- A. Make the California Environmental Quality Act findings specified in the conclusion of this Council Agenda Report;
- B. (Re)-Introduce, and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Approving a Development Agreement for the Waterfront Hotel By and Between the City of Santa Barbara and American Tradition, LLC; and
- C. Adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending Chapter 28.95 of Title 28 of the Santa Barbara Municipal Code by Adding a Provision Relating to the Development Agreement Between the City of Santa Barbara and American Tradition, LLC.

DISCUSSION:

On April 19, 2016, the City Council introduced the two above-referenced ordinances for first reading. Council voted 5-2 (Dominguez and Murillo NOE, Rowse absent) on Item B. (the Development Agreement, reduced to a five year term) and 5-2 (Dominguez and Murillo NOE, Rowse absent) on Item C, (the TEDR Amendment). The Development Agreement ordinance requires four votes for passage and adoption. The TEDR Amendment requires five votes for final adoption pursuant to City Charter section 1507. On April 26, 2016, this office requested the Council to delay second reading of both ordinances due to certain legal concerns. We have, in conjunction with the Parker family, revised the proposed Development Agreement to address our legal concerns.

Our principal Development Agreement concern had to do with the legal remedies available if the Agreement is not complied with by either party. Recent case law has made it clear that a developer can obtain money damages from the City if the City does not comply with a development agreement. While there is little risk that this City Council

would fail to comply with the Agreement, there is an unknown risk that the voters through the initiative process or a future Council might enact restrictions that would make it difficult or impossible for the City to comply with the Agreement. Accordingly, we have added language, highlighted in revised Section 25, which precludes money damages as an enforcement remedy. The developer or the City may enforce the Agreement by requiring the other party to fulfill the promises exchanged in the Agreement, but money damages are not available. We believe the revised language better protects the City from unexpected liability risks.

We also had concerns with language in Sections 2 and 10.1 which appeared to acknowledge the indefinite existence of a vested right to develop the previously approved 150 room hotel. The intent of the parties was to protect the right to develop the 150 room hotel only during the five year term of the Development Agreement. Accordingly, we have added language to Recital P., and Sections 2 and 10.1, which limits the City's acknowledgement of the right to develop the 150 room hotel to the term of the Development Agreement. If, after the Development Agreement expires, the 150 room hotel has not been developed, any right to do so will also expire.

Finally, we had concerns that the Transfer of Existing Development Rights provisions in Section 11 were not sufficiently linked to Council's approval of the companion ordinance amending Chapter 28.95. We have revised the Agreement to add a Section 11.3 which states that if, for any reason, the Chapter 28.95 amendments do not become effective, the TEDR provisions of the Development Agreement do not become effective either.

Because of the changes to the Development Agreement, we advise reintroduction and subsequent adoption of the Development Agreement ordinance. The TEDR Amendment is ready for adoption via second reading by title only.

CEQA Findings

Staff recommends approval of the Development Agreement, which would allow for completion of the Specific Plan, as well as a revised project that could involve a reduced footprint and building mass on the site. In order to approve a Development Agreement, the City Council must find it to be consistent with the General Plan and Specific Plan, among other findings.

Staff has prepared an Addendum to the Waterfront Park and Hotel and Youth Hostel Project EIR as the environmental document for this project which was included as Attachment 5 to the April 19, 2016 Council Agenda Report. Staff recommends that Council make the following California Environmental Quality Act (CEQA) findings:

1. The City Council has reviewed and considered the Addendum, dated January 14, 2016, to the Certified Final Project Environmental Impact Report (EIR) SCH#92091038 along with the Certified EIR and earlier EIR Addenda of June 1995, November 1996, and August 2007, which together constitute environmental

analysis for the current project under California Environmental Quality Act (CEQA) provisions; and

2. The City Council finds that the EIR Addendum dated January 14, 2016 has been completed in compliance with CEQA and reflects the Council's independent judgment and analysis.

PREPARED BY: Ariel Pierre Calonne, City Attorney

SUBMITTED BY: Ariel Pierre Calonne, City Attorney

APPROVED BY: City Administrator's Office



**MEMORANDUM
OFFICE OF THE CITY ATTORNEY**

DATE: May 17, 2016

TO: Mayor and City Council

FROM: Ariel Pierre Calonne, City Attorney

SUBJECT: Correction to Agenda Item 9 Council Agenda Report relating to the April 19, 2016 Waterfront Hotel Development Agreement Vote

The above-referenced Council Agenda Report incorrectly reports the Council's April 19, 2017 action as follows:

On April 19, 2016, the City Council introduced the two above-referenced ordinances for first reading. Council voted 4-2 (Dominguez and Murillo NO, Rowse absent) on Item B. (the Development Agreement, reduced to a five year term) and 4-2 (Dominguez and Murillo NO, Rowse absent) on Item C, (the TEDR Amendment).

I am informed by the City Clerk Services Manager that the actual vote took place in a single motion approving both Items B. and C. by a vote of 4-2, with Council Members Dominguez and Murillo voting NO, and Council Member Rowse absent.

APC/apc