



# CITY OF SANTA BARBARA

## COUNCIL AGENDA REPORT

**AGENDA DATE:** May 24, 2016

**TO:** Mayor and Councilmembers

**FROM:** City Attorney's Office

**SUBJECT:** Revised Waterfront Hotel Development Agreement

### **RECOMMENDATION:**

That Council: (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.

### **DISCUSSION:**

On April 19, 2016, the City Council introduced the two above-referenced ordinances for first reading. Council voted 4-3 (Dominguez, Hart and Murillo NOE) on Item B. (the Development Agreement) and 5-2 (Dominguez and Murillo NOE) 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.

On May 17, Council voted 5-2 (Hart and Murillo NOE) to introduce the ordinance approving the Development Agreement and directed the City Attorney's Office to revise the Development Agreement to reflect the following understandings:

1. Any transfer of existing development rights would occur on a square footage basis and not a room-for-room basis;
2. The Parker Family would have five (5) years in which to obtain a building permit for a hotel on the Hotel Parcel;
3. An additional two (2) years would be added to the term of the Agreement during which time the Parker Family could apply for a transfer existing development rights; and
4. Any transfer of existing development rights from the Hotel Parcel to the Fess Parker Resort would include the transfer of credit for the prior environmental mitigations.

**PREPARED BY:** Ariel Pierre Calonne, City Attorney

**SUBMITTED BY:** Ariel Pierre Calonne, City Attorney

**APPROVED BY:** City Administrator's Office