



Memorandum

**TO: HONORABLE MAYOR AND
CITY COUNCIL**

FROM: Paul Krutko

SUBJECT: See Below

DATE: June 7, 2010

Approved

Date

6/8/10

Council District: 3

SUBJECT: AUTHORIZE THE CITY MANAGER TO NEGOTIATE AND EXECUTE CERTAIN NO-BUILD EASEMENTS OVER THE PERALTA PLAZA TO ADJACENT PROPERTY OWNERS OR LESSORS AND A PROPERTY USE AND MAINTENANCE AGREEMENT FOR THE SAN PEDRO PUBLIC MARKET.

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to negotiate and execute:

- a. No build easements to be granted by City over portions of the Peralta Adobe Plaza to adjacent property owners or to be recorded against a ground lease held by Urban Markets as lessee of the Perrazzo property; and
- b. A property use and maintenance agreement with Urban Markets LLC for maintenance of the Plaza.

OUTCOME

Development of an urban market in the historic San Pedro Square area will serve as an amenity to residents, workers and visitors to Downtown San Jose. Urban markets have become successful downtown revitalization tools in many cities including the Ferry Building in San Francisco, Rockridge Hall in Oakland, and the Emerybay Public Market in Emeryville. The creation of the Public Market will also allow many more visitors to San Pedro Square to visit the Peralta Adobe the City's oldest existing structure and experience a part of San Jose's history.

Approval of these agreements will allow building permits to be issued for the project to commence construction.

BACKGROUND

On February 24 2009, the Redevelopment Agency Board approved a building rehabilitation and loan agreement with Urban Markets, LLC for improvements associated with the San Pedro Public Market. The Urban Market intends to expand on the successful San Pedro Square entertainment and dining district by renovating the El Dorado Bakery Building located at 87 N. San Pedro Street (APN No. 259-35-013, 87 N. San Pedro Partners, property owners; and APN No. 259-35-053, Peralta-North San Pedro, LLC, property owner) and the Lusardi Building at 196 W. St. John Street (APN. No. 259-35-009, Swensen French No. 1 LLC/Green Valley, property owner). The project will create inviting space around the Peralta Adobe, and will also develop a new building on the corner of W. St. John and N. San Pedro Streets (APN No. 259-35-045, Perrazzo Living Trust, Eleanor Perrazzo, Trustee, property owner). Urban Markets has a ground on the Perrazzo property, and a no-build easement must also be recorded to allow new construction on this parcel. Urban Markets is in discussions with the owner of the Perrazzo property to obtain the desired consent to record a no-build easement that will be acceptable to the owner/lessor and the Building Department in order to allow the project to proceed.

Future phases of the project include the placement of retail kiosks in and around the Peralta Plaza and San Pedro Square area and the proposed addition of an additional market building on the Fallon House parking lot.

On December 12, 2009, the Planning Commission approved a Conditional Use Permit that stipulates the uses allowed on the property and requirements the project must adhere to in operation of the public market. In addition, the Conditional Use Permit requires the applicants to obtain certain no-build easements over portions of the Peralta Adobe Plaza in favor of adjacent property owners; to obtain a property use agreement with the City for use of the Peralta Adobe Plaza, and that Urban Markets to comply with the terms of the Amended and Restated Operation Agreement between the City and History San Jose (HSJ), as approved by the City Council on June 23, 2009, and obtain an agreement with History San Jose that is acceptable to the City and that specifies the terms and conditions under which Urban Markets may use the Plaza.

This memorandum details specific approvals that are necessary to facilitate the first phase of the construction, operation and maintenance of the San Pedro Public Market. In order to proceed with the construction of improvements to the El Dorado Bakery Building and the Lusardi Building the City must grant no-build easements that allow both openings and awnings onto the Peralta Plaza to three adjacent property owners.

ANALYSIS

The Public Market is to be located within the San Pedro Square area. San Pedro square is a well-established activity center with many restaurants and entertainment venues that offer sidewalk cafes and patio dining areas. The "square" is comprised of a collection of historic buildings located on several blocks of the downtown and serves as a primary Downtown amenity. Within the heart of San Pedro Square is the Peralta Adobe, the City's oldest surviving structure and the

City's first landmark. The Adobe is situated in the Peralta Plaza, as shown in the attached aerial photograph, Attachment A.

Urban Markets LLC intends to enhance the area around the Adobe and to structurally retrofit and improve the El Dorado Baker Building, a Contributing Structure, and the Lusardi Building, a concrete building located to the west and directly abutting the Adobe. Urban Markets also proposes the development of a new market building on the southwest corner of W. St. John and N. San Pedro Streets under the terms of its lease with Perrazzo Living Trust. The project will accommodate interior as well as open air vendors serving food and selling retail items within commercial spaces. Within the publicly owned Peralta Plaza, the project proposes to install pedestrian pathways and temporary seating and kiosks in the Peralta Adobe plaza for use by retail and food vendors.

Currently the Peralta Adobe is somewhat hidden and underutilized. Urban Markets LLC will increase the public's awareness of the Adobe and thereby enhance the public's knowledge of a seminal part of San Jose's history. The project will allow patrons to utilize the Adobe and surrounding Plaza on a daily basis. The Adobe will continue its use as a museum with school groups visiting in the mornings. History San Jose, has the exclusive use of the Plaza under current agreement with the City. History San Jose brings school children to experience and enjoy San Jose's living history. HSJ's school related activities will be enhanced through the improvements planned to be included in the project. Urban Markets has agreed to coordinate the Market's activities to ensure they enhance and not inhibit HSJ's programs. In order to minimize any potential impacts from increased patronage to the Peralta Plaza, the CUP requires the preparation of a maintenance plan and a visitor monitoring program. The CUP also references a No-Build Agreement to ensure compliance with Building Code Requirements and a Property Use Agreement to allow Urban Markets LLC to use the property in conjunction with the CUP.

Easements

As mentioned above, the City owns the Peralta Adobe and the adjacent Peralta Plaza. The El Dorado Bakery building, the Lusardi Building, and the Perazzo Building sit directly on the property lines of the Plaza. Building code requirements stipulate that doors and windows have either appropriate set backs or easements on adjacent properties. In order to facilitate the improvement of the related Market buildings, the City must grant No-Build Easements on and over the No-Build Easement Areas to the owner of the Perrazzo parcel, or against the ground lease with Urban Markets as lessee, as shown on the diagram attached as Attachment A. The No-Build Easements require the City to keep the No-Build Easement areas free from building and surface structures of any kind except for landscaping, awnings, openings and irrigation systems, or pavement or surfacing of the areas, as approved by the Building Department. Approval of the No-Build Easements is critical to the project as the Building Department cannot issue building permits until the project secures the No-Build Easements.

Easement Appraisals and Consideration for Payment of Related Easements

Carneghi-Blum & Partners, Inc. appraised the No-Build Easements for the Urban Markets project in accordance with all relevant City policies. The project requires four No-Build Easements. As mentioned previously, the Easements are a required element of the project's Building Department approvals and provide adequate setbacks for the adjacent parcels. The Easements also allow awnings and landscaping as approved by the Building Department. Carneghi determined a Fair Market Value of \$75,200 for all of the Easements. The cost of easements is a one-time cost to the project. The Easement Agreements are to be in effect as long as the Conditional Use Permit is in effect.

In consideration for payment of the Easements the Urban Market LLC will conduct maintenance activities in conjunction with the Public Market Project including maintenance of the Peralta Plaza and day-to-day maintenance of the Peralta Adobe. Urban Market's LLC will work closely with History San Jose and City staff to coordinate maintenance activities. The minimum estimated cost for providing the associated maintenance the project will be \$2,500 per month. Annual maintenance costs will likely exceed \$30,000. City staff has determined that the value of the maintenance services to be provided by Urban Markets LLC is greater than the one-time purchase price of the easements, given the on-going nature of the proposed maintenance services. Maintenance activities on the Peralta Plaza are currently undertaken by the General Services Department and the Department of Parks and Recreation. The identified costs are in addition to the costs associated with operating and maintaining the associated private structures. The Maintenance Agreement described further below will alleviate the City from maintenance costs associated with the Peralta Plaza. The Maintenance Agreement will provide an enhanced level of maintenance service reflecting the increased utilization of the Plaza. The CUP requires Urban Markets to employ an historic consultant to monitor and consult with History San Jose and provide proactive maintenance to the Peralta Adobe to ensure that the Adobe is not diminished through the increased visitation anticipated from Market activities.

Use and Maintenance Agreement

As stated earlier, the Conditional Use Permit for the project requires a Property Use Agreement for the Project, which has been combined with a maintenance agreement into a single document. The Agreement ensures that the project is operated in concert with the CUP. The Agreement grants non-exclusive use of the Peralta Adobe Plaza for Public Market operations. While the Market can operate retail and food kiosks within the Plaza, the Peralta Plaza remains a public space. Individuals who do not patronize the Market stores can still enjoy the same access to the Peralta Plaza and Adobe facilities as currently occurs under existing conditions. This Agreement grants only a license for the Peralta Plaza and does not grant Urban Markets any right of possession in or to the Peralta Plaza.

The schedule of maintenance to be placed in this Use and Maintenance Agreement will specify the tasks and frequency of the tasks to be undertaken to care for the Peralta Plaza. Urban Markets shall be fully responsible for all grounds, landscape and building maintenance of the

Peralta Adobe Plaza at its sole expense. Maintenance activities shall be coordinated with the appropriate representative from HSJ and the City.

City of San Jose/History San Jose Agreement

The City of San Jose has an existing agreement with History San Jose for the management and operation of many of the City's historic properties. Under this HSJ agreement, all other uses are secondary to use by HSJ. Urban Markets acknowledges that its use of the Plaza is subordinate to the terms and provisions of the Amended and Restated Operations Agreement Between the City of San Jose and History San Jose. History San Jose (HSJ) has exclusive use of the Peralta Adobe Plaza; however, the City may approve an agreement between History San Jose and a third party for long term use of the Peralta Adobe Plaza. Urban Markets is required to enter into an agreement with HSJ for its proposed uses of the Plaza under the CUPHSJ and Urban Markets are working to finalize an agreement between the two organizations. HSJ will not obtain an occupancy permit for the Market until such time that the City Manager or her designee has reviewed and approved the proposed agreement. The City Manager is authorized to approve an acceptable arrangement between HSJ and Urban Markets under the City's agreement with HSJ.

CONCLUSION

The proposed No-Build Easements, and the proposed Use and Maintenance Agreement, as well as the Manager-approved agreement between HSJ and Urban Markets, will facilitate the successful construction and operation of the San Pedro Public Market project. The Public Market will in-turn enhance the vitality of the San Pedro Square area and act as an amenity to residents, workers and visitors to San Jose. By improving the Peralta Plaza staff anticipates that many more visitors to the area will learn about San Jose's early history.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, the General Services Department, Planning Building and Code Enforcement Department and the Redevelopment Agency.

EVALUATION AND FOLLOW-UP

Staff will continue to work with Urban Markets LLC throughout construction of the project. Staff anticipates returning to the City Council in the fall to present a proposed ordinance intended to allow the operation of multiple kiosks under single management in at least three areas throughout San Jose, including the San Pedro Square area. An additional maintenance agreement with Public Markets for the public areas around the Public Market is also anticipated. Finally, Urban Markets has indicated an interest in purchasing the Fallon House parking lot. Staff will return to Council with the appropriate analysis and documents related to any proposed sale of the property.

POLICY ALTERNATIVES

Alternative: An alternative to approving the No Build Easements and the Use and Maintenance Agreement would be to defer action on either the No-Build Easements or Use and Maintenance Agreement.

Pros: Additional time for consideration may provide for refinement of the documents.

Cons: Deferring approval of the proposed documents would cause significant delay in the construction and opening of the Public Market.

Reason for not recommending: Urban Markets LLC has already begun structural retrofit of the El Dorado Bakery Building and the Lusardi Building. The project has reached a critical point in the development of the Public Market. Any delay associated with a possible deferral would have significant negative impact on the project. The construction crews currently assigned to the project would likely be assigned to other projects and the opening of the Public Market would be delayed from the fall to the following year.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum does not trigger any of the criteria listed above. The memorandum has been posted on the City's web-site.

The San Pedro Public Market project has been extensively reviewed by the public on several occasions. The Project has been before the Redevelopment Agency for related actions three times. The City Council reviewed and approved related Planning Department approvals. Multiple community meetings were held to discuss the project, including the Public Meeting required for the Project's entitlement process. Additionally, the Downtown Association featured the Public Market project at one of the Association's meetings.

COORDINATION

The preparation of this memorandum and the associated work was coordinated with the Redevelopment Agency, Office of Economic Development, City Attorney's Office, Department of Transportation, and the Department of Parks, Recreation and Neighborhood Services.

Honorable Mayor and City Council
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FISCAL/POLICY ALIGNMENT

This project is consistent with applicable City Council policies to add vitality to the Downtown and to add revenue and jobs.

CEQA

Resolution No. 72767, File No. CP 09-054.

/s/

PAUL KRUTKO
Chief Development Officer

Attachment

Attachment A

