

Murtaza Baxamusa and San Diego County Building & Construction Trades Council, AFL-CIO
v. Civic San Diego and City of San Diego
SDSC Case No. 37-2015-00012092-CU-PT-CTL

Settlement Terms

3. Terms of Settlement: In consideration of settlement of any and all claims arising from the Lawsuit mentioned above, the Parties agree as follows:

3.1 Agency and Operating Agreements

a. City will terminate Agency Agreement with Civic San Diego

- i.** Following execution of this Agreement, including any and all necessary City Council Open Session approvals and effective dates contained therein, Civic San Diego will no longer operate as agent for the City for planning, permitting, and non-successor project management functions.
- ii.** City staff will bring an item to City Council rescinding the Agency Agreement together with an overall package amending the Operating Agreement and Planned District Ordinance (PDO) amendments.

b. City will Amend Operating Agreement with Civic San Diego

- i.** The Operating Agreement will be amended so that the only surviving contractual relationship between the City and Civic San Diego relates to former redevelopment functions to support the City in its role as the Successor Agency and Housing Successor Agency. City will not delegate to Civic San Diego any new municipal functions.
- ii.** The Operating Agreement term will be for five (5) years to allow sufficient time to implement the winding down of projects and assets of the former redevelopment agency. Wind down is estimated at two (2) to three (3) years, but ultimately the Parties acknowledge timing is not solely within City and Civic San Diego control.
- iii.** The Five (5) year term of the Operating Agreement will have one five (5) year option to be renewed only by a vote of the City Council, and only if certain external triggers are met, such as unforeseen delays.
- iv.** The Amended Operating Agreement will be presented to City Council together with an overall package of Agency Agreement termination and PDO amendments.

3.2 Planned District Ordinances

- a.** City will return all land use planning and permitting functions from Civic San Diego to City.
- b.** City will preserve separate PDOs for Downtown due to unique dense urban environment and existence of National Historic District, but will make amendments to account for return of planning and permitting authority. Marina PDO will be merged into the Centre City PDO, and Gaslamp PDO will remain separate due to historical designation.
- c.** Downtown land use process levels (San Diego Municipal Code (SDMC) section 156.0304(b), (c), (e) and (f)) will be brought into conformance with citywide land use process levels, without elevating any permit type to a higher process level.
- d.** Special design review process by the Civic San Diego President and the Civic San Diego Board will be eliminated. All projects will need to conform to Downtown Design Guidelines as a part of the normal City staff review process. All review documentation will be a part of the public record, accessible from the City by the public in a manner consistent with the City's current practice.

3.3 Implementation Schedule

- a.** The effective date of the Land Development Code changes outside of the Coastal Zone would be the later of July 1, 2019 or thirty (30) days following City Council adoption.

3.4 Community Investment

- a.** Civic San Diego may continue its community investment programs (non-City related) as an independent non-profit public benefit corporation.
- b.** As a certified community development entity (CDE), Civic San Diego may continue to be eligible to receive New Markets Tax Credit (NMTC) allocations.

3.5 Parking District

- a.** All parking district administration functions will be transferred to the City in the next feasible budget cycle (anticipated FY 2020).

3.6 Non-Opposition

- a.** Petitioners, for a period of ten (10) years after the execution date of this Agreement, will not advocate for or propose changes to the land use development process for Downtown as defined in Section 3.2 above in effect following implementation of this Agreement, or encourage, support, promote, or incite any other persons or entities to do so.
- b.** Petitioners will not bring any legal challenges against individual projects that receive approvals prior to the structural changes to the land use permitting and planning set forth in this Agreement, or encourage, support promote, or incite any other persons or entities to do so.
- c.** Petitioners, for a period of ten (10) years after the execution date of this Agreement, will not advocate, sponsor, support, or provide resources to any direct legislative action, at the federal, state, or local level, which would propose to eliminate or reasonably negatively impact Civic San Diego.

3.7 Audits

- a.** The Parties agree that no new audits will be conducted.

3.8 Related Case

- a.** As a condition precedent to this Agreement being executed and finalized the related litigation *San Diegans for Open Government v. Civic San Diego, et al.*, San Diego Superior Court Case No. 2018-00008326-CU-CO-CTL, will be dismissed with prejudice, and any attorneys' fees paid in the *SDOG* case (not to exceed \$25,000) would reduce the amount of attorneys' fees received by the Petitioners in *Baxamusa et al.*

3.9 Attorneys' Fees and Costs

- a.** City shall tender Petitioners a payment of \$725,000.00 payable to "The Coopersmith Law Firm IOLTA Client Trust Account." This amount constitutes the full and complete settlement of any and all claim to costs and fees of any type, including attorneys' fees.