

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: 1826092
Date: Wednesday, June 9, 2021 3:23:30 PM
Attachments: [Supplemental Memo \(SSE Changes\).doc](#)

From: MWChan@perkinscoie.com <MWChan@perkinscoie.com>
Sent: Wednesday, June 2, 2021 4:20 PM
To: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Cc: Gray, Matthew S. (SFO) <mgray@perkinscoie.com>
Subject: RE: 1826092

[External Email]

Hi Johnny,

Please see attached for suggested edits to the memo.

Michelle

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From: Phan, Johnny <Johnny.Phan@sanjoseca.gov>
Sent: Wednesday, June 02, 2021 2:35 PM
To: Gray, Matthew S. (SFO) <MGray@perkinscoie.com>; Chan, Michelle W. (SFO) <MWChan@perkinscoie.com>
Subject: 1826092

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COUNCIL AGENDA: 06-08-2021
ITEMS: 2.2(f); 2.2(g)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann, City Attorney

SUBJECT: SEE BELOW

DATE: June 2, 2021

Approved

Date

COUNCIL DISTRICT: 3

SUPPLEMENTAL

**SUBJECT: DOWNTOWN WEST MIXED USE PLAN PROJECT – PLANNED
DEVELOPMENT REZONING ORDINANCE AND DEVELOPMENT
AGREEMENT ORDINANCE (FILE NO. GP19-009; PDC19-039)**

RECOMMENDATION

- Adoption of an ordinance on second reading, with instructions to the City Clerk to conform the Planned Development Rezoning ordinance to actions taken relative to amendments to the Arena Management Agreement (Item 8.1 of the June 8, 2021 City Council agenda). The redline text in the Planning Development Rezoning ordinance to be accepted only if amendments to the Arena Management Agreement is approved by City Council and executed by the parties pursuant to the City/Google/Sharks Settlement Agreement & Release.
- Adoption of an ordinance on second reading, with instructions to the City Clerk to conform the Development Agreement prior to its execution in accordance with actions taken relative to amendments to the Arena Management Agreement (Item 8.1 of the June 8, 2021 City Council agenda). The redline text in Section 3.3, 14.2, 14.6, 14.7, and Exhibit K to be accepted only if amendments to the Arena Management Agreement is approved by Council and executed by the parties pursuant to the City/Google/SSE Settlement Agreement & Release.

Commented [MC1]: Since the Ordinance will be signed on June 9th and the Settlement Agreement provides until June 22nd for the City Council to approve the Settlement Agreement, we would need to incorporate the redline text into the PD Zoning ordinance even if the AMA amendment is not approved on June 8th.

REASON FOR SUPPLEMENTAL

HONORABLE MAYOR AND CITY COUNCIL

June 2, 2021

Subject: Downtown West Mixed Use Plan Project – Planned Development Rezoning Ordinance and Development Agreement Ordinance (Supplemental Memo)

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On May 25, 2021, the City Council certified the Downtown West Mixed-Use Plan Environmental Impact Report and approved the project entitlements. The second reading for the Planned Development Rezoning ordinance and Development Agreement ordinance (which includes the Development Agreement attached as Exhibit A to the ordinance) are on the June 8, 2021 City Council agenda and include changes approved by City Council on May 25, 2021 (first reading) as part of the Settlement Agreement & Release between the City, Google, LLC (“Google”) and Sharks Sports and Entertainment, LLC (“Sharks”).

As outlined in Staff’s Supplemental Memorandum dated May 25, 2021, ~~that was~~ approved by the City Council on the same date, these ordinance changes would only be accepted by the City Clerk and go into effect if City Council approves and the parties fully execute an amendment to the Second Amended and Restated Arena Management Agreement (“AMA”) dated August 15, 2018 pursuant to the timeframe set forth in the Settlement Agreement. The proposed amendment to the AMA is on the same June 8, 2021 City Council agenda as Item 8.1. The Settlement Agreement & Release gives the City and Sharks until June 22, 2021 to fully sign the amended AMA but the parties anticipate full execution much earlier.

The PD Zoning ordinances provides the following two options:

- 1) Option 1: If Council approves an amendment to the AMA and the parties execute the amendment on or before ~~June 9-June 22~~, 2021 consistent with the Settlement Agreement & Release, then certain changes that are shown in redline in the PD Zoning ordinances will be effective after second reading and shall replace non-Settlement Agreement language set forth in Section 6, paragraph B and the Development Agreement should include the corresponding changes prior to execution.
- 2) Option 2: If Council does not approve an amendment to the AMA ~~by June 9, 2021 or the parties do not execute the amendment on or before June 22, 2021~~, then both the original language set forth in Section 6, paragraph B and of the ordinances without the redline text shown in the second reading ~~shall be~~ adopted. As set forth in the redline text, if as Council approves an amendment to the AMA by June 22, 2021, the operative language will be the redline text set forth in Section 6, paragraph B, which was approved on May 25, 2021 (first reading). If Council does not approve an amendment to the AMA by June 22, 2021, the operative language will be the original language set forth in Section 6, paragraph B.

In terms of the Development Agreement ordinance, the Clerk shall attest the Development Agreement ordinance on June 9, 2021, with the following instructions to conform the Development Agreement prior to execution, which shall not occur until City Council approves the AMA amendment on or before June 22, 2021, or the parties do not execute the amendment before June 22, 2021:

- Option 1: If Council approves an amendment to the AMA and the parties execute the amendment on or before June 22, 2021 consistent with the Settlement Agreement & Release, then the Development Agreement will incorporate the redline text changes in Section 3.3, 14.2, 14.6, 14.7, and Exhibit K prior to execution.

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HONORABLE MAYOR AND CITY COUNCIL

June 2, 2021

Subject: Downtown West Mixed Use Plan Project – Planned Development Rezoning Ordinance and Development Agreement Ordinance (Supplemental Memo)

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- Option 2: If Council does not approve an amendment to the AMA or the parties do not execute the AMA amendment on or before June 22, 2021, the redline text changes in Section 3.3, 14.2, 14.6, 14.7, and Exhibit K will not be accepted prior to execution of the Development Agreement.

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CONCLUSION

The City Attorney's Office will coordinate with the City on the above based on Council's action on June 8, 2021.

Nora Frimann
City Attorney

For questions please contact Johnny V. Phan, Chief Deputy City Attorney at (408) 535-1981.