Centre City
Development
Corporation

REPORT NO. CCDC-06-26

DATE ISSUED:	July 12, 2006
ATTENTION:	Honorable Chair and Members of the Redevelopment Agency Docket of July 18, 2006
ORIGINATING DEPT.:	Centre City Development Corporation
SUBJECT:	Proposed Guidelines for Implementation of the Polanco Redevelopment Act – All San Diego Redevelopment Project areas
COUNCIL DISTRICT(S):	2, 3, 4, 6, 7 and 8
REFERENCE:	Proposed Guidelines for Implementation of the Polanco Redevelopment Act by the Redevelopment Agency of the City of San Diego, Centre City Development Corporation, and the Southeastern Economic Development Corporation
STAFF CONTACT:	David N. Allsbrook, Manager-Contracting and Public Works (619-533-7112)

REQUESTED ACTION:
Recommend the Proposed Guidelines for Implementation of the Polanco Redevelopment Act be adopted.

STAFF RECOMMENDATION:
That the Redevelopment Agency approve the Proposed Guidelines for Implementation of the Polanco Redevelopment Act.

SUMMARY:
The Proposed Guidelines for Implementation of the Polanco Redevelopment Act will guide the practices and procedures of the Redevelopment Agency in utilizing the Polanco Redevelopment Act when acquiring property on behalf of the Redevelopment Agency. The proposed guidelines describe the various tasks the Redevelopment Agency is authorized to undertake pursuant to the Polanco Redevelopment Act (Cal. Health & Safety Code §§33459 et. seq.), (the "Act").

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FISCAL CONSIDERATIONS: None with this action.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION:
On June 28, 2006, the Centre City Development Corporation Board of Directors approved with a unanimous vote to recommend that the Redevelopment Agency approve the Proposed Guidelines for Implementation of the Polanco Redevelopment Act.

OTHER RECOMMENDATIONS: None.

BACKGROUND

In 1989, the Act was approved by the California Legislature and became law in 1990. The Act provides the Redevelopment Agency (the "Agency") with authority to perform various tasks. The tasks include:

1) Requesting information about a property or conducting an environmental investigation of a property;
2) Issuing 60-day notices to responsible parties to request remedial action plans;
3) Recovering costs incurred to investigate or remediate hazardous substances at a property, or seeking declaratory relief that a responsible party is liable for future costs;
4) Seeking injunctive relief to compel a responsible party to remediate a property;
5) Designating a desired lead agency to perform the regulatory oversight of an investigation or remediation effort; and
6) Obtain regulatory immunities and execute agreements with third parties to remediate a property under the Act so that the Agency, the Corporation, or the Southeastern Economic Development Corporation (the "SEDC") and the third party receive the regulatory certain immunities provided by the Act upon completion of the remediation.

The Agency has previously delegated authority to the President of the Corporation, or designee to "identify and name responsible parties and take other actions as appropriate and as authorized by the Act; and has authorized the Executive Director of the Redevelopment Agency, or designee to take any and all actions necessary as authorized by the Act and other supportive statues."

The Agency's legal counsel, Opper & Varco has advised staff that because of a recent lawsuit filed by Mr. Melvin Shapiro, where he relied on statutes which purport to limit the ability of the Agency to delegate certain tasks to staff, including staff at the Corporation and SEDC; the question has been raised as to what tasks can be delegated by the Agency to other staff without further review or ratification by the Agency. Opper & Varco has concluded that "ministerial" tasks can be delegated by the Agency to other staff without further review or ratification; however, when considering whether a task is "ministerial", a court considers how much discretion is required to perform the task. Case law has indicated that when guidelines are created to minimize the amount of discretion required to perform tasks, the more likely the task is to be considered ministerial.

CONCLUSION

The Proposed Guidelines for Implementation of the Polanco Redevelopment Act describes and discusses the current custom and practice to implement the Act. The adoption of the guidelines will clarify the issue of delegation by the Agency and support the argument, if it has to be made in Court at some future time, that the tasks which were delegated by the Board to its staff are ministerial, and may therefore be legally delegated.

Respectfully submitted,

David N. Allsbrook
Manager-Contracting & Public Works

Concurred by:

Nancy C. Graham
President

Attachment(s): Proposed Guidelines for Implementation of the Polanco Redevelopment Act by the Redevelopment Agency of the City of San Diego, Centre City Development Corporation, and the Southeastern Economic Development Corporation

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