

March 5, 2019

TO: Mayor Kevin Faulconer
Councilmember Chris Ward
City Attorney Mara Elliott
SANDAG Legal Counsel Peter Stevens
Neighborhood Investment Manager Elizabeth Studebaker

FR: Mat Wahlstrom

RE: Request for Delay and Reconsideration of Normal Street Promenade Project

SUMMARY

After two years of emails, two Community Planning Group presentations, and the received responses of a California Public Records Act request, it has become apparent that the Normal Street Promenade project is an improper and arguably illegal effort to divert a public right of way designated for a City park to the private benefit of a City contractor. And that the agencies and personnel involved have allegedly engaged in bad faith arguments to hide these facts from the public to further their own agendas. Therefore it is imperative to postpone plans for this project as is until a thorough accounting can be conducted and a proper and clearly legal process for developing Normal Street as a City park is performed.

BACKGROUND

Hillcrest is the only neighborhood in Uptown without a park of any kind. The 1988 Uptown Community Plan called to "Develop the excess Normal Street right-of-way as a linear mini park" [[page 88](#)]. This was repeated in the 2016 UCP update, which calls to "Design and construct a variety of passive recreational and community uses, including a children's play area, with flexible opportunities for the weekly farmer's market and other community events" for the "Normal Street Linear Park" [[page RE-133](#)]. That this was understood to be mostly green space is shown in Figure 7-1, which has the entire area designated per the legend as "Proposed Parks/Park Equivalencies" [[page RE-135](#)] — same as the Mystic Park open space to its west — and by the illustrated "Conceptual rendering showing a redesign of Normal Street as a potential linear park" [[page RE-136](#)]. Finally, the popular understanding that this area was designated for a green space is borne out by the name, "Normal Street Greenway," used to describe this project by the Hillcrest Business Association on its website still today [[URL](#); [image](#) cached 3/5/19].

[Since 1997](#), the Hillcrest Business Association has staged the Hillcrest Farmers Market on Normal Street, and has steadily expanded its footprint. It receives half the proceeds from this weekly event, and is its single largest source of annual revenue — over \$210,000 per the latest audit [[page 6](#)]. As such, the HBA has long sought to expand its control over this public right of way. Including, as was reported to Uptown Planners in an [email from 10/8/2014](#), plans to erect a permanent 30' tall by 20' wide illuminated sign advertising the market.

HOW THE PROCESS SHOULD WORK

City Council Policy 600-33, “Public Notification and Input for City-Wide Park Development Projects,” has as its purpose “to establish guidelines to assure the public has adequate advance notification and opportunity to participate in the input process of Projects. It is intended that the process be administratively efficient, structurally predictable, and result in timely public input.” And critically, “This Council Policy *applies to all entities performing proposed improvements to the City’s park facilities*” [[page 1](#), emphasis added].

Without reciting all nine pages of this policy, what is striking about the process for the Promenade project is the extent to which it was completely ignored. For example, no bulletins were created or distributed to all “property owners who surround the park within a minimum 300-foot radius of the Project site”; no sign or notice was ever posted at the project site to provide information to the general public; no project director from Parks and Recreation was designated and/or identified; and no public project assessment has been performed. This last point is critical, as per City of San Diego DSD Bulletin 510, “a CEQA document is required for the City Council to release funding” [[page 1](#)].

WHAT HAPPENED INSTEAD

Because I had heard at board meetings of the HBA about their representations with different agencies regarding Normal Street, I kept a running [correspondence from 3/1/17 and 3/1/18](#), between and among staff from SANDAG and the office of City Council District 3. Throughout, I was repeatedly assured that the public would be included in the design process, and “that parks are governed by Council Policy 600-33, which requires community outreach and workshops to approve the GDP for the park” [[page 1](#)].

On 01/24/19, Uptown Planners was asked to hold a [special meeting](#) for those involved in the Normal Street Promenade to make their first official presentation of the project to the public. At that meeting, it became clear that the core features and design of the

project had already been decided, and the public's contribution would be cosmetic, limited to choosing from pre-selected lists of light fixtures, planters, and paving. And any mention of the word "park" was eliminated, euphemized as a "[public space](#)."

So instead of park as we have been promised, the City instead is allocating millions in public funds to build the equivalent of a drive-in theater for use just five hours a week on behalf of a City contractor and unusable for any "passive recreational" purposes.

WHY HAS IT HAPPENED

Though the motive for the HBA's actions is clear, the reasons why elected officials and staff of the City of San Diego, SANDAG, and the Uptown Community Parking District would work together in apparent violation of Policy 600-33 have been murky. Which is why on 2/5/19, I submitted a [request under the California Public Records Act](#) of the agencies involved to respond. They included the City Attorney, City Council District 3, City Treasurer, Development Services, Economic Development, Finance, Mayor, Parks & Recreation, Planning, Public Works, Purchasing & Contracting, Transportation & Storm Water, and Real Estate Assets. Although by law they were all required to reply within 10 days, only Real Estate Assets and the office of Councilmember Chris Ward have responded — the latter only to claim that "it will take 1 to 2 months to review potentially responsive documents" [[page 1](#)]. As of the date of this letter, the other elected offices and City departments have not complied, potentially exposing the City to liability under Government Code [6250 et seq.](#)

WHAT ARE THE ISSUES GOING FORWARD

However, on 3/1/19, SANDAG did respond, with [sixty pages of meeting notes](#). They indicate that those involved have been aware of the potential impropriety of their actions and concerned with coordinating their efforts to gain approval of their predetermined plan as quickly as possible. For example,

- The City admits it delegated its responsibility to develop Normal Street as parkland, and transferred \$2.2 million to SANDAG to subsume it into their Eastern Hillcrest Bikeways project [[page 48](#)]. While couched in terms of the City benefitting from SANDAG funding for the Promenade project, a [news story published on 2/22/19](#) reveals what is more likely: that it is the financially troubled SANDAG which is getting a project subsidized that it otherwise might have to eliminate.
- In notes from 12/14/18 marked "for internal discussion, not for distribution," there was question about this "place that was supposed to be a park," asking

Councilmember Ward's representative to speculate "how much of an issue this would be" [[page 49](#)]. Even dismissing any embarrassment, diverting this land to non-park use would violate the City's General Plan, which calls for [2.8 acres of parkland per 1,000 residents](#). Hillcrest has no park and a population of [13,600](#).

- There are still legal questions of what can be put in the transportation right of way [[page 40](#)]. This is confirmed by emails from Real Estate Assets, which note that "Normal Street went in by subdivision which means the City would only have an easement" [[email](#) of 8/6/18], meaning it's "owned in fee by the adjacent owners" [[email](#) of 7/5/18], and so the land may have to be "returned to the adjacent owners if the street were vacated and we would have to purchase the land" [[email](#) of 6/28/18]. All of which means the City may not know or is hiding the true costs for the Promenade project.
- As this will not be a City park, the City will not be in charge of it [[page 25](#)]. Rather, the City has delegated the responsibilities and benefits of maintaining the Promenade to the HBA, which is trying to establish a [Maintenance Assessment District](#) for this purpose. So instead of all citizens getting paying equally for the general enjoyment of this "park," it will be the residents and businesses neighboring Normal Street that will be taxed for it. This lack of providing a specific benefit is already in limbo [due to lawsuits](#); and if ruled illegal, would leave this site an orphaned eyesore.
- Currently, the HBA has control of the small public right of way [at the base of the Pride Flag](#), and insists that charities that wish to hold events there, such as San Diego Pride, [contract with the HBA](#) to use its vendors and split any net proceeds. There's no reason to think that allowing them to have control over the entirety of Normal Street would make them any controlling of who can make use of this "public space."

CONCLUSION

SANDAG's own analysis states that "if the delay is 3 months" for the Promenade, "we might be OK with that" [[page 30](#)]. And as already noted, it will "take 1 to 2 months" for Councilmember Ward's office to produce documents. Therefore it is the duty of care for all involved to make use of at least that amount of time to address the concerns identified here.

Mat Wahlstrom
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