





MEMORANDUM OFFICE OF THE CITY ATTORNEY

Date: April 18, 2022

To: State Street Advisory Committee

From: Ariel Calonne, City Attorney 

By: Dan Hentschke, Assistant City Attorney 

Subject: SSAC Participation in Selection of State Street Master Plan Consultant

BACKGROUND

On March 9, 2021, the City Council established the State Street Advisory Committee (SSAC) as a limited duration, single purpose advisory committee to participate in the development of the Downtown State Street Area Master Plan and to prepare a report and recommendation regarding the Master Plan to the City Council and other decision-making bodies such as the Planning Commission. The SSAC was intentionally constituted to include persons who are stakeholders, including property owners, business owners, and others who have a financial interest that may be materially affected by the Master Plan as ultimately adopted. Appointments to the SSAC were made on July 20, 2021.

At its meetings of March 9 and July 20, 2021, the City Council was advised that the SSAC members would not meet the definition of “public official” as described in the Political Reform Act. (Gov. Code § 82048; FPPC Regs. Section 18700 (c) (2).) However, some members of the SSAC are public officials for other reasons, such as membership on the City Council or Planning Commission. This is because as the SSAC was formed and empowered, it does not possess decision making authority as defined in the Political Reform Act. Instead it has been “formed or engaged for the sole purpose of researching a topic and preparing a report or recommendation for submission to another public official or governmental agency that has final decisionmaking authority” and will not make substantive recommendations over an extended period of time that could be approved without significant amendment or modification by another public official or governmental agency. (FPPC Regs. Section 18700 (c)(2)(B).) This limitation of authority is essential to executing the Council’s desire to have financially interested business and property owners participate in the process.

This office has advised that the SSAC must keep its attention focused on development and content of the Master Plan and cannot participate or provide recommendations on other matters such as rules for the interim operation of State Street under the Economic Recovery Extension and Transition Ordinance (ERETO) and administrative matters. Were it otherwise, SSAC members would be designated as public officials subject to the disclosure and disqualification requirements of the Political Reform Act and the City's Local Conflict of Interest Code. As a practical matter, this would mean that stakeholders who have a financial interest in State Street (e.g., income, investments, real property) could not be members of the Committee, which would frustrate the Council's intent and the Committee's purpose.

SSAC PARTICIPATION IN SELECTION OF STATE STREET MASTER PLAN CONSULTANT

Regarding the procurement process for a Master Plan consultant, this office has advised that the SSAC may participate in the development of the scope of work, but may not participate in the interview process or ultimate selection of the consultant. Consistent with that advice, staff has developed the following **State Street Master Plan RFP Selection Process:**

Eight firms submitted proposals to the City for the State Street Master Plan project by close of the request for proposals response period on March 24. The proposals are confidential and will remain confidential until completion of the selection process.

Staff will analyze the responses to determine the most appropriate proposal that addresses long-term visioning for State Street's future. After reviewing and scoring the proposals, City Staff will make a recommendation to City Council on the consultant selection and finalize a contract.

To assure that the final contract has a scope of work that reflects the SSAC's objectives, Staff proposes the following process to guide the selection of a finalist:

1. A small group of City staff will conduct the first round of reviews for the RFP proposals and reduce the number of proposals to the top 4-5 candidates.
2. The Chair of the SSAC will appoint a subcommittee of SSAC members to conduct a second review of the scope of work proposed by the top 4-5 candidates. This review would be limited to the scope of work and would not disclose any information that would identify the candidates. In order for SSAC members to participate in this effort, staff will contact the top 4-5 candidates and request that they submit a supplemental document without

identifiable information that includes responses to questions that relate to the scope of work. The SSAC subcommittee will review responses and rank candidates. Staff will invite (up to) three candidates for an interview.

3. A small group of City staff and Mr. Dave Davis will conduct final interviews. Mr. Davis will not be acting in an official capacity (as Chair of the SSAC) for the review process. City staff will select a consultant and negotiate a contract. City staff will take the selection to the City Council for their approval and contract authorization.

CONCLUSION

This office has reviewed and approved the selection process described by staff. The SSAC's role in the selection process is limited to and focused on the scope of work. This is consistent with the SSAC's limited purpose and does not involve the SSAC in other governmental decisions. Although Mr. Davis is the chair of the SSAC, his participation in the final interview panel is not on behalf of the SSAC or in another official capacity.

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cc: Mayor and City Council Members
Rebecca Bjork, City Administrator
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