

LABOR PEACE AGREEMENT POLICY FOR TRANSIT ORIENTED DEVELOPMENT HOTEL OPERATIONS

VISION

As stated in its Board-adopted Transit-Oriented Development Policy, The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large-scale public investment. This includes real estate assets essential to BART's transit-operations, and real estate assets that can be used to catalyze transit-oriented development (TOD) in furtherance of BART's purpose and goals. BART TOD projects will prioritize uses with the highest ridership including residential, community services, and uses with a high density of quality jobs such as office space, but potentially also hotel and hospitality. Due to both its financial interest in these projects to support transit operations, and its commitment to ensuring projects provide community benefits, this policy aims to provide greater certainty around BART's expectations for labor operations in hotels that are part of its TOD projects.

POLICY

- The District shall not execute any lease, Lease Disposition and Development Agreement (LDDA), or other contract or agreement providing for the development of a Hotel Development Project in which the District has a proprietary interest, unless and until the project applicant, developer, or owner, and any operator or manager of the hotel that has been selected, has signed a Labor Peace Agreement covering any Hospitality Operations at the project.
- Each such District lease, LDDA, or other contract or agreement shall further require that any future subcontractor, tenant, sub-lessee, or manager that operates a hospitality operation at the Hotel Development Project shall be required to enter into a Labor Peace Agreement, as defined below.
- The District shall make these requirements express components of any request for proposal, request for qualifications, or other similar solicitation for a Hotel Development Project.
- Nothing in this Policy shall require or compel an employee to be a member of any labor organization, nor shall it require the developer or any tenant, subcontractor, or sub-tenant to recognize a labor organization as the bargaining representative for its employees or to enter into a collective bargaining agreement with any labor organization.
- This Policy shall not apply to hotel development projects on which the District's cumulative investment, or the present value of its expected lease revenues, is less than \$100,000 or on which the hotel or motel component of the hotel development project will employ fewer than 10 full-time equivalent employees at the hotel or motel.
- Moreover, this policy shall be prospective and shall not be applicable to any past or present development projects for which options agreements for ground leases or ground leases have already been executed between the District and any developer.
- This Policy will sunset in 5 years to allow the District to evaluate the impacts. Staff will return to Board at least 6 months before sunset to seek approval to continue or dissolve.

DEFINITIONS

For purposes of this Policy, the following terms shall have the ascribed meanings:

a. “Labor Peace Agreement” shall mean a binding and enforceable agreement with any labor organization that represents or seeks to represent hospitality workers in the county in which the project will be located, in which the labor organization agrees on behalf of itself and its members, in exchange for good and valuable consideration, not to engage in any picketing, work stoppages, boycotts, or any other economic interference with any hospitality operation at the project.

b. “Hospitality Operation” shall mean any hotel or motel operation, and any conference center, restaurant, bar, or any other food and beverage service operation operated or developed in conjunction with a hotel or motel.

c. “Hotel Development Project” shall mean a real-estate project developed pursuant to the TOD Policy that will or may include one or more hotels or motels.

d. “Proprietary interest” shall mean any of the following:

(i) through a lease of real property that is owned by the District and used for the hotel development project, the District receives ongoing revenue, excluding government fees, tax revenue, or assessment revenue, or similar fees and revenues, except for tax revenue under the circumstances specified in paragraphs (ii) and (iii) of this subsection;

(ii) the District receives ongoing revenue from the hotel development project to repay loans provided by the District to assist in the development of the project, including incremental tax revenues generated by the project;

(iii) the District receives ongoing revenue from the hotel development project to pay debt service on bonds provided by the District to assist in the development of the project, including incremental tax revenues generated by the project;

(iv) the District has assets at risk because it has agreed to underwrite or guarantee the development of the hotel development project or loans related to the project; or

(v) the District has an ongoing economic and non-regulatory interest at risk in the financial success of a hotel development project which is likely to be adversely affected by labor-management conflict, except that no interest shall be considered economic and non-regulatory if it arises from the exercise of regulatory or police powers such as taxation (except as set forth in paragraphs (ii.) and (iii.) of this subsection), zoning, or the issuance of permits or licenses.