

City Council Creation of Not-for-Profit (NFP)

- ◆ Based on City Settlement Agreement with PG&E
- ◆ Cash funds of about \$68.75M now held by City to be transferred to NFP once formed
- ◆ Purpose of NFP in Settlement Agreement: to benefit the City and its residents
 - Provide enduring and significant value to entire community
 - Recognize impact of tragedy so it's never forgotten
- ◆ Funds cannot be used for general City operations
- ◆ Potential sale proceeds from some or all of five lots PG&E transferred to City to be transferred to NFP

Constraints on NFP

- ◆ Federal and state tax law for 501(c)(3)
- ◆ State laws applicable to public entities
 - Brown Act
 - Public Records Act
 - FPPC conflict-of-interest laws
 - Government Code section 1090 and common law conflicts
 - Fiduciary duties of board members
 - Public bidding for projects
 - Prevailing wage for projects
 - Lobbying prohibited

Decisions about NFP for City Council to Make

- ◆ Initial decisions:
 - Purpose
 - Mission Statement
 - Composition of Governing Board: Number and Membership
 - ◆ Additional Advisory Subcommittee
 - ◆ Staffing and use of consultants
 - Name
- ◆ Future decisions:
 - Communication plan
 - Adopt Governing Documents
 - ◆ Articles of Incorporation
 - ◆ Bylaws
 - ◆ Conflict of Interest Policy
 - ◆ Federal and state tax exempt status
 - ◆ MOU between City and NFP
 - Establish plan for use of city-owned parcels
 - Establish dialogue with PG&E about options for disposition of their parcels

Decision #1: Purpose of NFP?

- ◆ Benefit the San Bruno community as a whole, not just the neighborhood where the tragedy occurred?
- ◆ Provide enduring and significant value to the community over the long term?
- ◆ Recognize the impact of the tragedy on the community so it's never forgotten?
- ◆ Other: _____

Decision #1: Issues to Consider

- ◆ Express intent of Settlement Agreement that funds be used for city as a whole
- ◆ Express long-term perspective of sustainable investments in both facilities and programs

Decision #2: Mission Statement of NFP?

- ◆ Role of NFP in relation to City Council?
 - Final decision-making entity
 - Recommending entity
- ◆ Basic mission?
 - Build or improve one major public facility
 - Build or improve several public facilities
 - Provide 1-time funding for programs that benefit San Bruno community
 - Provide ongoing endowment for programs that benefit San Bruno community
 - Provide funding for regional or other programs if consistent with purpose of NFP
 - Provide funding to organizations that invest in community
 - Engage in fundraising
 - Other: _____

Decision #2: Issues to Consider

◆ Role of NFP

- Allow City Council to have ultimate authority regarding use of funds while avoiding conflicts
- Allow City Council to retain control over substantial settlement obtained for benefit of entire community
- Some NFPs are final decision-making entities, while also committing to work with City and coordinate projects

◆ Mission statement

- Recognize NFP's substantial funding and enduring commitment to facilities and programs that directly benefit all of San Bruno's residents
- Determine if entity with long-term duration is in city's interest
 - ◆ Potential partial funding of several projects with other community partners
 - ◆ Establish endowment with some or all funds and use income stream to fund projects using other financing

Decision #3: Composition of NFP Governing Board?

◆ Number of members?

- 3
- 5
- 7
- 9 or more

◆ Categories of members?

- City Council members
- Members of appointed City Boards or Commissions
- Members of City staff
- Former City officials
- Members of civic organizations
- Other members of the public
- Others: _____

Decision #3: Issues to Consider

- ◆ Number of members
 - Large number of board members can be unwieldy
 - But other successful city-created foundations use upwards of 10 board members and many more ad-hoc volunteers for specific projects
 - Important to have sufficiently large number of board and/or subcommittee members to accomplish foundation's work
 - Number of members will also be driven by breadth of mission statement and whether entity is single-purpose or has continuing role in community

Decision #3: Issues to Consider

◆ Categories of members

- Current city officials and staff will be involved as regulators in planning and approval process for NFP projects
 - ◆ Potential common-law conflicts
 - ◆ Potential appearance of incompatibility between duty to city and fiduciary duty to NFP
- Other successful city-created foundations do not have current city officials on board, irrespective of whether board is recommending entity or final decision-making entity

Decision #4: Establish Additional Advisory Subcommittee to NFP?

- ◆ Number of members?
 - Same as governing board
 - More than governing board
 - Fewer than governing board
- ◆ Categories of members?
 - City Council members
 - Members of appointed City Boards or Commissions
 - Members of City staff
 - Former City officials
 - Members of civic organizations
 - Other members of the public
 - Others: _____

Decision #4: Issues to Consider

- ◆ Number of members
 - Obtain broad community involvement
 - Encourage selection of professionals for particular tasks such as accounting, investing, planning, construction, development
 - Allow board to focus on policy, not on details
- ◆ Categories of members
 - Same considerations as with governing board

Decision #5: Staffing and Use of Volunteers/Consultants by NFP?

- ◆ Executive director?
- ◆ Use only City staff for all NFP activities?
- ◆ Use only volunteers/consultants for all NFP activities?
- ◆ Use combination of staff and volunteers/consultants for all NFP activities?
- ◆ Other: _____

Decision #5: Issues to Consider

- ◆ With over \$68M in capital, NFP has assets well in excess of other city-sponsored foundations
- ◆ City does not have spare staff to allocate to extensive and long-term NFP activities
- ◆ City staff will be acting as regulators for NFP projects; raises questions of common-law conflicts and appearance of incompatibility between duty to city and duty to NFP

Decision #6: Name of NFP?

- ◆ The San Bruno...
 - Foundation
 - Community Fund or Foundation
 - Civic Fund or Foundation
 - Crestmoor (Glenview) Fund or Foundation
 - Phoenix Fund or Foundation
- ◆ Build San Bruno
- ◆ Other: _____

Decision #6: Issues to Consider

- ◆ Name should concisely express fundamental purpose of entity to benefit entire community
- ◆ Name should be sufficiently broad and not limit purpose of entity

Future Decisions for City Council to Make

- ◆ Communication plan
- ◆ Adopt governing documents
- ◆ Establish plan for use of City-owned parcels
 - Park
 - Sale with proceeds go to NFP per Settlement Agreement
 - Potential swaps with other property owners
- ◆ Establish dialogue with PG&E about options for disposition of their parcels
 - Sale on open market individually
 - Sale or transfer to City individually or as a group
 - Sale or transfer as a group to developer

Initial Decisions for NFP to Make Once Established

- ◆ Appoint officers
- ◆ Adopt governing documents
- ◆ Appoint Advisory Subcommittee if established
- ◆ Establish meeting dates and other operational details
- ◆ Retain consultants: attorney, financial, clerical, other
- ◆ Establish operational budget
- ◆ Purchase required insurance and bonds

Next Steps

- ◆ Compile and summarize input from City Council
- ◆ Return at another study session to present results
 - Establish process for appointments to governing board
 - Finalize remaining decisions regarding name, composition, advisory committee, staff/consultants, purpose, and mission statement
 - Direct staff to take other steps to proceed with drafting legal documents
- ◆ Schedule establishment of NFP at subsequent City Council meeting
- ◆ Additional resources:
 - www.prfsancarlos.org
 - www.windsorparcs.org
 - www.scefkids.org