

CALIFORNIA COASTAL COMMISSION

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January 26, 2010

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LCP AMENDMENT
#3-08 (Downtown Encinitas Specific Plan Revisions) for Commission Meeting of
February 10-12, 2010**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on January 28, 2009. A one-year time extension was granted on March 11, 2009. As such, the last date for Commission action on this item is March 28, 2010.

SUMMARY OF AMENDMENT REQUEST

The proposed amendment to the City's Downtown Encinitas Specific Plan, which is part of the certified Implementation Program (IP) for the City's LCP, will restrict the types of ground floor uses along the First Street Corridor (S. Coast Highway 101) to retail and pedestrian-oriented services only so as to encourage a pedestrian-oriented environment. The amendment provides for a series of goals and objectives that, among other things, encourage pedestrian activity, limit ground floor uses to retail businesses that demonstrate a dependency on walk-up traffic, and establish regulations to control accessory and nonconforming uses. The goals and objectives will be implemented by revisions to the Commercial Mixed – First Street Zone (D-CM-1) that include new definitions for "Commercial", "Retail Only" and "First Floor Retail". In addition, various existing uses within the existing D-CM-1 zoning that are inconsistent with pedestrian use will be prohibited and new pedestrian-oriented uses added. In addition, new development standards for First Floor Retail will be added to the D-CM-1 Zone to control and encourage pedestrian activity. Finally, the nonconformity provisions of the existing Downtown Encinitas Specific Plan will be revised to disallow any nonconforming use if discontinued for a period in excess of 365 consecutive days. In addition to these revisions designed to enhance pedestrian-oriented uses along the First Street Corridor, the City has taken the opportunity of the subject LCP Amendment request to add two proposed uses within the D-CM-1 Zone to the adjacent D-CM-2 Zone: Day Spa, Beauty Treatment Services, and Yoga, Pilates, Martial Arts or Similar Exercise Class.

SUMMARY OF STAFF RECOMMENDATION

The appropriate resolutions and motions begin on Page 3. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 4.

BACKGROUND

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances) which included the Downtown Encinitas Specific Plan as part of the implementing ordinances. The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone.

ADDITIONAL INFORMATION

Further information on the Encinitas LCP Amendment #3-08 may be obtained from Gary Cannon, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- I. MOTION: *I move that the Commission reject the Implementation Program Amendment for the City of Encinitas certified LCP as submitted.***

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment will meet the requirements of and be in conformity with the policies of the certified Land Use Plan (LUP) and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.

**PART III. FINDINGS FOR APPROVAL OF THE ENCINITAS
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The amendment proposes to modify the Downtown Encinitas Specific Plan, part of the City's IP, so as to regulate ground-floor retail uses in a way that maintains and enhances the economic viability and pedestrian oriented character of the Downtown Encinitas First Street Corridor (South Coast Highway 101). To do so, the amendment provides for limiting first floor uses to retail and pedestrian-oriented services only within the D-CM-1 Zone that comprises the First Street Corridor from approximately K Street to the south to approximately B Street on the north. The amendment also proposes to add two uses proposed for the D-CM-1 Zone to the D-CM-2 Zone so that these particular uses (Day Spa, Beauty Treatment Services, and Yoga, Pilates, Martial Arts or Similar Exercise Class) are available in both zones in storefront locations. The D-CM-2 Zone is located along either side of Second Street, west of First Street, and extends from K Street to the south to C Street on the north (Ref. Exhibits #2 and #3). The existing certified Downtown Encinitas Specific Plan is available at the following link:
<http://www.ci.encinitas.ca.us/Government/PublicD/EncinitasRanch/>

B. PURPOSE AND INTENT OF THE ORDINANCE.

The amendment revises Sections 2.3, 3.1(D), 3.2.3(A), 3.2.3(B)(1) and 11.3(B)(4) of the Downtown Encinitas Specific Plan (DESP). The purpose and intent of Section 2.3 is to provide goals and objectives for the DESP. The purpose and intent of Section 3.1(D) is to provide zoning and regulations unique to the First Street Corridor Subdistrict. The purpose and intent of Section 3.2.3(A) is to provide zoning regulations within the Commercial Mixed – First Street Zone (D-CM-1). The purpose and intent of Section 3.2.3(B)(1) is to identify permitted uses within the Commercial Mixed – Second Street Zone (D-CM-2). The purpose and intent of Section 11.3(B)(4) is to address and regulate nonconforming structures and uses.

C. PROVISIONS OF THE ORDINANCE.

The provisions have been designed to primarily relate to the Commercial Mixed - First Street Corridor (D-CM-1)

- 1) Identify retail and service uses within the D-CM-1 Zone that would be allowed on the ground-floor and those uses allowed above or behind the primary use on the first floor.
- 2) Define what is meant by Commercial, Retail Only and First Floor Retail in the D-CM-1 Zone.
- 3) Allow for improvements to non-conforming structures as long the improvements are more conforming and loss of nonconforming uses after 365 consecutive days of discontinuance.

Secondarily, the provisions have been designed to allow for two new uses in the Commercial Mixed – Second Street zone (D-CM-2):

- 1) Add two uses, Day Spa, Beauty Treatment Services, and Yoga, Pilates, Martial Arts or Similar Exercise Class to the Commercial Mixed-Second Street Zone (D-CM-2).

D. ADEQUACY OF THE ORDINANCE TO IMPLEMENT THE CERTIFIED LUP SEGMENTS.

The following goals and policies are part of the certified LUP, which are the standard of review for this ordinance, and are particularly relevant to promoting visitor uses and coastal access by encouraging priority uses and pedestrian-oriented activities:

Land Use Element:

POLICY 1.14 The City will maintain and enhance the Highway 101 commercial corridor by providing appropriate commercial-serving tourist-related and pedestrian uses.

Land Use Policy: Community of Old Encinitas: (Page LU-69 to LU-70)

[. . .]

Commercial Revitalization:

[. . .]

Commercial development standards and uses will promote high pedestrian activity; [. . .]

The overall intent of the proposed LCP Amendment is to maintain and enhance pedestrian-activities and the economic viability of the Encinitas downtown environment by restricting ground-floor uses along the First Street Corridor to retail and services that demonstrates a dependence on frequent pedestrian traffic. Currently, the existing regulations for the D-CM-1 Zone allow a number of uses that could interfere with the objectives of creating a pedestrian-active commercial district. The LCP Amendment removes those specific uses (e.g., dwelling units, residential care facilities and medical offices) from storefront locations in the D-CM-1 Zone, eliminates other specific uses entirely (e.g., pottery manufacturing and cellular facilities) and adds two new uses that are consistent with a pedestrian-active commercial district (Day Spa, Beauty Treatment Services, and Yoga, Pilates, Martial Arts or Similar Exercise Class). Since these last two uses are compatible with the neighboring Commercial Mixed – Second Street Zone (D-CM-2), the City is taking advantage of the LCP process to add these two new uses to that zone as well. Each of the proposed revisions to the City’s DESP are consistent with the LUP requirements of Policies 1.14 which requires the City to maintain and enhance commercial-serving, tourist-related and pedestrian uses along the Highway 101

commercial corridor. In addition, each revision is consistent with the policies outlined in the LUP as cited above relating to the community of Old Encinitas which encourages commercial development that promotes high pedestrian activity. As such, the proposed revisions to the DESP will conform with and will be adequate to carry out the above-cited policies of the certified LUP.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f), 13542(a), and 13555(b). In this particular case, all of the proposed amendments are being approved as submitted. Thus, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms with CEQA provisions.

ORDINANCE 2008-16

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ENCINITAS, CALIFORNIA AMENDING
THE DOWNTOWN ENCINITAS SPECIFIC PLAN
TO LIMIT GROUND FLOOR USES ALONG SOUTH
COAST HIGHWAY 101 TO RETAIL AND
PEDESTRIAN-ORIENTED SERVICES ONLY
(CASE NUMBER: 07-085 ZC/LCPA)**

WHEREAS, the Planning Commission conducted a Public Hearing on May 15, 2008 and considered public testimony and made a recommendation to approve the amendment with revisions to the City Council;

WHEREAS, the City Council conducted a Public Hearing on August 27, 2008 and considered public testimony and discussed limitations on ground-floor uses along S. Coast Highway 101 to retail and pedestrian-oriented services only;

WHEREAS, the City Council finds that the Downtown Encinitas Specific Plan should be amended to maintain a pedestrian-active and economically viable downtown environment by restricting the types of ground-floor uses within the D-CM-1 Zone; and

WHEREAS, the City Council finds that the amendments are consistent with the adopted Local Coastal Plan and further strengthens coastal access with establishing pedestrian oriented uses along S. Coast Highway 101; and

NOW, THEREFORE, the City Council of the City of Encinitas hereby ordains as follows:

SECTION ONE. GOALS AND OBJECTIVES. Section 2.3, Goals and Objectives of the Downtown Encinitas Specific Plan is hereby amended to read as follows:

See Attachment "1"

SECTION TWO. SUBDISTRICTS. Section 3.1(D), Subdistricts of the Downtown Encinitas Specific Plan is hereby amended to read as follows:

See Attachment "2"

SECTION THREE. D-CM-1 ZONE. Section 3.2.3(A), D-CM-1 Zone of the Downtown Encinitas Specific Plan is hereby amended to read as follows:

See Attachment "3"

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SECTION FOUR. D-CM-2 ZONE. Section 3.2.3(B)(1), D-CM-2 Zone of the Downtown Encinitas Specific Plan is hereby amended to add the following (underlined) permitted uses:

Day Spa, Beauty Treatment Services

Yoga, Pilates, Martial Arts or Similar Group Exercise Class

SECTION FIVE. NONCONFORMITIES. Section 11.3(B)(4), Nonconformities of the Downtown Encinitas Specific Plan is hereby amended to read as follows:

See Attachment "4"

SECTION SIX. ENVIRONMENTAL FINDING. The City of Encinitas previously prepared Environmental Impact Report No. 89-254 for the project. Based upon a review of the current project, it has been determined that:

(A) No substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(B) No substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(C) No new information of substantial importance shows any of the following:

(1) The project will have one or more significant effects not discussed in the previous EIR;

(2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(3) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(4) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Therefore, in accordance with Section 15164 of the State CEQA Guidelines, the City Council in their independent judgment has considered the addendum and the Final EIR to the DESP and approves the addendum.

SECTION SEVEN. PUBLIC NOTICE AND EFFECTIVE DATE. The City Clerk is directed to prepare and have published a summary of this ordinance no less than five 5 days prior to consideration of its adoption and again within fifteen 15 days following adoption indicating the votes cast. This ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas.

PASSED AND ADOPTED this 10th day of December, 2008 by the following vote to wit:

AYES: Barth, Bond, Houlihan.

NAYS: Stocks.

ABSTAIN: None.

ABSENT: Dalager.

Signature on file *MS*

Maggie Houlihan, Mayor
City of Encinitas

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance No. 2008-16 which has been published pursuant to law.

Signature on file

Deborah Cervone, City Clerk

NOISE

- Noise sources - traffic & commuter rail.
- Relationship to land uses and development standards.

2.3 Goals & Objectives

The following specific plan goals and objectives were formulated based on the problems and issues identified by the SPARC and are grouped together under the same major categories.

LAND USE GOALS

- **Maintain the small scale and beachtown character of the Downtown Encinitas specific plan area.**

Objectives

- Adopt land use development regulations for the specific plan area that define height, building mass, and/or density.
- Establish architectural design guidelines that promote architectural compatibility with the existing community character and also encourage design diversity without sacrificing design quality.
- Establish road standards that maintain a semi-rural character for the eastern residential subdistrict.
- Provide for parkways in the western residential subdistrict.
- Provide for the development of a transit station in the transit corridor of the specific plan area, with care to insure that resulting traffic is safe and within acceptable levels, and that the character of the downtown area is preserved.

- **Provide outdoor public spaces for cultural and civic activities.**

Objectives

- Maintain the block between D Street and E Street, east of Vulcan Avenue for a potential civic center in the downtown area.
- Encourage plazas and/or an outdoor amphitheater as part of a permanent civic center site.

See existing certified Downtown Encinitas Specific Plan at <http://www.ci.encinitas.ca.us/Government/PublicD/EncinitasRanch/>

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- Support a policy encouraging public events within the specific plan area.

- **Provide allowances and regulations for street vendors and performers.**

- **Objective**

- Establish specific zone regulations that allow street vendors and performers to use the public right-of-way and public spaces.

- **Identify under-utilized land and propose potential land uses.**

- **Objectives**

- Change the zoning of the property designated as limited visitor-serving commercial located at 112 C Street and 371 Second Street to a mixed use zone that would allow more development flexibility of the property.
 - Encourage the redevelopment of a civic center complex to include a city hall, library, and/or a small, outdoor (capacity of 100 or less) amphitheater for the block between D Street and E Street, east of Vulcan Avenue.
 - Encourage and support the continuation and vitality of the La Paloma Theater as a potential civic auditorium as well as a theater.
 - Develop vista points at potential west street ends such as F Street.
 - Develop a mini-park/vista point at the west end of J Street.
 - Develop a joint use school and park facility at the Pacific View Elementary School site.
 - Develop the east block of Moonlight Beach State Park between Third Street and First Street as a mixed use park site which includes restoration of Cottonwood Creek and potential uses such as those described in the Moonlight Beach Master Plan.

- **Identify subdistricts and consider as separate and unique areas within the specific plan area.**

Objectives

- Establish design recommendations and development standards for the following subdistricts within the specific plan area: Residential East, Haciendas de la Playa Condominiums, Railroad Right-of-Way, First Street Corridor, Second Street Corridor, Moonlight Beach State Park, Visitor Serving Commercial Site, Vulcan Square Site, and Residential West.
- Recognize the unique land use issues and development potential of the "Coast Dispatch" site within the First Street Corridor Subdistrict.

- **Provide for mixed-use land opportunities in the specific plan area.**

Objectives

- Rezone First Street to allow mixed-use development which would enable properties to develop as either commercial or a mix of primarily commercial with secondary residential uses.
- Rezone portions of Second Street to allow mixed use development which would enable properties to develop as residential, commercial, office professional, or a mix of these uses.
- Develop design guidelines and development standards that address incompatibilities between uses in mixed use zones such as conflicting hours of operation, noise, traffic, etc.

- **Maintain and enhance a pedestrian-oriented environment and economically viable downtown by limiting ground floor uses along the First Street Corridor (S. Coast Hwy 101) to pedestrian oriented uses only.**

Objectives

- Establish specific regulations for commercial uses and services that promote pedestrian activity and provide highly visible and accessible opportunities for a wide variety of shopping at the street level.
- Limit ground floor uses to retail business services that demonstrate a dependency upon walk-up traffic, and/or serve patrons on an unannounced or drop-in

basis.

- Pedestrian activity at the street level should be strongly encouraged to create and maintain a compact, uninterrupted walking experience that represents a unique, attractive, and memorable destination for residents and visitors.
- Identify a process that would allow a use that is not specifically listed when it can demonstrate its dependency on frequent pedestrian traffic.
- Establish a set of regulations that control the location, amount, quantity, or size of accessory uses and nonconforming uses.
- Require that windows provide a clear and transparent view into ground floor uses to give buildings a pedestrian-scale.

▪ **Enhance the streetscapes within the specific plan area.**

Objectives

- Establish a comprehensive street tree program for the specific plan area.
- Establish a comprehensive sign program for certain subdistricts within the specific plan area.
- Strengthen and promote pedestrian linkages within the plan area through comprehensive circulation planning and streetscape design.

▪ **Expand existing library facilities.**

Objective

- Redevelop the existing library site or incorporate as part of the proposed civic center site.

▪ **Promote more child care facilities and services.**

Objective

- Encourage a daycare facility in conjunction with the commuter rail station as part of Phase 2 development or the proposed civic center.

▪ **Maintain and encourage more neighborhood serving uses in**

Subdistricts

professional, high density residential, or a mixture of both types of uses. This designation is more compatible immediately adjacent to the elementary school and surrounding residential uses.

Properties within this subdistrict which require special design guidelines, historic, or land use consideration such as the "Boat Houses" and the old school house/Pacific View Elementary School site are discussed in Section 4.5.9 and Chapter 8.0 of the specific plan.

D. First Street Corridor Subdistrict

The subdistrict is defined as all parcels fronting First Street south of Encinitas Boulevard and north of K Street excluding those shown in Figure 4. The Limited Visitor-Serving Commercial site is subject to the development standards established for that subdistrict (see the Limited Visitor-Serving Commercial Subdistrict). The Moonlight Beach site is subject to the development standards per Chapter 30.32 of Title 30 of the Encinitas Municipal Code.

The First Street Corridor subdistrict focuses on what also is referred to as "Main Street"; in fact, First Street and Second Street together comprise the project area of a *Main Street* demonstration project by the State of California. First Street is the focus of greatest activity for the Downtown community, providing commercial services for both the surrounding neighborhoods and for recreational visitors to the beach community. First Street itself is also the continuation of Coastal Highway 101, also known as Pacific Coast Highway. A majority of Downtown Encinitas' retail and visitor-serving commercial uses exist along this corridor as well as some mixed uses which include residential units together with primary office or commercial uses. First Street is typified by small commercial lots and pedestrian-scale buildings relating directly to the street.

The goals for the First Street Corridor include preserving and enhancing the unique "main street" character of the Downtown area, providing for mixed uses, and developing specific development standards that address the unique development character and constraints of the corridor. Ground floor uses are limited to pedestrian oriented business services in order to provide a compact walking experience in which shopping opportunities are highly visible and accessible at the street level. Other uses shall be permitted above and/or behind the primary commercial use.

The previous zoning of general commercial (GC) is replaced with a mixed use zone (D-CM-1). Refer to Section 4.5, for specific design guidelines for the First Street Corridor.

Properties within this subdistrict which require specific design guidelines, historic, and land use consideration such as the "Coast Dispatch" site, the La Paloma Theater complex, and the proposed commuter rail station site are discussed in Section 4.5.9 and Chapter 8.0 of this specific plan.

DOWNTOWN ENCINITAS SPECIFIC PLAN

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3.2.3 Mixed Use Zones

A. Zone: Commercial Mixed - First Street (D-CM-1)

This zone is intended to provide a commercial zoning district that preserves the unique characteristics of the First Street Corridor (S. Coast Highway 101) and maintains a pedestrian-oriented environment.

Commercial is intended to serve both the needs of the neighborhood residents as well as persons visiting the city for business and recreational purposes. Thus, this district is intended for both general and visitor-serving commercial purposes. In order to maintain a pedestrian-scale environment and economically viable downtown, ground floor uses shall be limited to business services that serve patrons on an unannounced or drop-in basis. Residential and other commercial uses not engaged in "retail only" (such as medical, professional, and administrative offices) are generally permitted above and/or behind the primary use, as specified herein.

"Retail Only" is primarily characterized by businesses that either sell goods and commodities for personal household or business consumption, individually or in small quantities; or provide services that are pedestrian oriented, serving patrons on an unannounced or drop-in basis, as identified in Section 3.2.3.A.(1).

First Floor Retail is intended to provide a wide variety of retailing opportunities and other pedestrian oriented uses that are highly visible and accessible at the street level. Interruptions to the continuity of retail frontage along S. Coast Highway 101 decreases pedestrian traffic. Thus, ground floor uses shall be limited to businesses that demonstrate a dependency on walk-up traffic to maintain a compact, uninterrupted walking experience.

All uses credited towards meeting the required retail frontage standards must conduct a majority of transactions directly with the consumer (with face-to-face interaction on the premises). In order to increase economic synergy and liveliness of the downtown, only specific commercial activities and uses are allowed in storefront areas. See First Floor Retail standards, Section 3.2.3.A(4)(n).

~~where~~ Commercial use mixed with restricted residential use may be allowed on the same property or in the same structure, with the intent of providing housing opportunities and mitigating the impacts between mixed commercial and residential uses.

~~Commercial~~ is intended to provide both for some of the commercial retail and service needs of the surrounding community, and commercial activities to serve the needs of persons visiting the city for business and recreational purposes. Thus, this district is intended for both general and visitor-serving commercial purposes.

Residential, as a secondary use on commercial property, is intended to

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Commercial Mixed - First St. (D-CM-1)

provide residential units with a minimum dwelling unit size of 350 square feet. Mixed-use residential is not allowed to use more than half of any site's building floor area except when guaranteed affordable dwelling units are provided (See Mixed Use Site Planning standards, Section 3.2.3.A (4)(m)).

It is the intention of the D-CM-1 Zone to allow for significant functional and physical integration of project components of mixed commercial and residential uses. Consideration will be given to joint use of parking, common areas, landscaping, specific visitor-serving commercial types of uses and associated intensities, housing types and sizes of units, and overall architectural design.

The following principal uses shall be permitted in the D-CM-1 Zone and are identified as either a permitted use or those uses permitted upon the issuance of a minor use permit or major use permit. Those uses permitted or prohibited in a storefront location are also identified. All other principal uses are prohibited.

1. Permitted Uses:

	<u>Prohibited in a storefront location</u>
Alcoholic Beverage Sales off premise (Ord. 91-03)	
Antique Sales, Retail	
Appliance Sales & Repair (Household and Small Appliances)	
Aquarium, Commercial	
Arcade Accessory (Non-Adult)	
Art Gallery	
Artisan/Craftsman (sales & studio)	
Bakery (Retail)	
Bank/Savings and Loan	
Barber and Beauty Shop (Cosmetologist)	
Bicycle Sales, Rental and Service	
Billiard, Pool Hall	
Book Sales	
Candy and Confectionery Sales	
Catering Service	
Cellular Facility (Ord. 91-03; subject to EMC 9.70)	
Clothing Rental	
Coins, Purchase and Sales	
Computer Sales & Service	
Conservatory of Music	
Convenience Store	
Cosmetic Design Studio	
Costume Rentals	
Dairy Store	
Dance Studio	
Day Care Center	X
<u>Day Spa, Beauty Treatment Services</u>	

Commercial Mixed - First St. (D-CM-1)

Delicatessen	
Dental Clinic	X
Dressmaking Shop/Alterations	
Drug Store ²	
Dry Cleaning, Retail and Self-Service ²	
Dwelling Unit, Caretaker - accessory to the principal use (Ord. 91-07)	X
Dwelling Unit, One-Family, in a mixed-use development ¹	X
Dwelling Unit, Two-Family, in a mixed-use development ¹	X
Dwelling Unit, Three-Family, in a mixed-use development ¹	X
Educational Institution, Public	
Finance Company	X
Fire Station	
Floor Covering, Retail ²	
Florist Shop	
Furniture Sales ²	
Garden Supplies ²	
Gem/Precious Stone Retail	
Gift Shop	
Glass and Mirrors, Retail	
Glass Studio (Stained and others)	
Hair Salon (Ord. 91-03)	
Hardware Store ²	
Hat Cleaning and Blocking	
Hat Shop	
Health Food Store	
Hobby Supply Shop	
Home Occupations	X
Ice Cream Parlor	
Insurance Office	
Interior Decorating Service	
Jewelry Sales	
Lapidary Shop, Retail (Gems)	
Laundromat	
Laundry	
Locksmith	
Machine and Tool Sales (Retail Store) ²	
Mail Order House	X
Market (food) ²	
Market (wholesale) ²	X
Medical/Dental Office	X
Medical/Dental Clinic	X
Microwave Antenna/Tower	
Motorcycle Sales (only)	
Motor Vehicle Parts Store ²	
Museum	
Music/Record Store	
Newsstand	

Commercial Mixed - First St. (D-CM-1)

Notions and Dry Goods Store	
Office (Business and Professional)	X
Optical Products Sales	
Orthopedic Devices Sales	
Paper Product Sales	
Parcel Delivery Service	X
Pet Shop/Pet Grooming	
Pharmacy ²	
Photocopy Shop	
Photofinishing, Retail	
Photographic Studio	
Photographic Supplies	
Postal Annex, Private Ownership	
Pottery Manufacturing	
Pottery Sales	
Printing	
Radio/Television Sales	
Real Estate Office	
Recreational Facilities Public	
Reducing Salon	
Residential Care, Limited (6 or fewer) ¹	X
Restaurant (no alcohol sales; outdoor dining permitted by design review)	
Retail Sales ²	
Schools, Public: (Elementary, Jr. High, High School)	
Scientific Instruments Sales	X
Second Hand Dealer (Ord. 91-03)	
Second Hand Store	
Shoe Repair/Sales	
Sidewalk Dining (encroachment permit required)	
Sign Shop	
Silk Screen Printing Shop	
Sporting Goods Sales ²	
Stationery Store	
Surf Shop Retail/Rental	
Surf Shop with Manufacturing	
Swimming Pool Supplies/Equipment Sales	
Tailor Shop	
Theaters and Places of Public Assembly	
Tile Sales	
Video Sales & Rental	
Wearing Apparel Shop	
Yoga, Pilates, Martial Arts or Similar Group Exercise Class	

¹ Permitted in conjunction with a permitted commercial or office use. Dwelling units may not exceed 50% of the gross developed floor area for this development site.

² Total gross floor area greater than 20,000 square feet shall require a major use permit.

Commercial Mixed - First St. (D-CM-1)

X - Prohibited in a storefront location; Permitted above and/or behind primary commercial use in a non-storefront location. Ground floor uses in storefront locations shall be limited to "retail only" and/or business that serve patrons on an unannounced or drop-in basis. See First Floor Retail Standards, Section 3.2.3.A (4)(n).

2. Minor Use Permits:

	Prohibited in a storefront location
Arcade Primary (Non-Adult)	
Bowling Alley	X
Candle Manufacturing	
Car Wash (Ord. 89-41)	
Charitable Bins and Depositories (accessory)	
Church/Temple/Religious Institution	
Gas Distribution, Meter and Control Station	X
Outdoor Sales/Swap Meet (Ord. 91-03)	
Pawn Shop	
Pottery Manufacturing	
Restaurant (with alcohol sales; outdoor dining permitted)	
Swap Meet/Outdoor Sales (Ord. 91-03)	

X - Prohibited in a storefront location; Permitted above and/or behind primary commercial use in a non-storefront location. Ground floor uses in storefront locations shall be limited to "retail only" and/or business that serve patrons on an unannounced or drop-in basis. See First Floor Retail Standards, Section 3.2.3.A (4)(n).

3. Major Use Permits:

	Prohibited in a storefront location
Bar/Cocktail Lounge	
Cellular Facility (Ord. 91-03)	
Club, Athletic or Recreational	X
Club, Private	X
Club, with Alcohol Sales	X
Courts, Commercial (Badminton, Tennis, Racquetball, Others)	X
Dance Hall	X
Educational Institution, Private	X
Electrical Distribution Substation	
Emergency Residential Shelter	X
Garage, Public Parking	X
Grocery Store	
Gymnasium, Public Health Club	
Hotel	
Jewelry Manufacturing	
Library	

Commercial Mixed - First St. (D-CM-1)

Massage Parlor	
Medical Complex	X
Motel	
Motorcycle Sales and Service	
Open Air Theater	
Parking Lot, Commercial	X
Radio/Television Broadcasting Studio	X
Radio/Television Transmitter	
Recording Studio	X
Recreational Facilities Private	X
Recreational Facilities Public	
Residential Care, General (7 or more)	X
Schools, Private: (Elementary, Jr. High, High School)	X
Schools, Technical	X
Single-Room Occupancy Hotel	
Terminals and Stations (Taxi, Bus, Train, Limousine etc.)	

X - Prohibited in a storefront location; Permitted above and/or behind primary commercial use in a non-storefront location. Ground floor uses in storefront locations shall be limited to "retail only" and/or business that serve patrons on an unannounced or drop-in basis. See First Floor Retail Standards, Section 3.2.3. A (4)(n).

4. Development Standards: Except as specified below, the development standards under Chapter 30.20 of the Encinitas Municipal Code for the GC Zone shall apply under the D-CM-1 Zone. In case of conflict between regulations, those specified below shall prevail:

- a. **Net Lot Area:** 3,200 net square feet minimum
- b. **Lot Width:** 40 feet
- c. **Lot Depth:** 80 feet³
- d. **Front Yard Setback:** 0 feet
- e. **Side Yard Setback for each interior side:** 0 feet
- f. **Street Side Yard Setback:** 0 feet
- g. **Rear Yard Setback:** 0 feet
- h. **Lot Coverage maximum percentage:** 90 percent
- i. **Building Height maximum:** 30 feet or two stories, whichever is less (See Section 30.20.010C6 of the Encinitas

³East-side of First Street, lot depth shall extend from First Street to the railroad right-of-way. West side of First Street, lot depth shall extend from First Street to either the existing alley or to Second Street. In no case shall an existing alley be blocked.

Commercial Mixed - Second St. (D-CM-2)

B. Zone: Commercial Mixed - Second Street (D-CM-2)

This zone is intended to allow individual properties to develop as either residential, commercial, office professional or, a mixed-use of commercial/office and residential uses. In a mixed-use project, residential uses may be allowed on the same property or in the same structure as a commercial use, with the intent of providing housing opportunities while also mitigating the impacts between commercial and residential uses.

Commercial is intended to provide retail uses which serve local residents of the community, while maintaining compatibility with a residential environment. Compared to commercial uses on First Street, those on Second Street are intended to be less visitor-serving and more community-serving. Second Street is also intended to provide a higher proportion of office and business uses, and a somewhat less-intensive activity level.

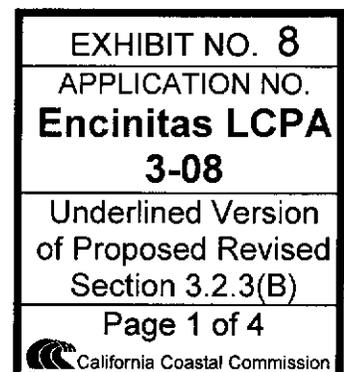
Residential, as a primary use, is intended to provide single-family or multi-family units. Densities of up to 25 dwelling units per acre shall be allowed. Residential in a mixed-use project is limited to no more than half of the development site's allowed floor area. Free-standing residential (residential use only on a development site; no commercial or office use) is permitted, but shall be limited so as not to constitute more than 25% of the zone district's total lot acreage.

It is the intention of the D-CM-2 Zone to allow for significant functional and physical integration of project components of adjacent development sites, as well as of mixed-use projects. Consideration will be given to joint use of parking, common areas, landscaping, specific D-CM-2 types of uses and associated intensities, housing types and sizes of units, and overall architectural design.

The following principal uses shall be permitted in the D-CM-2 Zone and are identified as either a permitted, minor use permit or major use permit. All other principal uses are prohibited.

1. Permitted Uses:

- Antique Sales, Retail
- Appliance Sales & Repairs (Household and Small Appliances)
- Arcade Accessory (Non-Adult)
- Art Gallery
- Artisan/Craftsman (sales & studio)
- Bakery (Retail)
- Bank/Savings and Loan
- Barber and Beauty Shop (Cosmetologist)
- Bed and Breakfast
- Bicycle Sales, Rental and Service
- Billiard, Pool Hall
- Blueprinting and Photostating
- Book Sales
- Candy and Confectionery Sales
- Catering Service



Commercial Mixed - Second St. (D-CM-2)

Cellular Facility (Ord. 91-03)
Clothing Rental
Coins, Purchase and Sales
Computer Sales & Service
Conservatory of Music
Convenience Store
Cosmetic Design Studio
Costume Rental
Dairy Store
Dance Studio
Day Care Center
Day Spa, Beauty Treatment Services
Delicatessen
Dental Clinic
Dressmaking Shop/Alterations, Retail
Dry Cleaning, Retail and Self-Service
Dwelling Unit, Caretaker-accessory to the principal use (Ord. 91-07)
Dwelling Unit, One-Family¹
Dwelling Unit, Two-Family¹
Dwelling Unit, Three-Family¹
Dwelling Unit, Multiple Family¹
Educational Institution, Public
Employment Agency
Family Day Care Home, Large (7 to 12 children) (Ord. 92-28)
Family Day Care Home, Small (6 or fewer children) (Ord. 92-28)
Feed and Grain Sales
Finance Company
Fire Station
Florist Shop
Garden Supplies
Gift Shop
Glass and Mirrors, Retail
Glass Edging and Beveling, associated with retail
Glass Studio (Stained and others)
Hair Salon (Ord. 91-03)
Hat Cleaning and Blocking, associated with retail
Hat Shop
Health Food Store
Hobby Supply Shop
Home Occupations
Ice Cream Parlor
Interior Decorating Service
Jewelry Sales
Laundromat
Lawnmower Sales and Service
Locksmith
Market (food)
Medical/Dental Clinic
Medical/Dental Office
Music/Record Store
Newsstand
Notions and Dry Goods Store
Office (Business and Professional)
Optical Products Sales
Orthopedic Devices Sales
Parks and Recreational Areas

¹Permitted as stand-alone not to exceed 25 du/acre, or in conjunction with a permitted commercial or office use in a mixed-use development. Dwelling units may not exceed 50% of the gross allowable floor area for the development site in a mixed-use development.

Commercial Mixed - Second St. (D-CM-2)

Pharmacy
Pet Shop/Pet Grooming
Photocopy Shop
Photofinishing, Retail
Photographic Studio
Photographic Supplies
Post Office
Postal Annex, Private Ownership
Pottery Sales
Printing
Public Utilities: Office
Real Estate Office
Reducing Salon
Residential Care, Limited (6 or fewer)¹
Restaurant (no alcohol sales; outdoor dining permitted by design review)
Retail Sales
Schools, Public: (Elementary, Jr. High, High School)
Second Hand Dealer (Ord. 91-03)
Second Hand Store
Shoe Repair/Sales
Sidewalk Dining (encroachment permit required)
Sign Shop
Silk Screen Printing Shop
Sporting Goods Sales
Stationery Store
Stone (Precious) Manufacturing
Surf Shop Retail/Rental
Swimming Pool Supplies/Equipment Sales
Tailor Shop
Telephone Answering Service
Veterinarian
Video Sales & Rental
Wearing Apparel Shop
Yoga, Pilates, Martial Arts or Similar group Exercise Class

2. Minor Use Permits:

Arcade Primary (Non-Adult)
Candle Manufacturing
Charitable Bins and Depositories (accessory)
Day Care Center
Drug Store
Dwelling Unit, one family, stand-alone²
Dwelling Unit, two family, stand-alone²
Dwelling Unit, three family, stand-alone²
Dwelling Unit, multiple family, stand-alone²
Furniture Sales
Gas Distribution, Meter and Control Station
Horticultural Services
Hotel/Motel
Laboratories (medical, dental)
Nurseries, Horticultural
Outdoor Sales/Swap Meet (Ord. 91-03)
Residential Care, Limited (6 or fewer), stand alone²
Swap Meet/Outdoor Sales (Ord. 91-03)

²Stand-alone residential development, up to 25 du/acre per site, is allowed subject to the finding that the acreage of all residential-only land use within the Second Street D-CM-2 zone does not exceed 25% of all land acreage in the zone. It is intended that stand-alone residential use be spread more or less evenly throughout the zone, and not be concentrated so as to preclude the predominant commercial character of lands within the D-CM-2 zone.

Commercial Mixed - Second St. (D-CM-2)

Tile Sales
Upholstery Installation

3. Major Use Permit:

Automobile Electric and Tune-up
Automobile Rental (Office only)
Automobile Repair (no auto body or painting)
Cellular Facility (Ord. 91-03)
Church/Temple/Religious Institution
Club, Athletic or Recreational
Club, Private
Courts, Commercial (Badminton, Tennis, Racquetball, Others)
Convent and Monastery
Educational Institution, Private
Electrical Distribution Substation
Emergency Residential Shelter
Floor Covering, Retail
Garage, Public parking
Garment Manufacturing
Gymnasium, Public Health Club
Laboratories (biochemical, film, other)
Library
Massage Parlor
Medical Equipment Sales
Museum
Parcel Delivery Service
Parking Lot, Commercial
Police/Sheriff Station/Jail
Radio/Television Broadcasting Studio
Radio/Television Transmitter
Recording Studio
Recreational Facilities Private
Recreational Facilities Public
Residential Care, General (7 or more)
Restaurant (w/alcohol sales; outdoor dining permitted)
Schools, Private: (Elementary, Jr. High, High School)
Schools, Technical
Scientific Instruments Sales

4. Development Standards: Except as specified below, the development standards under Chapter 30.20 of the Encinitas Municipal Code for the GC Zone shall apply under the D-CM-2 Zone for commercial office, or mixed-use development. Except as otherwise specified below, stand-alone residential shall comply with the standards of Chapter 30.16 of the Encinitas Municipal Code for the R-25 Zone. In case of conflict between regulations, those specified below shall prevail.

- a. **Net Lot Area:** 4,000 net square feet
- b. **Lot Width:** 40 feet
- c. **Lot Depth:** 100 feet
- d. **First Story**

SURFACE TRANSPORTATION PROGRAM (STP) FUNDS

The passage of the Intermodal Surface Transportation Efficiency Act of 1991 provides \$155 billion over six years to strengthen the national transportation system with approximately \$3 billion of the funds to be used for "enhancement" projects. Transportation enhancement activities include: pedestrian and bicycle facilities, acquisition of scenic and historic sites, scenic and historic highway programs, landscaping, rehabilitation of historic transportation facilities, preservation of abandoned transportation corridors, archeological planning and research, control and removal of outdoor advertising, and mitigation of water quality impacts from roadway runoff. Funding can be obtained through San Diego Association of Governments (SANDAG) on a regional basis and also directly through the State.

OTHER FUNDING SOURCES

There may be other sources available to finance improvement projects such as special assessment districts, government grants, or various types of bonds not listed above, that may be used to fund improvements.

11.3 Specific Plan Administration

B. Processing and Review

4. Nonconformities

- a. A "nonconforming use" is a use that:
 - i. Is not within the scope, either expressly or implicitly, of the land use regulations set forth in this specific plan that announces the purpose, intent, permissible uses, accessory use and prohibited use for the zone in which the particular use is located;
 - ii. Did comply with the zoning restrictions contained in the zoning ordinance in effect at the time the use was created and was lawfully created; and
 - iii. Has not been terminated in accordance with the provisions of the specific plan.
- b. With the adoption of this Specific Plan, nonconforming uses and structures shall be subject to the following provisions:
 - i. Improvement, alteration or enlargement of nonconforming facilities may be made provided that the facility is made more nearly conforming and its appearance is enhanced. Structures within which nonconforming uses are operated may be modified or expanded, so long as the nonconforming use does not thereby increase in its inconsistency with the

DOWNTOWN ENCINITAS SPECIFIC PLAN

EXHIBIT NO. 9
APPLICATION NO. Encinitas LCPA 3-08
Underlined Version of Proposed Revised Section 11.3(B)

allowances of this Specific Plan. Such structural modification or expansion shall otherwise be consistent with applicable development standards and provisions of Chapter 30.76 of the Encinitas Municipal Code.

- ii. Structures within which nonconforming uses are operated, if damaged or completely destroyed by fire or other calamity, shall be allowed to be reconstructed, and the nonconforming use shall be allowed to continue so long as such reconstruction and continuance is otherwise consistent with the provisions of this Specific Plan.
 - iii. Any discontinuance of such nonconforming use or activity for a continuous period of more than 365 consecutive days shall be deemed to constitute an abandonment of any right to continue or maintain such nonconforming facilities and any future use shall conform to the Specific Plan requirements.—A nonconforming use which becomes and remains inactive for an unlimited period of time may be renewed and continue to operate, at the same site and occupancy it previously operated from, provided that no other use in the interim has legally been established at the same occupancy.
- c. All other nonconformity provisions pursuant Chapter 30.76 of the Encinitas Municipal Code shall apply.