

June 23, 1998

PETE WILSON, Governor

CALIFORNIA COASTAL COMMISSION

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TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR,
BILL PONDER, COASTAL PROGRAM ANALYST, SAN DIEGO DISTRICT

SUBJECT: STAFF RECOMMENDATION ON MAJOR AMENDMENT 1-98C (Drive-Thru
Restaurants/Stormwater Management/Incidental Outdoor Dining Areas)
TO THE CITY OF CARLSBAD LCP (For Public Hearing and Possible
Commission Action at the Meeting of July 7-10, 1998)

SYNOPSISSUMMARY OF AMENDMENT REQUEST

On March 5, 1998, the City of Carlsbad's proposed LCP Amendment #1-98 was received in the San Diego District including six separate revisions to the Land Use and Implementation Plans of the certified local coastal program. At the June, 1998 hearings, the Commission acted on the first two amendments of the submittal (LCPA #1-98A/Poinsettia Properties and LCPA #1-98B/Aviara Master Plan). The remaining four amendments were the subject of a time extension request at the Commission's June, 1998 hearing where the Commission granted the time extension for a period not to exceed one year. The three amendments to be heard at this hearing involve Drive-Thru Restaurants, Stormwater Management and Incidental Outdoor Dining Areas. With the exception of the Hillside Development Ordinance amendment, the above three amendments will be heard as LCPA 1-98C at the July, 1998 hearing. It is anticipated the Hillside Development Ordinance will be heard at the August, 1998 hearing as Carlsbad LCPA 1-98D. Additional information on the contents of the amendment request can be found in the Background section on the next page.

SUMMARY OF STAFF'S PRELIMINARY RECOMMENDATION

Staff recommends that, following a public hearing, the Commission approve the land use plan amendments as submitted, approve one implementation plan amendment as submitted (Drive-thru Restaurants) and then deny portions of the implementation plan (Stormwater Management/Incidental Outdoor Dining Areas) as submitted. Staff then recommends the amendments be approved subject to suggested modifications which ensure adoption of the Stormwater Management amendment will not result in adverse impacts to downstream coastal resources and adoption of the Incidental Outdoor Dining Areas amendment will not result in adverse public access/parking impacts to coastal visitors in nearshore areas.

The motions and resolutions for these actions begin on Page 3. The suggested modifications begin on Page 5. The findings for approval of the "Drive-thru Restaurants" Land Use Plan amendments, as submitted, begin on Page 7. The findings for approval, as submitted, of the Drive-thru Restaurants implementation plan revisions begin on Page 10. The findings for rejection of the Stormwater Management and Incidental Outdoor Dining Areas implementation plan revisions, as submitted, begin on Page 11 and Page 13 respectively; the findings for certification of both, if modified, begin on Page 16.

BACKGROUND

As mentioned above, the Carlsbad Local Coastal Program consists of six geographic segments. The Agua Hedionda Lagoon LCP segment is comprised of approximately 1,100 acres; the Carlsbad Mello I LCP segment contains about 2,000 acres; the Carlsbad Mello II LCP segment includes approximately 5,300 acres; the East Batiquitos Lagoon/Hunt Properties LCP segment has about 1,000 acres; the West Batiquitos Lagoon/Sammis Properties segment contains 200 acres and the Village Redevelopment Area has approximately 100 acres. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all of its segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment remains as a deferred certification area until an implementation plan is certified.

The "Drive-thru Restaurants" amendment revises all six of the City's LCP segments and would prohibit drive-thru restaurants as an allowable land use. The amendment changes both the respective LUPs and zoning.

The "Stormwater Management" amendment revises all six of the City's LCP segments and adds a new chapter to the Carlsbad Municipal Code relating to Stormwater Management and Discharge Control and would prohibit non-stormwater discharges to the storm water conveyance system (spills, illegal dumping, illicit connections) and reduce pollutants from urban runoff to the maximum extent practicable.

The "Incidental Outdoor Dining Areas" amendment modifies Chapter 21 of the Municipal Code and would apply to all of the City's LCP segments except the Redevelopment Area to allow "incidental outdoor dining areas" associated with restaurants on private property. The amendment allows small accessory outdoor dining areas in association with already allowed restaurants and will exclude such areas from parking requirements and sewer impact fees.

ADDITIONAL INFORMATION

Further information on the submittal may be obtained from Bill Ponder at the San Diego District office of the Coastal Commission at 3111 Camino Del Rio North, Suite 200, San Diego, CA 92108, (619) 521-8036.

PART I. OVERVIEW

A. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

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 various components of 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 resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided prior to each resolution.

- A. RESOLUTION I (Resolution to approve certification of the City of Carlsbad Land Use Plan Amendment 1-98C/Drive-Thru Restaurants, as submitted)

MOTION I

I move that the Commission certify the City of Carlsbad Land Use Plan Amendment No. 1-98C, as submitted.

Staff Recommendation

Staff recommends a YES vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the appointed Commissioners is needed to pass the motion.

Resolution I

The Commission hereby certifies the amendment request to the City of Carlsbad Land Use Plan, as submitted, and adopts the findings stated below on the grounds that the amendment will meet the requirements of and conform with the policies of Chapter 3 (commencing with Section 30200) of the California Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act; the land use plan, as amended, will contain a specific access component as required by Section 30500 of the Coastal Act; the land use plan, as amended, will be consistent with applicable decisions of the Commission that shall guide local government actions pursuant to Section 30625(c); and certification of the land use plan amendment does meet the requirements of Section 21080.5(d)(2)(i) of the California Environmental Quality Act, as there would be no feasible measures or feasible alternatives which would substantially lessen significant adverse impacts on the environment.

- B. RESOLUTION II (Resolution to approve portions of the City of Carlsbad Implementation Plan Amendment 1-98C/Drive-Thru Restaurants as submitted)

MOTION II

I move that the Commission reject the City of Carlsbad Implementation Plan Amendment No. 1-98C, as it relates to Drive-Thru Restaurants, as submitted.

Staff Recommendation

Staff recommends a NO vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution II

The Commission hereby certifies the amendment to the City of Carlsbad's Local Coastal Program on the grounds that the amendment conforms with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

- C. RESOLUTION III (Resolution to reject portions of the City of Carlsbad Implementation Plan Amendment 1-98C/Stormwater Management and Incidental Outdoor Dining Areas, as submitted)

MOTION III

I move that the Commission reject the City of Carlsbad Implementation Plan Amendment No. 1-98C for the Stormwater Management and Incidental Outdoor Dining Areas, as submitted.

Staff Recommendation

Staff recommends a YES vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution III

The Commission hereby denies the amendment to the City of Carlsbad's Local Coastal Program on the grounds that the amendment is inadequate to carry out the provisions of the certified land use plan. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

- D. RESOLUTION IV (Resolution to approve portions of the City of Carlsbad Implementation Plan Amendment 1-98C/Stormwater Management and Incidental Outdoor Dining Areas, if modified)

MOTION IV

I move that the Commission approve the City of Carlsbad Implementation Plan Amendment No. 1-98C for Stormwater Management and Incidental Outdoor Dining Areas, if modified.

Staff Recommendation

Staff recommends a YES vote and the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

Resolution IV

The Commission hereby certifies the amendment to the City of Carlsbad's Local Coastal Program on the grounds that the amendment, as modified, conforms with, and is adequate to carry out, the provisions of the certified land use plan. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impacts which the approval would have on the environment.

PART III. SUGGESTED MODIFICATIONS

The following are the suggested revisions for this amendment request. Language to be added is underlined; language to be deleted is crossed out.

STORMWATER MANAGEMENT ORDINANCE

1. Under Definitions, Section 15.12.020.D (California Ocean Plan) shall be revised to read as follows:

"California Ocean Plan" means the California Ocean Plan: Water Quality Control Plan for Ocean Waters of California adopted by the State Water Resources Control Board ~~September 1997~~ effective July 23, 1997 and any subsequent amendments.

2. Under Definitions, Section 15.12.020.G.4 (Development) shall be revised to read as follows:

[..."Development shall mean"] a change in the density or intensity of the use of land, including, but not limited to, a subdivision pursuant to the Subdivision Map Act (Government Code Section 66410, et seq.) and any other division of land, including lot splits, except where the division of land is brought about in connection with the purchase of such land by a public agency for public recreational use;

3. Under Definitions, Section 15.12.020.K (Hazardous Materials) shall be revised to read as follows:

"Hazardous Materials" shall mean any substance or mixture of substances which is toxic, corrosive, flammable, an irritant, a strong sensitizer, or generates pressure through decomposition, heat or other means, if such a substance or mixture of substances may cause, or substantially contribute to, substantial injury, serious illness or harm to humans, domestic livestock, or wildlife.

4. Under Discharge of Pollutants, Section 15.12.050.A shall be revised to read as follows:

The prohibition on discharges shall not apply to any discharge regulated under a NPDES permit issued to the discharger and administered by the State of California pursuant to Chapter 5.5, Division 7, of the California Water Code, provided that the discharger is in compliance with all requirements of the permit and other applicable laws and regulations. Proof of compliance with said permit may be required in a form acceptable to the City of Carlsbad prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

5. Under Discharge of Pollutants, Section 15.12.050.B shall be revised to read as follows:

Discharges from the following activities will not be considered as source of pollutants to waters of the United States when properly managed to ensure that potential pollutants are not present, water line flushing; landscape irrigation; diverted water flows;...

6. Under Watercourse Protection, Section 15.12.090 shall be revised to read as follows:

Every person owning property through which a watercourse passes, and such person's lessee or tenant, shall keep and maintain that part of the watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles which would pollute, contaminate, or significantly retard the flow of water through the watercourse; shall maintain existing privately owned structures

within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse; and shall not remove healthy bank vegetation beyond that actually necessary for said maintenance which shall be accomplished in a manner that minimizes the vulnerability of the watercourse to erosion; and shall be responsible for maintaining that portion of the watercourse that is within their property lines in order to protect against erosion and degradation of the watercourse originating or contributed from their property.

7. Under Remedies Not Exclusive, Section 15.12.190 shall be revised to read as follows:

Remedies set forth in this Chapter are not exclusive but are cumulative to all other civil and criminal penalties provided by law, including, but not limited to, penalty provisions of the Federal Clean Water Act and/or the State Porter-Cologne Water Quality Control Act. The Porter-Cologne Water Quality Control Act is California Water Code Section 13000 et seq., and any future amendments. The seeking of such federal and/or state remedies shall not preclude the simultaneous commencement of proceedings pursuant to this Chapter.

INCIDENTAL OUTDOOR DINING AREAS ORDINANCE

8. Section 21.04.188.1 of the Carlsbad Municipal Code shall be revised to read as follows:

...Incidental outdoor dining areas shall be utilized only as extensions of restaurants providing indoor seating and which are properly licensed for such service. On properties located west of the railroad right-of-way and outside of the Village Redevelopment Area, "incidental outdoor dining areas" shall be allowed only where the existing indoor restaurant, bona fide eating establishment or deli provides on-site parking in compliance with the parking ratios specified in Chapter 21.44 (Parking Ordinance) of the Municipal Code. Incidental outdoor dining areas may be located on private property only (not in the public right-of-way)....

PART IV. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT 1-98C AS SUBMITTED

A. AMENDMENT DESCRIPTION

Only one of the three amendment requests which are the subject of this report involves land use plan revisions; it is the one addressing drive-thru restaurants. The land use portion of the amendment modifies or inserts policy language into the Village Redevelopment Area, Mello I, Mello II, Agua Hedionda, East Batiquitos and West Batiquitos LCP segments. The new/revised policy text prohibits "Drive-thru Restaurants" as a permitted land use from

each of these LCP segments. Regarding the Village Redevelopment Area, the Village Master Plan and Design Manual implements the Redevelopment Plan and regulates land uses in the Village Redevelopment Area. This document currently limits drive-thru facilities for fast food restaurants to three of the nine land use districts within the Village Redevelopment Area. The proposed revision to the Village Master Plan and Design Manual will prohibit drive-thrus for fast food restaurants in all areas of the Village. The amendment modifies the Land Use Chart within the Manual to prohibit "drive-thru restaurants" from any location in the Village area and LCP segment.

B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that the land use plan amendment, as set forth in the resolution for certification as submitted, is consistent with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

d) Assure priority for coastal-dependent and coastal-related development over other developments on the coast.

e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

C. CHAPTER 3 CONSISTENCY

1. Visitor-Serving Uses.

Section 30222 provides that private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over other development except for agricultural uses or coastal-dependent uses. The amendment proposes to define "drive-thru restaurants" (based on the presence of a drive-thru lane to

service customers), and then to specifically prohibit them by either adding new policy language to the respective LUPs or revising existing language to prohibit "Drive-Thru Restaurants" as a permitted use.

In its decision, the City found that such uses can have an adverse impact on public health, safety and welfare through potential cumulative traffic, noise, litter, aesthetic and air quality impacts. The City further found that its goals for the future included the de-emphasis of motor vehicle use and mitigating other nuisance factors while emphasizing pedestrian circulation. Additionally, the City found there were sufficient existing drive-thru establishments throughout the City to accommodate existing and anticipated needs. There are twelve drive-thru restaurants within the City, with five being in the Village Redevelopment Area. The existing drive-thru restaurants would not be eliminated by the ordinance; and, as long as they are legally in existence at the time of this ordinance's enactment, they will be allowed to seek extension of their conditional use permits. Regarding handicapped access, the City found that existing services were adequate and restaurants would still have to meet American Disability Act access requirements independently.

The proposed amendment is not in conflict with the above provision of the Coastal Act. The prohibition of drive-thru restaurants will not prohibit the restaurant itself as a permitted use nor result in a required decrease in size or visitor-serving potential, only prohibit the use of drive-up lanes for outside customer service. These lanes do not provide a visitor-serving use in-and-of themselves, only a convenience for those who do not wish to leave the car to receive food. It is not anticipated that just because a drive-thru lane is not allowed to access a restaurant, that the restaurant would not provide the same product it had prior to the ban (i.e., a fast food restaurant would remain a fast food restaurant). For those reasons, the Commission finds there is no reduction in visitor-serving facilities or uses as a result of the amendment and it can be found consistent with the applicable section of the Coastal Act.

2. PUBLIC ACCESS/PEDESTRIAN ORIENTATION.

Section 30210 of the Coastal Act addresses the protection of coastal access and states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

As cited above, the Coastal Act provides for the protection of public access. The Commission finds there should be no adverse impacts to public access opportunities within the City resulting from the drive-thru restaurant prohibition. The amendment would promote pedestrian-oriented objectives throughout the City, particularly in the Village Redevelopment Area where

pedestrian circulation is preferred over automobile use. Again, the proposed amendment will not change the zones or specific locations where restaurants, the primary visitor-serving use, will be allowed. It will only eliminate one customer service feature that such establishments could offer in any new restaurant development. Thus, the Commission finds the proposed map and policy revisions can be found consistent with Sections 30210 and Section 30222 of the Coastal Act.

PART V. FINDINGS FOR APPROVAL OF PORTIONS OF THE CITY OF CARLSBAD'S
IMPLEMENTATION PLAN AMENDMENT 1-98C/DRIVE-THRU RESTAURANTS,
AS SUBMITTED

A. AMENDMENT DESCRIPTION/DRIVE-THRU RESTAURANTS ORDINANCE. The subject amendment modifies the City's zoning ordinance by prohibiting drive-thru restaurants throughout the City. Consequently, it involves the Village Redevelopment Area, Mello I, Mello II, Agua Hedionda, East Batiquitos/Hunt and West Batiquitos/Sammis segments of the Carlsbad LCP.

B. FINDINGS FOR CERTIFICATION/DRIVE-THRU RESTAURANTS

a) Purpose and Intent of the Ordinance. The purpose and intent of the zoning amendment is to amend various Chapter 21 sections of the Carlsbad Municipal Code to address the prohibition of drive-thru restaurants throughout the City.

b) Major Provisions of the Ordinance. Chapter 21 of the Municipal Code addresses revisions to the regulations of "drive-thru restaurants" as follows:

-Defines "Drive-thru Restaurants" (based on the presence of a drive-thru lane to service customers) and prohibits such uses defined as "drive-thru restaurants"

c) Adequacy of Ordinance to Implement the Certified LUP. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the various segments of the LCP. The primary regulations addressing drive-thru restaurants for all areas of the City, except the Village Redevelopment Area, are contained in the City's zoning ordinance. Currently, Section 21.42.010(5)(N) (Conditional Uses) allows drive-thru businesses in any zone except residential through the processing of a conditional use permit. The subject amendment proposes to define "Drive-thru Restaurants" (based on the presence of a drive-thru lane to service customers); and then to specifically prohibit them from Section 21.42.010(5)(N). This results in "Drive-thru Restaurants" being prohibited from all zones except the Village Redevelopment Area in the City. However, Section 21.42.010(5)(N) provides that drive-thru restaurants that are either existing or have received final approvals by the effective date of the ordinance are allowed to exist and may apply for CUP extensions to allow for continued operations.

The Village Master Plan and Design Manual implements the Redevelopment Plan and regulates land use in the Village Redevelopment Area. This document currently limits drive-thru facilities for fast food restaurants to three of the nine land use districts within the Village Redevelopment Area. The proposed revision to the Village Master Plan and Design Manual is also covered by technical amendment to Section 21.35.020 (Incorporation of Village Master Plan and Design Manual by reference into Carlsbad Municipal Code) and will prohibit drive-thrus for fast food restaurants in all areas of the Village.

The drive-thru prohibition is limited in nature and will not change existing LCP regulations encouraging higher priority uses such as restaurants and other visitor-serving uses. Therefore, the Commission finds that the subject amendment to the Implementation Program is consistent with and adequate to carry out the policies of the certified LUP, as already amended herein.

PART VI. FINDINGS FOR DENIAL OF PORTIONS OF THE CITY OF CARLSBAD
IMPLEMENTATION PLAN AMENDMENT 1-98C/STORMWATER MANAGEMENT AND
INCIDENTAL OUTDOOR DINING AREAS, AS SUBMITTED

A. AMENDMENT DESCRIPTION

1. STORMWATER MANAGEMENT AND DISCHARGE CONTROL ORDINANCE. Regarding the Stormwater Management and Discharge Control ordinance, the amendment modifies the City's zoning ordinance city-wide. Consequently, it will involve the Village Redevelopment Area, Mello I, Mello II, Agua Hedionda, East Batiquitos/Hunt and West Batiquitos/Sammis segments of the Carlsbad LCP.

2. INCIDENTAL OUTDOOR DINING AREAS. The amendment modifies the City's zoning ordinance city-wide and is only applicable outside of the Redevelopment Area. Consequently, it will involve the Mello I, Mello II, Agua Hedionda, East Batiquitos/Hunt and West Batiquitos/Sammis segments of the Carlsbad LCP.

B. FINDINGS FOR REJECTION/STORMWATER MANAGEMENT AND DISCHARGE CONTROL

a) Purpose and Intent of the Ordinance. The purpose and intent of the Stormwater Management Ordinance is to ensure the future health, safety and general welfare of the citizens of Carlsbad by prohibiting non-stormwater discharges to the storm water conveyance system (spills, illegal dumping, illicit connections) and reducing pollutants from urban runoff to the maximum extent practicable. The intent of the ordinance is to protect and enhance the water quality of watercourses, water bodies and wetlands in a manner pursuant to and consistent with the Clean Water Act and California Regional Water Quality Control Board NPDES Permit No. 90-42 and any amendment, revision or reissuance thereof.

b) Major Provisions of the Ordinance. New Chapter 15.12 addresses the prohibition of non-stormwater discharges to the storm water conveyance system (spills, illegal dumping, illicit connections) and the reduction of pollutants from urban runoff as follows:

- Establishes definitions for the ordinance's application;

- Supplements the existing grading and erosion control policy provisions of the City's certified LCP;

- Provides the City with the legal authority to enforce the new provisions and sets forth inspection and testing procedures;
- Prohibits discharges to the storm water conveyance system from spills, dumping or disposal of certain materials other than storm water, permitted or exempted discharges;
- Mandates utilization of Best Management Practices to the maximum extent practicable to eliminate or reduce pollutants entering the conveyance system; and
- Directs that watercourses be maintained in a manner that retains flows but also minimizes erosion potential and protects habitat.

c) Adequacy of Ordinance to Implement the Certified LUP. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the various segments of the LCP. The amendment amends all six of the City's LCP segments and would add a new chapter to the Carlsbad Municipal Code relating to Stormwater Management and Discharge Control. The water quality ordinance will supplement the existing grading and erosion control policy provisions of the City's certified LCP by protecting and enhancing the water quality of water courses, water bodies and wetlands within the City and coastal zone.

The storm water ordinance is intended to ensure that receiving waters (i.e., Batiquitos Lagoon, Agua Hedionda Lagoon, Buena Vista Lagoon and their tributary creeks and the Pacific Ocean) are protected from adverse impacts resulting from non-storm water discharges. Stormwater is surface runoff and drainage associated with storm events and snow melt prior to contact with urban areas and other areas where the natural environment has been significantly disturbed or altered, either directly or indirectly, as a result of human activity. Stormwater runoff and drainage from areas that are in a natural state, have not been significantly disturbed or altered either directly or indirectly as a result of human activity, and the character and type of pollutants naturally appearing in the runoff have not been significantly altered, either directly or indirectly, as a result of human activity, is considered "unpolluted" and conforms to the definition of "stormwater". Thus, the ordinance seeks to prohibit polluted, non-stormwater related discharges to the stormwater system which eventually discharge into the above receiving waters.

The ordinance applies to all forms of development proposals. Projects must be found in compliance with all applicable federal and state laws, plans and permits in regards to stormwater management and discharge control. The ordinance provides that "Best Management Practices" must be followed to the maximum extent practicable to prevent or reduce the discharge of pollutants directly or indirectly to receiving waters. Notification of spills, containment and cleanup procedures are identified in the ordinance. An "enforcement official" is created by the ordinance to enforce the provisions

of the ordinance and can issue cease and desist orders and impose fines and penalties in appropriate situations.

Regarding conformance with the drainage and runoff control provisions of the LUPs, a number of LUP policies require that new development must not adversely affect coastal resources such as the above named water bodies. Generally, the LUPs require that new development submit drainage and runoff control plans and install permanent runoff and erosion control devices to ensure that runoff will not promote downstream erosion and that it incorporate sediment controls. For example, Policy 4-3 of the Mello II LUP provides that all permanent runoff-control and erosion-control devices must be developed and installed prior to or concurrent with any onsite grading activities. The Mello I LUP provides that drainage improvements be constructed between the project site and the lagoon, restricts grading activities to the months of April through September, requires revegetation of all graded areas immediately after grading, requires runoff be controlled so as not to exceed pre-development velocities and requires appropriate measures shall be taken on and off-site to prevent siltation of lagoons and other environmentally sensitive areas. The other LCP segments that comprise the Carlsbad LCP contain similar provisions to ensure that water quality will be maintained.

The stormwater management ordinance will not change existing LCP regulations requiring the protection of the quality of coastal waters by minimizing adverse effects of waste water discharges and entrainment, controlling runoff and encouraging waste water reclamation. The ordinance will only serve to enhance these existing regulations. However, the proposed ordinance must be clarified in several areas which requires a number of technical revisions. The revisions are minor and involve mostly clarifications in the ordinance regarding who and what the ordinance applies to and other aspects of ordinance administration. While minor and technical in nature, the Commission finds that the ordinance, as submitted, can not be found consistent with the water quality policies of the respective land use plans to the extent necessary to approve it as submitted. Therefore, the Commission must reject the implementation plan amendment.

C. FINDINGS FOR REJECTION/INCIDENTAL OUTDOOR DINING AREAS

a) Purpose and Intent of the Ordinance. The purpose and intent of the Incidental Outdoor Dining Areas amendment is to allow small accessory outdoor dining areas on private property in association with already allowed restaurants with indoor seating and to exclude such areas from parking requirements and sewer impact fees.

b) Major Provisions of the Ordinance. The Incidental Outdoor Dining Areas amendment modifies Chapter 21 of the Municipal Code to allow incidental outdoor dining areas associated with restaurants on private property citywide outside the Village Redevelopment Area as follows:

-Adds a new definition to the municipal code (Section 21.04.188.1) which specifies, among other things, that "incidental outdoor dining areas" shall be limited to: a maximum of 20% of the number of indoor seats or a maximum of twenty (20) seats, whichever is more restrictive; a maximum of six (6) tables; and a maximum of 400 square feet (sq.ft.) in area;

- Provides design and locational criteria for incidental outdoor dining areas to comply with regulations governing alcoholic beverage service and access for persons with disabilities;

- Provides a one year "sunset clause" should the parking waiver prove unworkable; and

- Provides an administrative permit procedure to review such applications.

c) Adequacy of Ordinance to Implement the Certified LUP. The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the various segments of the LCP. The amendment excludes all "incidental outdoor dining areas" from the floor area calculations used to determine the number of parking spaces required. Currently, incidental outdoor dining areas are not a permitted use within the City; restaurants must provide parking for any indoor and outdoor use areas at the same ratio. Through the IP amendment, incidental outdoor dining areas will be provisionally permitted.

As newly defined in the Municipal Code, an "incidental outdoor dining area" means a small extension of an indoor restaurant, eating establishment or deli which extends outdoors beyond the walls of the restaurant and which is used extensively for eating, drinking and pedestrian circulation therein. They may be located on private property only (not in the public right-of-way). Incidental outdoor areas are allowed only in the zones in which restaurants and/or deli's are allowed (C-1, O, C-2, C-T, C-M, M, and P-M zones) and may be approved by administrative permit.

The proposed amendment would not change the zones in which restaurants or delis (with or without outdoor seating areas) are allowed. It allows a limited amount of such outdoor seating to be provided without having to provide parking and without having to provide sewer impact fees. A restaurant which is designed to provide a larger outdoor dining area (e.g. one containing 600 sq.ft. of area) would be required to provide parking for the portion of the outdoor dining area which exceeds the "incidental" definition. In addition, the currently proposed amendment proposes pedestrian clearance between tables and/or walls/fences shall be a minimum of 42 inches wide; no encroachment shall occur into the public right-of-way; no existing parking spaces shall be eliminated; no interference with vehicle or pedestrian circulation shall be allowed; no removal or reduction of existing landscaping without equivalent replacement; no creation of traffic hazards; and the location cannot be incompatible with outdoor dining, in the opinion of the City Engineer because of the speed, volume or nearness of vehicular traffic.

The certified parking code requirement for restaurants/delis parking is one space per 100 sq.ft. of gross floor area (for restaurants less than 4,000 sq.ft. in size) and 40 spaces plus one space per 50 sq.ft. of gross floor area in excess of 4,000 sq.ft. (for restaurants of 4,000 sq.ft. or greater). Currently, the Municipal Code provides that restaurants which incorporate

outdoor seating areas are allowed provided they comply with all requirements, including providing required parking at the appropriate restaurant parking ratio.

The Commission is concerned about the proposed parking exemption in the nearshore areas of the City outside of the Village Redevelopment Area. Specifically, there's concern about the areas located west of the railroad right-of-way near the ocean, where parking demand is high but parking supplies may be low or the southern areas of the City where there are substantial undeveloped areas which are expected to experience growth in the near future. The railroad right-of-way runs north/south through the City, near and paralleling the ocean. There are a number of commercially-designated sites west of the railroad right-of-way that the ordinance would apply to near Palomar Airport Road and Poinsettia Lane, including sites within the Poinsettia Properties Specific Plan Area and the Poinsettia Shores Specific Plan Area. These specific plans cover approximately 190 acres of land north of Batiquitos Lagoon and contain lands approved by the Commission for visitor commercial uses, some of which are located west of the railroad right-of-way. Some of these areas may be considered as "beach impact areas" where parking competition is expected to be greatest between residents, commercial patrons and beach visitors. These areas are directly across from South Carlsbad State Beach. South Carlsbad State Beach is a unit of the State Department of Parks and Recreation. The campground is located westerly of Carlsbad Blvd., north of Ponto State Beach. In addition to seven beach access stairways, the park is developed with 226 campsites, 10 comfort stations, a campfire center and concession stand. Because it provides both day use and overnight use, it is considered a major recreational facility for coastal visitors.

Policy 7-9 of the Mello II LUP entitled "Carlsbad State Beach: Parking" states:

Parking facilities are entirely inadequate in the vicinity of South Carlsbad State Beach. To remedy this problem, the 20-acre site located between Carlsbad Boulevard and the railroad junction of Palomar Airport Road shall be developed for parking facilities of approximately 1,500 spaces. When this facility becomes heavily utilized, jitney service should be initiated between the parking area and designated points along Carlsbad Boulevard.

Given the above, the Commission is concerned about allowing this revision on properties located west of the railroad right-of-way outside of the Village Redevelopment Area. This is important because limited public parking and on-street parking is available in the nearshore area along and west of Carlsbad Boulevard for beach visitors. Outdoor dining areas, whether large or "incidental" are a very attractive dining option in Southern California. Given the suitable weather conditions and use of heaters and shade covers, these outdoor areas draw business and are generally preferred by many customers. Should a restaurant be successful already, such an addition will only serve to expand capacity and fuller operation. This could exacerbate potential parking conflicts in the nearshore areas under certain conditions. One particular concern would be the adequacy of the existing restaurant's

parking facilities. If an existing establishment failed to provide its full parking complement, it should not be allowed to add an "incidental dining" area and exacerbate its parking deficiency, especially in nearshore areas. The submitted ordinance makes it clear that existing parking cannot be eliminated to provide the incidental dining area, but it does not specify that restaurants without adequate parking cannot be allowed a further parking exemption. Thus, the availability of public parking could be affected if an incidental outdoor dining area was allowed near the beach and the existing restaurant failed to provide its required parking complement. For that reason, the amendment must be denied as submitted.

PART VII. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN
AMENDMENT 1-98C/STORMWATER MANAGEMENT AND INCIDENTAL OUTDOOR DINING
AREAS, IF MODIFIED

As revised in the suggested modifications, the proposed amendments can be found consistent with the respective certified land use plans. Regarding the Stormwater Management amendment, the proposed ordinance must be clarified in several areas to make it consistent with recent model stormwater ordinances. These revisions are not substantive, but rather technical in nature, and include a number of revisions that relate to the ordinance's date of effectiveness and citation for the Water Quality Control Plan for Ocean Waters of California as adopted by the State Water Resources Control Board; that all forms of development be subject to the ordinance, including lot splits; that a "hazardous material" be defined as one that may "substantially contribute" to substantial injury; that proof of compliance with a discharge pollutant permit may be required if deemed necessary by the City; and landowners shall be responsible for maintaining that portion of a watercourse that is within their property lines to protect against erosion and degradation of the watercourse. With the above revisions, the Commission finds the subject implementation plan amendment is consistent with and adequate to carry out the policies of the certified LUP.

Regarding the Incidental Outdoor Dining Areas amendment, the Commission finds the amendment can only be accepted west of the railroad right-of-way in Carlsbad, outside the Redevelopment Area, if the existing restaurant provides full parking at the ratios specified in the Municipal Code. The Commission can approve the amendment as revised in the suggested modification based on the following considerations.

First, the amendment only applies to areas outside the Village Redevelopment Area and is limited for one year (until 10/17/98). Should the ordinance be determined unworkable at that time, it could be repealed. Second, the amendment allows a maximum of 20% of the number of indoor seats or a maximum of twenty (20) seats, whichever is more restrictive; a maximum of six (6) tables; and a maximum of 400 square feet (sq.ft.) in area. Therefore, it has a limited scope. Pursuant to the suggested modification, incidental outdoor dining areas will only be allowed with restaurants that otherwise provide their full off-street parking complement consistent with the parking ratios in the Municipal Code for areas west of the railroad tracks which are viewed as

"beach impact areas". Third, outdoor dining areas represent an amenity associated with high-priority, visitor-serving uses which should be encouraged as long as they do not result in any other access conflicts. Fourth, a key justification is the City's stricter parking ratio which requires, at a minimum, 1 space per 100 square feet of gross floor area for restaurants, which is a more restrictive parking standard than used by other certified jurisdictions. It is reasonable to allow a limited parking exemption where, in the case of the nearshore areas west of the railroad right-of-way, the existing restaurant/dining facility complies with the certified parking ratios. Furthermore, areas outside the Village Redevelopment Area are newly developing so restaurants in those areas should be providing full parking consistent with the LCP as new uses.

Based on the above, the Commission finds the proposed amendment is limited in nature. Any proposed restaurant in the coastal zone (with or without incidental outdoor dining area) will be subject to essentially the same regulations and the proposed parking exemption, as defined and modified herein, can be found consistent with the public access policies of the LCP.

PART VIII. 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, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the subject LCP amendment, as modified, would not result in potentially significant environmental impacts under the meaning of the California Environmental Quality Act. As discussed above, the proposed amendments are not expected to have any adverse land use or resource impacts. Therefore, the Commission finds that no significant, unmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed amendment.

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TEXT CHANGES TO THE VARIOUS LCP SEGMENTS
REGARDING DRIVE-THRU RESTAURANTS

EXHIBIT NO. 1
Carlsbad LCPA 1-98C
LUP Revisions Drive-Thru
Page 1 of 2

Mello I

The Mello I Land Use Plan is amended by the addition of the following policy language to Sections 1, 2 and 3, to read as follows:

Section 1 (Standard Pacific), add a new policy:

"Policy 6 - Drive-thru Restaurant Prohibition

Drive-thru Restaurants are prohibited as an allowed land use."

Section 2 (Occidental Land Inc.) Policy No. 1, Subsection 2 (b) is amended to read:

"Commercial uses may be allowed on the two parcels south of Poinsettia Lane and adjacent to I-5 on both sides of the freeway provided that 35% of the land areas devoted exclusively to tourist commercial uses. Drive-thru restaurants are prohibited as an allowed land use."

Section 3 (Rancho La Costa) Policy No. 1, Subsection No. 2 is amended to read:

"The land uses allowed by the Master Plan shall be compatible with the City of Carlsbad General Plan as amended and as adopted as of March 1, 1988, to provide a combination of residential, commercial (including visitor serving) and open space uses. Drive-thru Restaurants are prohibited as an allowed land use."

Mello II

The Mello II Land Use Plan is amended by the addition of new policy language to Section No. 1 (Allowable Land Uses) to read as follows:

"Policy 1-3 Drive-thru Restaurant Prohibition

Drive-thru Restaurants are prohibited as an allowable land use."

Agua Hedionda Land Use Plan

The Agua Hedionda Land Use Plan is amended by the addition of new policy language to Section No. 3(Land Use Plan) to read as follows:

"Policy 1.11 Drive-thru Restaurants are prohibited as an allowable land use."

East Batiquitos Lagoon

The East Batiquitos Lagoon Land Use Plan is amended by the addition of new policy language to Section B.1 (Land Use Categories), subsection (1)(a)2) to read as follows:

"Commercial portions of Planning Areas 10 and 11 that are subject to this plan are designated Recreation Commercial (RC). In addition to the uses permitted under this designation, other uses may include restaurants. Drive-thru Restaurants are prohibited as an allowable land use."

18

The East Batiquitos Lagoon Land Use Plan is amended by the addition of new policy language to Section B.1 (Land Use Categories), subsection (3)(c) to read as follows:

"(c) Drive-thru Restaurants are prohibited as an allowable land use."

West Batiquitos Lagoon

The West Batiquitos Lagoon Land Use Plan is amended by the addition of policy language to Section "A" (Land use Categories) to read as follows:

"The following are the proposed land use "Planning Areas", each providing a brief description. The "Planning Areas" correspond directly with the planning areas approved with the Poinsettia Shores Master Plan. All development in these planning areas are subject to the provisions of the Poinsettia Shores master Plan as adopted by the City of Carlsbad and certified by the California Coastal Commission. No development inconsistent with the Master Plan shall be permitted. The planning areas identified below will replace the former planning areas established by the BLEP Master Plan. See the attached map for the location of the Planning Areas described below.
Drive-thru Restaurants are prohibited as an allowable land use."

ORDINANCE NO. NS-439

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CARLSBAD CALIFORNIA, AMENDING TITLE 21 OF THE
CARLSBAD MUNICIPAL CODE TO DEFINE AND PROHIBIT
IN ALL ZONES, DRIVE-THRU RESTAURANTS

WHEREAS, on June 3, 1997, the City Council adopted Resolution No. 97-474 directing the Planning Director to prepare a potential prohibition of drive-thru restaurants from all zones in the City; and

WHEREAS, the Planning Commission and Design Review Board held a duly noticed joint public hearing on September 17, 1997 as prescribed by law to consider said prohibition; and

WHEREAS, the City Council did on December 2, 1997 hold a duly noticed public hearing as prescribed by law to consider said prohibition; and

WHEREAS, the City Council finds there are sufficient drive-thru restaurants in the City to serve existing and future needs at this time; and

WHEREAS, further expansions and approvals of drive-thru restaurants do not ensure safe traffic circulation and can lead to traffic congestion, circulation and parking problems; and

WHEREAS, drive-thru restaurants may be detrimental to the quality of life, including the scenic quality of life in the City of Carlsbad, and otherwise inconsistent with its general welfare; and

WHEREAS, the Council finds that drive-thru restaurants do not protect the residential character of the community; and

WHEREAS, this action does not deny a landowner of lawful and economic uses of that property; and

EXHIBIT NO. 2

Carlsbad LCPA 1-98

Drive-Thru
Ordinance

Page 1 of 5

1 WHEREAS, it is not the intent of the City Council to restrict, amend or prohibit
2 other lawful uses which may exist on a larger parcel, a portion of which contains a drive-thru
3 restaurant; and

4 WHEREAS, the City Council does not intend this action to affect or impact
5 existing lawful drive-thru restaurants; and

6 WHEREAS, it will further allow the City Council to determine at a later date
7 whether or not it is necessary or desirable to review, modify or amend this prohibition,
8

9 NOW, therefore, the City Council of the City of Carlsbad, California, does ordain
10 as follows:

11 SECTION 1: That Title 21, Chapter 21.04, Section 21.04.109 is added to the
12 Carlsbad Municipal Code to read as follows:

13 "21.04.109. Drive-thru Restaurant.
14 "Drive-thru Restaurant" means a restaurant that has a drive-thru lane to serve
customers in motor vehicles."

15 SECTION 2: That Title 21, Chapter 21.26, Section 21.26.010(22) is amended to
16 read as follows:

17 "21.26.010(22).
18 (22) Restaurants (excluding drive-thru restaurants), tea rooms or cafes
19 (excluding dancing or entertainment and on-sale liquor);"

20 SECTION 3: That Title 21, Chapter 21.26, Section 21.26.020(1) is amended to
21 read as follows:

22 "21.26.020(1).
23 (1) All uses shall be conducted wholly within a building except such uses as
24 gasoline stations, electrical transformer substations and nurseries for sale of plants and flowers
and similar enterprises customarily conducted in the open;"

25 SECTION 4: That Title 21, Chapter 21.27, Section 21.27.030(4) is amended to
26 read as follows:

27 "21.27.030(4).
28

1 (4) Restaurants (except drive-thru Restaurants);”

2 SECTION 5: That Title 21, Chapter 21.27, Section 21.27.030(6) is amended to
3 read as follows:

4 “21.27.030(6).

5 (6) Drive-thru facilities (except drive-thru restaurants);”

6 SECTION 6: That Title 21, Chapter 21.28, Section 21.28.020(1) is amended to
7 read as follows:

8 “21.28.020(1).

9 (1) All uses shall be conducted wholly within a building except such uses as
10 gasoline stations, electrical transformer substations and horticultural nurseries, and similar
enterprises customarily conducted in the open.”

11 SECTION 7: That Title 21, Chapter 21.29, Section 21.29.030(3) is amended to
12 read as follows:

13 “21.29.030(3).

14 (3) Restaurants (with the exception of drive-thru restaurants);”

15 SECTION 8: That Title 21, Chapter 21.29, of the Carlsbad Municipal Code is
16 amended by the deletion of subdivision (5) and renumbering of subdivision (6) to subdivision (5)
17 of Section 21.29.050, to read as follows:

18 “21.29.050(5).

19 (5) Bed and breakfast uses.”

20 SECTION 9: That Title 21, Chapter 21.30, Section 21.30.020(2) is amended to
21 read as follows:

22 “21.30.020(2).

23 (2) All uses shall be conducted wholly within a completely enclosed building,
24 or within an area enclosed on all sides with a solid wall or uniformly painted fence not less than
25 five feet in height, except such uses as gasoline stations, electrical transformer substations and
horticultural nurseries, and similar enterprises customarily conducted in the open, provided such
exclusion shall not include storage yards, contractor’s yards and like uses;”

26 SECTION 10: That Title 21, Chapter 21.34, Section 21.34.030(1) is amended t
27 read as follows:

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"21.34.030(1).

(1) Eating and drinking establishments (with the exception of drive-thru restaurants)"

SECTION 11: That Title 21, Chapter 21.35, Section 21.35.020 is amended to read as follows:

"21.35.020. Incorporation of redevelopment plan and village master plan and design manual by reference.

The Carlsbad Village Area Redevelopment Plan as adopted by Carlsbad City Council Ordinance No. 9591 on July 21, 1971, and the Village Master Plan and Design Manual as adopted by Carlsbad Housing and Redevelopment Commission Resolution No. 271 on November 21, 1995, and modified by Carlsbad Housing and Redevelopment Commission Resolutions No. 280 on August 13, 1996, and No. 291, are hereby adopted by reference and incorporated into this chapter."

SECTION 12: That Title 21, Chapter 21.42, Section 21.42.010(5)(N) is amended to read as follows:

"21.42.010.(5)(N).

(N) Drive-thru business or drive-thru facilities to existing businesses except drive-thru restaurants which are prohibited from all zones in the City including coastal zone properties. The drive-thru restaurant prohibition applies Citywide to all existing and proposed specific plans, master plans, and related amendments. Drive-thru restaurants that are either existing or have received final approvals on the effective date of this ordinance are allowed to continue in existence subject to the terms and conditions of this Code and the Conditional Use Permit or

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1 other discretionary permit permitting them and may apply for and may be granted CUP
2 extensions under this Code."

3 EFFECTIVE DATE: The ordinance shall be effective thirty days after its
4 adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be
5 published at least once in a newspaper of general circulation within fifteen days after its
6 adoption, *except that, if necessary, within the Coastal Zone the effective date of this ordinance*
7 *shall be the date of final Coastal Commission approval of this ordinance.*

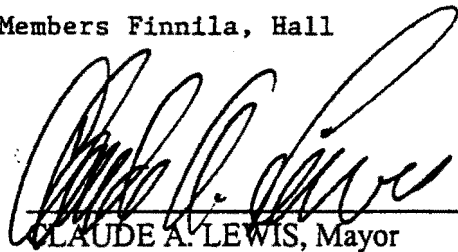
8 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
9 Council on the 16th day of December, 1997, and thereafter

10 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
11 Carlsbad on the 6th day of January, 1998, by the following vote, to wit:


12
13 AYES: Council Members Lewis, Nygaard, Kulchin

14 NOES: Council Members Finnilla, Hall

15 ABSENT: None

16
17 
18 CLAUDE A. LEWIS, Mayor

19 ATTEST:

20 
21 ALETHA L. RAUTEMKRANZ, City Clerk
22 (SEAL)
23 KAREN R. KUNDTZ, Assistant City Clerk
24
25
26
27
28

Stormwater
Ordinance

Page 1 of 11

CHAPTER 15.12

STORM WATER MANAGEMENT AND DISCHARGE CONTROL

Sections:

- 15.12.010 Purpose and Intent
- 15.12.020 Definitions
- 15.12.030 Administration
- 15.12.040 Construction and Application
- 15.12.050 Discharge of Pollutants
- 15.12.060 Discharge in Violation of Permit
- 15.12.070 Illicit Connections
- 15.12.080 Reduction of Pollutants
- 15.12.090 Contacting or Entering Storm Water Required
- 15.12.090 Watercourse Protection
- 15.12.100 Authority to Inspect
- 15.12.110 Inspection Procedures-- Additional Requirements
- 15.12.120 Containment, Cleanup, and Notification of Spills
- 15.12.130 Testing, Monitoring or Mitigation Required-- When.
- 15.12.140 Concealment
- 15.12.150 Administrative Enforcement Powers
- 15.12.160 Administrative Notice, Hearing, and Appeal Procedures
- 15.12.170 Judicial Enforcement
- 15.12.180 Violations Deemed a Public Nuisance
- 15.12.190 Remedies Not Exclusive

15.12.010 Purpose and Intent.

The purpose of this Chapter is to ensure the future health, safety, and general welfare of the residential, commercial, and industrial sectors of the City of Carlsbad by:

A. Prohibiting non-storm water discharges to the storm water conveyance system.

B. Eliminating discharges to the storm water conveyance system from spills, dumping or disposal of materials other than storm water or permitted or exempted discharges.

C. Reducing pollutants in storm water discharges, including those pollutants taken up by storm water as it flows over urban areas (Urban Runoff), to the maximum extent practicable.

D. Reducing pollutants in storm water discharges in order to achieve applicable water quality objectives for surface waters in San Diego County.

The intent of this ordinance is to protect and enhance the water quality of our watercourses, water bodies, and wetlands in a manner pursuant to and consistent with the Clean Water Act and California Regional Water Quality Control Board NPDES Permit No. CA0108758, Order 90-42 and any amendment, revision or reissuance thereof.

15.12.020 Definitions.

When used in this Chapter, the following terms shall have the meanings ascribed to them in this Section:

A. "Basin Plan" means the Comprehensive Water Quality Control Plan for the San Diego Basin adopted by the Regional Water Quality Control Board, San Diego Region (July 1975) and approved by the State Water Resources Control Board, together with subsequent amendments.

B. "Best Management Practices or (BMP)" means schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce to the maximum extent practicable (MEP) the discharge of pollutants directly or indirectly to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

C. "Building Permit" shall mean a permit issued pursuant to Chapter 18.04.

D. "California Ocean Plan" means the California Ocean Plan: Water Quality Control Plan for Ocean Waters of California adopted by the State Water Resources Control Board September 1991 and any subsequent amendments.

E. "Clean Water Act" shall mean the Federal Water Pollution Control Act enacted by Public Law 92-500, as amended by

1 Public Laws 95-217, 95-576, 96-483, and
2 95-117 (33 USCA Section 1251 et seq.), and
any subsequent amendments.

3 F. "County Health Officer" shall mean
4 the Health Officer of the County of San
5 Diego Department of Public Health or
designee.

6 G. "Development" shall mean:

7 1. The placement or erection of
8 any solid material or structure on land, in
9 water, or under water;

10 2. The discharge or disposal of any
11 dredged material or of any gaseous, liquid,
12 solid, or thermal waste;

13 3. The grading, removing,
14 dredging, mining, or extraction of any
15 materials;

16 4. A change in the density or
17 intensity of the use of land, including, but not
18 limited to, a subdivision pursuant to the
19 Subdivision Map Act (Government Code
20 Section 66410, et seq.) and any other
21 division of land, except where the division of
22 land is brought about in connection with the
23 purchase of such land by a public agency for
24 public recreational use;

25 5. A change in the intensity of the
26 use of water, or of access thereto;

27 6. The construction,
28 reconstruction, demolition, or alteration of
the size of any structure, including any
facility of any private, public, or municipal
entity; and,

7. The removal or harvesting of
major vegetation other than for agricultural
purposes.

As used in this definition, "structure"
includes, but is not limited to, any building,
road, pipe, flume, conduit, siphon, aqueduct,
telephone line, and electrical power
transmission and distribution line. (Source:
Government Code Section 65927).

H. "Employee Training Program"
means a documented employee training
program for all persons responsible for
implementing a Storm Water Pollution
Prevention Plan. The Employee Training
Program shall include, but is not limited to,
the following topics:

1. Laws, regulations, and local
ordinances associated with storm water
pollution prevention, and an overview of the
potential impacts of polluted storm water on
the receiving waters of the San Diego
region.

2. Proper handling of all materials and
wastes to prevent spillage.

3. Mitigation of spills including
spill response, containment and cleanup
procedures.

4. Visual monitoring of all effluent
streams to ensure that no illicit discharges
enter the storm water conveyance system.

5. Discussion of the differences
between the storm water conveyance
system and the sanitary sewer system.

6. Identification of all on-site
connections to the storm water conveyance
system.

7. Preventive maintenance and
good housekeeping procedures.

8. Material management
practices employed by the facility to reduce
or eliminate pollutant contact with storm
water discharge.

I. "Enforcement Agency" shall mean the
City of Carlsbad or its authorized agents
charged with ensuring compliance with this
Chapter.

J. "Enforcement Official" shall mean the
City Manager or his or her designee.

K. "Hazardous Materials" shall mean
any substance or mixture of substances
which is toxic, corrosive, flammable, an
irritant, a strong sensitizer, or generates
pressure through decomposition, heat or
other means, if such a substance or mixture
of substances may cause substantial injury,
serious illness or harm to humans, domestic
livestock, or wildlife.

L. "Illicit Connection" means any
un-permitted or undocumented physical
connection to the storm water conveyance
system which has not been approved by the
City of Carlsbad, or any connection which
drains illegal discharges either directly or
indirectly into a storm water conveyance
system.

M. "Illegal Discharge" means any
non-permitted or non-exempt discharge to
the storm water conveyance system that is
not composed entirely of storm water, or is
expressly prohibited by federal, state, or
local regulations, laws, codes, or
ordinances, or degrades the quality of
receiving waters in violation of Basin Plan
and California Ocean Plan standards.

N. "Maximum Extent Practicable" shall
mean, with respect to Best Management
Practices (BMPs), an individual BMP or
group of BMPs which address a Pollutant of

1 concern, which have a cost of
2 implementation reasonably related to the
3 pollution control benefits achieved, and
4 which are technologically feasible.

5 O. "National Pollution Discharge
6 Elimination System (NPDES) Permit" shall
7 mean a permit issued by the Regional Water
8 Quality Control Board or the State Water
9 Resources Control Board pursuant to
10 Chapter 5.5, Division 7 of the California
11 Water Code, to control discharges from point
12 sources to waters of the United States,
13 including, but not limited to:

14 1. California Regional Water Quality
15 Control Board NPDES Permit No.
16 CA0108758, Order 90-42 and any
17 amendment, revision or reissuance thereof.

18 2. NPDES General Permit for
19 Storm Water Discharges Associated with
20 Industrial Activities'

21 3. NPDES General Permit for
22 Storm Water Discharges Associated with
23 Construction Activity; and,

24 4. California Regional Water
25 Quality Control Board, San Diego Region,
26 General De-Watering Permits (Order
27 Numbers 91-10 and 90-31).

28 P. "Non-Storm Water Discharge"
means any discharge to the storm water
conveyance system that is not entirely
composed of storm water.

Q. "NPDES General Permit" shall
mean a permit issued by the State Water
Resources Control Board, including, but not
limited to:

1. NPDES General Permit for
Storm Water Discharges Associated with
Industrial Activities; and,

2. NPDES General Permit for
Storm Water Discharges Associated with
Construction Activity.

R. "Order No. 90-42", dated July 16,
1990, shall mean California Regional Water
Quality Control Board NPDES Permit No.
CA0108758, Order 90-42 and any
amendment, revision or reissuance thereof,
together with all amendments, and which is
on file in the office of the City Clerk.

S. "Parking Lot" shall mean an open
area, other than a street or other public way,
used for the parking of motorized vehicles,
whether for a fee or free, to accommodate
clients or customers or to accommodate
residents of multi-family dwellings (i.e.,
apartments, condominiums, townhomes,

mobile homes, dormitories, group quarters,
etc.).

T. "Person" shall mean any individual,
organization, business trust, company,
partnership, entity, firm, association,
corporation, or public agency, including the
State of California and the United States of
America.

U. "Pollutant" includes, but is not
limited to, solid waste, sewage, garbage,
medical waste, wrecked or discarded
equipment, radioactive materials, dredged
spoil, rock, sand, industrial waste, and any
organic or inorganic substance defined as a
pollutant under 40 C.F.R. 122.2 whose
presence degrades the quality of the
receiving waters in violation of Basin Plan
and California Ocean Plan standards such
as fecal coliform, fecal streptococcus,
enterococcus, volatile organic carbon
(VOC), surfactants, oil and grease,
petroleum hydrocarbons, total organic
carbon (TOC), lead, copper, chromium,
cadmium, silver, nickel, zinc, cyanides,
phenols, and biocides.

A pollutant also includes any
contaminant which degrades the quality of
the receiving waters in violation of Basin
Plan and California Ocean Plan standards
by altering any of the following parameters:
pH, total suspended and settleable solids,
biochemical oxygen demand (BOD),
chemical oxygen demand (COD), nutrients,
and temperature.

V. "Premises" means any building, lot
parcel, real estate, land or portion of land
whether improved or unimproved.

W. "Receiving Waters" means surface
bodies of water, which serve as discharge
points for the storm water conveyance
system, including the Batiquitos Lagoon,
Agua Hedionda Lagoon and Buena Vista
Lagoon and their tributary creeks, reservoirs,
lakes, estuaries, and the Pacific Ocean.

X. "Storm Water" shall mean surface
runoff and drainage associated with storm
events and snow melt prior to contact with
urban areas, agricultural areas, and/or other
areas in which the natural environment has
been significantly disturbed or altered, either
directly or indirectly, as a result of human
activity (also see definition for "Non-Storm
Water").

For the purposes of this Chapter, Storm
Water runoff and drainage from areas that
are in a natural state, have not been

1 significantly disturbed or altered, either
2 directly or indirectly, as a result of human
3 activity, and the character and type of
4 Pollutants naturally appearing in the runoff
5 have not been significantly altered, either
6 directly or indirectly, as a result of human
7 activity, shall be considered "unpolluted" and
8 shall satisfy the definition of "Storm Water"
9 in this Chapter.

10 Y. "Storm Water Conveyance System"
11 includes, but is not limited to those municipal
12 facilities within the City of Carlsbad by which
13 storm water may be conveyed to waters of
14 the United States, including any roads with
15 drainage systems, municipal streets, catch
16 basins, natural and artificial channels or
17 storm drains.

18 Z. "Storm Water Pollution Prevention
19 Plan" means a document which describes
20 the on-site program activities to eliminate or
21 reduce to the maximum extent practicable,
22 pollutant discharges to the storm water
23 conveyance system.

24 A Storm Water Pollution Prevention
25 Plan prepared and implemented pursuant to
26 any NPDES Storm Water permit shall meet
27 the definition of a Storm Water Pollution
28 Prevention Plan for the purposes of this
Chapter.

AA. "Watercourse" means any natural
or artificial stream, river, creek, ditch,
channel, canal, conduit, culvert, drain,
waterway, gully, ravine, arroyo or wash, in
which waters flow in a definite direction or
course, either continuously or intermittently,
and which has a definite channel and a bed
or banks. A channel is not limited to land
covered by minimal or ordinary flow but also
includes land covered during times of high
water. "Watercourse" does not include any
surface drainage prior to its collection in a
stream, river, creek, ditch, channel, canal,
conduit, culvert, drain, waterway, gully,
ravine, arroyo or wash.

BB. "Wet Season" means October 15
through April 15.

CC. "Wetlands" shall mean areas that
are inundated or saturated by surface or
ground waters at a frequency and duration
sufficient to support, and that under normal
circumstances do support, a prevalence of
vegetation typically adapted for life in
saturated soil conditions. Wetlands
generally include swamps, marshes, bogs,
and similar areas.

15.12.030 Administration

The Enforcement Official shall
administer, implement, and enforce the
provisions of this Chapter. Any powers
granted to, or duties imposed upon, the
Enforcement Official may be delegated by
the Enforcement Official to Persons in the
employ of the City, or pursuant to contract.
When deemed necessary by the
Enforcement Official, the Enforcement
Official shall prepare and present to the City
Council for approval regulations consistent
with the general policies established herein
by the City Council. The Enforcement
Official shall enforce Council approved
regulations necessary to the administration
of this ordinance, and may recommend that
the Council amend such regulations from
time to time as conditions require.

15.12.040 Construction and Application

This Chapter shall be interpreted to
assure consistency with the requirements of
the federal Clean Water Act and acts
amendatory thereof or supplementary
thereto, applicable implementing regulations,
and California Regional Water Quality
Control Board NPDES Permit No.
CA0108758, Order 90-42 and any
amendment, revision or reissuance thereof.

15.12.050 Discharge of Pollutants

The discharge of non-storm water
discharges to the storm water conveyance
system or to any other conveyance system
which discharges into receiving water is
prohibited, except as specified below:

A. The prohibition on discharges shall
not apply to any discharge regulated under a
NPDES permit issued to the discharger and
administered by the State of California
pursuant to Chapter 5.5, Division 7, of the
California Water Code, provided that the
discharger is in compliance with all
requirements of the permit and other
applicable laws and regulations.

B. Discharges from the following
activities will not be considered a source of
pollutants to waters of the United States
when properly managed: water line flushing;
landscape irrigation; diverted stream flows;
rising ground waters; uncontaminated
ground water infiltration [as defined at 40
CFR 35.2005(20)] to storm water
conveyance systems; uncontaminated
pumped ground water; discharges from

1 potable water sources; foundation drains; air
2 conditioning condensation; irrigation water
3 springs; water from crawl space pumps;
4 footing drains; lawn watering; individual
5 residential car washing; flows from riparian
6 habitats and wetlands; dechlorinated
7 swimming pool discharges; and street wash
8 water.

9 C. The prohibition of discharges shall
10 not apply to any discharge which the City of
11 Carlsbad or the county health officer, and/or
12 the Regional Water Quality Control Board
13 determine are necessary for the protection
14 of the public health and safety.

15 15.12.060 Discharge in Violation of 16 Permit

17 Any discharge that would result in or
18 contribute to a violation of California
19 Regional Water Quality Control Board
20 NPDES Permit No. CA0108758, Order 90-42
21 and any amendment, revision or reissuance
22 thereof, either separately considered or
23 when combined with other discharges, is
24 prohibited. Liability for any such discharge
25 shall be the responsibility of the person(s)
26 causing or responsible for the discharge.

27 15.12.070 Illicit Connections

28 It is prohibited to establish, use,
maintain, or continue illicit connections to
the storm water conveyance system,
regardless of whether such connections
were made under a permit or other
authorization or whether permissible under
the law or practices applicable or prevailing
at the time of the connection except as
authorized in section 15.12.050.

15.12.080 Reduction of Pollutants Contacting or Entering Storm Water Required.

A. It is unlawful for any Person not to
utilize Best Management Practices to the
Maximum Extent Practicable to eliminate or
reduce Pollutants entering the City's Storm
Water Conveyance System.

B. In order to reduce the risk of Non-
Storm Water or Pollutant discharges to the
City's Storm Water Conveyance System, the
following minimum Best Management
Practices shall be implemented:

1. Commercial and Industrial
Business-Related Activities.

a. Storm Water Pollution
Prevention Plan: When the Enforcement

Official determines that a business or
business-related activity causes or
significantly contributes to violation of the
water quality standards set forth in the Basin
Plan or California Ocean Waters Plan, or
conveys Significant Quantities of Pollutants
to Receiving Waters, then the Enforcement
Official may require the business to develop
and implement a Storm Water Pollution
Prevention Plan (SWPPP). Businesses
which may be required to prepare and
implement a SWPPP include, but are not
limited to, those which perform
maintenance, storage, manufacturing,
assembly, equipment operations, vehicle
loading, and/or cleanup activities partially or
wholly out of doors.

b. Coordination with
Hazardous Materials Response Plans and
Inventory: Any business subject to the
Hazardous Materials inventory and response
program pursuant to Chapter 6.95 of the
California Health and Safety Code, shall
include provisions for compliance with this
Chapter in its Hazardous Materials
Response Plan, including prohibitions of
unlawful Non-Storm Water discharges and
Illegal Discharges, and provisions requiring
the use of Best Management Practices to
reduce the discharge of Pollutants in Storm
Water.

c. Impervious Surfaces:
Persons owning or operating a Parking Lot
or an impervious surface (including, but not
limited to, service station pavements or
paved private streets and roads) used for
automobile-related or similar purposes shall
clean those surfaces as frequently and as
thoroughly as is necessary, in accordance
with Best Management Practices, to prevent
the discharge of Pollutants to the City's
Storm Water Conveyance System.
Sweepings or cleaning residue from Parking
Lots or impervious surfaces shall not be
swept or otherwise made or allowed to go
into any Storm Water conveyance, gutter, or
roadway, but must be disposed of in
accordance with regional solid waste
procedures and practices.

2. Activities not Otherwise Regulated
by Subsection B.1.

a. Any person engaged in
Development or other activity not covered by
Subsection B.1 in the City of Carlsbad shall
utilize Best Management Practices to
prevent Pollutants from entering the Storm

1 Water Conveyance System by complying
2 with all applicable local ordinances, the
3 Standard Specifications for Public Works
4 Construction when performing public work,
5 and applicable provisions of the NPDES
6 General Permit for Storm Water Discharges
7 Associated with Construction Activity issued
8 by the State Water Resources Control Board
9 (State Board Order No. 92-08-DWQ), and
10 any subsequent amendments.

11 b. Standard for Parking Lots and
12 Similar Structures. Persons owning or
13 operating a parking lot or impervious
14 surfaces used for similar purposes shall
15 clean those structures thoroughly as is
16 necessary to prevent the discharge of
17 pollutants to the storm water conveyance
18 system to the maximum extent practicable,
19 but not less than once prior to each wet
20 season. Sweepings or cleaning residue
21 from parking lots or said impervious
22 surfaces shall not be swept or otherwise
23 made or allowed to go into the gutter or
24 roadway.

25 15.12.090 Watercourse Protection

26 Every person owning property through
27 which a watercourse passes, and such
28 person's lessee or tenant, shall keep and
maintain that part of the watercourse within
the property reasonably free of trash, debris
excessive vegetation, and other obstacles
which would pollute, contaminate, or
significantly retard the flow of water through
the watercourse; shall maintain existing
privately owned structures within or adjacent
to a watercourse, so that such structures will
not become a hazard to the use, function, or
physical integrity of the watercourse; and
shall not remove healthy bank vegetation
beyond that actually necessary for said
maintenance which shall be accomplished in
a manner that minimizes the vulnerability of
the watercourse to erosion. No person shall
commit or cause to be committed any of the
following acts, unless a written permit has
first been obtained from the Enforcement
Official, and the appropriate State or Federal
agencies, if applicable:

A. Discharge pollutants into or
connect any pipe or channel to a
watercourse;

B. Modify the natural flow of water in a
watercourse;

C. Carry out developments within thirty
feet of the center line of any watercourse or

twenty feet of the edge of a watercourse,
whichever is the greater distance;

D. Deposit in, plant in, or remove any
material from a watercourse including its
banks except as required for necessary
maintenance;

E. Construct, alter, enlarge, connect
to, change, or remove any structure in a
watercourse; or

F. Place any loose or unconsolidated
material along the side of or within a
watercourse or so close to the side as to
cause a diversion of the flow, or to cause a
probability of such material being carried
away by storm waters passing through such
a watercourse.

G. The above requirements do not
supersede any requirements set forth by the
California Department of Fish and Game
Stream Alteration Permit process.

15.12.100 Authority to Inspect

A. During normal and reasonable hours
of operation, the Enforcement Officer shall
have the authority to make an inspection to
enforce the provisions of this Chapter, and
to ascertain whether the purposes of this
Chapter are being met. An inspection may
be made after the designated representative
of the City of Carlsbad has presented proper
credentials and the owner and/or occupant
authorizes entry. If the City of Carlsbad
representative is unable to locate the owner
or other persons having charge or control of
the premises, or the owner and/or occupant
refuses the request for entry, the City of
Carlsbad is hereby empowered to seek
assistance from any court of competent
jurisdiction in obtaining entry.

After obtaining legal entry, the
representative of the City of Carlsbad may:

1. Inspect the premises at all
reasonable times.

2. Carry out any water sampling
activities necessary to enforce this Chapter,
including taking water samples from the
property of any person which any authorized
representative of the City of Carlsbad
reasonably believes is currently, or has in
the past, caused or contributed to causing
an illegal storm water discharge to the storm
water conveyance system. Upon request by
the property owner or his/her authorized
representative, split water samples shall be
given to the person from whose property the
samples were obtained.

1 3. Stop and inspect any vehicle
2 reasonably suspected of causing or
3 contributing to an illegal discharge to the
4 storm water conveyance system.

5 4. Conduct tests, analyses and
6 evaluations to determine whether a
7 discharge of storm water is an illegal
8 discharge or whether the requirements of
9 this chapter are met.

10 5. Photograph any effluent
11 stream, material or waste, material or waste
12 container, container label, vehicle, waste
13 treatment process, waste disposal site
14 connection, or condition believed to
15 contribute to storm water pollution or
16 constitute a violation of this Chapter.

17 6. Review and obtain a copy of
18 the Storm Water Pollution Prevention Plan
19 prepared by a facility operator, if such a plan
20 is required of the facility.

21 7. Require the facility operator to
22 retain evidence, as instructed by the
23 inspector, for a period not to exceed 30
24 days.

25 8. Review and obtain copies of all
26 storm water monitoring data compiled by the
27 facility, if such monitoring is required of the
28 facility.

 B. Routine or area inspections shall be
based upon such reasonable selection
processes as may be deemed necessary to
carry out the objectives of this ordinance,
including but not limited to random sampling
and/or sampling in areas with evidence of
storm water contamination, illegal
discharges, discharge of non-storm water to
the storm water system, or similar factors.

15.12.110 Inspection Procedures-- Additional Requirements.

During the inspection, the Enforcement
Official shall comply with all reasonable
security, safety, and sanitation measures. In
addition, the Enforcement Official shall
comply with reasonable precautionary
measures specified by the owner and/or
occupant or facility operator.

At the conclusion of the inspection, and
prior to leaving the site, the Enforcement
Official shall make every reasonable effort to
review with the owner and/or occupant or
the facility operator each of the violations
noted by the Enforcement Official and any
corrective actions that may be necessary. A
report listing any violation found by the
Enforcement Official during the inspection

shall be kept on file by the Enforcement
Agency. A copy of the report shall be
provided to the owner and/or occupant or
facility operator, or left at the Premises if no
Person is available. If corrective action is
required, then the occupant, facility owner,
and/or facility operator shall implement a
plan of corrective action based upon a
written plan of correction, submitted to the
Enforcement Agency, which states the
corrective actions to be taken and the
expected dates of completion. Failure to
implement a plan of correction constitutes a
violation of this Chapter.

All Enforcement Officials shall have
adequate identification. Enforcement
Officials and other authorized personnel
shall identify themselves when entering any
property for inspection purposes or when
inspecting the work of any contractor.

With the consent of the property owner
or occupant or pursuant to a search warrant,
the Enforcement Official is authorized to
establish on any property that discharges
directly or indirectly to the municipal Storm
Water Conveyance System such devices as
are necessary to conduct sampling or
metering operations. During all inspections
as provided herein, the official may take
samples of materials, wastes, and/or effluent
as deemed necessary to aid in the pursuit of
the inquiry or in the recordation of the
activities onsite.

15.12.120 Containment, Cleanup, and Notification of Spills.

It is unlawful for any Person owning or
occupying any Premises who has knowledge
of any release of Significant Quantities of
materials, Pollutants, or waste which may
result in Pollutants or Non-Storm Water
discharges entering the City's Storm Water
Conveyance System to not immediately take
all reasonable action to contain, minimize,
and clean up such release. Such Person
shall notify the City of Carlsbad of the
occurrence and/or County of San Diego
Department of Health
Services/Environmental Health Services
Hazardous Materials Management Division,
and any other appropriate agency of the
occurrence as soon as possible, but no later
than 24 hours from the time of the incident's
occurrence.

1 **15.12.130 Testing, Monitoring or**
2 **Mitigation Required--When.**

3 A. The Enforcement Official may
4 require that any Person engaged in any
5 activity and/or owning or operating any
6 facility which causes or contributes to Storm
7 Water pollution or contamination, Illegal
8 Discharges, and/or discharge of Non-Storm
9 Water to the Storm Water Conveyance
10 System perform monitoring, including
11 physical and chemical monitoring and/or
12 analyses and furnish reports as the
13 Enforcement Official may specify if:

14 1. The Person, or facility owner or
15 operator, fails to eliminate Illegal Discharges
16 within a specified time after receiving a
17 written notice to do so by the Enforcement
18 Official.

19 2. The Enforcement Official has
20 documented repeated violations of this
21 Chapter by the Person or facility owner or
22 operator which has caused or contributed to
23 Storm Water pollution.

24 It is unlawful for such Person or facility
25 owner or operator to fail or refuse to
26 undertake and provide the monitoring,
27 analyses, and/or reports specified. Specific
28 monitoring criteria shall bear a relationship
to the types of Pollutants which may be
generated by the Person's activities or the
facility's operations. If the Enforcement
Agency has evidence that a Pollutant is
originating from a specific Premises, then
the Enforcement Agency may require
monitoring for that Pollutant regardless of
whether said Pollutant may be generated by
routine activities or operations. The Person
or facility owner or operator shall be
responsible for all costs of these activities,
analyses and reports.

B. Any Persons required to monitor
pursuant to Paragraph A, above, shall
implement a Storm Water monitoring
program including, but not limited to, the
following:

1. Routine visual monitoring for
dry weather flows.

2. Routine visual monitoring for
spills which may pollute Storm Water runoff.

3. A monitoring log including
monitoring date, potential pollution sources,
as noted in 1 and 2, and a description of the
mitigation measures taken to eliminate any
potential pollution sources.

C. The Enforcement Official may
require a Person, or facility owner or

operator, to install or implement Storm
Water pollution reduction or control
measures, including, but not limited to,
process modification to reduce the
generation of Pollutants or a pretreatment
program approved by the Regional Water
Quality Control Board and/or the City of
Carlsbad if:

1. The Person, or facility owner or
operator fails to eliminate Illegal Discharges
after receiving a written notice from the
Enforcement Official.

2. The Person, or facility owner or
operator, fails to implement a Storm Water
Pollution Prevention Plan, as required by the
Enforcement Official.

3. The Enforcement Official has
documented repeated violations of this
Chapter any such Person or facility owner or
operator which has caused or contributed to
Storm Water pollution.

D. If testing, monitoring or mitigation
required pursuant to this Chapter are
deemed no longer necessary by the
Enforcement Official, then any or all of the
requirements contained in Paragraphs A, B,
and C may be discontinued.

E. A Storm Water monitoring program
prepared and implemented pursuant to any
State-issued NPDES General Permit shall
be deemed to meet the requirements of a
monitoring program for the purposes of this
Chapter.

15.12.140 Concealment

Causing, permitting, aiding, abetting or
concealing a violation of any provision of this
Chapter is unlawful and shall constitute a
separate violation of this Chapter.

**15.12.150 Administrative Enforcement
Powers**

The Enforcement Agency and
Enforcement Official can exercise any
enforcement powers as provided in Chapter
1.08 of this Code. In addition to the general
enforcement powers provided in Chapter
1.08 of this Code, the Enforcement Agency
and Enforcement Official have the authority
to utilize the following administrative
remedies as may be necessary to enforce
this Chapter:

A. Cease and Desist Orders. When
the Enforcement Official finds that a
discharge has taken place or is likely to take
place in violation of this Chapter, the

1 Enforcement Official may issue an order to
2 cease and desist such discharge, practice,
3 or operation likely to cause such discharge
4 and direct that those Persons not complying
5 shall:

6 1. Comply with the applicable
7 provisions and policies of this Chapter.

8 2. Comply with a time schedule
9 for compliance.

10 3. Take appropriate remedial or
11 preventive action to prevent the violation
12 from recurring.

13 B. Notice to Clean and Abate.

14 Whenever the Enforcement Official finds any
15 oil, earth, dirt, grass, weeds, dead trees, tin
16 cans, rubbish, refuse, waste or any other
17 material of any kind, in or upon the sidewalk
18 abutting or adjoining any parcel of land, or
19 upon any parcel of land or grounds, which
20 may result in an increase in Pollutants
21 entering the City's Storm Water Conveyance
22 System or a Non-Storm Water discharge to
23 the City's Storm Water Conveyance System,
24 the Enforcement Official may issue orders
25 and give written notice to remove same in
26 any reasonable manner. The recipient of
27 such notice shall undertake the activities as
28 described in the notice.

C. Storm Water Pollution Prevention
Plan. The Enforcement Official shall have
the authority to establish elements of a
Storm Water Pollution Prevention Plan, and
to require any owner or occupier of any
Premises to adopt and implement such a
plan pursuant to Section 15.12.080.B.1.a.,
as may be reasonably necessary to fulfill the
purposes of this Chapter.

D. Employee Training Program. The
Enforcement Official shall have the authority
to establish elements of an Employee
Training Program, as may be necessary to
fulfill the purposes of this Chapter, where
such a Program has been required as an
element of a Storm Water Pollution
Prevention Plan.

E. Civil Penalties. Any Person who
violates any of the provisions of this Chapter
or who fails to implement a Storm Water
monitoring plan, violates any cease and
desist order or Notice to Clean and Abate, or
fails to adopt or implement a Storm Water
Pollution Prevention Plan as directed by the
Enforcement Official shall be liable for a civil
penalty not to exceed \$1,000 for each day
such a violation exists. The violator shall be
charged for the full costs of any

investigation, inspection, or monitoring
survey which led to the detection of any
such violation, for abatement costs, and for
the reasonable costs of preparing and
bringing legal action under this subsection.
In addition to any other applicable
procedures, the Enforcement Agency may
utilize the lien procedures listed in section
15.12.160.C.6 to enforce the violator's
liability. The violator may also be liable for
compensatory damages for impairment, loss
or destruction to water quality, wildlife, fish
and aquatic life.

15.12.160 Administrative Notice,
Hearing, and Appeal
Procedures.

A. Unless otherwise provided herein,
any notice required to be given by the
Enforcement Official under this chapter shall
be in writing and served in person or by
registered or certified mail. If served by mail,
the notice shall be sent to the last address
known to the Enforcement Official. Where
the address is unknown, service may be
made upon the owner of record of the
property involved. Such notice shall be
deemed to have been given at the time of
deposit, postage prepaid, in a facility
regularly serviced by the United States
Postal Service whether or not the registered
or certified mail is accepted.

B. When the Enforcement Official
determines that a violation of one or more
provisions of this chapter exists or has
occurred, any violator(s) or property
owner(s) of record shall be served by the
Enforcement Official with a written Notice
and Order. The Notice and Order shall state
the Municipal Code Section violated,
describe how violated, the location and
date(s) of the violation(s), and describe the
corrective action required. The Notice and
Order shall require immediate corrective
action by the violator(s) or property owner(s)
and explain which method(s) of
administrative enforcement are being utilized
by the Enforcement Official: Cease and
Desist Order, Notice to Clean and Abate,
establishment of a Storm Water Pollution
Prevention Plan, and/or establishment of an
Employee Training Program. The Notice
and Order shall also explain the
consequences of failure to comply, including
that civil penalties shall begin to immediately
accrue if compliance is not achieved within

1 ten (10) days from the date the Notice and
2 Order is issued. The Notice and Order shall
3 identify all hearing rights. The Enforcement
4 Official may propose any enforcement action
5 reasonably necessary to abate the violation.

6 C. If the violation(s) is not corrected
7 within ten (10) days from the date the Notice
8 and Order is issued, the Enforcement
9 Official shall request the City Manager to
10 appoint a Hearing Officer and fix a date,
11 time, and place for hearing. The
12 Enforcement Official shall give written notice
13 thereof to the violator(s) or owner(s) of
14 record, at least ten (10) days prior to the
15 date for hearing.

16 1. The Hearing Officer shall
17 consider any written or oral evidence
18 presented to determine whether the
19 violation(s) exists, a Cease and Desist Order
20 should be required, a Notice to Clean and
21 Abate should be required, a Storm Water
22 Pollution Prevention Plan should be
23 required, an Employee Training Program
24 should be required, and/or Civil Penalties
25 should be imposed, consistent with rules
26 and procedures for the conduct of hearings
27 and rendering of decisions established and
28 promulgated by the City Manager.

2 2. In determining whether action
3 should be taken or the amount of a civil
4 penalty to be imposed, the Hearing Officer
5 may consider any of the following factors:

6 a. Duration of the
7 violation(s).

8 b. Frequency or recurrence.

9 c. Seriousness.

10 d. History.

11 e. Violator's conduct after
12 issuance of the Notice and Order.

13 f. Good faith effort to
14 comply.

15 g. Economic impact of the
16 penalty on the violator(s).

17 h. Impact of the violation on
18 the community.

19 i. Any other factor which
20 justice may require.

21 3. If the violator(s) or owner(s) of
22 record fail to attend the hearing, it shall
23 constitute a waiver of the right to a hearing
24 and adjudication of all or any portion of the
25 Notice and Order.

26 4. The Hearing Officer shall
27 render a written decision within ten (10) days
28 of the close of the hearing, including findings
of fact and conclusions of law, identifying the

time frame involved and the factors
considered in assessing civil penalties, if
any. The decision shall be effective
immediately unless otherwise stated in the
decision. The Hearing Officer shall cause
the decision to be served on the
Enforcement Official and all participating
violators or owners of record.

5. If the persons assessed civil
penalties fail to pay them within the time
specified in the Hearing Officer's decision,
the unpaid amount constitutes either a
personal obligation of the person assessed
or a lien upon the real property on which the
violation occurred, in the discretion of the
Enforcement Official. If the violation(s) is
not corrected as directed the civil penalty
continues to accrue on a daily basis. Civil
penalties may not exceed \$100,000 in the
aggregate. When the violation is
subsequently corrected, the Enforcement
Official shall notify the violator(s) and/or
owner(s) of record of the outstanding civil
penalties and provide an opportunity for
hearing if the amount(s) is disputed within
ten (10) days from such notice.

6. The Enforcement Official shall
take all appropriate legal steps to collect
these obligations, including referral to the
City Attorney for commencement of a civil
action to recover said funds. If collected as
a lien, the Enforcement Official shall cause a
notice of lien to be filed with the County
Recorder, inform the County Auditor and
County Recorder of the amount of the
obligation, a description of the real property
upon which the lien is to be recovered, and
the name of the agency to which the
obligation is to be paid. Upon payment in
full, the Enforcement Official shall file a
release of lien with the County Recorder.

15.12.170 Judicial Enforcement.

A. Criminal Penalties. Any person who
violates any provision of this Chapter or who
fails to implement a Storm Water monitoring
plan, violates any cease and desist order or
Notice to Clean and Abate, or fails to adopt
or implement Storm Water Pollution
Prevention Plans or Employee Training
Programs as directed by the Enforcement
Official shall be punished, upon conviction,
by a fine not to exceed \$1,000 for each day
in which such violation occurs, or
imprisonment in the San Diego County jail

1 for a period not to exceed six (6) months, or
2 both.

3 B. Injunction/Abatement of Public
4 Nuisance. Whenever a discharge into the
5 Storm Water Conveyance System is in
6 violation of the provisions of this Chapter or
7 otherwise threatens to cause a condition of
8 contamination, pollution, or nuisance, the
9 Enforcement Official may also cause the City
10 to seek a petition to the Superior Court for
11 the issuance of a preliminary or permanent
12 injunction, or both, or an action to abate a
13 public nuisance, as may be appropriate in
14 restraining the continuance of such
15 discharge.

16 C. Other Civil Action. Whenever a
17 Notice and Order or Hearing Officer's
18 decision is not complied with, the City
19 Attorney may, at the request of the
20 Enforcement Official, initiate any appropriate
21 civil action in a court of competent
22 jurisdiction to enforce such Notice and Order
23 and decision, including the recovery of any
24 unpaid Storm Drain Fees and/or civil
25 penalties provided herein.

26 **15.12.180 Violations Deemed a Public
27 Nuisance.**

28 In addition to the other civil and criminal
penalties provided herein, any condition

caused or permitted to exist in violation of
any of the provisions of this Chapter is a
threat to the public health, safety, and
welfare and is declared and deemed a public
nuisance, which may be summarily abated
and/or restored as directed by the
Enforcement Official in accordance with the
procedures identified in Chapter 6.16. A civil
action to abate, enjoin or otherwise compel
the cessation of such nuisance may also be
taken by the City, if necessary.

The full cost of such abatement and
restoration shall be borne by the owner of
the property and the cost thereof shall be a
lien upon and against the property in
accordance with the procedures set forth in
section 15.12.160.C.6.

15.12.190 Remedies Not Exclusive.

Remedies set forth in this Chapter are
not exclusive but are cumulative to all other
civil and criminal penalties provided by law,
including, but not limited to, penalty
provisions of the Federal Clean Water Act
and/or the State Porter-Cologne Water
Quality Control Act. The seeking of such
federal and/or state remedies shall not
preclude the simultaneous commencement
of proceedings pursuant to this Chapter.

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ORDINANCE NO. NS-420

Incidental Outdoor
Dining Areas
Ordinance
Page 1 of 6

A ZONE CODE AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT TO AMEND TITLE 21, CHAPTERS 21.04, 21.26, 21.27, 21.28, 21.29, 21.30, 21.31, 21.32, 21.33, 21.34 OF THE CARLSBAD MUNICIPAL CODE TO ALLOW AND REGULATE INCIDENTAL OUTDOOR DINING AREAS ASSOCIATED WITH RESTAURANTS CITYWIDE OUTSIDE OF THE REDEVELOPMENT AREA.
CASE NAME: INCIDENTAL OUTDOOR DINING AREAS
CASE NO.: ZCA 96-10

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That Title 21, Chapter 21.04 of the Carlsbad Municipal Code is amended by the addition of Section 21.04.188.1 to read as follows:

"21.04.188.1 Incidental Outdoor Dining Areas.

"Incidental Outdoor Dining Area" means, everywhere except within the Redevelopment Area Local Coastal Program Segment, a small extension of an indoor restaurant, bona fide eating establishment, or deli which extends outdoors beyond the walls of the restaurant and which is used exclusively for eating, drinking, and pedestrian circulation therein. Incidental outdoor dining areas shall be utilized only as extensions of restaurants providing indoor seating and which are properly licensed for such service. Incidental outdoor dining areas may be located on private property only (not in the public right-of-way). The maximum number of seats, tables, and square feet allowed in an incidental outdoor dining area shall be limited to:

- (i) a maximum of 20% of the number of indoor seats or a maximum of twenty (20) seats, whichever is more restrictive; and,
- (ii) a maximum of six (6) tables; and
- (iii) a maximum of 400 square feet in area.

Incidental outdoor dining areas may be allowed pursuant to Chapter 21.26 of the Carlsbad Municipal Code. Any amount of outdoor dining area exceeding the above limitations shall not be considered "incidental" for purposes of this definition."

SECTION II: That Title 21, Chapter 21. 26 of the Carlsbad Municipal Code is amended by the addition of Section 21.26.013 to read as follows:

"21.26.013 Incidental Outdoor Dining Areas permitted by administrative permit.

Incidental outdoor dining areas may be approved by administrative permit for restaurants, bonafide eating establishments, and deli's in the C-1, O, C-2, C-T, C-M, M, and P-M zones outside of the Redevelopment Area. The owner of the subject property shall make written application to the Planning Director. Such application shall include all materials deemed necessary by the Director to show that the requirements of Subsection (c) hereof are met. If the site is in the Coastal Zone, the application shall also constitute an application for a Coastal Development Permit.

1 (a) The Director shall give written notice to all property owners within 300 feet of the
2 subject property of pending development decision after the application is complete, at least fifteen
working days prior to the decision on the application as follows:

3 (1) Contents. The notice shall include all requirements of Section 21.54.061 of
4 this code, including a notice of a public comment period of at least 15 working days sufficient to
5 receive and consider comments submitted by mail prior to the date established for the decision.
6 The notice shall also include a statement that a public hearing shall be held upon request by any
person and a statement that failure by a person to request a public hearing may result in the loss of
that person's ability to appeal approval of the administrative permit by the Director to the Planning
Commission.

7 (b) The Director may approve, approve with conditions, or deny the permit. The
8 Director may waive a public hearing on an administrative permit if notice has been provided in
9 accordance with subsection (a)(1) of this section and a request for a public hearing has not been
10 received by the city within 15 working days from the date of sending the notice. If a request for a
11 public hearing is received, a public hearing before the Director shall be held in the same manner as
a Planning Commission hearing. In either event, the Director's decision shall be based upon the
requirements of, and shall include, specific factual findings supporting whether the project is or is
not in conformity with the requirements of Section 21.26.013(c).

12 The Director's decision shall be made in writing. The date of the decision shall be
13 the date the writing containing the decision or determination is mailed or otherwise delivered to the
14 person or persons affected by the decision. If the matter includes a Coastal Development Permit,
unless the decision is appealed to the Planning Commission, the Director shall provide a notice of
final action in accordance with Sections 21.201.160 and 21.201.170.

15 (c) Development Standards. All Incidental Outdoor Dining Areas shall comply with
the following development standards:

16 (1) All applicable requirements of the State of California Disabled Access
Regulations (Title 24).

17 (2) All applicable requirements of the Alcoholic Beverage Commission, if
alcoholic beverages are served in the outdoor area.

18 (3) Be operated only during the hours of operation of the associated restaurant.

19 (4) Provide adequate circulation to accommodate normal pedestrian traffic and
circulation for the outdoor dining area. Pedestrian clearance between tables and/or walls/fences
shall be a minimum 42" wide.

20 (5) Not be located where the area would:

21 (A) encroach into the public right-of-way;

22 (B) eliminate any existing parking spaces;

23 (C) interfere with vehicle or pedestrian circulation;

24 (D) remove or reduce existing landscaping (unless equivalent additional
landscaping is provided elsewhere to the satisfaction of the Planning Director);

25 (E) present a traffic hazard; or,

26 (F) be incompatible with outdoor dining, in the opinion of the City
Engineer, because of the speed, volume, or nearness of vehicular traffic.

27 (6) When calculating square footage for purposes of determining parking
28 required per Chapter 21.44 of this Code, space used for incidental outdoor dining areas pursuant to
this section shall be excluded.

1 SECTION III: That Title 21, Chapter 21. 27 of the Carlsbad Municipal Code is amended
2 by the addition of Section 21.27.035 to read as follows:

3 "21.27.035 Incidental Outdoor Dining Areas permitted by administrative permit.

4 Subject to the development standards set forth in section 21.26.013(c) an Incidental
5 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

6 SECTION IV: That Title 21, Chapter 21. 28 of the Carlsbad Municipal Code is amended
7 by the addition of Section 21.28.012 to read as follows:

8 "21.28.012 Incidental Outdoor Dining Areas permitted by administrative permit.

9 Subject to the development standards set forth in section 21.26.013(c) an Incidental
10 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

11 SECTION V: That Title 21, Chapter 21. 29 of the Carlsbad Municipal Code is amended
12 by the addition of Section 21.29.045 to read as follows:

13 "21.29.045 Incidental Outdoor Dining Areas permitted by administrative permit.

14 Subject to the development standards set forth in section 21.26.013(c) an Incidental
15 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

16 SECTION VI: That Title 21, Chapter 21.30 of the Carlsbad Municipal Code is amended
17 by the addition of Section 21.30.015 to read as follows:

18 "21.30.015 Incidental Outdoor Dining Areas permitted by administrative permit.

19 Subject to the development standards set forth in section 21.26.013(c) an Incidental
20 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

21 SECTION VII: That Title 21, Chapter 21.32 of the Carlsbad Municipal Code is
22 amended by the addition of Section 21.32.015 to read as follows:

23 "21.32.015 Incidental Outdoor Dining Areas permitted by administrative permit.

24 Subject to the development standards set forth in section 21.26.013(c) an Incidental
25 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

26 SECTION VIII: That Title 21, Chapter 21.34 of the Carlsbad Municipal Code is
27 amended by the addition of Section 21.34.035 to read as follows:

28 "21.34.035 Incidental Outdoor Dining Areas permitted by administrative permit.

 Subject to the development standards set forth in section 21.26.013(c) an Incidental

1 Outdoor Dining Area may be approved by administrative permit pursuant to section 21.26.013(a)."

2 SECTION IX: SUNSET CLAUSE: That this ordinance shall remain in effect only until
3 midnight October 17, 1998, and as of that date is repealed unless an ordinance which is enacted
4 before October 17, 1998, deletes or extends that date.

5 EFFECTIVE DATE: This ordinance shall be effective thirty days after its
6 adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be
7 published at least once in a publication of general circulation in the City of Carlsbad within
8 fifteen days after its adoption. *(Notwithstanding the preceding, this ordinance shall not be*
9 *effective within the City's Coastal Zone until approved by the California Coastal Commission.)*

10 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
11 Council on the 9th day of SEPTEMBER 1997, and thereafter.

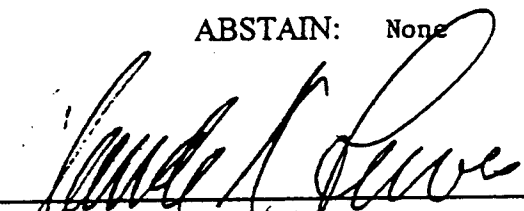
12 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
13 Carlsbad on the 16th day of SEPTEMBER 1997, by the following vote, to wit:

14 AYES: Council Members Lewis, Finnilla, Nygaard, Kulchin, Hall

15 NOES: None

16 ABSENT: None

17 ABSTAIN: None

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22 
23 CLAUDE A. LEWIS, Mayor

24 ATTEST:

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26 
27 ALETHA L. RAUTENKRANZ, City Clerk
28 (SEAL)

ORDINANCE NO. NS-421

AN AMENDMENT TO TITLE 13, CHAPTER 13.10 OF THE CARLSBAD MUNICIPAL CODE TO CREATE A SEWER IMPACT FEE EXEMPTION FOR INCIDENTAL OUTDOOR DINING AREAS ASSOCIATED WITH RESTAURANTS ON PRIVATE PROPERTY CITYWIDE OUTSIDE OF THE REDEVELOPMENT AREA.

CASE NAME: INCIDENTAL OUTDOOR DINING AREAS

CASE NO.: MCA 96-04

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION 1: That Title 13, Chapter 13.10 of the Carlsbad Municipal Code is amended by the amendment of Table 13.10.020(c)(7) to read as follows:

(7) Restaurants:

◆ No seating	2.67
◆ Seating	2.67 plus 1.00
(Exception: Seats allowed in "Incidental Outdoor Dining Areas" as defined by Chapter 21.04.188.1 do not count toward generation of sewer impact fees.)	per each 7 seats or fraction thereof

Delicatessen or fast food, using only disposable tableware:

◆ No seating	2.67
◆ Seating	2.67 plus 1.00
(Exception: Seats allowed in "Incidental Outdoor Dining Areas" as defined by Chapter 21.04.188.1 do not count toward generation of sewer impact fees.)	per each 21 seats or fraction thereof

EFFECTIVE DATE: This ordinance shall be effective thirty days after its adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be published at least once in a publication of general circulation in the City of Carlsbad within fifteen days after its adoption. *(Not withstanding the preceding, this ordinance shall not be effective within the City's Coastal Zone until approved by the California Coastal Commission.)*

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1 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
2 Council on the 9th day of SEPTEMBER 1997, and thereafter.

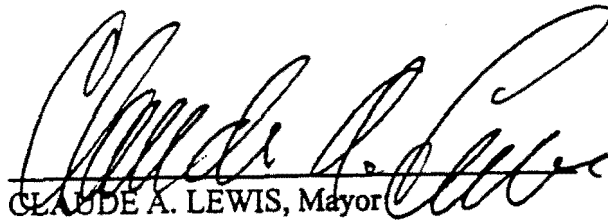
3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Carlsbad on the 16th day of SEPTEMBER 1997, by the following vote, to wit:

5 AYES: Council Members Lewis, Finnila, Nygaard, Kulchin, Hall

6 NOES: None

7 ABSENT: None

8 ABSTAIN: None

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12 
13 CLAUDE A. LEWIS, Mayor

14 ATTEST:

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16 
17 ALETHA L. RAUTENKRANZ, City Clerk

18 (SEAL)

RESOLUTION NO. 291--

A RESOLUTION OF THE HOUSING AND REDEVELOPMENT
COMMISSION OF THE CITY OF CARLSBAD APPROVING
AN AMENDMENT TO THE CARLSBAD LOCAL COASTAL
PROGRAM ESTABLISHING A PROHIBITION ON DRIVE-THRU
RESTAURANTS IN THE VILLAGE REDEVELOPMENT AREA
AND LCP SEGMENT OF THE CITY'S COASTAL ZONE
CASE NO. LCPA 97-07

WHEREAS, California State law requires that the Local Coastal
Program, General Plan, and Zoning designations for properties in the Coastal Zone
be in conformance; and

WHEREAS, the proposed Local Coastal Program Amendment is
consistent with all applicable policies of the Village Redevelopment segment of the
Carlsbad Local Coastal Program, in that a change to the Village Master Plan and
Design Manual is necessary to implement a Citywide prohibition on Drive-thru
restaurants. The proposed change will clearly designate drive-thru food service uses
as a prohibited use throughout the Village Redevelopment area; and

WHEREAS, the proposed amendment to the Village Redevelopment
segment of the Carlsbad Local Coastal Program is required to establish the drive-thru
prohibition for this portion of the City; and

WHEREAS, the Housing and Redevelopment Commission of the City
of Carlsbad has determined that an amendment to the City's Local Coastal Program
(LCP) is necessary and appropriate for all properties located in the Village
Redevelopment Segment of the LCP prohibiting drive-thru restaurants; and

WHEREAS, the proposed amendment to the Village Master Plan and
Design Manual, constitute a request for a Local Coastal Program Amendment as
shown on Exhibit "Z" dated September 17, 1997, attached hereto, and as set forth in
Section 11 of Ordinance No. NS-439 , as provided in Public Resources Code

1 section 30574 and Article 15 of Subchapter 8, Chapter 2, Division 5.5 of Title 14 of
2 the California Code of Regulation (the California Coastal Act Administrative
3 Regulations); and

4 WHEREAS, the Design Review Board did on the 17th day of September
5 1997, hold a duly noticed public hearing as prescribed by law to consider said
6 request; and

7
8 WHEREAS, the Housing and Redevelopment Commission did on
9 December 2, 1997, hold a duly noticed public hearing as prescribed by law to
10 consider said request; and

11 WHEREAS, at said public hearing, upon hearing and considering all
12 testimony and arguments, if any, of all persons desiring to be heard, said Board
13 considered all factors relating to the Local Coastal Program Amendment; and

14
15 WHEREAS, State Coastal Guidelines requires a six-week public review
16 period for any amendment to the Local Coastal Program; and

17 WHEREAS, the City Council finds there are sufficient drive-thru
18 restaurants in the City to serve existing and future needs at this time; and

19
20 WHEREAS, further expansions and approvals of drive-thru
21 restaurants do not ensure safe traffic circulation and can lead to traffic congestion,
22 circulation and parking problems; and

23 WHEREAS, drive-thru restaurants may be detrimental to the quality of
24 life, including the scenic quality of life in the City of Carlsbad, and otherwise
25 inconsistent with its general welfare; and

26
27 WHEREAS, the Council finds that drive-thru restaurants do not
28 protect the residential character of the community; and

1 WHEREAS, this action does not deny a landowner other reasonable,
2 proper, lawful and economic uses of that property; and

3 WHEREAS, it is not the intent of the City Council to restrict, amend or
4 prohibit other lawful uses which may exist on a larger parcel, a portion of which
5 contains a drive-thru restaurant; and

6
7 WHEREAS, the City Council does not intend this action to affect or
8 impact existing lawful drive-thru restaurants,

9 NOW, THEREFORE, BE IT HEREBY RESOLVED by the Housing and
10 Redevelopment Commission of the City of Carlsbad as follows:

- 11 A) That the foregoing recitations are true and correct.
- 12 B) At the end of the State mandated six week review period,
13 starting on July 24, 1997, and ending on September 4, 1997.
14 No public comments were received.
- 15 C) That based on the evidence presented at the public hearing, the
16 Housing and Redevelopment Commission **APPROVES LCPA**
17 **97-07** and amends section II entitled Land Use of the Village
18 Master Plan and Design Manual by the replacement of a portion
19 of the land use chart, page 2-27, as shown in Exhibit "Z",
20 attached hereto and incorporated herein by reference.

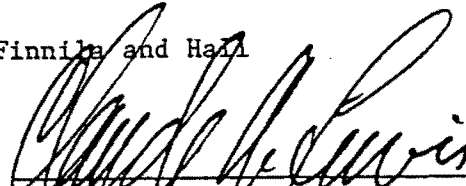
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1 PASSED, APPROVED AND ADOPTED at a Regular Meeting of the
2 City of Carlsbad Housing & Redevelopment Commission and City Council of the City
3 of Carlsbad, California on the 16th day of December, 1997, by the following
4 vote, to wit:

5 AYES: Commissioners Lewis, Nygaard, and Kulchin

6 NOES: Commissioners Finnika and Hall

7 ABSENT: None

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9 CLAUDE A. LEWIS, Chairman

10 ATTEST:
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12 RAYMOND R. PATCHETT, Secretary

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RONALD L.
CITY ATTORNEY - CITY OF CARLSBAD
1200 CARLSBAD VILLAGE DRIVE
CARLSBAD, CALIFORNIA 92008-1989

Section II Land Use of the Village Master Plan and Design Manual is amended by the replacement of a portion of the Land Use Chart, page 2-27 as attached.

ALLOWABLE LAND USES

The land uses noted below are listed in alphabetical order by category and according to land use district. The chart provides information on the type of land uses which are permitted, provisionally permitted or not permitted within a given land use district. Definitions for these categories can be found on page 2-24. Following the land use charts are "Provisional Land Use Standards" which are listed by either category or specific use; these standards are provided for selected provisional land uses to identify special considerations, findings and conditions which will be used to determine whether or not the identified use will be permitted within the subject land use district.

The key for the chart is: ● = Permitted Use

○ = Provisional Use

A = Accessory Use

X = Not Permitted Use

LAND USES	LAND USE DISTRICTS								
	1	2	3	4	5	6	7	8	9
FOOD SERVICES (3)									
FAST FOOD RESTAURANT (Large) (S)	●	●	●	X	X	X	X	X	X
FAST FOOD RESTAURANT (Small)	●	●	●	X	●	X	X	X	X
QUICK STOP FOOD STORE (S)	X	X	●	X	X	X	X	X	●
RESTAURANT W/ENTERTAINMENT (S)	●	●	●	●	●	X	X	X	●
RESTAURANT	●	●	●	●	●	X	X	X	●
SIDEWALK CAFE (S)	●	●	X	○	●	X	X	X	●
LIGHT INDUSTRIAL									
AUCTION HOUSES/STORES	X	X	X	X	X	●	X	X	X
BOAT BUILDING (limited to those craft which may be transported over a state highway without permit)	X	X	X	X	X	●	X	X	X
CABINET SHOPS	X	X	X	X	X	●	X	X	X
CERAMIC PRODUCTS MANUFACTURER	X	X	X	X	X	●	X	X	X
ELECTRONICS ASSEMBLY	X	X	X	X	X	●	X	X	X
RESEARCH LABORATORIES	X	X	X	X	X	●	X	X	X
FROZEN FOOD LOCKERS	X	X	X	X	X	●	X	X	X
GLASS STUDIOS (Edging, beveling and silvering in connection with sale of mirrors and glass for decorating purposes)	○	○	X	○	○	●	X	X	X
LAUNDRIES	X	X	X	X	X	●	X	X	X
MACHINE SHOPS	X	X	X	X	X	●	X	X	X
MANUFACTURING PLANTS (Small Scale)	X	X	X	X	X	●	X	X	X
MOTION PICTURE LABORATORIES	X	X	X	X	X	●	X	X	X
MUSICAL INSTRUMENT MANUFACTURER	X	X	X	X	X	●	X	X	X
PARCEL DELIVERY SERVICE	X	X	X	X	X	●	X	X	X
PLUMBING SHOP	X	X	X	X	X	●	X	X	X



- Outdoor seating in R-O-W is permitted in Districts 1, 2, 5 & 9 only with a provisional use permit approved by the Housing and Redevelopment Director.
- For all Village properties which are also located within the Coastal Zone, the primary permitted land uses for all ground floor space shall be those which are visitor-serving commercial. Visitor-serving commercial uses include but are not limited to: hotels, motels, restaurants, recreational or tourist information facilities, souvenir, gift or novelty shops and/or services which will aid in the comfort/enjoyment of a tourist or regional guest visit to the area. All other land uses, which are not expressly prohibited as noted herein, shall be provisional or accessory uses; these uses must be approved, or conditionally approved, via the redevelopment permit process.
- No Adult Entertainment Uses permitted within any land use district within the Village.
- All existing uses which are noted as "not permitted" within a land use district noted on this land use chart shall be allowed to remain pursuant to the non-conforming regulations set forth within this chapter. No expansion or intensification of non-conforming uses will be permitted.

Footnotes:

- Office Uses permitted on Roosevelt Street Only.
- The ground floor of all approved mixed use projects shall be devoted to commercial uses.
- No drive-thrus.
- See specific land use under Provisional Use Standards.
- See Self-Improvement Services category under Provisional Use Standards.
- See Sport Entertainment category under Provisional Use Standards.

RESOLUTION NO. 97-725

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
CARLSBAD APPROVING AN AMENDMENT TO THE
CARLSBAD LOCAL COASTAL PROGRAM TO ESTABLISH
A PROHIBITION ON DRIVE-THRU RESTAURANTS IN THE
CITY'S COASTAL ZONE OUTSIDE THE VILLAGE
REDEVELOPMENT AREA AND LCP SEGMENT

WHEREAS, California state law requires that the Local Coastal
Program, General Plan and Zoning designations for properties in the Coastal Zone
be in conformance; and

WHEREAS, the Planning Director has determined that a Zone Code
Amendment to:

**Prohibit Drive-thru Restaurants as an allowed land use
from all zoning districts in the City including all coastal
zone properties outside the Village Redevelopment
area.**

be prepared; and

WHEREAS, the Planning Commission did on the 17th day of September
1997, hold a duly noticed public hearing as prescribed by law to consider said
request; and

WHEREAS, at said public hearing, upon hearing and considering all
testimony and arguments, if any, of all persons desiring to be heard, said Board
considered all factors relating to the Zone Code Amendment; and

WHEREAS, the City Council did on December 2, 1997 hold a duly
noticed public hearing as prescribed by law to consider said prohibition; and

WHEREAS, the proposed Zone Code Amendment implements City
Council Resolution No. 97-474 as approved on June 3, 1997; and

1 WHEREAS, the proposed Zone Code Amendment will effectively
2 establish a Citywide prohibition on Drive-thru Restaurants in all zoning districts
3 including the City's coastal zone area and Village Redevelopment area. Such uses
4 can have an adverse impact on public health, safety and welfare through potential
5 cumulative traffic, noise, litter, aesthetic and air quality impacts. The proposed zone
6 code amendment will also further promote the pedestrian oriented objectives of the
7 Redevelopment area as contained in the Village Design Manual; and
8

9 WHEREAS, the proposed Zone Code Amendment is consistent with
10 the implementing policies of the General Plan and Mitigation Measures of the Master
11 EIR conducted for the General Plan Update of 1994 which are designed to de-
12 emphasize motor vehicle use and other nuisance factors while emphasizing
13 pedestrian circulation; and
14

15 WHEREAS, the Planning Director has determined that the project is
16 exempt from the requirements of the California Environmental Quality Act (CEQA) per
17 Section 15061(b)(3) of the State CEQA Guidelines and will not have any adverse
18 significant impact on the environment; and
19

20 WHEREAS, the Council further finds that there are sufficient existing
21 drive-thru restaurants to accommodate the needs of the citizens of Carlsbad for the
22 foreseeable future and no new drive-thru restaurants are needed. It will further allow
23 the City Council to determine at a later date whether or not it is necessary or
24 desirable to review, modify or amend this prohibition; and
25

26 WHEREAS, further expansions and approvals of drive-thru
27 restaurants do not ensure safe traffic circulation and can lead to traffic congestion,
28

1 circulation and parking problems; and

2 WHEREAS, drive-thru restaurants may be detrimental to the quality of
3 life, including the scenic quality of life in the City of Carlsbad, and otherwise
4 inconsistent with its general welfare; and

5 WHEREAS, the Council finds that drive-thru restaurants do not
6 protect the residential character of the community; and

7 WHEREAS, this action does not deny a landowner other reasonable,
8 proper, lawful and economic uses of that property; and

9 WHEREAS, it is not the intent of the City Council to restrict, amend or
10 prohibit other lawful uses which may exist on a larger parcel, a portion of which
11 contains a drive-thru restaurant; and

12 WHEREAS, the City Council does not intend this action to affect or
13 impact existing lawful drive-thru restaurants,

14 NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council
15 of the City of Carlsbad, California as follows:

16 A) That the foregoing recitals are true and correct.

17 B) That the various LCP segments regarding drive-thru restaurants
18 as set forth in Exhibit "Y" dated September 17, 1997 attached
19 hereto and incorporated herein, are approved.

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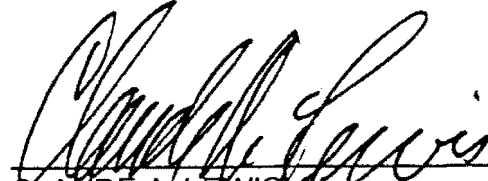
28 ...

1 PASSED, APPROVED AND ADOPTED at a Regular Meeting of the
2 City Council of the City of Carlsbad, California on the 16th day of December,
3 1997, by the following vote, to wit:
4

5 AYES: Council Members Lewis, Nygaard, and Kulchin

6 NOES: Council Members Finnilla and Hall

7 ABSENT: None

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9
10 CLAUDE A. LEWIS, Mayor

11 ATTEST:

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14 ALETHA L. RAUTENKRANZ, CITY CLERK
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RONALD L. HALL
CITY ATTORNEY - CITY OF CARLSBAD
1200 CARLSBAD VILLAGE DRIVE
CARLSBAD, CALIFORNIA 92008-1989

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RESOLUTION NO. 97-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING AN AMENDMENT TO ALL SIX SEGMENTS OF THE CARLSBAD LOCAL COASTAL PROGRAM TO ADOPT THE CITY'S STORMWATER ORDINANCE AS AN IMPLEMENTING ORDINANCE FOR CARLSBAD'S LOCAL COASTAL PROGRAM.

CASE NAME: STORMWATER ORDINANCE

CASE NO: LCPA 96-09

WHEREAS, California State law requires that the Local Coastal Program, General Plan, and Municipal Code regulations for properties in the Coastal Zone be in conformance; and

WHEREAS, a verified application for an amendment to the Local Coastal Program, as shown on Exhibit "X", dated January 28, 1997, attached and incorporated herein, has been filed with the City Council; and

WHEREAS, said verified application constitutes a request for a Local Coastal Program Amendment as shown on Exhibit "X", dated January 28, 1997, as provided in Public Resources Code Section 30574 and Article 15 of Subchapter 8, Chapter 2, Division 5.5 of Title 14 of the California Code of Regulations of the California Coastal Commission Administrative Regulations; and

WHEREAS, the City Council did on the 28th day of January 1997, hold a duly noticed public hearing as prescribed by law to consider the proposed Local Coastal Program Amendment shown on Exhibit "X", dated January 28, 1997, attached hereto; and

WHEREAS, at said public hearing, upon hearing and arguments, if any, of all persons desiring to be heard, the City Council relating to the Local Coastal Program Amendment.

EXHIBIT NO. 6
Carlsbad LCPA 1-98
Stormwater Resolutions
Page 1 of 3

1 WHEREAS, State Coastal Guidelines requires a six week public review period for
2 any amendment to the Local Coastal Program.

3 NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the
4 City of Carlsbad, as follows:

- 5 A) That the foregoing recitations are true and correct.
- 6
- 7 B) At the end of the State mandated six week review period, starting on August 22,
8 1996, and ending on October 4, 1996, staff shall present to the City Council a
9 summary of the comments received. No public comments have been received.
- 10 C) That based on the evidence presented at the public hearing, the City Council
11 approves LCPA 96-09 as shown on Exhibit "X", dated January 28, 1997, attached
12 hereto and made a part hereof based on the following findings:

13 Findings:

- 14 1. That the proposed Local Coastal Program Amendment is consistent with all applicable
15 policies of the City of Carlsbad Local Coastal Program (LCP), in that the Stormwater
16 Ordinance will supplement the existing Carlsbad LCP Drainage and Erosion Control
17 policies by prohibiting non-stormwater discharges (spills, illegal dumping and illicit
18 connections) to the stormwater conveyance system and reduce pollutants from urban
19 runoff.
- 20 2. That the proposed amendment to Carlsbad's Local Coastal Program is required to
21 maintain consistency between the City's Municipal Code and its Local Coastal Program.
- 22 3. That the Planning Director has determined that the project is exempt from the
23 requirements of the California Environmental Quality Act (CEQA) per Sections 15308
24 and 15061(b)(3) of the State CEQA Guidelines and will not have any adverse significant
25 impact on the environment.

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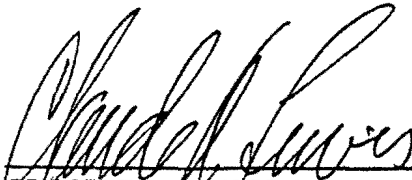
...

1 PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council
2 of the City of Carlsbad, held on the 28th day of January 1997, by the following vote, to wit:

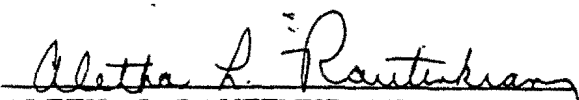
3 AYES: Council Members Lewis, Finnilla, Nygaard, Kulchin and Hall

4 NOES: None

5 ABSENT: None
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9 
10 CLAUDE A. LEWIS, Mayor

11 ATTEST:

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14 ALETHA L. RAUTENKRANZ, City Clerk
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RESOLUTION NO. 97-601

A RESOLUTION OF THE CITY COUNCIL OF THE
CARLSBAD, CALIFORNIA, APPROVING A
DECLARATION FOR ZCA 96-10/LCPA 96-10
APPROVING LCPA 96-10.

CASE NAME: INCIDENTAL OUTDOOR DINING

CASE NO.: ZCA 96-10/LCPA 96-10

The City Council of the City of Carlsbad, California, does hereby resolve as follows:

WHEREAS, on May 7, 1997, the Carlsbad Planning Commission held a duly noticed public hearing to consider a Negative Declaration and a Zone Code Amendment (ZCA 96-10) and a Local Coastal Program Amendment (LCPA 96-10) relating to Incidental Outdoor Dining Areas. At the conclusion of the hearing the Commission adopted Resolutions No. 4038, 4039, and 4040 recommending approval of the Negative Declaration and of ZCA 96-10 and LCPA 96-10; and,

WHEREAS, the City Council of the City of Carlsbad, on the 9th, day of September, 1997 held a public hearing to consider the Commission's recommendations and hear all persons interested in or opposed to the Negative Declaration and the Zone Code Amendment (ZCA 96-10) and the Local Coastal Program Amendment (LCPA 96-10) relating to Incidental Outdoor Dining Areas.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Carlsbad, California as follows:

1. That the above recitations are true and correct.

2. That the City Council adopts and incorporates the findings of Planning Commission Resolution No. 4038 approving the Negative Declaration for Incidental Outdoor Dining Areas Zone Code Amendment (ZCA 96-10) and Local Coastal Program Amendment (LCPA 96-10).

a) Independent Judgment: The City Council finds that the Negative Declaration reflects the City Council's independent Judgment.

b) Location and Custodian of Record of Proceedings. Pursuant to Public Resources Code section 21081.6(d), all the materials that constitute the administrative record in this proceeding are in the custody of and can be found in the offices of the City Clerk and the Director of Planning in the City of Carlsbad. The administrative record includes, but is not limited to: the Negative Declaration and all public comments thereon received during the public review period and responses thereto, and the proceedings of the Planning Commission and the City Council thereon.

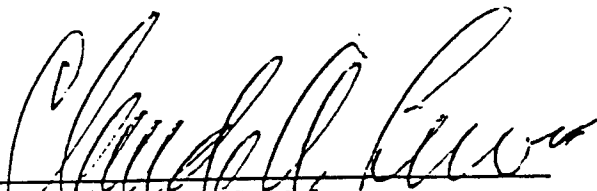
3. That the City Council adopts and incorporates the findings of Planning Commission Resolutions No. 4039 and 4040 recommending approval of the Zone Code Amendment (ZCA 96-10) and Local Coastal Program Amendment (LCPA 96-10).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Carlsbad on the 9th day of September 1997, by the following vote, to wit:

AYES: Council Members Lewis, Finnilla, Nygaard, Kulchin, and Hall

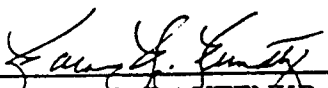
NOES: None

ABSENT: None



CLAUDE A. LEWIS, Mayor

ATTEST:



ALETHA L. RAUTENKRANZ, City Clerk
KAREN R. KUNDTZ, Assistant City Clerk
(SEAL)

