STATE OF CALIFORNIA -- THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
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May 26, 2005

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TO: COMMISSIONERS AND INTERESTED PERSONS

FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
LAURINDA OWENS, COASTAL PLANNER, SAN DIEGO AREA OFFICE

SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR AMENDMENT NO. 2-04A (Fourth Quarterly Update) for Commission Meeting of June 7-10, 2005

SYNOPSIS

The subject LCP amendment was submitted and filed as complete on March 22, 2005. The date by which the Commission must take action, absent an extension of time limits by the Commission, is June 22, 2005. This report addresses a portion of the City of San Diego's second major LCP amendment request for 2004. This portion of the submittal addresses the Implementation Plan (IP), and is identified as LCPA 2-04A. Part B addresses incorporation of the Sunset Cliffs Natural Park Master Plan into the certified Peninsula LCP segment; Part C addresses updates to the Carmel Valley Neighborhood 8 Precise Plan and rezones a 5.4 acre site from Single Family and Open Space to Neighborhood Commercial and Open Space. A time extension request for these latter components (B and C) is scheduled on the June agenda, and they are expected to be brought before the Commission in July.

SUMMARY OF AMENDMENT REQUEST

The subject implementation plan (IP) amendment includes changes to several different ordinances of the certified Land Development Code (LDC), portions of which comprise the IP of the certified LCP. An overview of the amendment request includes, but is not limited to, the following items: amendment to create a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling; change within the Open Space Residential zone category to allow for reasonable development of privately owned lots and to better implement the protection of open space; dissolution of the Board of Zoning Appeals and transfer of its powers and duties to the Planning Commission; consolidation of right-of-way information in the LDC to clarify the types of permits required and standards applied to improvements in the public right-of-way; changes to the permits required for site reconnaissance and testing/illegal grading procedures; changes to exempt public linear trails and public access projects from the development area regulations of the environmentally sensitive lands and the OR-1-2 zone; and, changes to require timely restoration for all emergency development activity conducted

within environmentally sensitive lands in accordance with an approved revegetation plan and the Biology Guidelines. Also proposed are a number of corrections to miscellaneous inconsistencies in the regulations that have resulted in misinterpretation of the development regulations. These include, in part, changes to the definition of "kitchen"; procedures for issuing a stop work order; language addressing when a map waiver may be requested; language addressing when a demolition removal permit may be issued; measurement of setbacks, etc.

SUMMARY OF STAFF RECOMMENDATION

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 6. The findings for denial of a portion of the Implementaton Plan Amendment as submitted begin on Page 6. The findings for approval of a portion of the Implementation Plan Amendment, if modified, are on Pages 15 and 18. The findings for approval of the remaining portion of the Implementaton Plan Amendment as submitted begin on Page 19.

BACKGROUND

The City's first IP was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code and a few PDOs; this replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. While it is has been in operation for five years, the City is reviewing this plan on a quarterly basis, and is expecting to make a number of adjustments to facilitate implementation; most of these will require Commission review and certification through the LCP amendment process. The City's IP includes Chapters 11 and portions of Chapters 12 through 14 of the LDC.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP amendment #2-04A may be obtained from Laurinda Owens, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part. The earliest LUP approval occurred in May 1979, with others occurring in 1988, in concert with the implementation plan. The final segment, Mission Bay Park, was certified in November 1996.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code, and associated documents, as the City's IP, replacing the original IP adopted in 1988.

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

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

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

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

I. **MOTION I:** ***I move that the Commission reject Part A of the Implementation Program Amendment for the City of San Diego Implementation Plan Amendment No. 2-04A, as submitted.***

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of **Part A of the Implementation Program Amendment submitted for** ***City of San Diego LCP Amendment No. 2-04A,*** and adopts the findings set forth below on grounds that Part A of the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plans. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

II. **MOTION II:** ***I move that the Commission certify Part A of the Implementation Program Amendment for the City of San Diego LCP Amendment No. 2-04A, if it is modified as suggested in this staff report.***

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of Part A of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies **Part A of the Implementation Program Amendment for the *City of San Diego*** if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carryout the certified Land Use Plans. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. **MOTION:** ***I move that the Commission reject Part B of the Implementation Program Amendment for the City of San Diego LCP Amendment No. 2-04,as submitted.***

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

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

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies **Part B of the Implementation Program Amendment for the *City of San Diego LCP Amendment No. 2-04A*** as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

PART II. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The **underlined** (in bold print) sections represent language that the Commission suggests be added from the language as originally submitted. Underlined sections represent the new language the City is adding to the Land Development Code.

1. Add the following to Section 131.0466 Deviations from Development Regulations for Reasonable Accommodations (c) and (d) as subsection (5):

131.0466 (c)

... (5) For *coastal development* in the *coastal overlay zone*, there is no feasible alternative that provides greater consistency with the certified Local Coastal Program.

131.0466 (d)

... **(5) For *coastal development* in the *coastal overlay zone*, there is no feasible alternative that provides greater consistency with the certified Local Coastal Program.**

2. Add the following to Section 126.0504 Findings for Site Development Permit Approval (n) Supplemental Findings – *Public Right-of-Way* Encroachments as subsection (5):

(5) For *coastal development* in the *coastal overlay zone*, the *encroachment* is consistent with Section 132.0403 (Supplemental Use Regulations of the Coastal Overlay Zone).

PART III. FINDINGS FOR REJECTION OF PART A OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT #2-04A, AND APPROVAL, IF MODIFIED

A. AMENDMENT DESCRIPTION. The proposed amendment contains two components that cannot be supported as submitted which will comprise Part A for purposes of this report, Commission motions and resolutions of approval. These include the creation of a deviation process to allow persons with disabilities the equal opportunity to use and enjoy a dwelling unit; and changes to the the permit requirements for public right-of-way improvements.

1. Deviations for Reasonable Accommodation. The proposed changes to the development regulations to accommodate persons with disabilities in the housing sector would allow deviations from the following regulations through a Process One building permit:

1) minimum setback requirements;
2) minimum parking requirements; and
3) minimum floor area ratio (FAR) requirements for deviations less than or equal tofive percent.

Deviations from the following regulations may be permitted with a Neighborhood Development Permit decided in accordance with Process Two.

1) Minimum FAR requirements for deviations greater than 5 percent, but no greater than 10 percent;
2) Angled building envelope plane requirements, not to exceed a maximum structure height of 30 feet;
3) Accessory structure requirements.

This will permit flexibility in the design of a dwelling unit necessary to accommodate a disabled person. For example, changes to the building design will be permitted to improve ingress and egress of a building to accommodate wheelchairs or special parking needs for accessible vans, etc.

2. Public Right-of-Way Improvements. The proposed revisions are meant to clarify the permit process for improvements in the right-of-way and standards for the approval process for such improvements. Currently, Chapter 6 (not part of the certified LC) addresses the controls and protection of street planting in the public right-of-way. The Park and Recreation Department exercises jurisdiction and control over planting, maintenance, care and removal of trees, or plants in all streets or other public rights-of-way of the City. Also, a Public Right-of-Way Permit is currently required for the planting of any tree, shrub, or plant greater than 30 inches in height or for trimming of trees in the right-of-way from the Development Services Department. However, the City did not intend to require duplicative permits for landscape improvements in the public right-of-way (both from the City Development Services Department as well as from the Park and Recreation Department). Therefore, through the proposed amendment, revisions will be made such that applicants are required to obtain only one permit for landscape improvements in the right-of-way, that being either a Street Tree Permit from Park and Recreation or a Publc Right-of-Way Permit from the Development Services Department. In addition, there are other landscape requirements contained in Section 142.0409 of the Land Development Code. The City is not proposing changes to this section of the Code.

In addition, the City proposes to incorporate standards into the Public Right-Of-Way Permit regulations (not part of the LCP) to determine whether or not to approve an encroachment in the right-of-way through Process One. These standards require that 1) there is no present public use for the right-of-way; 2) that the encroachment is consistent with the underlying zone; and 3) that the proposed encroachment is three feet or less in height.

Within the LCP, the City proposes to add a section to both the Neighborhood Development Permit regulations and the Site Development Permit regulations as follows:

Proposed Section 126.0402 (k)

> A Neighborhood Development Permit is required for construction of a privately owned structure proposed in the public right-of-way dedicated for a street or an alley, where the applicant is the record owner of the underlying fee title as described in Sections 129.0710(a)(b)92).

Proposded Section 125.0504 (n)

Supplemental Findings – Public Right-Of-Way Encroachements

> A Site Development Permit in accordance with Setion 126.0502(d)(6) for any encroachment or object which is erected, placed, constructed, established or maintained in the public right-of-way when the applicant is not the record owner of the property on which the proposed encroachment will be located may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):
>
> (1) The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant written permission to maintain the encroachment on their property;
> (2) The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel;
> (3) The proposed encroachment will not adversely affect the aesthetic character of the community;
> (4) The proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law.

Through the proposed revisions to the LDC, the Public Right-Of-Way Use Permit regulations would be deleted and replaced by the Public Right-Of-Way Permit regulations (not part of the LCP) and the above sections referencing when a NDP and SDP is required for improvements in the public right-of-way.

Only the two components addressing Reasonable Accommodation and Public Right-Of-Way Improvements are addressed in Part A. The remainder of the LCP submittal consists of several minor corrections/revisions/clean-up that do not raise any coastal issues. These latter revisions (Part B) can be supported as submitted and are detailed in Section IV of the staff report.

3. City Permit Process pursuant to the LDC. Section 112.0103 of the City of San Diego's Land Development Code identifies the processing and review requirements when more than one permit of approval is required. It states:

> When an applicant applies for more than one permit, map or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for the development as set forth in Section 111.0105. The findings required for approval of each permit shall be considered individually, consistent with Section 126.0105.

Section 126.0105 states:

> An application for a development permit may be approved only if the decision maker determines that the development, as proposed or as conditioned, meets all findings for all required permits as provided in Chapter 12, Article 6, Divisions 2 through 8. If the decision maker determines that any of the findings are not met, the application shall be denied. The decision maker shall record the decision in writing and shall specify the evidence or statements presented that support the findings.

Throughout the LDC there is specific reference to the SDP and NDP processes that apply City-wide; however, the coastal development permit (CDP) requirement is only specifically addressed in the CDP regulations commencing with Section 126.0701. it is through the CDP process that all policies of the applicable certified LCP land use plans and the implementing ordinances, including the LDC and Planned District Ordinances (PDOs) are applied.

In addition, the City has several process levels for permits. These include:

Process One: a permit, map or other matter that may be approved or denied by a staff person. No public hearing is required.

Process Two: a permit, map or other matter may be approved, conditionally approved or denied by a staff person. No public hearing is required. However, an appeal hearing is available upon request.

Process Two Appeals: The Planning Commission shall hear appeals of Process Two decisions subject to several requirements (who can appeal, timing for appeals, scheduling of appeals, etc.).

Process Three: a permit, map or other matter may be approved, conditionally approved or denied by a hearing officer.

Procress Three Appeals: a permit, map or other matter approved by the Hearing Officer may be appealed to the Planning Commission.

Process Four – a permit, map or other matter may be approved, conditionally approved or denied by the Planning Commission.

Process Five - a permit, map or other matter may be approved, conditionally approved or denied by the City Council.

The above processes are explained in more detail in Sections 112.0501 through 112.0507 of the LDC and shown on Exhibit 6.

B. SPECIFIC FINDINGS FOR REJECTION

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.

1. Applicable Land Use Plan Policies. Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreation and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that a Coastal Development Permit is required and that development is approved only when consistent with the certified LCP. Listed below are typical policies contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego which generally protects the above-described resources, including policies addressing preservation of community character as well as removal of landscaping in public rights-of-way, that blocks public views to the ocean, etc.

La Jolla LCP Land Use Plan

- The City shall maintain, and where feasible, enhance and restore existing parking areas, public stairways, pathways and railings along the shoreline to preserve vertical access (to the beach and coast), to allow lateral access (along the shore), and to increase public safety at the beach and shoreline areas. No encroachment into the public right-of-way should be permitted within the Coastal Zone without a permit. (pg. 52)

- Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated view opportunities. (pg. 56)

- Where existing streets serve as public vantage points, as identified in Figure 9 and Appendix G including, but not limited to, view corridors and scenic overlooks and their associated viewsheds, set back and terrace development on corner lots and/or away from the street in order to preserve and enhance the public view provided from the public vantage point to and along the ocean. In review of variances or

other requests for reduced setbacks within the viewshed public vantage points, adjacent to identified view corridors or on property between the ocean and first coastal roadway, do not allow any reduction in the public view provided to and along the ocean. Figure 9 and Appendix G list streets that provide identified public views to and along the ocean to be protected from visual obstruction. (pg. 56)

- Plant and maintain landscaping or vegetation so that it does not obstruct public views of coastal resources from identified public vantage points as identified in Figure 9. (pg. 57)

- Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent an appearance of the public right-of-way being walled off from the ocean. (pg. 57)

- Maintain or, if necessary, remove, modify or relocate landscaping on City-owned land and easements, and public right-of-way, to preserve, enhance, or restore identified public physical and/or visual access to the ocean. (pg. 59)

- Require that all proposed development maintain and enhance public access to the coast by providing adequate parking per the Coastal Parking regulations of the Land Development Code. This required parking includes higher parking ratios for multiple-dwelling units in the Beach Impact Areas, as well as the required prohibition of curb cuts where there is alley access, in order to retain and enhance publicly-accessible street parking for beach visitors. (pg. 74)

- All unauthorized encroachments into the public right-of-way should be removed or an Encroachment Removal Agreement (ERA) should be obtained. (pg. 86)

- In order to maintain and enhance the existing neighborhood character and ambiance, and to promote good design and visual harmony in the transitions between new and existing structures, preserve the following elements:

    1) Bulk and scale – with regard to surrounding structures or land form conditions as viewed from the public right-of-way and from parks and open space; (pg. 90)

<u>Mission Beach Precise Plan and Local Coastal Program Addendum</u>

- Under the Local Coastal Program, the following specific concept for future implementation technique development is set out in regard to community landscaping:

- Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation.

Peninsula Community Plan and Local Coastal Program Addendum

- This Plan does not recommend creation of new industrial areas in Peninsula and no industrial areas currently exist in the community outside of the naval and port district lands. Due to the fully built up character of Peninsula and limited transportaion access, this community cannot contribute to the industrial land base recommended for the City in the General Plan. (pg. 16)

- Maintain and encourage continued development of the commercial fishing and marine related commercial land uses within Peninsula. (pg. 44)

- Public access to the bay and ocean should be provided to the maximum extent feasible consistent with resource protection, protection of private property rights, public safety and size of beaches. (pg. 76)

- Preserve and enhance significant views of the bay and ocean. (pg. 108)

Ocean Beach Precise Plan

- That public access to beaches and the shoreline be protected, first by clearly establishing public access and use rights, and second by requiring new developments to provide visual and physical access. (pg. 42)

- That views available from elevated areas and those adjacent to the beaches and ocean be preserved and enhanced wherever possible. (pg. 83)

- That street trees be located so as not to block views upon maturity and to complement the surrounding area.

2. Reasonable Accommodations - Section 131.0466 and Section 126.0402(j)

a) Purpose and Intent of the Ordinance. The purpose and intent of the ordinance is to make reasonable accommodations in the zoning laws and other land use regulations to afford persons with disabilities the equal opportunity to use and enjoy a dwelling.

b) Major Provisions of the Ordinance. The major provisions of the ordinance would create a deviation process to modify existing residential development standards in circumstances where development regulations would preclude reasonable accommodation of a dwelling for persons with disabilities. The proposed changes would allow deviations to 1) the required minimum setbacks, 2) minimum parking requirements, or 3) maximum floor area ratio (FAR) up to five percent through a Process One decision. This means proposed structures may encroach into the required building

setbacks, provide less on-site parking than is required (i.e., one space instead of two) or exceed the required floor area ratio. This will permit flexibility in the design of a dwelling unit necessary to accommodate a disabled person such as changes to the ingress and egress of a building to allow more room for wheelchairs or special parking needs for accessible vans, etc.

Additional deviations could be requested through a Neighborhood Development Permit (NDP) (Process Two), which would require notification to the surrounding neighbors. Deviations that could be requested through a NDP would include 1) additional floor area ratio greater than 5% not to exceed 10%, 2) encroachments into the angled building envelope plane requirements or from the 3) accessory structure requirements. More specifically, exceptions could be made to the minimum floor area ration requirements such that deviations could be granted greater than 5% but not more than 10 percent. Also, the angled building envelope plane requirements could be exceeded as long as the maximum structure height does not exceed 30 feet. Lastly, deviations to the requirements for accessory structures could also be granted such as the size or use of such structures.

Deviations from the above development regulations may be approved subject to the following:

1) The development will be used by a disabled person;
2) The deviation request is the minimum necessary to make specific housing available to a disabled person and complies with all applicable development regulations to the maximum extent feasible;
3) The deviation request will not impose an undue financial or administrative burden on the City;
4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations;
5) The deviation will not adversely affect surrounding uses.

The determination of what is reasonable depends on two factors: 1) whether or not the request imposes an undue burden or expense on the local government and, 2) whether or not the proposed use creates a fundamental alteration of the zoning program. If the answer is yes to both, then the requested accommodation is considered "unreasonable". The City cites an example in its staff report that states, if a person with a disability requests the City to waive the requirement for a side yard setback in a single family zone in order to build a ramp to the front door, such a request would not cause an undue burden or expense to the City nor would it alter the fundamental character of the neighborhood. Conversely, if the request required that the City build a new road or extend utilities to a property at great public expenditure, the request would pose an undue financial burden on the City and, therefore, would be considered unreasonable.

c) Adequacy of the Ordinance to Implement the Certified LUP. The City found the proposed language to accommodate individuals with disabilities in the housing market will create a City that is accessible to all people who live and work in it. Only two other

cities in California to date have adopted such ordinances and these include the City of Long Beach and San Jose. The Commission approved LCP Amendment No. 3-99 for the City of Long Beach in August 2000. While there is no limit or cap to the number of dwelling units that may be modified to accommodate disabled persons, there is a slight potential that through the granting of a deviation to a development regulation, particularly in the Coastal Zone Overlay, potential impacts to coastal resources may occur.

For example, as in the example that the City cited above, there is the potential that through the reduction to a building setback for purposes of building a ramp or to create a structure with a greater F.A.R. on a lot located between the first public road and sea, that a public view of the ocean may be blocked. If such view is designated and protected in a certified Land Use Plan, as proposed, there is no requirement to consider alternatives to the building design or to choose the alternative that has the least impact on the coastal resources.

Other potential impacts to coastal resources could result from a proposed structure exceeding the Floor Area Ratio (F.A.R.) to accommodate wheelchairs or handicapped accessible vans or elevators for handicapped individuals which could result in either a structure being out of character with the community, or encroachment into a public view corridor blocking public views of the ocean. Other potential impacts could result from a building design that results in a reduction to the on-site parking requirements on a property located between the first coastal road and sea where beach parking is in more critical demand (Beach Impact Area), resulting in usurpation of street parking that is typically reserved for beach visitors. In addition, a potential impact could result from a reduction to yard area setbacks providing public views, if the property is located adjacent to a designated public view corridor or next to a public boardwalk (such as in the Mission Beach community).

As proposed, the City is requiring that the development must comply with all applicable development regulations to the maximum extent possible and that the deviation be the minimum necessary to achieve the desired goal. However, the new regulations only refer to the Neighborhood Development Permit as a potential discretionary approval that may be required, and suggest some deviations could be granted through a building permit alone. However, in the coastal overlay zone, all development requires a coastal development permit which requires the development be reviewed as to its conformity with the certified LCP land use plans and implementing ordinances. The language, as proposed, does not make this requirement clear and, in fact, with only a reference to development regulations, the language creates an opportunity to overlook the provisions of the certified land use plans when considering how reasonable accommodation can be provided. For development in the coastal zone, such deviations should take into consideration any coastal issues that may be raised by the proposal. Therefore, absent any provisions in the code language to require that alternatives be considered that have the *least* impact on coastal resources, the Commission finds the subject proposal is not adequate to carry out the certified land use plans as submitted, and must be denied.

Approval if Modified

Suggested Modification #1 requires that a request for reasonable accommodation will be granted if, in addition to the requirements that must be met as proposed by the City, that the decision maker find there are no feasible alternatives for providing reasonable accommodation at the property that would provide greater consistency with the certified Local Coastal Program. This suggested modification is similar to the modification suggested by the Commission in its action on the City of Long Beach LCP amendment and will assure the certified LCP land use plans as well as applicable development regulations will be considered, and the deviation with the least impact on coastal resources chosen. If modified as suggested, the Commission can certify the reasonable accommodation permit process as part of the LCP implementing ordinances to establish an orderly and fair process for disabled persons that ensures equal access to housing, as in conformance with, and adequate to carry out , the provisions of the certified LUPs.

2. Public Right-Of-Way Improvements

Section 126.0402 (k) and 126.0504 (n) NDP and SDP Required
Section 129.0702 Public Right-of-Way Permit Review (not part of LCP)

a) Purpose and Intent of the Ordinance. The purpose and intent of the Site Development Permit procedures are to establish a review process for proposed development that, because of its site, location, size or some other characteristics, may have significant impacts on resources or the surrounding areas, even if developed in conformance with all regulations. The intent of these procedures is to apply site-specific conditions as necessary to assure that the development does not adversely affect the applicable land use plan and to help ensure that all regulations are met.

The purpose and intent of the Neighborhood Development Permit procedures are to establish a review process for development that propose new uses, changes to existing uses, or expansions of existing uses that could have limited impacts on the surrounding properties. The intent of these procedures is to determine if the development complies with all applicable regulations of the zone and any supplemental regulations pertaining to its uses, and to apply conditions that may be necessary to help ensure compliance.

The purpose of the Public Right-of-Way Permit Procedures is to establish the process for review of public right-of-way permit applications for compliance with the regulations set forth in the LDC and to protect the public health, safety and welfare. The Public Right-Of-Way Permit Procedures are not currently part of the certified LCP and are not proposed by the City to be part of the LCP with this LCP amendment.

The purpose and intent of the Public Right-Of-Way Use Permit regulations (to be deleted) is to establish the process for approval of encroachments in the public right of way when the applicant is not the record owner of the property on which the proposed encroachment will be located.

b) Major Provisions of the Ordinance. The major provisions of the Site Development Permit and Neighborhood Development Permit processes include the following:

- When a site or neighborhood development permit is required
- Different process levels of review
- Findings for the permit
- Supplemental findings depending on what is being proposed
- Violations of a development permit

The major provisions for the Right-of-Way permit procedures include:

- When such a permit is required
- Exemptions from requirement for a public right-of-way permit
- Decision process for a right-of-way permit, etc.

c) Adequacy to Carry Out the Land Use Plans. The City has indicated the goal of the proposed LDC amendment is to clarify the permit review and approval process by consolidating the information in the LDC, because the existing public right-of-way approval process is unclear regarding permits required and standards to be applied. The proposed LCP amendment would create a discretionary review for privately-owned structures within the right-of-way including a Process Four level decision Site Development Permit (SDP) and Process Two level decision Neighborhood Development Permit (NDP) depending on the owner of the underlying land, prior to the issuance of the Public Right-of-Way Permit.

The City has described situations where an applicant proposes a right-of-way encroachment and is not the record owner of the underlying fee title. A Right-of-Way Use Permit is currently required in accordance with Process Four. However, the City feels requests for private encroachments in the right-of-way constitute development and should be processed as a development permit as opposed to a use permit. Therefore, the City proposes to reclassify the Right-of-Way Use Permit as a Process Four Site Development Permit. In so doing, the existing public Right-of-Way Use Permit procedures would be repealed and some of the information would be transferred into the Site Development Permit section of the LDC, and some to the Public Right-of–Way Permit regulations. Currently, the Site Development Permit and Right-of–Way Use regulations are part of the certified LCP, but the Public Right-of-Way Permit regulations are not.

The City has also indicated that prior to implementation of the Land Development Code, the City municipal code prohibited fences and walls in the public right-of-way. Subsequently, the City approved an amendment to the Code to allow some encroachments such as fences and walls through a Process Two permit. However, the amendment did not include the necessary changes to the LDC to clarify that the Process Two permit should be processed as a Neighborhood Development Permit. This is addressed in the subject proposal in the Neighborhood Development Permit regulations and the Public Right-Of-Way Permit regulations.

With the proposed modifications, all development in the public right-of-way will still be required to process an Encroachment Maintenance and Removal Agreement (EMRA) in addition to the applicable Public Right-of-Way Permit (Process Four SDP, Process Two NDP, and/or Process One Right-of-Way Permit). The information regarding the EMRA process will be transferred from Section 62.0302 and clarified in proposed Section 129.0715 (not part of the LCP currently or proposed).

The Coastal Act concern regarding development within public street right-of-ways primarily relates to potential impacts to public views and public access. Often times, undeveloped street-ends provide the only meaningful views toward the ocean between a wall of development on the intervening private parcels. In addition, they are often used for access to and along the shoreline. Therefore, the certified LCP should include clear standards applicable to any structures or landscaping proposed in these areas. As stated previously, street-ends are often designated as a public view or access corridors to be protected in a certified Land Use Plans. Specifically, the La Jolla Land Use Plan and Mission Beach LCP Land Use Plan contain policies that address protection of public views to the ocean and along designated public view corridors. Some require removal of landscaping that obstructs public views to the ocean as a community goal in the LUP. These policies include, but are not limited to:

- Maintain or, if necessary, remove, modify or relocate landscaping on City-owned land and easements, and public right-of-way, to preserve, enhance, or restore identified public physical and/or visual access to the ocean. (pg. 59/La Jolla LUP)

- All unauthorized encroachments into the public right-of-way should be removed or an Encroachment Removal Agreement (ERA) should be obtained. (pg. 86/La Jolla LUP)

o Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation. (pg. 14/Mission Beach LCP Land Use Plan)

The City is proposing to modify the procedures and the permit process for street right-of-way improvements (which includes installation of landscaping, fencing, walls, etc.); however, in doing so, it is not clear that a coastal development permit is also required for development in the right-of-way in the coastal overlay zone. Given the changes being made to the LCP to clarify the permit process and applicable standards, and the strong policy language contained in many certified land use plans that protect the right-of-ways as public view and access corridors, it seems appropriate to acknowledge those requirements with this action. However, the new regulations refer only to the Site and Neighborhood Development Permit as a potential discretionary approval that may be required, and suggest some improvements in the right-of-way may require only a Public Right-of-Way permit which would not be applicable through the coastal development permit process, because they are not part of the certified LCP. Some of the standards that

are in those regulations were previously in the Right-of -Way Use regulations which were part of the LCP but are proposed to be repealed.

As stated, in the coastal overlay zone, all development requires a coastal development permit which requires the development be reviewed as to its conformity with the certified LCP land use plans and implementing ordinances. The language, as proposed, does not make this requirement clear and, in fact, with only a reference to the SDP, NDP and Public Right-of -Way permits, the language creates an opportunity to overlook the provisions of the certified LCPs when considering improvements within right-of-ways. Unlike construction of a residence, it would be easier to assume accessory structures or landscaping within an adjacent right-of-way, particularly when other permits are specifically cited, would not require another discretionary CDP. There is also no language that specifically addresses removal of non-conforming structures or landscaping within existing right-of-ways.

For development in the coastal zone, there are specific supplemental regulations (Section 132.0403 attached as Exhibit No. 5) that address public view protection for property between the first coastal roadway and the sea which should be specifically considered and applied. Since these proposed revisions are intended to clarify permit requirements, this is the opportunity to acknowledge the coastal development permit requirement and applicable regulations for development in public right-of-ways in the coastal zone. The Commission finds, without the proposed modifications, the subject proposal is not adequate to carry out the certified land use plans as submitted, and must be denied.

Approval If Modified

Suggested Modification #2 would add to the supplemental findings required for a Site Development Permit required for a public right-of-way encroachment. It specifically requires that development in the coastal zone requiring a coastal development permit must be consistent with Section 132.0403, the Supplemental Use Regulations of the Coastal Overlay Zone. Given the Public Right-of –Way Permit regulations are not part of the certified LCP, the Commission is limited as to where to suggest modifications that would address the coastal issues associated with development in the right-of-ways. The referenced supplemental regulations for the coastal zone were added by the Commission to the LDC to implement the view protection policies of the certified land use plans mentioned above. They address specific requirements to preserve, enhance or restore a designated public view and that such views are maintained and enhanced, when possible. A specific reference to the standards in these regulations for development requiring both a coastal development permit and a right-of-way permit, will assure no improvements are permitted that would adversely impact existing public views of the ocean, and that such views are enhanced when possible. With this modification, the Commission finds the proposed revisions to the LDC adequate to carry out the view and access protection policies of the certified land use plans.

PART IV. FINDINGS FOR APPROVAL OF PART B OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. PART B - AMENDMENT DESCRIPTION

The City has submitted a number of amendments, which include changes to several different ordinances of the certified Land Development Code (LDC). The LDC applies citywide, and thus covers many areas not within the coastal zone. The ordinance revisions described in this report are part of a larger submittal which includes miscellaneous changes to the regulations in the LDC for different kinds of projects (i.e., dissolution of Boarding Zone of Appeals, public linear trails and public maintenance access projects, emergency restoration regulations, etc.). None of these proposed changes results in impacts to coastal issues and can be approved, as submitted.

B. Typical LUP Policies addressing Coastal Resources

As noted in the findings for rejection of a portion of the LCP submittal, each community plan or LCP Land Use Plan contains policies that protect coastal resources. The Commission's review of the proposed changes to the Land Development Code must assure that a Coastal Development Permit is required for all development in the coastal zone and that development is approved only when consistent with the certified LCP.

1. Section 131.0231 Open Space Residential Zone Category

a) Purpose and Intent of the Ordinance. The purpose of the OR zones is to preserve privately owned property that is designated as open space in a land use plan for such purposes as preservation of public health and safety, visual quality, sensitive biological resources, steep hillsides, and control of urban form, while retaining private development potential. These zones are also intended to help implement the habitat preservation goals of the City and the MHPA by applying development restrictions to lands wholly or partially within the boundaries of the MHPA. Development in these zones will be limited to help preserve the natural resource values and open space character of the land.

b) Major Provisions of the Ordinance. The ordinance includes the following major provisions:

- Development regulations
- Maximum permitted density
- Minimum lot area
- Allowable development area
- Lot width

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. There are several urbanized communities in the city (i.e., La Jolla in the coastal zone) with existing residential development located near canyons. These properties often have split land use

designations within their respective community plans. The intent is to preserve community open space near residential designated areas. Some of these community open spaces areas do not have natural steep slopes or sensitive vegetation that would be protected under the Environmental Sensitively Lands regulations but they are still designated as open space to provide open space within the community along canyon slopes and to preserve the open space character of the land.

It has been determined by the City that the OR zone development standards do not adequately address the narrow lots in urbanized communities where the zones were intended to be applied. The required setbacks are too wide and the maximum floor area ratio (FAR) requirement is too low to allow for reasonable development. As noted in the City's staff report, for example, the existing OR-1-1 zone requires 20-foot side yard setbacks which would make the building envelope only 10 ft. x 50 ft. wide. This would result in forcing development closer to the community open space rather than clustering the development in the most suitable area of the premises. The proposed amendment will allow for reasonable development of the applicable privately owned lots (limited to a maximum development area of 25 percent of the premises) and better implement the protection of community open space.

The City is proposing to modify the setbacks and FAR to be more consistent with the requirements of the residential zones while still maintaining the protection of open space in accordance with the purpose and intent of the OR zones. For example, lots in the OR zone will still be limited to a maximum 25 percent developable area of the entire site. The minimum front and rear setbacks would be reduced from 25 to 15 feet and the minimum side setbacks would be reduced from 20 feet to 8 feet. The maximum FAR would increase from 0.10 to 0.45. The maximum lot coverage requirement of 10 percent would be eliminated. However, all other development regulations would remain unchanged. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

2. Section 111.0203 Board of Zoning Appeals

a) Purpose and Intent of the Ordinance. This section is found under the General Rules and Authority section of the Land Development Code including Land Development Authorities and Advisory Boards. It describes the authority of the City Council, Planning Commission, Board of Zoning Appeals (BZA), Hearing Officer, City Staff, Historical Resources Board, etc.

b) Major Provisions of the Ordinance. This ordinance citation addresses the various aspects of the Board of Zoning Appeals. It includes:

- Authority
- Appointment and Terms
- Meeting
- Powers and Duties

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The Board of Zoning Appeals was originally established in 1952 to act on appeals of the Hearing Officer's decisions, which included decisions on Variances, Conditional Use Permits and other special permits. The Board consists of five members. During the LDC updated process it was decided that due to the changes in decision levels on some permits and the consolidation of processing under the LDC, the City determined that the BZA would only hear and determine appeals of general relief variances.

The City has since found that after implementation of the LDC in 2000, that the Board has only met about one time a year due to the infrequency of variance appeals. The Board itself did not want to disband and suggested that they assume additional responsibilities such as those that are currently reviewed by the Planning Commission. There are no coastal issues raised by the proposed amendment and the CDP process will not be significantly affected. However, the City found that due to many factors as enumerated above (low volume of items heard, continuation of this trend) that it was unlikely that the Board will be necessary. As such, the City, through this proposed amendment, proposes the dissolution of the Board of Zoning Appeals and transfers the powers and duties of it to the Planning Commission. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

3. Site Reconnaissance and Testing and Minor Amendments to Address Illegal Grading

Section 121.0312 Restoration and Mitigation as a Remedy
Section 126.0402 When a Neighborhood Permit is Required
Section 129.0112 Responsibilities of Permittee of Authorized Agent Regarding Inspections
Section 129.0214 Requirements for Approved Plans

a) Purpose and Intent of the Ordinance. This section of the LDC is found under the section addressing general information and required review and enforcement procedures. The purpose of the division is to require compliance with the Land Development Code, to state what activities violate the Land Development Code and to establish general remedies for these violations.

b) Major Provisions of the Ordinance. The major provisions of the ordinance require compliance with the LDC, procedures for issuing stop work orders, remedies, and restoration and mitigation as a remedy, etc.

c) Adequacy to Implement the Certified LUP Segments. The City proposes to amend the LDC to add language that would further restrict grading in the community plan open space areas and to also create a Process One grading permit for site reconnaissance work. It was found that in order to prepare the required technical studies to obtain a development permit, an applicant must conduct site reconnaissance for the

purpose of basic data collection or resource evaluation. This information is used for site design to prepare required environmental studies, geotechnical reports, and historic site surveys. Site reconnaissance and testing were exempt from permits under the code in effect prior to January 1, 2000 but were not addressed with the adoption of the LDC on that date. Under the LDC, any disturbance of land would be considered "development" therefore, an applicant conducting a site reconnaissance or testing on a site containing Environmentally Sensitive Lands would be required to obtain a Site Development Permit. Then upon completion of the reconnaissance and testing, a second SDP would be required to request approval of the actual development project.

According to the City, this has become costly and time-consuming for permit applicants. There were situations also where applicants did not obtain the required SDP to perform site reconnaissance work or due to the lack of coordination with City, resulted in unmitigated impacts to biological resources. The proposed amendments to the code will ensure that the work involved in the testing is the minimum necessary to accomplish the exploration, survey or testing and that any impacts are mitigated in conformance with the City's LDC. As such, a Neighborhood Development Permit (Process Two) for reconnaissance and testing on a site that contains ESL will be required. Through the proposed amendment, the City would permit site reconnaissance and testing with a Process One grading permit provided the applicant mitigates any impacts to sensitive biological or historical resources in conformance with the City's regulations. An engineering bond would also be required to ensure revegetation of disturbed areas. Also required is on-site biological monitoring and cultural resource monitoring while testing is performed to avoid or minimize impacts to resources. Process One means an application of a permit, map, or other matter acted upon in accordance with Process One may be approved or denied by a staff person designated by the City Manager pursuant to the Land Development Code. A public hearing is not required for projects processed under Process One.

In addition, the proposed amendments would require that any grading done without a permit will be required to be restored prior to any other permit being processed and that all impacts that occurred as part of an emergency be restored in conformance with the City's Biology Guidelines. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

4. Public Linear Trails and Public Maintenance Access Projects
Section 143.0111 Limited Exceptions from Environmentally Sensitive Lands Regulations

a) Purpose and Intent of the Ordinance. This section is under the Environmentally Sensitive Lands regulations. The purpose of these regulations is to protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development, including, but not limited to coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area, encourages a sensitive form of

development, retains biodiversity and interconnected habitats, maximizes physical and visual public access to and along the shoreline, and reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulation for Environmentally Sensitive Lands and accompanying Biology, Steep Hillside, and Coastal Bluffs and Beaches Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act and the California Coastal Act.

b) Major Provisions of the Ordinance. The ordinance includes, but is not limited to the following provisions:

- When the ESL regs apply
- Uses allowed within environmentally sensitive lands general development regulations for ESL lands including sensitive biological resources, steep hillsides, sensitive coastal bluffs, coastal beaches, and floodplains.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

Through the Site Development Permit and Coastal Development Permit process, the applicant is required to locate and quantify each environmentally sensitive resource and quantify the proposed encroachment into ESL with a breakdown for each individual premises in the project application. This has become very cumbersome for public trail and maintenance access projects that are located across multiple large properties that have varying types of ESL. Public agencies such as the Joint Powers Authority, County Water Authority, and North County Transit District and City Departments such as Engineering and Capital projects, Metro Wastewater, Park and Recreation and Water have had to expend large amount of time and money to perform this documentation to demonstrate that they do not exceed 25 percent development area restrictions.

The City has found that no linear trail or public access project processed under the regulations of the OR zone or ESL has ever come close to exceeding the development area restriction. For this reason, the City proposes through this amendment to render public linear trails and public maintenance access projects exempt from the requirements to inventory the entire premises for sensitive biological resources and steep hillsides. These kinds of public projects would still be required to obtain a Site Development Permit (Process Three), substantiate that the public trail or access path impacts the least amount of environmentally sensitive lands, provides full mitigation of any impacts to environmentally sensitive lands, and be in compliance with CEQA. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

5. Emergency Restoration Regulations- Section143.0126

a) Purpose and Intent of the Ordinance. (Same as above)

b) Major Provisions of the Ordinance. (Same as above)

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. As part of the Environmentally Sensitive Lands (ESL) regulations, existing Section 143.0126 requires that whenever development activity within ESL is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety subject to three criteria. These include that a) if the emergency work involves temporary impacts to ESL, a Neighborhood Development Permit or Site Development permit is not required provided the ESL is restored to its natural state. The existing regulations also require that the work be completed within 60 days of the emergency work; b) If the work results in permanent impacts to ESL, a Neighborhood Development Permit or Site Development Permit is required. An application for either permit is required to be submitted to the City within 60 days of completion of the emergency work; c) In the Coastal Overlay Zone, a coastal development permit is required for any emergency work in accordance with other provisions of the LDC.

Through the proposed amendment, additional language will be added to the Land Development Code addressing emergency work such that any required restoration work be completed in a timely manner. Although the LDC currently requires that the applicant apply for either a Neighborhood Development Permit or a Site Development Permit within 60 days of completion of the emergency work, there is no provision addressing the time frame for which the restoration work must be completed. The proposed amendment will require that the restoration work itself be completed in accordance with an approved restoration plan that must be initiated within 90 days of projection completion or prior to the beginning of the next rainy season, whichever time period is greater. As such, the Commission finds the proposed amendment consistent with, and adequate to carry out, the policies of the City's LUP segments.

6. Other proposed changes/corrections/clarifications to LDC

The City is also proposing a number of minor corrections/changes to the LDC to correct inconsistencies in the regulations, clarify confusing aspects of the regulation, or correct provisions that have created unintended consequences. The standard of review is the City's certified Land Use Plan Segments (i.e., La Jolla, Mission Beach, Pacific Beach, Ocean Beach, Peninsula, etc.). These include the following which are applicable in the coastal overlay zone:

Remove redundancies between Chapter 6 and LDC- As part of the adoption of the LDC, many of the regulations contained in the Municipal Code Chapter 6, Article 2 relating to public improvements, public right-of-way, encroachments, and grading were transferred to applicable sections if the LDC. However, the ordinance adopting the LDC did not repeal the necessary divisions. The proposed amendments would repeal the duplicative sections in Chapter 6, Divisions 1-3 and where necessary transfer the Chapter 6

regulations to the applicable sections of the LDC. Chapter 6 is not part of the LCP so this proposed change could result in a potential change to the standard of review.

Defacing or Removing Posted Notices- Currently the LDC does not have a specific regulation that prohibits the defacing or removal of a Notice of Application or a Notice of Future Decision places on a property. The proposed amendment would add a section to clarify that it is unlawful to deface or remove a posted notice. The change will allow Neighborhood Code Compliance staff to reference a specific section when issuing a violation citation.

Amend the Definition of Kitchen- When the LDC was adopted, the definition of kitchen changed from "facility used or designed to be used for the preparation of food" to "facilities used or designed to be used for the preparation of food and contains a sink, a refrigerator, stove and a range top or oven." The definition became more specific by including the various appliances that must be present to determine if a room is a kitchen. The new definition has been problematic because a defining factor of a dwelling unit is that it must contain a kitchen. This has made it difficult for Neighborhood Code Compliance Department (NCCD) staff to issue citations for illegal dwelling units where functioning dwelling unit does not have all of the appliances that constitute a kitchen per the LDC. In many cases the owners are renting out illegal units that lack adequate cooking facilities (small refrigerator, a small sink, and a microwave or hot plate), which in turn create health and safety hazards for the surrounding neighborhood.

City staff originally proposed to revert the former definition of kitchen that just stated that a kitchen is a facility used or designed to be used for the preparation of food. However, the Planning Commission recommended against the definition because they thought it was not specific enough. The City has since revised the language as follows: "Kitchen means an area used or designed to be used for the preparation of food which includes facilities to aid in the preparation of food such as a sink, a refrigerator, and a stove, range top or oven." The new definition better meets the intent and provides some latitude for NCCD staff to make a determination if the unit is actually functioning as a separate, illegal dwelling unit.

Determining Proposed Grade and Height Measurements for Pools and Spas- Structure height is measured from the lower of existing or proposed grade, within five feet of the structure's perimeter, to the highest point of the structure. Proposed grade is the ground elevation that will exist when all proposed development has been completed. It was not intended that the height calculation for an adjacent structure be taken from the bottom of a pool; however, the only exception explicitly stated in the code deals with basements. In order to clarify, Section 113.0231 will be amended to also exclude pools from the calculation of proposed grade. Additionally, a new section (Section 113.0270(a)(8)) and new Diagram 113-0200 will describe how to measure overall building height when a pool is located within 5 feet of the structure. Diagram 113-02H (ref. p. 9 of 55 of Exhibit No. 3) will also be modified to clarify where proposed grade is measured from for basements. The proposed changes will eliminate confusion when measuring structure height in these instances.

Procedures for Issuing a Stop Work Order- According to the current language, the City Attorney must approve all Stop Work Orders before they are issued, except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Clarification is needed to distinguish between work being done with a permit and work being done without a permit. The proposed language clarifies that the requirement for City Attorney approval only pertains to work where a permit has been issued. City Attorney approval is not needed to issue a Stop Work Order for work that is being done without a permit or being done illegally. Neighborhood Code Compliance would then be able to issue a Stop Work Order immediately where a permit has not been issued.

When a Map Waiver May Be Requested- The Subdivision Map Act Section 66428 allows a subdivider to request a waiver from the requirement to file a tentative map, parcel map, or final map for the development of condominium projects. The current language in the LDC only addresses the construction of new condominium projects and does nor specify that existing structures are also eligible for map waivers. The proposed language would clarify that conversions of existing structures into condominiums are allowed to request a map waiver of the requirement to file a tentative map or parcel map.

When a Demolition Removal Permit May Be Issued- The proposed amendment is needed to clarify when a demolition permit should be issued for a structure on a property that has a development permit application in process. The proposed edit is consistent with the requirement of consolidation of processing which requires that multiple permits or approvals be consolidated and reviewed by a single decision maker based on the highest level authority.

Variable Setbacks in Residential Zone- In the Residential Estate (RE) and Residential Single Dwelling Unit (RS) zones, side yards setbacks are allowed to observe a designated minimum dimension as long as the combined dimensions of both side setbacks equal at least 20 percent of the lot width. The variable setback option was intended to allow applicants flexibility in siting structures and to protect views where applicable. However, the variable side setback was not intended to allow development to observe minimum setbacks on both sides of the premises. Since this distinction is not clear, the proposed language clarifies that once a side setback is established for the premises, it applies to all additions constructed thereafter.

Consistency between Bay Window and Dormer Projections- As currently written, the LDC requires that bay windows must be placed at least four feet from the property line. The requirements for dormers is three feet from the property line. For consistency purposes, the proposed amendment would allow both bay windows and dormers be placed three feet from the property line.

Refuse and Recycle Material Storage- The refuse and recyclable material storage section required commercial development to locate material storage areas at least 25 feet from any pedestrian and vehicular access point. The code also requires that a premises served by an alley provide material storage areas that are directly accessible from the alley.

Since alley access is encouraged for commercial development, it is difficult for development to meet both requirements. The proposed amendment distinguishes between commercial development served by an alley and commercial development without an alley. This will eliminate conflicting requirements and will require only commercial development not served by an alley to provide a storage area at least 25 feet from any access point.

Retaining Wall regulations- The current LDC Diagram 142-03G (Retaining Wall Requirements) does not coincide with the text and can be confusing. The proposed modifications would update the text within the diagram for consistency with the text contained in the associated provisions. The diagram currently uses the term "horizontal separation" and the text in the provisions use the term "horizontal distance" to convey the same information. Additionally, the text below the diagram states that the horizontal separation can be equal to *or less* than the height of the upper wall, which is inconsistent with the requirements of the section. The proposed edits will clarify that the minimum horizontal distance must be *greater than or* equal to the height of the upper wall (reference Diagram 142-03H/p. 43 of 55 of Exhibit 3).

Measuring Setbacks- Setbacks are measured inward and perpendicular to the nearest property line. Underground structures are not subject to setbacks requirements unless the proposed location would conflict with required landscape and irrigation. The current code does not clearly address this potential conflict. Modified language is proposed in order to clarify that the required setbacks apply to those portions of underground parking structures, first stories, and basements that are above grade and where underground structures would conflict with required landscaping.

Turret Encroachment Beyond Maximum Structure in RT Zones- The RT zone allows for a turret (a small tower element) to encroach into the angled building envelope area up to five feet above the maximum height of the zone. The proposed language will clarify that a turret may encroach beyond the maximum height of the applicable RT zone, but where an overlay zone is applicable the proposed turret shall not exceed the established height limit of any overlay zone. For example, the proposed encroachment shall not exceed the 30-foot height limit established under Proposition D within the Coastal Height Overlay Zone.

Noise Abatement- The existing Sound Level Limits within Chapter 5 have not been updated to reflect the existing Building Code. Modifications are proposed to the Noise Abatement and Control Table to reflect the updated requirements and to clarify that the applicable limits are based on land uses and not base zones as the Table previously indicated.

Chimneys and Dormers- The current code addresses chimneys and dormers in separate sections of the code, but allows both chimneys and dormers to project into the space above the angled building envelope area in specified zones. The proposed code changes will clarify both elements are permitted architectural projections into the angled building envelope in the specified residential zones.

In summary, the Commission finds the above described changes/corrections/ clarifications to various sections of the Land Development Code do not raise any coastal issues or conflicts with the certified LUP policies and LDC and can be found consistent with, and adequate to implement the policies of the City's certified Land Use Plan segments.

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

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

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, 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 City implementation plan amendment, as proposed, would result in significant impacts unde the meaning of the California Environmental Quality Act. Without additional clarifying language to assure that developments approved to accommodate the disabled individuals in the housing sector is most protective of coastal resources and consistent with all other policies fo the certified LUPs, potential impacts to such resources might occur. Suggested modifications have been proposed which will make it clear that the the alternatives to modify a dwelling unit have been considerered and that the alternative that has the least impact on coastal resources is chosen.

In addition, without clarifying language (addressing ROW improvements), that a coastal development permit is required for any installation of landscaping in the public right-of-way in the coastal overlay zone, significant impacts to public views to the ocean could occur. Suggested modifications have been proposed that specify that a coastal development permit is required.

With inclusion of the suggested modifications, implementation of the proposed revisions to the Land Development Code will not result in significant impacts under the meaning of the California Environmental Quality Act. Therefore, this modified LCP amendment can be found consistent with the provisions of the California Environmental Quality Act.

PART A:

CHANGES TO ORDINANCES RELATED TO:

1) **DEVIATIONS FOR REASONABLE ACCOMMODATION; AND**
2) **CHANGES TO PERMIT PROCESS FOR IMPROVEMENTS IN THE PUBLIC RIGHT-OF-WAY**

STAFF IS RECOMMENDING APPROVAL WITH SUGGESTED MODIFICATIONS

PART B:

ALL OTHER PROPOSED CHANGES
STAFF IS RECOMMENDING APPROVAL AS SUBMITTED

street or an *alley*, where the *applicant* is the *record owner* of the underlying fee title as described in Sections 129.0710(a)(b)(2).

§126.0502 When a Site Development Permit Is Required

(a) through (c) [No change.]

(d) A Site Development Permit decided in accordance with Process Four is required for the following types of development.

(1) through (5) [No change.]

(6) Any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located in accordance with Section 129.0710(b).

(e) [No change.]

§126.0504 Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Ssection 126.0504(a) and the supplemental *findings* in Ssection 126.0504(b) through (n) that are applicable to the proposed *development* as specified in this Section.

(a) through (m) [No change.]

(n) Supplemental Findings- *Public Right-of-Way* Encroachments.

A Site Development Permit in accordance with Section 126.0502(d)(6) for any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located

Summary of Fourth Update Issues
Subject to Coastal Commission Review and Certification

Issue #	Section(s)	Description
	143.0110(c) 143.0126	other permit being processed in conformance with the City's Biology Guidelines.
6.	143.0111	Public Linear Trails and Public Maintenance Access Projects. Proposed amendments to exempt public linear trails and public access projects from the Environmentally Sensitive Lands development area regulations and the development area regulations of the OR-1-2 zone.
7.	143.0126	Emergency Restoration Regulations. Proposed amendments to require timely restoration for all emergency development activity conducted within environmentally sensitive lands in accordance with an approved revegetation plan and the Biology Guidelines.
CONSISTENCY CORRECTIONS		
8.	103.1703	SESDPDO Outdoor Storage Requirements. Amend the applicable regulations section of the Southeastern San Diego PDO to include LDC Chapter 14, Article 2, Division 11 (Outdoor Storage, Display, and Activity Regulations).
9.	~~Ch. 6, Art. 2, Div. 1-3~~ 142.0607 142.0611 142.0670 142.0680 ~~144.0231~~ ~~144.0233~~	Public Right-of-Way. Remove redundancies between Chapter 6 and the LDC Chapters 11-14 relating to improvements in the public right-of-way by repealing the duplicative sections. Transfer Repair and Replacement of Public Facilities, Formation of Cost Reimbursement Districts, and Acceptance of Dedications Sections into Chapter 14.
10.	112.0304(d)	Defacing or Removing Posted Notices. Add a new subsection to state that it is unlawful to deface posted notices.
11.	113.0103	Amend the Definition of Kitchen. Clarify the definition of kitchen to describe the function and the typical characteristics in order to address Neighborhood Code Compliance staff concerns.
12.	113.0231 113.0270	Determining Proposed Grade and Height Measurement adjacent to Pools. Clarify that the height measurement for an adjacent structure is not intended to be taken from the bottom

A decision on an application for a variance shall be made in accordance with Process Three. The decision may be appealed to the ~~Board of Zoning Appeals~~ Planning Commission unless otherwise specified by the Land Development Code.

~~§126.0901 Purpose of Public Right-of-Way Use Permit Procedures~~

~~The purpose of these procedures is to establish the process for approval of *encroachments* in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located. The intent of this division is to protect the *public right-of-way* for use and enjoyment by the public, to protect the public health, safety and welfare, and to maintain the aesthetic character of the community.~~

~~§126.0902 When Public Right-of-Way Use Permit Procedures Apply~~

~~A Public Right-of-Way Use Permit is required for any *encroachment* or object which is erected, placed, constructed, established, or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located, except when one or more of the following conditions is met:~~

~~(a) The *encroachment* is permitted under Chapter VI, Article 2, Division 11.~~

~~(b) The *encroachment* is permitted under Section 141.0619(b).~~

~~(c) The *encroachment* is permitted under Chapter VI, Article 2, Division 10.~~

~~(d) The *encroachment* is permitted under Section 141.0621.~~

~~§126.0903 How to Apply for a Public Right-of-Way Use Permit~~

~~An *applicant* shall submit an application for a Public Right-of-Way Use Permit in accordance with Section 112.0102.~~

~~§126.0904 Decision Process for a Public Right-of-Way Use Permit~~

Summary of Fourth Update Issues
Subject to Coastal Commission Review and Certification

Issue #	Section(s)	Description
		stories, and basements that are above grade, and underground structures where they would conflict with required landscape and irrigation requirements.
22.	131.0461(b)(3)(D)	Turret Encroachment Beyond Maximum Structure Height in RT Zones. Clarify that in the RT zone a turret may encroach into the angled building envelope area up to five feet above the maximum height of the base zone, but shall not exceed the established height limit of any overlay zone.
23.	~~59.5.0401~~	~~Noise Abatement. Revise references contained in the Noise Abatement and Control table to reflect the updated building code requirements and land use categories contained in the LDC.~~
24.	131.0444 131.0461 131.0464(c)	Chimneys and Dormers. Add references relating to chimneys and dormers to clarify that both are permitted to encroach within the angled plane. Remove the word "window(s)" where "dormer window(s)" is referenced.
MINOR FORMAT/REFERENCE CORRECTIONS		
25.	111.0207(b)(3) 111.0208(b)(2)(J)	Incorrect Terminology. "Community and Economic Development Manager" should be replaced with "Planning Director".
26.	121.0302(b)(1)	Incorrect Terminology. "Premises" should be replaced with "structures" in this case.
27.	~~121.0309(c)~~ ~~128.0102~~ ~~128.0104~~	~~Incorrect Terminology. "Planning and Development Review Director" should be replaced with "Development Services Director".~~
28.	~~129.0104(b)(2)~~	~~Incorrect Terminology. "Public Improvement Permits, Encroachment Permits, and Traffic Control Permits" should be replaced with "Public Right-of-Way Permits".~~
29.	126.0704(a)(5) 127.0106(d) 131.0540(c) 141.1004(n)(1) 143.0142(a)(4)(A) (a)(4)(C),(a)(4)(C)(	Incorrect Terminology. Replace % sign with the word percent.

(a) The *applicant* shall install and maintain the *encroachment* in a safe and sanitary condition at the sole cost, risk and responsibility of the *applicant*.

(b) The *applicant* shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.

(c) The *applicant* shall remove or relocate, at *applicant's* own expense, any *encroachment* within 30 days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security at the sole discretion of the City without further notice to the *applicant*. The *applicant* shall remove or relocate, at its own expense, any *encroachment* on shorter notice by the City in the case of an emergency or if determined necessary by the City. If the *applicant* fails to remove or relocate the *encroachment* in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security, at the sole discretion of the City, without further notice to the *applicant*.

(d) The City's rights with respect to the *public right-of-way* shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the *encroachment*.

(e) The *applicant* shall maintain liability insurance in the nature and amount satisfactory to the City Manager in order to protect the City from any potential claims which may arise from the *encroachment*. The policy shall name the City as an additional insured.

(f) The *applicant* shall furnish a surety bond, cash deposit or other security in an amount acceptable to the City Manager if required by the decision maker.

Summary of Fourth Update Issues
Subject to Coastal Commission Review and Certification

Issue #	Section(s)	Description
41.	143.0142	Italicize "encroachment", a defined term in the LDC.
42.	112.0506 113.0249 126.0504 ~~129.0214~~ 131.0464 143.0142	Correct errors in capitalization. The word Section in all Section references should be capitalized.

addition to plan check approvals, other documentation may be required before permit issuance, in conformance with the requirements of the Land Development Code, or the laws or requirements of other local, state, or federal jurisdictions. A Demolition/Removal Permit shall not be issued for a *development* that requires a *development permit* or for which a *development permit application* has been submitted until the *development permit* has been issued or has been withdrawn, where not otherwise required. Documentation of required insurance and surety shall be presented in accordance with Ssections 129.0508 and 129.0509.

(b) [No change.]

§129.0702 When a Public Right-of-Way Permit Is Required

(a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:

(1) [No change.]

(2) The construction of privately owned *structures* or facilities in the *public right-of-way* ~~to be maintained by the adjacent property owner~~;

(3) [No change.]

~~(4) The moving of any vehicle, load, trailer, or combination thereof, that exceeds the height, width, length, size, or weight of vehicle or load limitations provided in California Vehicle Code Division 15, over or across any *public right-of-way* under the jurisdiction of the City;~~

~~(5)~~(4) The planting of any tree, shrub, or plant greater than 30 inches in height in the *public right-of-way*; where not otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).~~: and~~

street or an *alley*, where the *applicant* is the *record owner* of the underlying fee title as described in Sections 129.0710(a)(b)(2).

§126.0502 **When a Site Development Permit Is Required**

(a) through (c) [No change.]

(d) A Site Development Permit decided in accordance with Process Four is required for the following types of development.

(1) through (5) [No change.]

(6) Any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located in accordance with Section 129.0710(b).

(e) [No change.]

§126.0504 **Findings for Site Development Permit Approval**

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Ssection 126.0504(a) and the supplemental *findings* in Ssection 126.0504(b) through (n) that are applicable to the proposed *development* as specified in this Section.

(a) through (m) [No change.]

(n) Supplemental Findings- *Public Right-of-Way* Encroachments.

A Site Development Permit in accordance with Section 126.0502(d)(6) for any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located

may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

(1) The proposed *encroachment* is reasonably related to public travel, or benefits a public purpose, or all *record owners* have given the applicant written permission to maintain the *encroachment* on their property;

(2) The proposed *encroachment* does not interfere with the free and unobstructed use of the *public right-of-way* for public travel;

(3) The proposed *encroachment* will not adversely affect the aesthetic character of the community; and

(4) The proposed *encroachment* does not violate any other Municipal Code provisions or other local, state, or federal law.

§126.0704 Exemptions from a Coastal Development Permit

[No change in text of first sentence.]

(a) Improvements to existing *structures* are exempt, except if the improvements involve any of the following:

(1) through (4) [No change.]

(5) The demolition or removal of 50~~%~~ percent or more of the exterior walls of the existing structure.

(6) through (9) [No change.]

(b) through (i) [No change.]

§126.0804 Decision Processes for a Variance

A decision on an application for a variance shall be made in accordance with Process Three. The decision may be appealed to the ~~Board of Zoning Appeals~~ Planning Commission unless otherwise specified by the Land Development Code.

~~§126.0901 Purpose of Public Right-of-Way Use Permit Procedures~~

~~The purpose of these procedures is to establish the process for approval of *encroachments* in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located. The intent of this division is to protect the *public right-of-way* for use and enjoyment by the public, to protect the public health, safety and welfare, and to maintain the aesthetic character of the community.~~

~~§126.0902 When Public Right-of-Way Use Permit Procedures Apply~~

~~A Public Right-of-Way Use Permit is required for any *encroachment* or object which is erected, placed, constructed, established, or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located, except when one or more of the following conditions is met:~~

~~(a) The *encroachment* is permitted under Chapter VI, Article 2, Division 11.~~

~~(b) The *encroachment* is permitted under Section 141.0619(b).~~

~~(c) The *encroachment* is permitted under Chapter VI, Article 2, Division 10.~~

~~(d) The *encroachment* is permitted under Section 141.0621.~~

~~§126.0903 How to Apply for a Public Right-of-Way Use Permit~~

~~An *applicant* shall submit an application for a Public Right-of-Way Use Permit in accordance with Section 112.0102.~~

~~§126.0904 Decision Process for a Public Right-of-Way Use Permit~~

~~A decision on an application for a Public Right-of-Way Use Permit shall be made in accordance with Process Four. A Process Four decision may be appealed to the City Council in accordance with Section 112.0508.~~

~~§126.0905 Findings for a Public Right-of-Way Use Permit~~

~~An application for a Public Right-of-Way Use Permit may be approved or conditionally approved if the decision maker makes all of the following findings:~~

~~(a) the proposed *encroachment* is reasonably related to public travel, or benefits a public purpose, or all *record owners* have given the *applicant* permission to maintain the *encroachment* on their property;~~

~~(b) the proposed *encroachment* does not interfere with the free and unobstructed use of the *public right-of-way* for public travel;~~

~~(c) the proposed *encroachment* is not detrimental to the public health, safety or welfare;~~

~~(d) the proposed *encroachment* does not interfere with the *record owners'* use or enjoyment of their property;~~

~~(e) the proposed *encroachment* does not adversely affect the land use plan;~~

~~(f) the proposed *encroachment* is not harmful to the aesthetic character of the community; and~~

~~(g) the proposed *encroachment* does not violate any other Municipal Code provisions or other local, state or federal law.~~

~~§126.0906 Public Right-of-Way Use Permit Conditions~~

~~The Public Right-of-Way Use Permit shall contain the following provisions and any other provisions which, in the opinion of the decision maker, are necessary to afford protection to the *record owner*, the City, and *public utilities*.~~

(a) The *applicant* shall install and maintain the *encroachment* in a safe and sanitary condition at the sole cost, risk and responsibility of the *applicant*.

(b) The *applicant* shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.

(c) The *applicant* shall remove or relocate, at *applicant's* own expense, any *encroachment* within 30 days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security at the sole discretion of the City without further notice to the *applicant*. The *applicant* shall remove or relocate, at its own expense, any *encroachment* on shorter notice by the City in the case of an emergency or if determined necessary by the City. If the *applicant* fails to remove or relocate the *encroachment* in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the *applicant's* permit bond, deposit or other security, at the sole discretion of the City, without further notice to the *applicant*.

(d) The City's rights with respect to the *public right-of-way* shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the *encroachment*.

(e) The *applicant* shall maintain liability insurance in the nature and amount satisfactory to the City Manager in order to protect the City from any potential claims which may arise from the *encroachment*. The policy shall name the City as an additional insured.

(f) The *applicant* shall furnish a surety bond, cash deposit or other security in an amount acceptable to the City Manager if required by the decision maker.

~~§126.0907 Violations of Public Right-of-Way Use Permit~~

~~It is unlawful for any person to erect, place, construct, establish, or maintain any *encroachment* in the *public right-of-way* without a permit if such permit is required. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.~~

§127.0104 Maintenance, Repair, or Alteration of Previously Conforming Structures ~~Is Required~~

(a) and (b) [No change.]

§127.0106 Expansion or Enlargement of Previously Conforming Structures

(a) through (c) [No change.]

(d) Within the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50~~%~~ percent or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new structure.

§128.0103 Powers and Duties of the ~~Planning and Development Review Director~~ Development Services Director in Implementing Environmental Quality Procedures

The ~~Planning and Development Review Director~~ Development Services Director shall be responsible for implementing this article.

(a) The ~~Planning and Development Review Director~~ Development Services Director shall have the following powers as required for all projects or activities as defined by CEQA, whether proposed by private *applicants*, the City, or other public agencies:

(1) through (8) [No change.]

(b) The ~~Planning and Development Review Director~~ Development Services Director shall establish and maintain that degree of independence in the

addition to plan check approvals, other documentation may be required before permit issuance, in conformance with the requirements of the Land Development Code, or the laws or requirements of other local, state, or federal jurisdictions. A Demolition/Removal Permit shall not be issued for a *development* that requires a *development permit* or for which a *development permit application* has been submitted until the *development permit* has been issued or has been withdrawn, where not otherwise required. Documentation of required insurance and surety shall be presented in accordance with Ssections 129.0508 and 129.0509.

(b) [No change.]

§129.0702 **When a Public Right-of-Way Permit Is Required**

(a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:

(1) [No change.]

(2) The construction of privately owned *structures* or facilities in the *public right-of-way* ~~to be maintained by the adjacent property owner~~;

(3) [No change.]

~~(4) The moving of any vehicle, load, trailer, or combination thereof, that exceeds the height, width, length, size, or weight of vehicle or load limitations provided in California Vehicle Code Division 15, over or across any *public right-of-way* under the jurisdiction of the City;~~

~~(5)~~(4) The planting of any tree, shrub, or plant greater than 30 inches in height in the *public right-of-way*; where not otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).; ~~and~~

~~(6) The trimming, cutting, removal, destruction, defacing, or in any other way injuring or endangering, of any tree, shrub, or plant growing in the *public right-of-way*;~~

(b) [No change.]

§129.0703 **Exemptions from Requirement for a Public Right-of-Way Permit**

Exemption from the Public Right-of-Way permit requirements does not authorize any work to be done in violation of the provisions of the *public right-of-way* regulations or other applicable local or state regulations. A Public Right-of-Way Permit is not required for the following work ~~if pedestrian or vehicular access will not be impeded~~:

(a) [No change.]

(b) The installation of ~~landscaping~~ landscape in the *parkway* that is less than 30 inches high and will be maintained by the fronting ~~adjacent~~ property owner or where otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).

§129.0710 **How to Apply for a Public Right-of-Way Permit**

An application for a Public Right-of-Way Permit shall be submitted in accordance with Sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* or other discretionary approval is required prior to issuance of a Public Right-of-Way Permit for the following:

(a) If the proposed *encroachment* involves construction of a privately owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with Section 126.0402 (k) except for the following:

(1) Private *hardscape* improvements in the *public right-of-way* including ramps required to accommodate required access for *disabled persons*;

(2) Fences or walls that meet the following criteria:

(A) There is no present use for the subject *public right-of-way*;

(B) The proposed *encroachment* is consistent with the underlying zone, city standards, and policies;

(C) The proposed *encroachment* shall be 3 feet or less in height.

(3) The *encroachment* is permitted under Chapter 6, Article 2, Division 11 (Utilities) or as a private underground utility service to the *applicants* property.

(4) The *encroachment* is permitted under Section 141.0619(b) (Pushcarts).

(5) The *encroachment* is permitted under Chapter 6, Article 2, Division 10 (Newsracks).

(6) The *encroachment* is permitted under Section 141.0621 (Sidewalk Cafes).

(7) Temporary monitoring wells in the *public right-of-way*

(b) If the proposed *encroachment* is erected, placed, constructed, established or maintained in the *public right-of-way* when the applicant is not the *record owner* of the property on which the *encroachment* will be located, a Site Development Permit is required in accordance with Section 126.0502(d)(6), except for the following:

(1) *Encroachments* listed in Section 129.0710(a)(4) through (7)

(2) Underground utility connections to a public main shall require a Neighborhood Development Permit in accordance with Section 126.0402(k).

(c) If the proposed *encroachment* includes underground or overhead structures which extend into the *public right-of-way* farther than the ultimate curb line, or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval, the item shall be scheduled for early consideration by the City Council in accordance with Council Policy 600-16, prior to the issuance of a Public Right-of-Way Permit.

§129.0715 **Encroachment Maintenance and Removal Agreement**

(a) An Encroachment Maintenance and Removal Agreement is required for any privately owned facilities or *structures* in the *public right-of-way* constructed and maintained by the property owner subject to the following:

(1) The *encroachment* shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest and shall not adversely affect the public's health, safety or general welfare.

(2) The property owner shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.

(3) The property owner must agree to remove or relocate the *encroachment* within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land, or the property owner agrees to an

equivalent to the requirement for removal as determined by the City Engineer.

(4) For *structures* encroaching over or under the *public right- of-way*, the property owner agrees to provide an alternate *right-of-way* or to relocate any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching *structure.*

(5) Whatever rights and obligations were acquired by the City with respect to the *rights-of-way* shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroaching *structure.*

(6) Except as provided in Section 129.0715(a)(7), the property owner shall maintain a policy of $1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the *encroachment.*

(7) The property owner of an *encroachment* serving a single "dwelling unit" shall maintain a policy of $500,000 liability insurance, for "encroachments" serving a single "dwelling unit," satisfactory to the City Engineer to protect the City from any potential claims which may arise from the *encroachments.*

(8) In the event the City is required to place, replace, or maintain a *public improvement* over which the property owner has constructed an encroaching *structure*, the property owner shall pay the City that

portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the owner's permanent encroaching *structure*.

(9) The property owner shall pay the City for all the cost of placing, replacing, or maintaining a *public improvement* within a *public right-of-way* when the City's facility has failed as a result of the construction or existence of the owner's encroaching *structure*.

(10) The costs of placing, replacing, or maintaining the *public improvement* shall include the cost of obtaining a necessary alternate easement.

(11) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the *public right-of-way* when such relocation, replacement, or protection results from the construction of the *encroachment*.

(12) Encroachment Maintenance and Removal Agreements for approved *encroachments* shall be recorded in the office of the County Recorder.

§131.0231 Development Regulations Table for Open Space Zones

The following development regulations apply in the open space zones as shown in Table 131-02C.

Table 131-02C
Development Regulations of Open Space Zones

Development Regulations [See Section 131.0230 for Development Regulations of Open Space Zones]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR-		OF[(1)]-
	3rd >>	1-	2-	1-	1-	1-	1-
	4th >>	1		1	1	2	1
Max Permitted Residential *Density* (DU Per *Lot*) [No change.]							
Min Lot Area (ac) [No change.]							

§131.0466 **Deviations from Development Regulations for Reasonable Accommodations**

The Federal Fair Housing Act and the California Fair Employment and Housing Act require that jurisdictions make *reasonable accommodations* to afford *disabled persons* the equal opportunity to use and enjoy a dwelling. In consideration of the special need and the potential benefit that can be accomplished with a requested modification, deviations may be approved through Process One or Process Two as described below.

(a) Deviations from the following regulations may be permitted through a Process One building permit:

(1) Minimum *setback* requirements;

(2) Minimum parking requirements; and

(3) Minimum *floor area ratio* requirements for deviations less than or equal to 5 percent.

(a) Deviations from the following regulations may be permitted with a Neighborhood Development Permit decided in accordance with Process Two:

(1) Minimum *floor area ratio* requirements for deviations greater than 5 percent, but no greater than 10 percent;

(2) Angled *building envelope* plane requirements, not to exceed a maximum *structure height* of 30 feet;

(3) Accessory *structure* requirements.

(b) Deviations from the *development* regulations described in Section 131.04616(a) may be approved subject to the following:

(1) The development will be used by a *disabled* person;

(2) The deviation request is the minimum necessary to make specific housing available to a *disabled person* and complies with all applicable development regulations to the maximum extent feasible;

(3) The deviation request will not impose an undue financial or administrative burden on the City;

(4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations.

(c) Deviations from the *development* regulations described in Section 131.0466(b) may be approved subject to the following:

(1) The development will be used by a *disabled* person;

(2) The deviation request is the minimum necessary to make specific housing available to a *disabled person* and complies with all applicable development regulations to the maximum extent feasible;

(3) The deviation request will not impose an undue financial or administrative burden on the City;

(4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations;

(5) The deviation request will not adversely affect surrounding uses.

§131.0540 **Maximum Permitted Residential Density and Other Residential Regulations**

The following regulations apply to all residential *development* within commercial zones:

(a) and (b) [No change.]

(c) Ground *Floor* Restriction. Residential use and residential parking are prohibited on the ground *floor* in the front half of the *lot*, except in the

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

(O-2005-39)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 10, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 103.1703; AMENDING CHAPTER 11, ARTICLE 1, DIVISION 1, BY AMENDING SECTION 111.0105; AMENDING CHAPTER 11, ARTICLE 1, DIVISION 2, BY REPEALING SECTION 111.0203; AMENDING CHAPTER 11, ARTICLE 1, DIVISION 2, SECTIONS 111.0207 AND 111.0208; AMENDING CHAPTER 11, ARTICLE 2, DIVISION 3, BY AMENDING SECTION 112.0304; AMENDING CHAPTER 11, ARTICLE.2, DIVISION 5, BY AMENDING SECTIONS 112.0501 AND 112.0506; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 113.0103; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 2, BY ADDING SECTION 113.0231; AMENDING CHAPTER 11, ARTICLE 3, DIVISION 2 BY AMENDING SECTIONS 113.0249 AND 113.0252, AND 113.0270, 113.0273, AND 113.0276; AMENDING CHAPTER 12, ARTICLE 1, DIVISION 3, BY AMENDING SECTIONS 121.0302, 121.0309, AND 121.0312; AMENDING CHAPTER 12, ARTICLE 5, DIVISION 1, BY AMENDING SECTION 125.0120; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 3, BY AMENDING SECTION 126.0303; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 4, BY AMENDING SECTION 126.0402; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5, BY AMENDING SECTION 126.0502 AND 126.0504; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 7, BY AMENDING SECTION 126.0704; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 8, BY AMENDING SECTION 126.0804; AND AMENDING CHAPTER 12, ARTICLE 6, DIVISION 9, BY REPEALING SECTIONS 126.0901, 126.0902, 126.0903, 126.0904, 126.0905, 126.0906, AND 126.0907; AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1, BY AMENDING SECTIONS 127.0104 AND 127.0106; AMENDING CHAPTER 12, ARTICLE 8, DIVISION 1, BY AMENDING SECTIONS 128.0103 AND 128.0104; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 1, BY AMENDING SECTIONS 129.0104 AND 129.0112; AMENDING CHAPTER 12, DIVISION 2, BY AMENDING SECTION 129.021[illegible] AMENDING CHAPTER 12, ARTICLE 9, DIVISION 5, BY

Exhibit No. 3
SDLCPA #2-04A
Strike-out/underlin
Ordinance
Part B

AMENDING SECTION 129.0506; AMENDING CHARTER 12, ARTICLE 9, DIVISION 7, BY AMENDING SECTIONS 129.0702, 129.0703, 129.0710, AND BY ADDING SECTION 129.0715; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 2, BY AMENDING SECTION 131.0231 AND ADDING SECTION 131.0260; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 4, BY AMENDING SECTIONS 131.0443, 131.0444, 131.0461, 131.0464, AND BY ADDING SECTION 131.0466; AMENDING CHAPTER 13, ARTICLE 1, DIVISION 5, BY AMENDING SECTION 131.0540; AMENDING CHAPTER 13, ARTICLE 2, DIVISION 12, BY AMENDING SECTION 132.1202; AMENDING CHAPTER 14, ARTICLE 1, DIVISION 10, BY AMENDING SECTION 141.1004; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 1, BY ADDING SECTION 142.0150; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 3, BY AMENDING SECTION 142.0340; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 4, BY AMENDING SECTION 142.0402; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 5, BY AMENDING SECTION 142.0560; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6, BY ADDING SECTION 142.0607; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6, BY AMENDING SECTIONS 142.0611 AND 142.0670; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 8, BY AMENDING SECTION 142.0810; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 12, BY AMENDING SECTION 142.1240; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1, BY AMENDING SECTIONS 143.0110, 143.0111, 143.0126, 143.0140, 143.0142; AND 143.0144; AMENDING CHAPTER 14, ARTICLE 3, DIVISION 3, BY AMENDING 143.0302; AMENDING CHAPTER 14, ARTICLE 4, DIVISION 2, BY AMENDING SECTION 144.0231; AMENDING CHAPTER 14, ARTICLE 4, DIVISION 2, BY ADDING SECTION 144.0233; AND AMENDING CHAPTER 14, ARTICLE 6, DIVISION 1, BY AMENDING SECTION 146.0106, ALL RELATING TO FOURTH UPDATE OF THE LAND DEVELOPMENT CODE.

§103.1703 Applicable Regulations

(a) General Provisions

(1) Where not otherwise specified in this division, the following chapters of the Land Development Code apply:

Chapter 11 (Land Development Procedures) - Chapter 14, Article 2, Division 8 (Refuse and Recyclable Material Storage) [No change.]

Disabled Person, pursuant to the Fair Housing Amendments Act of 1988, means any person who has a physical or mental impairment that substantially limits one or more major life activities; anyone who is regarded as having such impairment; or anyone who has a record of such impairment.

Dormer through *Internally illuminated sign* [No change.]

Kitchen means ~~facilities~~ an area used or designed to be used for the preparation of food which includes facilities to aid in the preparation of food such as ~~and contains~~ a sink, a refrigerator and stove, ~~and~~ a range top or oven.

Land use plans through *Public utility* [No change.]

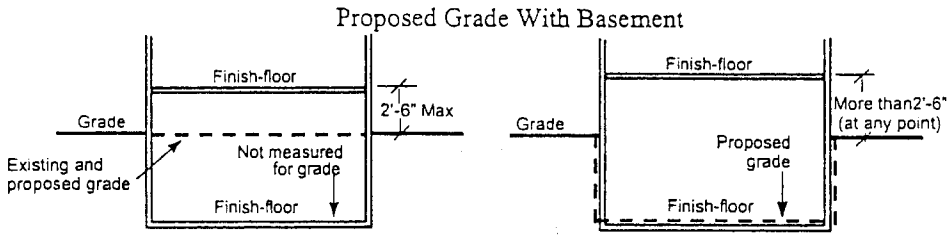
Reasonable Accommodation, pursuant to the Fair Housing Amendments Acts of 1988 and the California Fair Employment and Housing Act, means accommodations necessary to afford *disabled persons* an equal opportunity to use and enjoy a *dwelling unit*.

Reclamation through *Yard* [No change.]

§113.0231 **Determining Proposed Grade**

Proposed grade is the ground elevation that will exist when all proposed *development* has been completed. *Proposed grade* does not include pools and does not include *basements* where, at any point adjacent to the *basement*, the vertical distance between *existing grade* or *proposed grade*, whichever is lower, and the finish-*floor* elevation immediately above is 2 feet, 6 inches or less, as shown in Diagram 113-02H. If a *basement* contains multiple *floors*, the finish-*floor* elevation of the highest *basement floor* shall be used to determine *proposed grade*.

Diagram 113-02H



Change to Diagram 113-02H also includes text change from "2'-6" max to "2'-6" or less"

§113.0249 Determining Setback Line

(a) and (b) [No change.]

(c) When a side *setback* is allowed to observe the minimum dimensions as described in Ssection 131.0443(a)(3)(Setback Requirements in Residential Zones) all additions to the primary *structure* thereafter shall maintain that established side *setback.*

§113.0252 Measuring Setbacks

(a) [No change.]

(b) Those portions of *underground parking structures*, first *stories*, and *basements* that are ~~completely below~~ above *grade* are ~~not~~ subject to *setback* requirements. ~~except in zones that require landscaping in the front *yard.*~~ *Structures* located completely underground are exempt from the *setback* requirements except where the *structure* would conflict with the required landscape and irrigation.

§113.0270 Measuring Structure Height

Structure height is measured in accordance with the following.

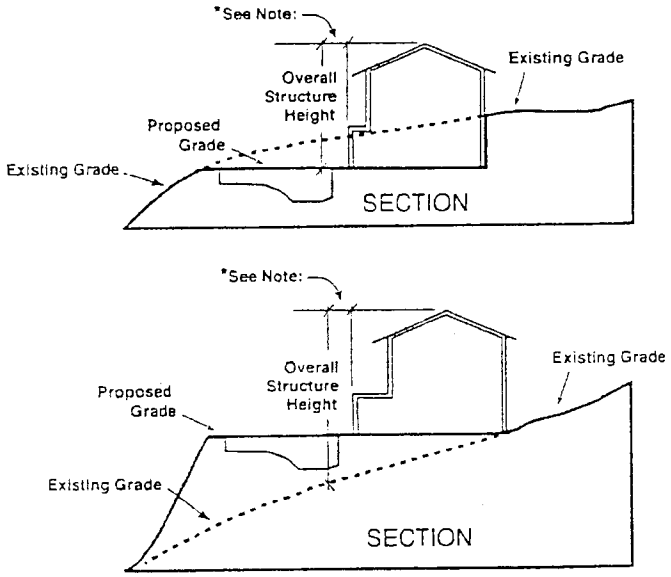
(a) *Structure Height* of Buildings and *Structures* Other Than *Fences*, *Retaining Walls*, or *Signs*

(1) through (7) [No change.]

(8) When a pool is located within 5 feet of the *structure*, the overall *structure height* is measured as noted in Section 113.0270(a)(5), except that *proposed grade* shall not include the pool. This is illustrated in Diagram 113-02OO.

Diagram 113-02OO

Overall Structure Height With Pool



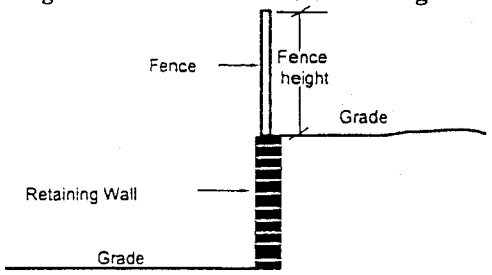
** Structure height is measured from the lowest point of existing grade or proposed grade within 5 feet of the structure's perimeter*

(b) *Structure Height* of *Fences*, Walls, and *Retaining Walls*

(1) *Fence* and Wall Height

(A) No height of any portion of a *fence* or wall is measured from the lowest grade abutting the *fence* or wall to the top of the *fence* or wall, except that the height of a *fence* or wall on top of a retaining wall is measured from *grade* on the higher side of the *retaining wall*, as shown in Diagram 113-02~~OO~~PP.

Diagram 113-02~~OO~~PP
Height of Fence or Wall on Retaining Wall



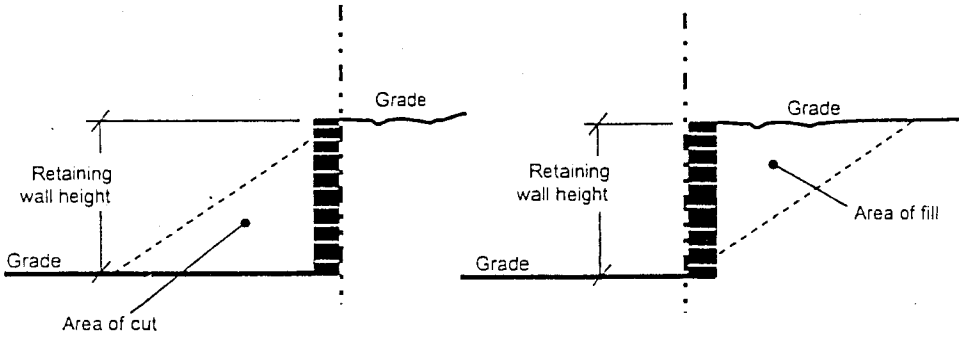
(B) [No change.]

(2) *Retaining Wall* Height

The height of a *retaining wall* is measured from *grade* on the lower side of the *retaining wall* to the top of the *retaining wall*, as shown in Diagram 113-02~~PP~~QQ.

Diagram 113-02~~PP~~QQ

Retaining Wall Height



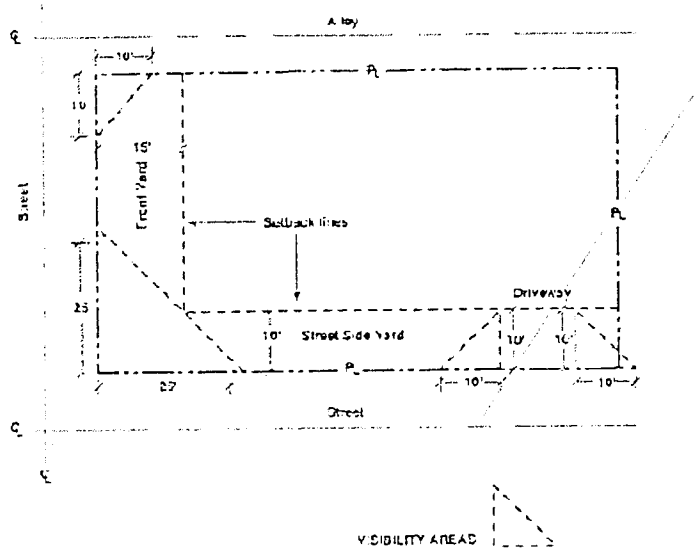
(c) [No change.]

§113.0273 Measuring Visibility Area

The *visibility area* is a triangular portion of a premises formed by drawing one line perpendicular to and one line parallel to the *property line* or *public right-of-way* for a specified length and one line diagonally joining the other two lines, as shown in Diagram 113-02~~QQ~~RR. No *structures* may be located within a *visibility area* unless otherwise provided by the applicable zone or the regulations in Chapter 14, Article 2 (General Development Regulations).

(a) through (d) [No change.]

Diagram 113-02~~QQ~~RR
Visibility Area

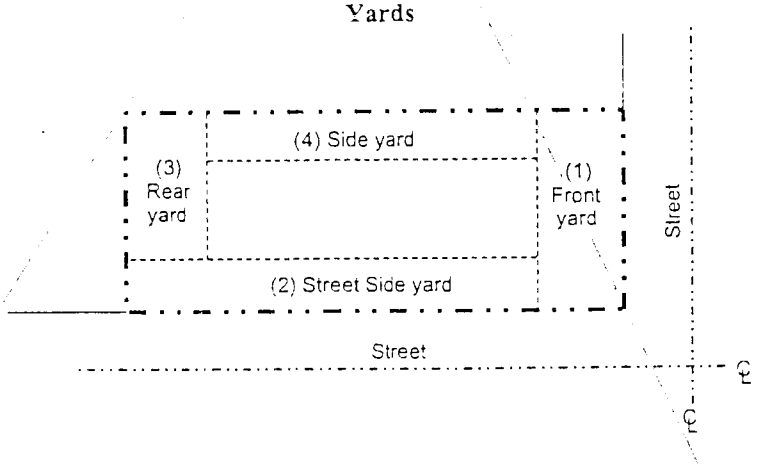


§113.0276 **Determining Yards**

(a) *Yards* are determined in the hierarchy described below and shown in Diagram 113-02~~RR~~SS:

(1) through (4) [No change.]

Diagram 113-02~~RR~~SS
Yards



(b) and (c) [No change.]

§121.0302 **Required Compliance with the Land Development Code**

(a) [No change.]

mapped and monumented in a manner satisfactory to the City Engineer in accordance with Subdivision Map Act Section 66428(b); or

(2) The *Subdivider* may request a waiver of the requirement to file a *tentative map* or *parcel map* for a *condominium conversion* project creating four or fewer condominium units.

(c) [No change.]

§126.0303 **When a Conditional Use Permit Is Required**

[No change to the paragraph.]

(a) Conditional Use Permits Decided by Process Three [No change.]

(b) Conditional Use Permits Decided by Process Four

Botanical gardens and arboreums through Nightclubs and bars over 5,000 square feet in size [No change.]

Privately operated recreations facilities over ~~10,000~~ 40,000 square feet in size

Residential care facilities for 13 or more persons through Wrecking and dismantling of motor vehicles [No change.]

(c) Conditional Use Permits Decided by Process Five [No change.]

§126.0402 **When a Neighborhood Development Permit Is Required**

(a) through (i) [No change.]

(j) A Neighborhood Development Permit is required for *development* requesting deviations for the purposes of *reasonable accommodations* on developed *premises* as described in Sections 129.0710(a)(b)(2).

(k) A Neighborhood Development Permit is required for construction of a privately owned structure proposed in the *public right-of-way* dedicated for a

~~§126.0907 Violations of Public Right-of-Way Use Permit~~

~~It is unlawful for any person to erect, place, construct, establish, or maintain any *encroachment* in the *public right-of-way* without a permit if such permit is required. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.~~

§127.0104 **Maintenance, Repair, or Alteration of Previously Conforming Structures ~~Is Required~~**

(a) and (b) [No change.]

§127.0106 **Expansion or Enlargement of Previously Conforming Structures**

(a) through (c) [No change.]

(d) Within the Coastal Overlay Zone, if the proposal involves the demolition or removal of 50~~%~~ percent or more of the exterior walls of an existing structure, the previously conforming rights are not retained for the new structure.

§128.0103 **Powers and Duties of the ~~Planning and Development Review Director~~ Development Services Director in Implementing Environmental Quality Procedures**

The ~~Planning and Development Review Director~~ Development Services Director shall be responsible for implementing this article.

(a) The ~~Planning and Development Review Director~~ Development Services Director shall have the following powers as required for all projects or activities as defined by CEQA, whether proposed by private *applicants*, the City, or other public agencies:

(1) through (8) [No change.]

(b) The ~~Planning and Development Review Director~~ Development Services Director shall establish and maintain that degree of independence in the

performance of these functions and duties as will assure the City Council, the City Manager, the Planning Commission, and the people of the City of San Diego that the review and analysis of the environmental consequences of projects, are in accordance with CEQA, are independent and wholly objective, and are not prepared for the purpose of either supporting or detracting from any project, plan, or position, whether advanced by the City, any other governmental agency, or private interest.

§128.0104 Authority to Require Mitigation and Monitoring Programs

When the conditions of a project approval require mitigation and monitoring, the City Manager and the ~~Planning and Development Review Director~~ Development Services Director are responsible for promulgating mitigation and monitoring standards and guidelines for public and private projects consistent with the requirements of CEQA section 21081.6. The ~~Planning and Development Review Director~~ Development Services Director or City Manager may require appropriate surety instruments or bonds from private project *applicants* to ensure the long term performance or implementation of required mitigation measures or programs. The City is authorized to recover its costs to offset the salary, overhead, and expenses for City personnel and programs to monitor qualifying projects.

§129.0104 Construction Permit Authorities

(a) [No change.]

(b) The powers and duties of the City Engineer with respect to *construction permits* are as follows:

(1) [No change.]

(2) To review applications for Grading Permits~~, Public Improvement Permits, Encroachment Permits, and Traffic Control~~ and Public Right-

of-Way Permits including plans, specifications, and other data to determine if an application is in compliance with the Municipal Code, adopted City standards, and engineering standards of practice.

(3) through (11) [No change.]

§129.0112 **Responsibilities of Permittee or Authorized Agent Regarding Inspections**

(a) through (d) [No change.]

(e) One set of the approved plans, permits and specifications shall be kept on the site of the *structure* or work at all times during which work authorized by those plans is in progress, and shall be made available to City officials upon request.

§129.0214 **Requirements for Approved Plans**

(a) [No change.]

~~(b) One set of the approved plans and specifications shall be returned to the *applicant* and that set shall be kept on the site of the *structure* or work at all times during which the work authorized by those plans is in progress.~~

(c)(b) Except as required by Ssections 19850 and 19851 of the Health and Safety Code, the building official shall retain one set of approved plans, specification and computations for a period of not less than 90 calendar days from the date of completion of the work authorized by those plans, after which time the building official may, at his or her discretion, either dispose of the copies or retain them as a part of the permanent files of the Development Services Department.

§129.0506 **Issuance of a Demolition/Removal Permit**

(a) A Demolition/Removal Permit may be issued after all required approvals and documentation have been obtained and the required fees have been paid. In

addition to plan check approvals, other documentation may be required before permit issuance, in conformance with the requirements of the Land Development Code, or the laws or requirements of other local, state, or federal jurisdictions. A Demolition/Removal Permit shall not be issued for a *development* that requires a *development permit* or for which a *development permit application* has been submitted until the *development permit* has been issued or has been withdrawn, where not otherwise required. Documentation of required insurance and surety shall be presented in accordance with Ssections 129.0508 and 129.0509.

(b) [No change.]

§129.0702 **When a Public Right-of-Way Permit Is Required**

(a) A Public Right-of-Way Permit is required for the following unless otherwise exempt under Section 129.0703:

(1) [No change.]

(2) The construction of privately owned *structures* or facilities in the *public right-of-way* ~~to be maintained by the adjacent property owner~~;

(3) [No change.]

~~(4) The moving of any vehicle, load, trailer, or combination thereof, that exceeds the height, width, length, size, or weight of vehicle or load limitations provided in California Vehicle Code Division 15, over or across any *public right-of-way* under the jurisdiction of the City;~~

~~(5)~~(4) The planting of any tree, shrub, or plant greater than 30 inches in height in the *public right-of-way*; where not otherwise covered by a Street Tree Permit per Chapter 6, Article 2, Division 6 (Street Planting).~~; and~~

portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the owner's permanent encroaching *structure*.

(9) The property owner shall pay the City for all the cost of placing, replacing, or maintaining a *public improvement* within a *public right-of-way* when the City's facility has failed as a result of the construction or existence of the owner's encroaching *structure*.

(10) The costs of placing, replacing, or maintaining the *public improvement* shall include the cost of obtaining a necessary alternate easement.

(11) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the *public right-of-way* when such relocation, replacement, or protection results from the construction of the *encroachment*.

(12) Encroachment Maintenance and Removal Agreements for approved *encroachments* shall be recorded in the office of the County Recorder.

§131.0231 Development Regulations Table for Open Space Zones

The following development regulations apply in the open space zones as shown in Table 131-02C.

Table 131-02C
Development Regulations of Open Space Zones

Development Regulations [See Section 131.0230 for Development Regulations of Open Space Zones]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR-		OF[1]-
	3rd >>	1-	2-	1-	1-	1-	1-
	4th >>	1		1	1	2	1
Max Permitted Residential *Density* (DU Per *Lot*) [No change.]							
Min Lot Area (ac) [No change.]							

Development Regulations [See Section 131.0230 for Development Regulations of Open Space Zones]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR-		OF[1]-
	3rd >>	1-	2-	1-	1-	1-	1-
	4th >>	1		1	1	2	1
Allowable *Development* Area (%) [No change.]							
Min Lot Dimensions [No change.]							
***Setback* Requirements**							
Min Front *Setback* (ft)		--		--	~~25~~ 15[6]	25	--
Min Side *Setback* (ft)		--		--	~~20~~ 8[7]	20	--
Min *Street* Side *Setback*		--		--	10[7]	20	--
Min Rear *Setback* (ft)		--		--	~~25~~ 20[8]	25	--
Max *Structure Height* (ft) [[No change.]					30	30	
Max *Lot Coverage* (%)		--		--	~~10~~ --	10	--
Max *Floor Area Ratio*		--		--	~~0.10~~ 0.45	0.10	--

Footnotes for Table 131-02C

1-5 [No change.]

6 See Section 131.0260(a).

7 See Section 131.0260(b).

8 See Section 131.0260(c).

§131.0260 Setback Requirements in the OR-1-1 Zone

Setbacks in the OR-1-1 Zone.

(a) Front *Setback*

(1) For that portion of a *lot* that fronts a *cul-de-sac*, the minimum front *setback* may be reduced to 10 feet.

(2) For *lots* where at least one-half of the front 50 feet of the *lot* depth has a minimum slope gradient of 25 percent, the *setback* closest to the *street frontage* may be reduced to a minimum of 6 feet.

(b) Side and *Street* Side *Setbacks*

(1) For *lots* exceeding 50 feet in width, each side *setback* shall be at least 8 feet or 10 percent of the width of the *lot*, whichever is greater, except

one side *setback* may observe 8 feet as long as the combined dimensions of both side *setbacks* equals at least 20 percent of the *lot* width.

(2) For *lots* with 40 to 50 feet in width, each side *setback* is a minimum of 4 feet.

(3) For *lots* with less than 40 feet in width, each side *setback* may be reduced to 10 percent of the *lot* with but shall not be reduced to less than 3 feet.

(4) The *street* side *setback* is at least 10 feet or 10 percent of the *lot* width, whichever is greater.

(5) For irregularly shaped *lots*, such as pie shaped *lots*, the *setbacks* are based on the average *lot* width for the first 50 feet of *lot* depth.

(6) For consolidated *lots*, the width for determining *setback* requirements is the width of the *premises* after the consolidation.

(c) Rear *Setback*

The required rear *setback* is at least 20 feet, except as follows:

(1) For *lots* with less than 100 feet in depth, the rear *setback* is at least 10 percent of the *lot* depth, but not less than 5 feet; and

(2) For *lots* with greater than 200 in depth, the rear *setback* is at least 10 percent of the *lot* depth.

§131.0443 Setback Requirements in Residential Zones

(a) *Setbacks* in RE and RS Zones

(1) and (2) [No change.]

(3) Side and *Street* Side *Setbacks* in all RE Zones and the RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-5, RS-1-6, RS-1-7 Zones.

(A) For *lots* exceeding 50 feet in width, each side *setback* shall be at least the dimension shown in Tables 131-04C and 131-04D or 10 percent of the width of the *lot*, whichever is greater, except one side *setback* may observe the minimum dimension shown in Tables 131-04C and 131-04D as long as the combined dimensions of both side *setbacks* equals at least 20 percent of the lot width. Once a side *setback* is established, all additions to the primary *structure* thereafter shall maintain the established side *setback*.

(B) through (F) [No change.]

(4) [No change.]

§131.0444 Maximum Structure Height in Residential Zones

(a) [No change.]

(b) In the RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-5, RS-1-6, and RS-1-7 zones, *structure height* shall not exceed the height of the *building envelope*. Abutting the required front, side, and street side yards, the height of the *building envelope* above 24 feet is established by the angled *building envelope* planes shown in Table 131-04H up to the maximum permitted 30-foot *structure height*, as shown in Diagram 131-04L. If the maximum *structure height* does not exceed 27 feet, the angle above 24 feet is required only at the side *yards*.

Table 131-04H
Required Angle Building Envelope Plane

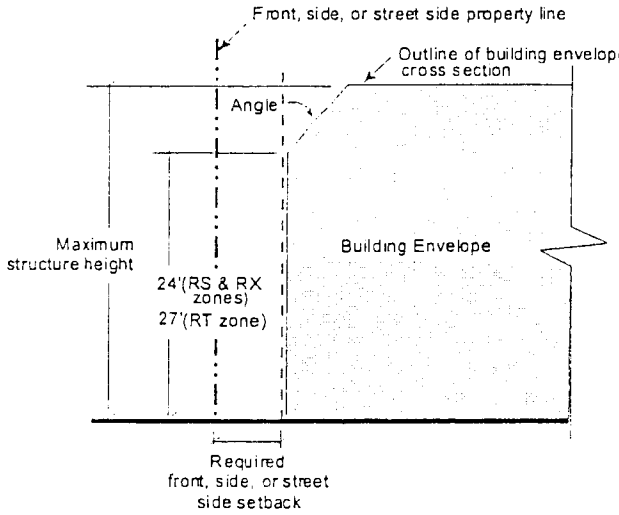
Lot Width: h	Angle of Plane [1]
Less than 75 feet	45 degrees
75 feet to 150 feet	30 degrees
Greater than 150 feet	0 degrees

~~The angled planes are measured from the vertical axis inward.~~

~~Chimneys may project into the space above the angled *building envelope* planes to a maximum *structure height* of 30 feet.~~

Diagram 131-04L

Angled Building Envelope Planes in RS, RX, and RT Zones



(c) In the RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-5, RS-1-6, RS-1-7, RM-1-1, RM-1-2, RM-1-3 and RX zones chimneys and *dormers* may project into the space above the angled *building envelope* planes to a maximum *structure height* of 30 feet. *Dormers* encroaching into the space above the angled *building envelope* are subject to the provisions in Sections 131.0461(a)(9) and (b)(6) (Architectural Projections and Encroachments).

~~(c)~~(d) In the RX zones, the *structure height* shall not exceed the height of the *building envelope*. Abutting the required front, side, and street side yards, the height of the *building envelope* above 24 feet is established by a 45-degree angled *building envelope* plane up to the maximum permitted 30-foot *structure height*. If the maximum *structure height* does not exceed 27 feet in height, the 45-degree angled *building envelope* plane is required only along

the side *yards*. The angled *building envelope* planes shall be measured in accordance with Diagram 131-04L. ~~Chimneys may project into the space above the angled *building envelope* planes to the maximum *structure height* of 30 feet.~~

(~~d~~) (e) In the RT zone, for buildings with a slab foundation, the maximum permitted *structure height* is 21 feet for one- and two-story *structures* or 31 feet for three-story *structures*. For buildings with a conventional raised *floor*, the maximum permitted *structure height* is 25 feet for one- and two-story *structures* or 35 feet for three-story *structures*. For buildings with sloped roofs with at least a 3:12 pitch (3 vertical feet to 12 horizontal feet), the maximum permitted *structure height* is increased by 5 feet. In all cases, unless otherwise excepted, the height of the *building envelope* above 27 feet adjacent to the front *setback line* is established by a 30-degree angled *building envelope* plane slanting inward to the maximum permitted *structure height*. The angled *building envelope* planes shall be measured in accordance with Diagram 131-04L.

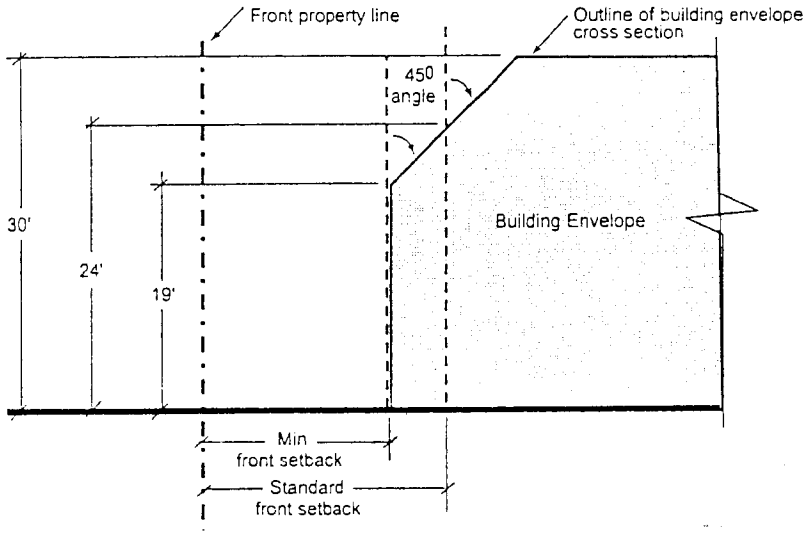
(e)(f) *Structure Height* Requirements in RM-1-1, RM-1-2, RM-1-3 Zones

(1) [No change in text.]

(A) [No change.]

Diagram 131-04M

Angled Building Envelope at Front Setback

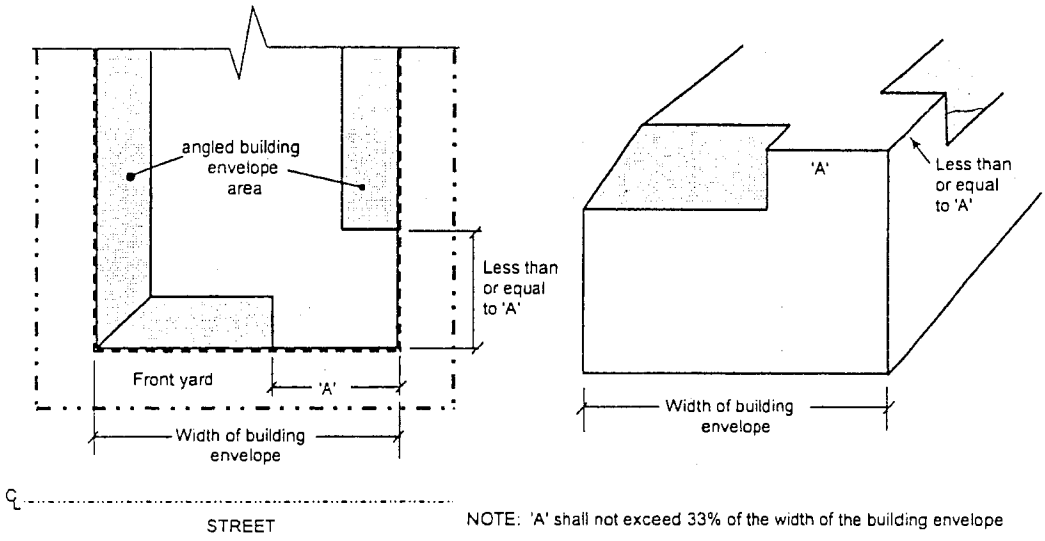


(B) ~~Exception~~: The *building envelope* may have a projection outside the angled *building envelope* area for up to 33 percent of the width of the *building envelope* facing the front *yard*. The maximum depth of the projection shall be equal to or less than its width. See Diagram 131-04N.

~~Chimneys may project into the space above the angled *building envelope* planes to a maximum height of 30 feet.~~

Diagram 131-04N

Exception for Angled Building Envelope Area



(~~B~~)(C) At the side *setback line*, the height of the *building envelope* above 24 feet in height is established by a 45-degree *building envelope* plane sloping inward to the maximum permitted 30-foot *structure height*.

(2) *Dormers* ~~windows~~ may project into the space above the 45-degree angled *building envelope* planes, as shown in Diagram 131-04O, subject to the following:

(A) A *dormer* ~~window~~ may not extend beyond a height of 30 feet;

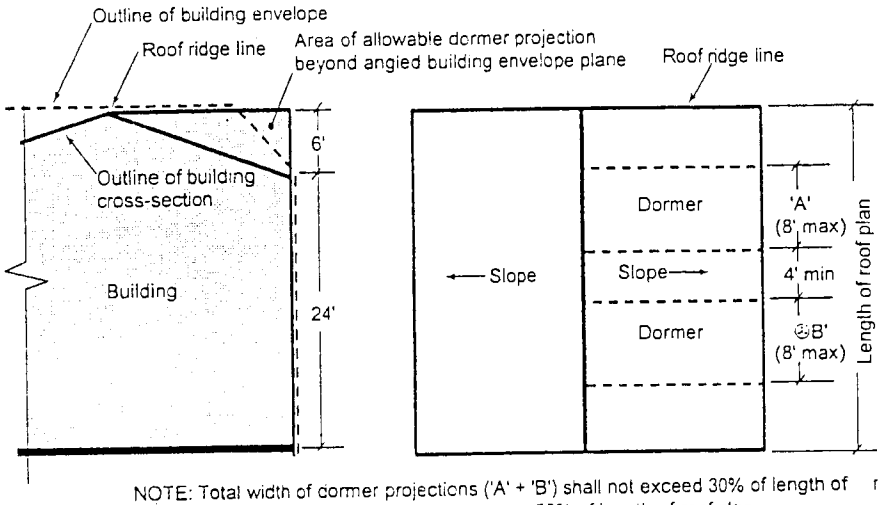
(B) The aggregate width of a *dormer* ~~windows~~ may not exceed 30 percent of the length of the roof plan to which the *dormers* will be attached;

(C) Each *dormer* ~~window~~ may not exceed 8 feet in width measured at the widest point; and

(D) There shall be at least 4 feet between each *dormer* ~~window~~.

Diagram 131-04O

Dormer ~~Window~~ Projection Beyond Angled Building Envelope Plane



(~~f~~)(g) *Structure Height* Requirements in RM-2-4, RM-2-5, RM-2-6 Zones

(1) [No change.]

(2) *Dormer* ~~windows~~ may project into the space above the 60-degree angled *building envelope* planes, as shown in Diagram 131-04O subject to the following:

(A) The aggregate width of *dormers* ~~windows~~ may not exceed 50 percent of the length of the roof plan to which the *dormers* will be attached; and

(B) *Dormers* ~~windows~~ may not extend beyond a height of 40 feet.

§131.0461 **Architectural Projections and Encroachments in Residential Zones**

(a) [No change in text of first paragraph.]

(1) and (2) [No change.]

(3) Bay windows may project into required *yards*, as shown in Diagram 131-04V, subject to the following requirements:

(A) [No change.]

(B) The bay window shall not project into the required *yard* more than 4 feet or 50 percent of the width of the required *yard*, whichever is less. The bay window shall not be closer than 4 3 feet to the *property line*;

(b) [No change in text.]

(1) and (2) [No change.]

(3) Turrets with or without cupola may encroach into the required minimum front and street side *yards* and may extend into the sloped *building envelope* area subject to the following requirements:

(A) through (C) [No change.]

(D) A turret (and cupola) may also extend above the building height limit and into the sloped *building envelope* area so that the highest point is up to 5 feet above the maximum *structure height* of the base zone. However, no *structure* or addition to a *structure* shall be permitted to exceed the established height limit of any overlay zone. (See Overlay Zones Chapter 13, Article 2, Division 1.)

(6) *Dormers* ~~windows~~ may project into required minimum front and street side *yards* subject to the following requirements:

(A) through (C) [No change.]

(7) [No change.]

(c) [No change.]

§131.0464 **Supplemental Requirements for Residential Zones**

(a) and (b) [No change.]

(c) Supplemental Requirements for RT Zones:

(1) and (2) [No change.]

(3) One building articulation feature from each category listed below shall be incorporated into each dwelling unit:

Category A and Category B [No change.]

Category C
Planter boxes
Trellises
Inset windows
Projecting covered entry

Dormers ~~windows~~
Inset entry

(A) through (K) [No change.]

(L) *Dormers* ~~Windows~~. *Dormers* may project into the space above the angled *building envelope* plane. *Dormers* may have pitched or curved roofs. The maximum width for *dormers* is 5 feet. At the side and *street* side *setbacks* a minimum separation of 10 feet between *dormers* is required. (See Ssection 131.0461(b)(6) for *yard encroachment* regulations).

(M) [No change.]

(d) through (f) [No change.]

(2) The deviation request is the minimum necessary to make specific housing available to a *disabled person* and complies with all applicable development regulations to the maximum extent feasible;

(3) The deviation request will not impose an undue financial or administrative burden on the City;

(4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations.

(c) Deviations from the *development* regulations described in Section 131.0466(b) may be approved subject to the following:

(1) The development will be used by a *disabled* person;

(2) The deviation request is the minimum necessary to make specific housing available to a *disabled person* and complies with all applicable development regulations to the maximum extent feasible;

(3) The deviation request will not impose an undue financial or administrative burden on the City;

(4) The deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations;

(5) The deviation request will not adversely affect surrounding uses.

§131.0540 Maximum Permitted Residential Density and Other Residential Regulations

The following regulations apply to all residential *development* within commercial zones:

(a) and (b) [No change.]

(c) Ground *Floor* Restriction. Residential use and residential parking are prohibited on the ground *floor* in the front half of the *lot*, except in the

CC-3-4, CC-3-5, CC-4-4, CC-4-5, CC-5-4, CC-5-5, and CV-1-2 zones, where these uses are prohibited on the ground *floor* in the front 30 feet of the *lot* as shown in Diagram 131-05A. Within the Coastal Overlay Zone, required parking cannot occupy more than 50~~%~~ percent of the ground floor in the CV-1-1 or CV-1-2 zones.

(d) [No change.]

§132.1202 Where the Mission Trails Design District Applies

(a) and (b) [No change.]

Table 132-12A
Mission Trails Design District Applicability

Type of *Development* Proposal		Supplemental Development Regulations	Required Permit Type/ Decision Process
(1)	Interior or exterior repairs or modifications ~~that do not require a construction permit~~	Exempt from this division	No permit required by this division
(2)	Any *development* of new structures, ~~alteration~~ expansion of existing structures, or grading on property zoned RS, RX, or RT within the Navajo or Tierrasanta communities as shown on Map No. C-916	Exempt from this division	No permit required by this division
(3)	[No change.]		

§141.1004 Mining and Extractive Industries

[No change in text of first paragraph.]

(a) through (m) [No change.]

(n) In the OR-1-2 zone, the following regulations apply.

(1) Processing and other related mining activities (such as asphaltic processing) are permitted only within the allowable 25~~%~~ percent development area.

(2) through (5) [No change.]

(o) [No change.]

§142.0150 **Site Restoration**

Restoration of *grading* undertaken without a permit is required and shall occur prior to any further development on the site. Restoration requires:

(a) Submittal to and acceptance by the Permit Issuing Authority of a restoration plan which may include necessary monitoring by the City or a City designated party, both at the cost of the violator;

(b) Obtaining a grading permit and receiving inspection approval from the Permit Issuing Authority; and

(c) Compliance with any other reasonable requirements of the Permit.

§142.0340 **Retaining Wall Regulations in All Zones**

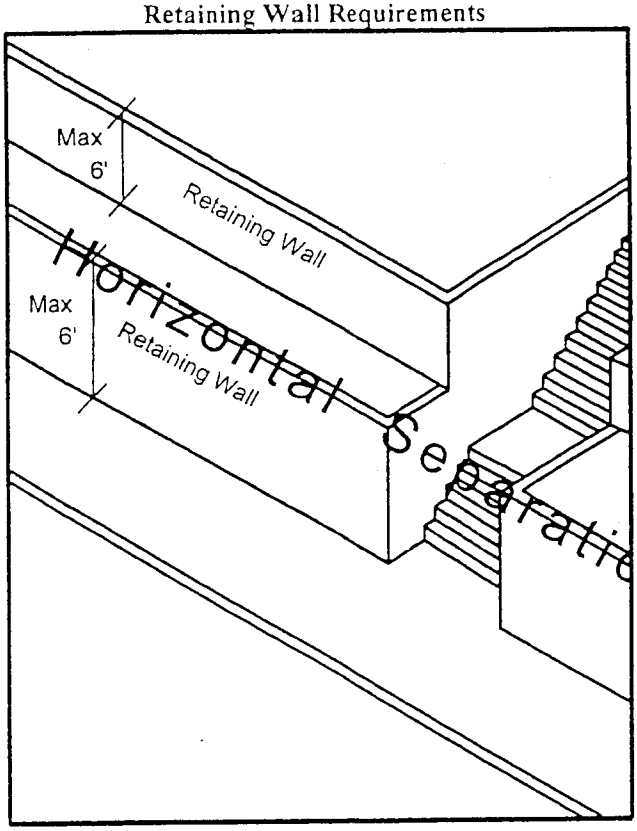
(a) through (c) [No change.]

(d) *Retaining Wall* Height in Required Side *Yards* and Required Rear *Yards*

(1) and (2) [No change.]

Diagram 142-03H

Retaining Wall Requirements



Horizontal separation distance shall be greater than or equal to the height of the upper wall

(e) through (f) [No change.]

§142.0402 When Landscape Regulations Apply

(a) [No change.]

(b) Table 142-04A provides the applicable regulations and type of permit required by this division for the landscaping required in conjunction with the specific types of *development* proposals. Any project that proposes more than one of the types of *development* shown is subject to all of the regulations for each type of *development*.

Table 142-04A

Landscape Regulations Applicability

Type of *Development* Proposal			Applicable Regulations	Required Permit Type/ Decision Process
Column A	Column B	Column C		

Type of *Development* Proposal 1. – 10. [No change.]	Applicable Regulations	Required Permit Type/ Decision Process
11. New trees or shrubs planted in the *public right-of-way*	62.0603, 129.0702 142.0403 and ~~144.0409~~ 142.0409	*Public Right-Of-Way* Permit or Street Tree Permit/ Process One

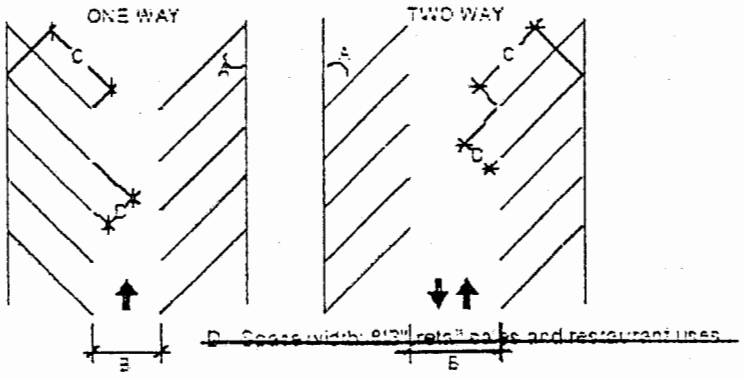
§142.0560 Development and Design Regulations for Parking Facilities

(a) through (b) [No change.]

(c) [No change in text.]

Table 142-05K [No change.]

Diagram 142.05B
Minimum Dimensions for Automobile Parking Spaces and Aisles



A. Angle between parking space and aisle
B. Aisle width
C. Space length: 15'
D. Space width: 8'3" retail sales and restaurant uses.
(all other uses 8')

(1) and (2) [No change.]

(d) through (k) [No change.]

§142.0607 **Repair and Replacement of Public Facilities**

Where in the course of *development* of private property, public facilities are damaged or removed the property owner shall, at no cost to the City, repair or replace the public facility to the satisfaction of the City Engineer.

§142.0611 **Exemptions from Requirement to Provide Public Improvements Incidental to a Building Permit**

The following activities are exempt from Section 142.0610:

(a) through (d) [No change.]

(e) The alteration of an existing *single dwelling unit*.

§142.0670 **Standards for Public Improvements**

~~(a) Public *street* improvements shall be constructed in accordance with the provisions of Municipal Code Chapter 6, Article 2 (Public Rights-of-Way and Improvements), adopted Council Policies, and the standards established in the Land Development Manual.~~

(~~b~~)(a) Streetscape and *street* improvements shall be constructed in accordance with the applicable adopted Council Policies, the standards established in the Land Development Manual, and the following regulations:

(1) For urbanized communities as designated in the Progress Guide and General Plan, the design of sidewalks shall be in *substantial conformance* with the historic design of sidewalks on adjacent properties including location, width, elevation, scoring pattern, texture, color, and material to the extent that the design is approved by the City Engineer, unless an alternative design is approved as part of a use permit or *development permit*. An alternative design also requires an

Encroachment Maintenance and Removal ~~Permit.~~ Agreement in accordance with Section 129.0715.

(2) and (3) [No change.]

(4) Public *street* improvements shall comply with the regulations in Municipal Code Chapter 6, Article 2 (Public Rights-of-Way and Improvements), adopted Council Policies, and the standards established in the Land Development Manual. Where, in the course of *development* of private property, a driveway is abandoned and is no longer suited for vehicular use, the property owner shall remove the depressed curb Section and apron and restore the *public right-of-way* to the satisfaction of the City Engineer.

(5) and (6) [No change.]

(c) through (e) [No change.]

(f) *Street* lights shall be constructed in accordance with ~~the requirements in Chapter 6, Article 2 (Public Rights-of-Way and Improvements),~~ adopted Council Policies, and the standards established in the Land Development Manual.

(g) [No change.]

§142.0740 Outdoor Lighting Regulations

(a) and (b) [No change.]

(c) Outdoor lighting fixtures that are existing and were legally installed before October 28, 1985, shall be exempt from Sections ~~141.0740~~ 142.0740(a) and (b), unless work is proposed over any period of time to replace 50 percent or more of the existing outdoor light fixtures or to increase the number of outdoor light fixtures by 50 percent or more on the *premises*.

(d) and (e) [No change.]

§142.0810 General Regulations for Refuse and Recyclable Material Storage

[No change in the first paragraph].

(a) [No change.]

(b) Location of Material Storage Areas

(1) through (5) [No change.]

(6) For commercial *development* on *premises* not served by an *alley*, ~~M~~material storage areas ~~in a commercial *development*~~ shall be located at least 25 feet from any pedestrian and vehicular access points.

(c) [No change.]

§142.1240 Ground Signs in Commercial and Industrial Zones

[No change in text of first sentence.]

(a) and (b) [No change.]

(c) Table 142-12H provides the general regulations for *ground signs*.

Table 142-12H
Maximum Allowances for Ground Signs

Maximum Allowances	*Sign* Categories		
	A	B	C
Permitted *Sign* Area [No change]			
Number of *Signs* per *Street Frontage* [No change.]			
Maximum Height[5]	30 ft	15 ft	8 ft
Freeway-oriented[3] [No change.]			
Premises located within 100 feet of residentially zoned property[4] [No change.]			
Visibility areas (see Section ~~113.0218~~ 113.0273)	3 ft	3 ft	3 ft
Required *Setbacks* [No change.]			

(d) [No change.]

(e) Locational Regulations for *Ground Signs*

(1) [No change.]

(2) [No change in text of first sentence.]

(A) [No change.]

(B) The entire *premises* is within 100 feet of the boundary of the residentially zone property, and the *sign* is located on the 25 percent of the *premises* that is farthest from that property. The *sign* shall not exceed the maximum height permitted in Table 143~~2~~-12H.

(3) and (4) [No change.]

(f) and (g) [No change.]

§143.0110 When Environmentally Sensitive Lands Regulations Apply

[No change in text of first sentence.]

(a) and (b) [No change.]

(c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

(1) through (7) [No change.]

(8) Site reconnaissance and testing for proposed projects, provided that:

(A) Any direct or indirect effects on *sensitive biological resources* are addressed in accordance with the Biology Guidelines of the Land Development Manual.

(B) Any subsurface explorations for *historical resources* are conducted in conformance with the Historical Resources Guidelines of the Land Development Manual.

(C) A bond consistent with Section 129.0119 has been submitted for revegetation of disturbed areas.

~~encroachment~~ *encroachment* is permitted in such *steep hillsides* to provide for a development area of up to a maximum of 25~~%~~ percent of the *premises* on *premises* containing less than 91~~%~~ percent of such *steep hillsides*. On *premises* containing 91~~%~~ percent or greater of such *steep hillsides*, the maximum allowable development area is 20~~%~~ percent of the *premises*; however, an additional 5~~%~~ percent ~~encroachment~~ *encroachment* into such *steep hillsides* may be permitted if necessary to allow an economically viable use, pursuant to the Steep Hillside Guidelines.

(B) [No change.]

(C) Up to an additional 15~~%~~ percent of ~~encroachment~~ *encroachment* onto such *steep hillsides* is permitted for the following:

(i) and (ii) [No change.]

(iii) In the North City Local Coastal Program Land Use Plan areas only: Local public streets or private roads and driveways which are necessary for access to the more developable portions of a site containing slopes of less than ~~twenty-five (25%)~~ percent grade, provided no less environmentally damaging alternative exists. The determination of whether or not a proposed road or driveway qualifies for an exemption, in whole or in part, shall be made by the City Manager based upon an analysis of the project site.

(D) For the purposes of Ssection 143.0142, ~~encroachment~~ *encroachment* shall be defined as any area of ~~twenty-five percent (25%)~~ percent or greater slope in which the natural landform is altered by grading, is rendered incapable of supporting vegetation due to the displacement required for the building, accessory structures, or paving, or is cleared of vegetation (including Zone 1 brush management).

(E) In the approval of any Coastal Development Permit for a *subdivision*, and any other division of land, including lot splits, no ~~encroachment~~ *encroachment* into *steep hillsides* containing *sensitive biological resources*, or mapped as Viewshed or Geologic Hazard on Map C-720 shall be permitted, and the decision maker shall require a minimum 30 foot setback for Zone 1 brush management for *coastal development* from such *steep hillsides*.

(b) through (h) [No change.]

§143.0144 **Development Regulations for Coastal Beaches**

[No change in the first paragraph.]

(a) [No change.]

(b) All *development* occurring on a site containing *coastal beaches* must conform with the Coastal ~~Beaches~~ Bluffs and Beaches ~~Bluffs~~ Guidelines in the Land Development Manual.

(c) through (j) [No change.]

§143.0302 **When Supplemental Neighborhood Development Permit and Site Development Permit Regulations Apply**

[No change in text of first sentence.]

Table 143-03A
Supplemental Neighborhood Development Permit or Site Development Permit Regulations Applicability

Type of *Development* Proposal	Applicable Sections	Required *Development* Permit/Decision Process
Affordable/In-Fill Housing Projects with Deviations	[No change.]	[No change.]
Site Containing *Environmentally Sensitive Lands*	[No change.]	[No change.]
Site Containing *Historical Resources*	143.0201, 143.0260, 143.0303, 143.0305, 143.0360, 143.0375, 143.0380	NDP/Process Two or SDP/Process Four
Fences or *Retaining Walls* Exceeding the Permitted Height	[No change.]	[No change.]
Relocated Building Onto a Site With an Existing Building	[No change.]	[No change.]
Site with *Previously Conforming* Conditions	127.0102-127.0106, 143.0303, 143.0305, 143.0375	NDP/Process Two
Nonresidental *Development* Exceeding the Maximum Permitted Parking	[No change.]	[No change.]
Shared Parking for Uses Not Listed in Section 142.0545(c)	[No change.]	[No change.]
Commercial *Development* With Tandem Parking	[No change.]	[No change.]
Previously Conforming Parking for a discontinued use	[No change.]	[No change.]
Mobilehome Parks in RM Zones	[No change.]	[No change.]
Mobilehome Parks in RS, RX Zones	[No change.]	[No change.]
Discontinuance of *Mobilehome Park*	143.0610-143.0640 ~~141.0410-141.0440~~, 132.0701-132.0705 ~~132.0801-132.0804~~, 143.0303, 143.0305, 143.0375~~, 143.0380~~	SDP/Process Three
Multiple Dwelling Unit *Development* that Varies from Minimum Parking Requirements	[No change.]	[No change.]
Nonresidental *Development* (With TDM Plan) that Varies from Minimum Parking Requirements	[No change.]	[No change.]
Community Plan Implementation Overlay Zone	[No change.]	[No change.]
Mission Trails Design District	[No change.]	[No change.]
Development Within the Urban Village Overlay Zone	[No change.]	[No change.]
Public improvements on More Than 3,000 Feet of Frontage or Where City Standards Do Not Apply	[No change.]	[No change.]
Manufactured Slopes in Excess of 25% Gradient and 25 Feet in Height	[No change.]	[No change.]
Affordable Housing in RE, RS, RX, RT, AR Zones	143.0303, 143.0305, 143.0310, ~~143.0320,~~ 143.0375,143.0380, 143.0710-143.0740	SDP/Process Three
Affordable Housing with Deviations from	143.0303, 143.0305, 143.0310, ~~143.0320,~~ 143.0375,143.0380,	SDP/Process Four

Type of *Development* Proposal	Applicable Sections	Required *Development* Permit/Decision Process
Development Regulations	143.0760	
Multiple Dwelling Unit Development in RM Zones Involving *Lot* Consolidation and Exceeds Number of Units Indicated in Table 126-05A	143.0303, 143.0305, 143.0310, ~~143.0320,~~ 143.0375,143.0380	SDP/Process Three
Clairemont Mesa Height Limit Overlay Zone	132.1301-132.1306 ~~132.0401-132.0406~~, 143.0303, 143.0305, 143.0375,143.0380	SDP/Process Five

Legend to Table 143-03A [No change.]

§144.0231 Right-of-Way Improvements and Land Development for Tentative Maps

(a) through (f) [No change.]

(g) Any private improvements existing or to be installed in public right-of-way shall require Encroachment Maintenance and Removal Agreements in accordance with ~~Municipal Code Chapter 6, Article 2 Division 6 (Encroachments).~~ Section 129.0715.

§144.0233 Acceptance of Dedication

No reservation for *public rights-of-way* shall be offered for dedication unless such offer includes any necessary slope easements required for the ultimate development of the *public right-of-way*, and no such reservation shall be accepted for dedication by the City until improvements therein are constructed pursuant to the requirements of this Code.

The City Engineer, or other designee of the City Manager, may accept on behalf of the City Council *streets* and roads, or portions thereof, into the City *street system* and record conveyances to the City of real property interests for *street* and road uses and purposes. No *street* shall be accepted into the City *street system* and open to public use until improvements are constructed pursuant to the requirements of this Code.

§146.0106 Sub-Sections of the 2001 California Electrical Code That Have Been Adopted with Modifications

Article 384, Switchboards and Panelboards, Section 3, Support and Arrangement of Busbars and Conductors, sub-Section (f)(1) Phase Arrangement is adopted with modifications as follows:

~~(f) Phase Arrangement~~

~~(1)~~ The phase arrangement on three-phase buses shall be A, B, C, from front to back, top to bottom, or left to right, as viewed from the front of the switchboard or panelboard. The C phase shall be that phase having the higher voltage to ground on three-phase (3- phase), four-wire (4-wire) delta connected systems. Other busbar arrangements may be permitted for additions to existing installations.

MJL:cfq:cdk:pev:cfq
10/07/04
O-2005-39
MMS#468

STRIKEOUT ORDINANCE
(OPTION 1)

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

(O-2005-39a)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1, OF THE SAN DIEGO MUNICIPAL CODE, BY AMENDING SECTION 143.0110 RELATING TO THE LAND DEVELOPMENT CODE.

§143.0110 **When Environmentally Sensitive Lands Regulations Apply**

This division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

(a) and (b) [No change.]

(c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

(1) through (7) [No change.]

(8) Site reconnaissance and testing for proposed *development*, provided that:

(A) Any direct or indirect effects on *sensitive biological resources* are addressed in accordance with the Biology Guidelines of the Land Development Manual.

(B) Any subsurface explorations for *historical resources* are conducted in conformance with the Historical Resources Guidelines of the Land Development Manual.

(C) An engineering/grading bond has been submitted for revegetation of disturbed areas.

MJL:cfq:pev
10/07/04
Or:Dept:DSD
O-2005-39a
mms#468

STRIKEOUT ORDINANCE
(OPTION 2)

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

(O-2005-39b)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 12, ARTICLE 6, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 126.0402; AND AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 143.0110 RELATING TO THE LAND DEVELOPMENT CODE.

§126.0402 When a Neighborhood Development Permit Is Required

(a) through (k) [No change.]

(l) A Neighborhood Development Permit is required for site reconnaissance and testing on *premises* containing *environmentally sensitive lands* as described in Section 143.0110.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

This division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

(a) and (b) [No change.]

Table 143-01A

Applicability of Environmentally Sensitive Lands Regulations

		Environmentally Sensitive Lands Potentially Impacted by Project				
Type of *Development* Proposal		Wetlands, listed non-covered species habitat[1]	Other *Sensitive Biological Resources* other than *Wetlands* and listed noncovered species habitat	*Steep Hillsides*	*Sensitive Coastal Bluffs* and *Coastal Beaches*	Floodplains
1. - 5. [No change.]						
6. Reconnaissance and Testing	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145, 143.0146
	P	NDP/Process Two	NDP/Process Two	NDP/Process Two	NDP/Process Two	NDP/Process Two

Environmentally Sensitive Lands Potentially Impacted by Project						
Type of *Development* Proposal		Wetlands, listed non-covered species habitat[(1)]	Other *Sensitive Biological Resources* other than *Wetlands* and listed noncovered species habitat	*Steep Hillsides*	*Sensitive Coastal Bluffs* and *Coastal Beaches*	Floodplains
		Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two
	U	143.9139(d),(c)	No change	No change	No change	No change
~~6.~~7. *Any development* that proposes deviations from any portion of the *Environmentally Sensitive Lands* Regulations.	R	[No change to the remaining column.]				
	P	[No change to the remaining column.]				
	U	[No change to the remaining column.]				
~~7.~~8. *Development* other than single *dwelling units* on the individual *premises*, that proposes alternative compliance for *development* in *steep hillsides*.	R	[No change to the remaining column]				
	P	[No change to the remaining column.]				
	U	[No change to the remaining column.]				

Footnotes to Table 143-01A [No change.]

(c) [No change.]

MJL:cfq
10/07/04
Or:Dept:DSD
O-2005-39b
mms#468

STRIKEOUT ORDINANCE
(OPTION 3)

OLD LANGUAGE: ~~STRIKEOUT~~
NEW LANGUAGE: UNDERLINE

(O-2005-39c)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 12, ARTICLE 6, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 126.0402; AND AMENDING CHAPTER 14, ARTICLE 3, DIVISION 1, BY AMENDING SECTION 143.0110 RELATING TO THE LAND DEVELOPMENT CODE.

§126.0402 When a Neighborhood Development Permit Is Required

(a) through (k) [No change.]

(l) Neighborhood Development Permit is required for site reconnaissance and testing on *premises* containing *environmentally sensitive lands* as described in Section 143.0110.

§143.0110 When Environmentally Sensitive Lands Regulations Apply

This division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

(a) and (b) [No change.]

Table 143-01A

Applicability of Environmentally Sensitive Lands Regulations

		Environmentally Sensitive Lands Potentially Impacted by Project				
Type of *Development* Proposal		Wetlands, listed non-covered species habitat[1]	Other *Sensitive Biological Resources* other than *Wetlands* and listed noncovered species habitat	*Steep Hillsides*	*Sensitive Coastal Bluffs* and *Coastal Beaches*	Floodplains
1. - 5. [No change.]						
6. Reconnaissance and Testing	R	143.0141(a),(b)	143.0141	143.0142	143.0143, 143.0144	143.0145, 143.0146
	P	NDP/Process Two	NDP/Process Two	NDP/Process Two	NDP/Process Two	NDP/Process Two

Type of *Development* Proposal		*Environmentally Sensitive Lands* Potentially Impacted by Project				
		Wetlands, listed non-covered species habitat[(1)]	Other *Sensitive Biological Resources* other than *Wetlands* and listed noncovered species habitat	*Steep Hillsides*	*Sensitive Coastal Bluffs* and *Coastal Beaches*	Floodplains
		Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two	Process ~~Four~~Two
	U	143.0130(d)	No change	No change	No Change	No Change
~~6~~ 7. *Any development* that proposes deviations from any portion of the *Environmentally Sensitive Lands* Regulations.	R	[No change to the remaining column.]				
	P	[No change to the remaining column.]				
	U	[No change to the remaining column.]				
~~7~~ 8. *Development* other than single *dwelling units* on the individual *premises*, that proposes alternative compliance for *development* in *steep hillsides*.	R	[No change to the remaining column]				
	P	[No change to the remaining column.]				
	U	[No change to the remaining column.]				

Footnotes to Table 143-01A [No change.]

(c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

(1) through (7) [No change.]

(8) Site reconnaissance and testing for proposed projects, provided that:

(A) Site reconnaissance and testing on a *premises* containing *environmentally sensitive lands* when the site reconnaissance and testing will not encroach into the *environmentally sensitive lands*, or;

(B) Impacts to *environmentally sensitive lands* are less than 0.1 acres of upland resources or 0.01 acres of *wetlands*.

MJL:cfq
08/20/04
Or:Dept:DSD
O-2005-39c
mms#468

STRIKEOUT ORDINANCE

NEW LANGUAGE: UNDERLINE
OLD LANGUAGE: ~~STRIKEOUT~~

(O-2005-44)

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 9.5, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 59.5.0401, PERTAINING TO NOISE AND ABATEMENT CONTROL; BY AMENDING CHAPTER 6, ARTICLE 2, DIVISIONS 1 THROUGH 3 BY REPEALING DIVISIONS 1 - 3; AND BY AMENDING CHAPTER 6, ARTICLE 2, DIVISION 7 BY AMENDING AND RENUMBERING SECTIONS 62.07 TO 62.0701, AND ADDING SECTION 62.0702, PERTAINING TO PUBLIC RIGHTS-OF WAY AND LAND DEVELOPMENT.

§59.5.0401 **Sound Level Limits**

(a) It shall be unlawful for any person to cause noise by any means to the extent that the one-hour average sound level exceeds the applicable limit given in the following table, at any location in the City of San Diego on or beyond the boundaries of the property on which the noise is produced. The noise subject to these limits is that part of the total noise at the specified location that is due solely to the action of said person.

TABLE OF APPLICABLE LIMITS

Land Use ~~Zone~~	Time of Day	One-Hour Average Sound Level (decibels)
1. Single Family Residential: ~~All R-1~~	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m.	50 45 40
2. Multi-Family Residential (Up to a maximum density of 1/2000) ~~All R-2~~	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m.	55 50 45

Land Use ~~Zone~~	Time of Day	One-Hour Average Sound Level (decibels)
3. ~~R-3, R-4 and all~~ All other Residential	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m.	60 55 50
4. ~~All~~ Commercial	7 a.m. to 7 p.m. 7 p.m. to 10 p.m. 10 p.m. to 7 a.m.	65 60 60
5. ~~Manufacturing all other industrial including Agricultural and Extractive Industry~~ Industrial or Agricultural	any time	75

(b) - (e) [No change.]

~~DIVISION 1~~

~~Definitions and Regulations~~

~~62.0101 Purpose and Intent~~

~~It is the purpose of this Article to provide for the orderly administration of private contract work in the public right-of-way and to protect the public interest and safety in the development of private property by:~~

~~Regulating grading, private encroachments on public rights-of-way or public property, and construction within the public right-of-way, and establishing standards therefor.~~

~~§62.0102 Definitions~~

~~For purposes of this Article, the following definitions apply:~~

~~"Agricultural clearing" means any clearing that is done to prepare a site for growing agricultural plants or animals.~~

~~"Architect" means an architect registered by the State of California, who is engaged in the practice of architecture.~~

~~"Brushing" means the removal of vegetation at or above the ground/surface level and root removal within six (6) inches of the ground/surface level.~~

~~"Centre City" means all of that area included within the boundaries of the Centre City San Diego Community Plan as adopted by the City Council on May 12, 1976, and as from time to time amended by the City Council (said plan being on file in the office of the City Clerk as Document No. RR-755413).~~

~~"Centre City Review Board" means that board established by Section 62.0209 of the San Diego Municipal Code.~~

~~"Certification" means a signed written statement that the specific, required inspections and tests have been performed and that the work complies with the applicable requirements of this article.~~

~~"Certify" means the act of producing or creating a certification.~~

~~"Civil Engineer R.C.E." means an engineer registered by the State of California to practice in the field of civil engineering.~~

~~"Clearing" means the cutting and removal of vegetation from the land without disturbance to the soil surface or destruction of the root system.~~

~~"Contractor" means a contractor licensed by the State of California to do work covered by this Article. A contractor may be authorized to act for a property owner in doing such work.~~

~~"Cut" has the same meaning as the term "Excavation."~~

~~"Drought Resistant Plantings" means the type of plant materials, including seeds, cuttings, or rooted plants, that, once established, are suitable for the conditions of~~

~~a project site and that can survive normal summer seasons without the provision of supplemental watering.~~

~~"Embankment" or "Fill" means the conditions resulting from any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported, or moved to a new location.~~

~~"Encroachment" or "Encroachment Structure" means privately owned facilities or structures in the public rights-of-way or on other public property, constructed and maintained by a property owner.~~

~~"Engineering Geologist" or "Certified Engineering Geologist" means a geologist, certified by the State of California as a Certified Engineering Geologist (C.E.G.).~~

~~"Environmentally Sensitive Lands" means the areas regulated in San Diego Municipal Code section 101.0462 ("Resource Protection Ordinance"), including floodplains, hillsides, wetlands, biologically sensitive lands, and significant prehistoric and historic site and resources.~~

~~"Excavation" or "Cut" means any operation in which earth, sand, gravel, rock, or other material in the ground is moved, by using tools for grading, trenching, digging, ditching, drilling, auguring, tunneling, scraping, cable or pipe plowing, drawing, brushing, or other similar activity.~~

~~"Fill" has the same meaning as the term "Embankment."~~

~~"Geotechnical Engineer" or "Soils Engineer" means a Civil Engineer registered by the State of California as a Geotechnical Engineer (G.E.).~~

~~"Grading" means any excavating, filling, embanking, or combination thereof, clearing, grubbing, or agricultural clearing on public or private property, including constructing slopes and facilities incidental to such work.~~

~~"Grubbing" means the removal or destruction of vegetation by removal of, or disturbance to, the root system or soil mantle by any means including chemical.~~

~~"Grading Advisory Board" means the advisory board established pursuant to this Article.~~

~~"Landscape Architect" means a landscape architect, registered by the State of California, to practice in the profession of landscape architecture.~~

~~"Landscape Contractor" means a contractor who is licensed by the State of California to do landscaping work and who has at least five (5) years of responsible experience in erosion control planting.~~

~~"Permittee" means any person to whom a permit is issued pursuant to this Article.~~

~~"Person" has the same meaning as in Section 11.0210 of this Code.~~

~~"Private Contract" means an agreement between the City and a property owner, or an agent therefor, for construction by the property owner or agent in the public rights-of-way, on other public property, or for grading.~~

~~"Property Owner" means any person having a legal or equitable interest in real property.~~

~~"Public Improvement" means publicly owned structures or facilities, including the construction thereof, in the public rights-of-way that are designed for the public use, safety, or general welfare, and that are maintained by the City.~~

~~"Public Property" means property owned in fee by the City or dedicated for public use.~~

~~Public Rights-of-Way" means public easements or public property that are used for streets, alleys or other public purpose.~~

~~Public Utility" means any public utility as defined in California Public Utilities Code Section 216, and any cable operator as defined in Section 602 of the 1992 Cable Television Consumer Protection and Competition Act (47 U.S.C. 602), including their respective contractors, subcontractors, agents, employees or representatives.~~

~~Reservation" means an unaccepted offer of dedication of real property for public rights-of-way, such offer remaining open for future acceptance.~~

~~"Slope" means the inclined exposed surface of an embankment, excavation, or natural terrain.~~

~~"Soils Engineer," has the same meaning as the term "Geotechnical Engineer."~~

~~"Uncontrolled Embankment" means any embankment constructed as grading on which no soil testing was performed or no compaction reports or other soils reports were prepared or submitted.~~

~~"Urban Design Program" means that program of urban design standards adopted by the City Council on October 25, 1983, and from time to time amended by the City Council, including all technical supplements thereto (said program and supplements being on file in the Office of the City Clerk as Document No. RR-259513.~~

~~§62.0103 Enforcement Authority and Remedies~~

~~(a) Enforcement Authority. The City Engineer, Building Official and the Director of the Neighborhood Code Compliance Department or any other Director are authorized to administer and enforce the provisions of this Article. The City Engineer, Building Official, Directors, or their designated Enforcement Officials, may exercise any enforcement powers as provided in Division 1, Article 2 of Chapter 1 of this Code.~~

~~(b) Enforcement Remedies. Violations of this Article may be prosecuted as misdemeanors subject to the fines and custody provided in Municipal Code Section 12.0201, unless a specific section of this Code expressly limits enforcement as an infraction. The Directors may also seek injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy set forth in this Division as well as in Chapter 1 of this Code.~~

~~(c) Strict Liability Offenses. Legal responsibility for violations of this Article shall be treated as strict liability offenses regardless of intent.~~

~~§62.0104 **Administration**~~

~~(a) Permit Issuing Authority. For purposes of Chapter 6, Article 2, the City Engineer and Building Official each are designated as the Permit Issuing Authorities for Grading, Encroachments, and Public Improvements.~~

~~(b) A permit for the work under Divisions 1, 2, 3 and 4 of this Article may be approved when all applicable requirements and provisions of this Municipal Code have been met.~~

~~(c) The Permit Issuing Authority, based on applicable ordinances, policies and standards, shall determine the extent, type, and nature of the work to be done under Divisions 1, 2, 3 and 4 of this Article, the type of application and permit required and the applicable fees.~~

~~(d) When the nature of the work requested is subject to other requirements of this Municipal Code, to other administrative regulations issued pursuant thereto, or affects the operations of any other department of the City, the Permit Issuing Authority shall adhere to those other requirements and shall be guided by the recommendations of other City departments in determining the disposition of the application. Applications that are not consistent with the various requirements shall be denied.~~

~~(e) A valid grading or public improvement permit shall expire and become void 365 calendar days after the date the permit is issued, except as otherwise provided by Sections 111.1128(c) and 111.1129(c) of this Code.~~

~~(f) The Permit Issuing Authority shall cause to be inspected all work done under Divisions 1, 2, 3 and 4 of this Article to ensure compliance with the provisions of the applicable regulations and conditions of approval and shall certify when the work is properly completed.~~

~~(g) The Permit Issuing Authority may cancel a permit or may require the plans to be amended when it is in the interest of public health, safety or general welfare and under any of the following situations:~~

~~(1) Upon the request of the permittee;~~

the site conditions or operative facts upon which the permit are not accurately presented in the application;

work as constructed or as proposed to be constructed creates d to public health, safety, or general welfare; or

the permit violates other provisions of the Municipal Code or state codes.

bject to the provisions of this Article is undertaken without suing Authority or the Director of the Neighborhood Code ent may:

the work to be stopped;

the violation to the Contractors' Licensing Board or other state agency;

a fee of double the normal City processing and inspection the permit;

the reasonable restoration of the site and any adjacent and d site to its lawful condition, at the sole cost of the violator;

mitigation of the violation where the Permit Issuing rity or the Director of the Neighborhood Code of pliance Department determines that reasonable restoration of e to its lawful condition is not feasible or that irreparable ge has been done to an environmentally sensitive area, t or structure. Mitigation requirements may include purchase change by the violator of like kind real property of similar or

greater quality and quantity. Mitigation shall be at the sole cost of the violator;

(6) Order a combination of restoration and mitigation of the site and any adjacent affected site as the Permit Issuing Authority or Director of the Neighborhood Code Compliance Department, depending upon the circumstances, at the sole cost of the violator;

(7) Cause the suspension of any permits relating to the same property or the withholding of certificates of occupancy for the property until the pre-requisite permit is obtained; and

(8) Promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.

§62.0105 Applications for Permits

(a) Applications for permits authorizing work under this Article shall be made in accordance with procedures established by the Permit Issuing Authority. Applications shall be accompanied by such detailed plans, specifications, schedules, and estimates as may be required to determine the nature and extent of the work and the applicable fees.Detailed plans shall be prepared on material and to the size and in the manner designated by the Permit Issuing Authority.

(b) When proposed work or inquiries concerning the public rights-of-way necessitates investigation, the Permit Issuing Authority may require a special

~~investigation application and fee. Special investigation fees shall be in addition to other fees and are not refundable.~~

~~(c) The permittee shall notify all public utilities of his request to construct improvements or encroachments within the rights-of-way and shall coordinate with the public utilities in order that any necessary relocations of existing facilities may be done in an orderly fashion without interrupting the continuity of service or endangering life or property.~~

~~§62.0106 **Grading Review Permits**~~

~~(a) All grading work that requires a grading permit, shall require a grading review permit in addition to and before a grading permit may be approved or denied, except for the following types of work:~~

~~(1) Grading for all public improvements, such as curbs, sidewalk, paving, sewer mains, water mains, storm drains, and similar improvements to be installed in the public rights of way when located adjacent to applicant's property and constructed in accordance with City standards.~~

~~(2) All grading work that was fully described in an application for a project that has been previously approved by another discretionary permit.~~

~~(3) All grading work listed in Section 62.0106(a)(3) is determined by the permit issuing authority to be minor:~~

~~(A) under sidewalk drains;~~

~~(B) underground private utility lines;~~

~~(C) private storm drain connection to public storm drains;~~

~~(D) basement or underground structures encroaching into the street right of way that do not require City Council approval;~~

~~(E) private irrigation lines and landscaping to be constructed in the street right of way between the curb and property lines by the abutting property owners;~~

~~(F) grading that does not result in the creation of a slop with a gradient steeper than 25 percent (4 horizontal to 1 vertical foot) and a height of 25 feet or more;~~

~~(E) fences, landscaping and other encroachments in utility easements.~~

~~(b) A grading review permit may be approved, conditionally approved or denied by a "Hearing Officer" in accordance with "Process Three". The "Hearing Officer's" decision to approve a grading review permit shall be based on the following:~~

~~(1) The proposed work authorized by the permit is consistent with the applicable ordinances, regulations, policies, and development standards.~~

~~(2) The proposed work authorized by the permit has satisfied all C.E.Q.A. requirements.~~

~~(3) The permit is consistent with council policies, the General Plan and applicable Community Plan.~~

(c) For purposes of Section 62.0106(b), "development standards" shall mean the following City of San Diego Documents:

Standard Drawings

Plan Preparation Manual

Drainage Preparation Manual

Street Design Manual

Landscape Technical Manual

Any other applicable standards adopted for purposes regulating Grading, Public Improvements, and Encroachment Permits.

§62.0107 **Permits for Projects within the Coastal Zone**

No grading permit, public improvement permit or encroachment permit will be issued by the Permit Issuing Authority for projects or developments within the California Coastal Zone as established by the California Coastal Act of 1976 as amended until such time as a Coastal Development Permit or certificate of exemption has been obtained from the City Development Services Director or the California Coastal Commission except that the repair of curbs, streets, and sidewalks will not be subject to this provision. Procedures to be followed when an application is submitted for a permit in the Coastal Zone are: The application, plans and specifications filed by an applicant for a permit shall be reviewed by the Permit Issuing Authority. Such plans shall be reviewed by other City departments to ensure compliance with the laws and ordinances under their jurisdiction. If the Permit Issuing Authority is satisfied that the work described in the application for a permit, and the plans and specifications filed therewith

~~conform to the requirements of this Code, and other pertinent laws and ordinances, the Permit Issuing Authority shall give notice that they are prepared to issue a permit, when the appropriate fees specified in Section 62.0109 have been paid and the applicant presents an approved permit or certificate of exemption granted by the City Development Services Director or the California Coastal Commission.~~

~~**§62.0108 Exploratory Permits**~~

~~In certain circumstances there may be a need to conduct geotechnical explorations for the purpose of basic data collection, research, or resource evaluation prior to completion of environmental studies or studies necessary to obtain an RPO permit. In those circumstances, the Permit Issuing Authority may approve, in accordance with "Process One", a grading permit for geotechnical exploration when the Development Services Director makes written findings that all of the following conditions exist:~~

~~(a) The work would not result in serious or major disturbance to an environmental resource; and~~

~~(b) The work contemplated will not have an adverse impact on the biological, prehistoric or historic values of the site.~~

~~(c) The permit is for exploratory work only, and only when the exploratory work is necessary to develop information for other required City reports and studies.~~

~~(d) The work involved is the minimum necessary to accomplish the exploration, survey or testing required.~~

(e) The work contemplated by the exploration will not physically enhance the use of the lands.

Notwithstanding any provision of the Resource Protection Ordinance (San Diego Municipal Code section 101.0462), which may provide to the contrary, such permits may be issued without obtaining a Resource Protection permit when the above conditions have been met.

§62.0109 Fees

Permit fees or deposits required by this article shall be collected by the Permit Issuing Authority or other designated person in accordance with procedures established by the City Auditor and Comptroller. A schedule of fees and deposits to cover the costs of processing the various types of work referred to in this Article shall be established by the City Council and filed in the office of the City Clerk. Fixed charges may be established to cover portions of the City Costs. Such fixed charges may include but are not limited to the cost for driveway permits, encroachment permits, and public improvement permits, update of City records and enforcement. No permit shall be issued and no work in the public right-of-way or grading shall be permitted until the fees applicable under this Article have been received by the appropriate Permit Issuing Authority.

Any portion of said deposit not used to cover the actual costs of the City in processing a permit application will be refunded, but no funds will be released until all billings are in, and until final acceptance of the work by the Permit Issuing Authority. In determining the actual costs incurred by the City in connection with the processing of final maps and improvements plans, the costs

as recorded by the City Auditor and Comptroller shall be prima facie evidence of actual costs of services performed by the City.

The State of California, its political subdivisions or other governmental agencies shall file applications for permits and shall be issued permits as required by this Article; provided, however, that no fees shall be required for work to be performed directly by the State of California, its political subdivisions or other governmental agencies. Contractors working for the State of California, its political subdivisions, or other governmental agencies shall obtain a permit and shall pay the permit fee.

§62.0110 **Refunds**

In the event a permit fee refund is requested by permittee and the City Engineer has determined that it is in the public interest to allow the permittee to abandon the work, the appropriate Permit Issuing Authority shall cancel the permit and refund the refundable portion of the fee.

§62.0111 **Bond Required**

Persons performing work under Grading, Encroachment, Public Improvement, or Driveway permits issued in accordance with this Article shall furnish a performance and materialman's bond, cash deposit or other form of security acceptable to the Permit Issuing Authority in accordance with the following provisions:

(a) The bond shall be issued by a surety company authorized to do business in the State of California and shall be approved by the City. The bond shall be in favor of The City of San Diego and shall be conditioned upon the

~~completion,~~

~~free of liens, of the work authorized by the permit in accordance with the requirements of this Article and the conditions prescribed by the permit. The Bonds shall be conditioned upon the surety company completing the required work or in employing a contractor to complete such work. Bonds shall be further conditioned that in the event the surety company does not notify the Permit Issuing Authority within 21 calendar days from the date of receipt of notice of default that it intends to complete the construction, that in such event the surety shall deposit with the Permit Issuing Authority within 35 days of the date of receipt of the notice of default the sum of money equal to the Permit Issuing Authority's estimated cost of the work plus 25%.~~

~~(b) Whenever the Permit Issuing Authority finds that a default has occurred in the performance of any term or condition of work authorized by a permit, they shall give written notice of such default to the principal and surety of the bond. Such notice shall state the work remaining to be done, the estimated cost of completion and the time estimated by the Permit Issuing Authority to be necessary for the completion of the work. After receipt of such notice, the principal or the surety must, within the time specified, either complete the work satisfactorily or deposit with The City of San Diego an amount equal to the Permit Issuing Authority's estimate of the completion cost plus an additional sum equal to 25% of such cost.~~

~~(c) In the event the principal or surety fails to deposit the estimated cost plus 25% with the City, the Permit Issuing Authority may cause the required work to be completed. The principal and the surety shall be liable for the cost of completing all necessary work which shall include all administrative costs and overhead incurred by the City in order to complete the work and collect costs.~~

~~(d) If the principal or surety deposits the estimated cost plus 25% as set forth in the notice, the Permit Issuing Authority shall cause the required work to be completed. The unexpended money shall be returned to the depositor at the completion of such work, together with an itemized accounting of the cost. The principal and surety shall hold the City harmless from any liability in connection with the work so performed by the City or contractor employed by the City. The City shall not be liable in connection with such work other than for the expenditure of said money.~~

~~(e) In lieu of a bond, the permittee may post a cash deposit or other security acceptable to the Permit Issuing Authority with the City Treasurer in an amount equal to the required bond. In the event of a default, the notice of default as provided above shall be given to the principal and if the default is not corrected within the time specified, the Permit Issuing Authority shall proceed without delay and without further notice of proceedings whatever to use the cash deposit or other security or any portion of such deposit or security to complete the required work. The balance, if any, of such cash deposit shall, upon completion of the work, be returned to the~~

~~depositor or to his successors or assigns after deducting the cost of the work.~~

~~(f) No bond under the provisions of this Article shall be required for: 1) any work performed by the State of California, any of its political subdivisions or any governmental agency; or 2) where the estimated cost of the work authorized by the permit is less than or equal to $50,000.~~

~~(g) Permits issued directly to a contractor pursuant to an approved application by the State of California or any of its political subdivisions or any governmental agency shall require a bond unless proof is submitted that the work is covered by a bond inuring to the benefit of the State or agency.~~

~~(h) The bond may be for a specific project or an annual and continuing bond may be filed with the City covering the costs of several projects. The amount of the bond covering a specific project shall be based on the amount of the estimate submitted by the person doing the work and approved by the Permit Issuing Authority and in accordance with the schedule in Section 62.0112 of this Article.~~

~~A person may utilize an annual and continuing bond for more than one permit provided the aggregate bonded amount of the permits outstanding do not exceed the total amount of the bond. Annual and continuing bonds shall contain a clause providing the Permit Issuing Authority within thirty (30) calendar days notice prior to cancellation.~~

~~§62.0112 Amount of Bond Required~~

~~The bond, cash deposit, or other security amount shall be based on an estimate of the cost of work approved by the City Engineer and in accordance with the following schedule:~~

~~(a) Public Improvements: 110% of the estimated cost of work for the work.~~

~~(b) Encroachments: 110% of the estimated cost of repair and restoration of the right-of-way to its original condition.~~

~~(c) Grading:~~

~~(1) Appurtenances: 100% of the estimated cost of retaining walls, drainage structures, or other grading appurtenances.~~

~~(2) Slope planting and irrigation systems: 50% of the estimated cost of slope planting and irrigation systems.~~

~~(3) Grading:~~

~~100% of the cost estimate in an amount up to $5,000;~~

~~$5,000 plus 50% of the cost estimated above $5,000 and up to $50,000;~~

~~$27,000 plus 25% of the cost estimate in an amount above $50,000.~~

~~Any notice of cancellation shall be sent to the appropriate Permit-Issuing Authority with sufficient information describing the project(s), permit type(s) and number, date issued, and purpose of the permit.~~

~~**§62.0113 Qualifications to do Work**~~

~~(a) All work under this Article shall be performed by a contractor who is licensed by the State of California to do the work proposed under the~~

~~permit; provided, however, that any person occupying property as that person's primary residence or constructing a house to be occupied as that person's primary residence may present an application to personally construct improvements or encroachments in the public right-of-way adjacent to that person's property or to do grading work on the property.~~

~~(b) Plans for public improvement and major work involving encroachment or grading authorized under this Article shall be prepared by a civil engineer. Where soils reports or soils investigations and/or geologic reports or geologic investigations are required, the reports and investigations shall be prepared and conducted by a soils engineer or engineering geologist.~~

~~(c) Revegetation plans for projects involving public improvements and major work involving encroachment or land development authorized under this Article shall be prepared by a Landscape Architect or other licensed professional whose primary area of work includes revegetation.~~

~~§62.0114 Appointment of Hearing Officer~~

~~The City Manager may appoint a Hearing Officer to act on applications requesting a grading review permit.~~

~~§62.0115 Public Utility Work~~

~~Any work authorized by permit as a result of application by a public utility may be performed by either the public utility or by its licensed contractor.~~

~~§62.0116 Public Improvement, Grading, Encroachment Requirements~~

~~(a) All work done under this Article shall be done in accordance with the approved plans and the conditions of the required permits, City contract,~~

or franchise. The work shall conform to the standards of the City of San Diego as set forth and contained in standard drawings, specifications and general conditions, on file in the office of the City Clerk.

(b) This Article shall not affect the requirements of any other Division of this Code requiring other permits, fees, or charges, including those for water and sewer mains, storm drains, and services.

(c) Any person or entity performing work covered by this Article shall provide a bond as described in Sections 62.0111 and 62.0112 of this Municipal Code and shall comply with the requirements of those sections.

§62.0201 Standards for Public Improvement Work

All public improvement work shall be done in accordance with the prevailing standards of The City of San Diego; provided, however, that in Centre City said prevailing standards for sidewalks, light standards and street landscaping shall be as specified by the Urban Design Program.

DIVISION 2

Public Improvements and Public Right-of-Way

§62.0202 Major Public Improvement Permit

A major public improvement permit shall be required for the following types of work:

(a) The work being proposed is not covered by the provisions of this Article.

(b) The work involves more than 3,000 feet of property frontage.

An application for a major public improvement permit may be approved, conditionally approved or denied by the City Council in accordance with "Process Five", except no Planning Commission recommendation is required. The Permit

Issuing Authority shall submit the applications, together with his recommendations thereon, to the City Manager for presentation to the City Council. Other public improvements may be approved or denied in accordance with "Process One" by the Permit Issuing Authority.

§62.0203 **Public Improvement Subject to Desuetude or Damage**

(a) Where, in the course of development of private property, public improvements are damaged, removed, disconnected or dislocated, the property owner shall, at no cost to the City, repair or replace such public improvements to the satisfaction of the Permit Issuing Authority.

(b) Where, in the course of development of private property, a driveway is abandoned and is no longer suited for vehicular use, the property owner shall remove the depressed curb section and apron and restore the right-of-way to the standards normally required.

(c) The Permit Issuing Authority shall notify the property owner in writing of such desuetude or damage, and the property owner shall take corrective action within 30 days of receipt of such notice. There shall be no certification as to the completion of a building or other permitted work where a notice has been issued, and corrective action has not been taken.

§62.0204 **City Streets -- Painting, Disfiguring Prohibited**

Unauthorized persons shall not paint, daub sticky substance, deface, mar or place any sign or advertisement upon any public property, public street or part thereof.

§62.0205 **Acceptance of Dedications**

~~No reservation for public rights-of-way shall be offered for dedication unless such offer includes the necessary slope easements required for the ultimate development of the right-of-way, and no such reservation shall be accepted for dedication by the City until improvements therein are constructed pursuant to the requirements of this Code.~~

~~The City Engineer, or other designee of the City Manager, may accept on behalf of the City Council streets and roads, or portions thereof, into the City street system and record conveyances to the City of real property interests for street and road uses and purposes. No street shall be accepted into the City street system and open to public use until improvements are constructed pursuant to the requirements of this Code.~~

~~§62.0206 **Public Improvements Incidental to a Building Permit or Structure**~~

~~(b) No building or structure shall be erected or enlarged, and no building permit shall be issued therefor, unless the streets and alleys adjacent to such lot have been dedicated and improved along the abutting frontage to the then prevailing standards of The City of San Diego; provided, however, that in Centre City said prevailing standards shall be supplemented by the standards of the Urban Design Program. (San Diego Municipal Code section 62.0102.)~~

~~Street improvements shall include but not be limited to curbs, gutters, sidewalk, pedestrian access ramps, and half width paving. Alley improvements shall consist of full width paving. Where such improvements do not exist or are not to the prevailing standard, a building~~

~~permit may, nevertheless, be issued under any of the following circumstances after any needed dedication has been granted:~~

~~(1) When a permit for the required improvements has been issued in accordance with the provisions of this Code, provided, however, that the public improvements covered by such permit shall be installed and accepted prior to final inspection by the Building Official of the structure permitted under the building permit.~~

~~(2) When improvements constructed to less than the prevailing standard exist and the Permit Issuing Authority finds that they are in substantial conformance with the requirements of this section.~~

~~(3) When the Permit Issuing Authority determines that the amount of work associated with the requested building permit is of such limited scope that it should be deferred until such time as adjacent improvements are installed~~.

~~Whenever it is determined that the abutting public improvements are to be deferred, no building permit shall, nevertheless, be issued until the property owner executes a waiver of his, or any successor is in interest, right to protest a future assessment project for installation of the required improvements, said waiver to be recorded against the property on which the building permit is issued.~~

~~(b) The provisions of section 67.0206 shall not apply to:~~

~~(1) The construction of accessory buildings such as residential~~ garages.

~~(2) The construction of accessory structures such as swimming pools or patio decks.~~

~~(3) The alteration of an existing single family residence.~~

~~(4) The alteration of existing buildings, other than a single family residence, where the proposed improvements have a total value, as estimated by the Building Official of $50,000 or less, except that in Centre City the value threshold shall be $250,000.~~

~~(5) Neighborhood revitalization projects operated by the City Housing Commission.~~

~~§62.0207 **Public Improvements Incidental to a Building or Structure in Centre City**~~

~~(a) No building or structure shall be erected or enlarged, and no building permit shall be issued therefor, within Centre City, unless the streets adjacent to such lot are improved along the abutting frontage to the standards prescribed by the Urban Design Program (San Diego Municipal Code section 62.0102), said improvements including but not limited to:~~

~~(1) Specialized light standards.~~

~~(2) Specialized sidewalk pavement.~~

~~(3) Street landscaping.~~

~~The specialized light standards, specialized sidewalk pavement, and street landscaping referred to herein shall be considered as public improvements and shall be maintained by an assessment district established for that purpose pursuant to Division 15, Part 2 of the California Streets and Highways Code and Section 65.0201 of this Municipal Code.~~

~~(b) Where such improvements do not exist or are not to the standard of the Urban Design Program (San Diego Municipal Code section 62.0102), a building permit may, nevertheless, be issued under any of the following circumstances after any needed dedication has been granted:~~

~~(1) When a permit for the required improvements has been issued in accordance with the provisions of this Code.~~

~~(2) When improvements constructed to a lesser or different standard than those specified by the Urban Design Program exist and the City Engineer finds that they are in substantial conformance with the requirements of this section.~~

~~(3) The Permit Issuing Authority determines that the amount of work associated with the requested building permit is of such limited scope that it should be deferred until such time as adjacent improvements are installed.~~

~~Whenever it is determined that the abutting public improvements are to be deferred, no building permit shall, nevertheless, be issued until the property owner executes a waiver of his or any successor in interest's right to protest a future assessment project for installation of the required improvements; said waiver to be recorded against the property on which the building permit is issued.~~

~~(c) The provisions of this section shall not apply where the proposed building improvements have a total value, as estimated by the Building Official, of $250,000 or less.~~

~~§62.0208 Cost Reimbursement District Procedural Ordinance~~

~~(a) Purpose and Intent.~~

~~In the course of the development of properties, whether through the subdivision process or the development or redevelopment of previously subdivided properties, it is frequently necessary or desirable to require the Developer to install certain Public Improvements, which improvements exceed in size, capacity or number that which is normally required to benefit the development or which are located off-site of the development and which benefit property or properties not within the subdivision or development and which improvements are dedicated to the public. It is the purpose of the "Cost Reimbursement District Procedural Ordinance" (Ordinance) to establish requirements and procedures for reimbursement to either the Developer or City, or both, by those property owners who subsequently benefit from these improvements to the extent of their benefit. It is the intent of the Council that all property owners who subsequently benefit from the Public Improvements, make the appropriate reimbursements to the Developer or City, or both. A Reimbursement District may be formed prior to or concurrent with the construction of the improvements. The formation of a Reimbursement District will not be available to the Developer if construction is substantially complete. It is further the intent of the Council that this Ordinance shall be supplemental to the reimbursement procedures set forth in the California State Subdivision Map Act~~

~~(Government Code section 60410 et seq.) (the Act), and any other provisions of this Municipal Code.~~

~~(b) Nature of Improvements.~~

~~The Act provides in Sections 66485 and 66486 for the adoption of a local ordinance which establishes requirements and procedures for reimbursement. The Act also requires the City to enter into an agreement with the Developer to reimburse the Developer for that excess portion of the costs attributable to improvements which are supplemental in size, capacity, number, or length for the benefit of property or properties located outside the development area. The Street Superintendent shall determine the area of benefit and establish reimbursement charges based on benefit as provided in this Ordinance.~~

~~(c) Definitions.~~

~~(1) "Actual or estimated cost of Public Improvements" means the actual or estimated costs for the construction, engineering, district formation, right-of-way, condemnation proceedings, mitigation or any other expense incidental to the construction of improvements.~~

~~(2) "Substantial completion of a facility" means construction of a facility which has progressed sufficiently so that the facility can be used for the purpose for which it was intended.~~

~~(3) "Benefited Area" means the entire area which receives a benefit from the Public Improvement.~~

~~(4) "Developer" means the person who is responsible for constructing the Public Improvement.~~

~~(5) "Street Superintendent" means the person whose duty it is under the law to have the care or charge of the streets or the improvement thereof in the City.~~

~~(6) "Excess Costs" means the costs attributable to the improvements which benefit areas outside the development area.~~

~~(7) "Public Improvements" means those improvements described in this Ordinance, including, but not limited to, streets (access or major thoroughfare), bridges, traffic signals, drainage, water or sanitary sewer facilities, other public facilities such as parks and libraries, and any accessory improvements necessary to the functioning of the Public Improvements. "Public Improvements" do not include any improvements that will benefit only the development in which they are located. The term "Public Improvements" may also be treated as including the cost of acquisition of any necessary land or right-of-way for the construction of the improvement.~~

~~(8) "Reimbursement District" means the Benefited Area within which property is subject to a reimbursement charge for the purpose of reimbursing the Developer or City, or both, for the Excess Costs of the public improvement.~~

~~(9) "Resolution of Lien" means the resolution passed by the Council establishing the amount of charges due from each parcel within a Reimbursement District established pursuant to Section 62.0208(j) of this Ordinance.~~

(d) Request For Reimbursement Agreement.

~~The Developer may request the Council or the Council on its own olition may initiate the formation of a Reimbursement District: (1) whenever a Developer elects or is required by the City to install or replace improvements which are in excess of those improvements required to accommodate the development and which the City Council determines to benefit property other than that of the Developer; or (2) whenever the City participates in the costs of improvements which the City Council determines will be of benefit to property other than, or in addition to, the Developer's property; provided that the costs of the facilities constructed by the Developer are not later reimbursed through an assessment under a Public Improvement District. The request of the Developer shall be in writing and submitted to the Street Superintendent with a completed application and an application fee. The Street Superintendent shall expeditiously process the request to the City Council.~~

~~(e) Costs of Formation of Reimbursement District.~~

~~Before the Council authorizes initiation of the formation of a Reimbursement District, the Developer shall deposit with the City the following fees to cover various administrative costs.~~

~~(1) Application fee.~~

~~An application fee, which shall be set by City Council resolution, shall be deposited in a general cost reimbursement district administration fund established by the City Auditor and Comptroller. The application fee and all administrative fees shall be deposited in the appropriate funds established by City Council for each district.~~

~~(2) Administrative Fees.~~

~~An administrative fee, which shall be set by Council resolution, shall cover administrative expenses, such as the calculation of the Excess Costs of the facilities, determination of the Benefited Area, determination of the proposed spread of the Excess Costs to the benefiting parcels, accounting of funds, and time to conduct an audit. Administrative fees shall also cover the costs of publishing all notices and mailings and shall cover County Recorder and similar costs.~~

~~(3) Engineering Service Costs~~

~~In those situations where an excessive amount of time and labor would be involved in the preparation of documents and estimates, the City Engineer may request that special engineering services be~~

~~retained to expedite and facilitate the preparation of the documents and estimates. This retained engineer shall have no contractual relationship with the Developer. The costs of any such engineering service shall be paid by the Developer; however, the costs shall be considered an incidental cost of the improvements to be recouped pursuant to the provisions of the Reimbursement District.~~

~~(f) Council Action on Request.~~

~~After considering the Developer's request or upon the recommendation of the City Manager, the City Council in its sole discretion may direct the City Manager to begin the proceedings for the formation of a Reimbursement District.~~

~~(g) Costs for monitoring the Reimbursement District.~~

~~Three weeks prior to the noticed public hearing described in Section 62.0208(i), the Developer shall deposit with the City such additional funds in the project monitoring fund as the Street Superintendent determines may be required. If the Reimbursement District is formed by the City Council, these funds shall be used to cover the costs of annually monitoring the Reimbursement District for the life of the District. If funds from the deposit become depleted below fifty percent (50%) of the original deposit amount, the City may require an additional amount be withheld from any lien payments to replenish the fund to an appropriate level. In the event that the Reimbursement District is fully built out prior~~

to the expiration of the District, a pro rated refund will be made along with the final reimbursement.

(h) Estimate Of the Street Superintendent.

Pursuant to the direction of the City Council and after consultation with the Developer, the Street Superintendent shall prepare and file with the City Clerk:

(1) A plat indicating the boundaries of the Reimbursement District which identifies all parcels within the District.

(2) The actual or total estimated cost of the Public Improvements.

(3) An estimate of the assessment and spread necessary to equitably pay the Excess Costs.

(i) Notice and Hearing on Establishment of Reimbursement District.

(1) Upon receiving the request from the Street Superintendent, the City Clerk shall set a noticed public hearing before the City Council

(2) The City Clerk shall cause a notice of the hearing, in substantially the following form, to be published once in a newspaper of general circulation in the City at least ten (10) calendar days prior to such hearing:

NOTICE OF HEARING

1. The City Council of The City of San Diego will hold a public hearing at _____ on _____ at the City Council Chambers on the 12th Floor of the City Administration Building, 202 C Street, San Diego, California, 92101 to consider the establishment of a reimbursement district for the financing of certain public facilities and related improvements within the City otherwise known as the Cost Reimbursement District No. (_____).

Your property is located within the proposed boundaries of the cost reimbursement district and may be subject to a fee to pay a portion of the cost of providing such facilities. If, within a 20-year period from the date of forming this district, you either file a final map, are issued a building permit for improvements which will ultimately utilize the cost reimbursement improvements, or are issued a building permit for improvements valued in excess of $20,000, the fee would become due and payable. The boundaries of the district are more particularly described by Plat No. () which is on file in the Office of the City Clerk.

All persons desiring to testify with respect to: the necessity of said public improvements, the cost of said public improvements, the benefited area or the amount of the costs eligible to be recovered, may appear and be heard at this hearing.

2. The Street Superintendent shall, at least twenty (20) days prior to the hearing, cause a copy of the above notice to be mailed to each owner of real property within the benefited area as shown on the last equalized tax roll. The notice shall be accompanied by a map of the proposed benefited area and a statement by the Street Superintendent describing:

a. A brief description of the public improvements and that portion considered to be in excess of the developer's requirements which benefits other properties.

b. The estimated or actual costs necessary to pay for the public improvements.

c. The estimated or actual costs which are proposed to be assessed against the benefiting property when the property is developed/redeveloped.

d. A plat, indicating the boundaries of the district.

(j) Action by City Council.

After the public hearing, the City Council may in its sole discretion approve a resolution establishing the district as well as enter into a reimbursement agreement with the Developer to provide for the disbursements of proceeds of the district.

If the scope of the project or nature of the work is altered during construction, the City Council may increase the estimated cost by not more than fifteen (15) percent without further notice to the affected property owners.

The Benefited Area shall be that area which, upon the recommendation of the Street Superintendent and after a noticed public hearing, in the opinion

~~of the City Council is determined to be the area benefited by the construction of the Public Improvements.~~

~~Benefit may be obtained by frontage, proximity to the improvements, release of anticipated subdivider/building responsibilities or other such means as determined by the Street Superintendent. The resolution establishing the Reimbursement District shall indicate it is a "Resolution of Lien." The resolution shall reference an exhibit containing the following:~~

~~(1) A list of the properties, identified by assessor's parcel number and ownership of record, which are included within the Reimbursement District boundaries.~~

~~(2) A plat, indicating the boundaries of the Reimbursement District and identifying the properties assessed~~.

~~(3) An apportionment of the Excess Costs which represent the actual or estimated fee to be charged each parcel within the Reimbursement District. If the costs are estimated, the resolution shall indicate that the fees are subject to recomputation by the Street Superintendent when the construction and final audit have been completed.~~

~~(4) The time when the assessed fees are due and payable.~~

~~(5) Other matters as appropriate to the establishment and administration of this Reimbursement District.~~

~~The reimbursement agreement with the Developer shall contain provisions necessary and appropriate to the procedures and terms for the reimbursements.~~

~~The charges against each parcel within the Reimbursement District shall be subject to an annual six (6) percent simple interest payable at the time fees are paid and the lien released.~~

~~Once the allocation of the cost has been approved by a resolution of the City Council, the "Resolution of Lien" shall constitute a statement of charges due from the owners and their successors, heirs or assigns of the various parcels of property as their benefited share of the Public Improvements.~~

~~Subsequent to the construction of the Public Improvements, the Street Superintendent shall respread the lien after final costs have been calculated and verified by an audit, and shall cause the lien roll to be appropriately modified. All affected property owners shall be notified in writing of their final lien amount.~~

~~The Street Superintendent shall record a copy of the Council "Resolution of Lien" with the County Recorder. Upon payment of the amounts due, or upon the expiration of the Reimbursement District, the Street Superintendent shall cause to be filed a release of lien upon the property or properties affected.~~

~~(k) Limitations on Reimbursement Agreement.~~

~~The reimbursement agreement shall indicate that the liens are subject to an annual six (6) percent simple interest charge and shall be payable to the City during the term of the agreement. Lien payments shall be placed by the City in the appropriate funds established by Council for each Reimbursement District. These funds will be established to reimburse the Developer for costs incurred for the construction of the improvements. Accrued interest during period money was deposited with City shall be transferred to the project monitoring fund, prior to payment to the Developer or subdivider. The term of any reimbursement agreement shall be established by the City Council and shall be based upon the reasonable expectations of the development of benefited properties or the use of the Public Improvement by the benefited properties; provided, however, that the maximum term of any reimbursement agreement shall be for a period of twenty (20) years.~~

~~If, during the period following the formation of the Reimbursement District, any person records a final map (subdivision, parcel, consolidation or financial~~

~~map) or applies for a building permit on a lot for which a lien for Public Improvements has been established in accordance with this Ordinance, and such person or his predecessor in interest has not paid the lien to the City, the~~

~~established lien shall be paid prior to the filing of the final map or the issuance of the building permit. Payment shall not be required, however,~~

~~in connection with building permits having a total improvement value of twenty thousand dollars ($20,000) or less, unless the building permit is for improvements which will ultimately use the Reimbursement District's improvements. Permits for improvements which are modifications or additions to existing single family residential structures shall not be subject to payment of lien under these reimbursement proceedings. All liens shall include a principal charge plus the annual six (6) percent simple interest rate calculated from the date of acceptance of the Public Improvements by the City or City Council's approval of the Reimbursement District, whichever occurs later.~~

~~(l) Obligation of Developer or Subdivider to Claim Moneys.~~

~~All moneys collected under the provisions of this Chapter shall be deposited by the City Treasurer into an appropriate fund established for the collection of funds and the monitoring of a particular Reimbursement District. The City Auditor shall refund to the person or persons who paid for the improvements for which the liens were collected, or to their assignees, all moneys so collected.~~

~~The City shall notify the Developer of the existence of moneys deposited in this fund. No funds may be reimbursed to the Developer until all costs included in the Reimbursement District have been verified by audit. The notice shall be mailed to the address contained in the reimbursement agreement and no further~~

~~inquiries shall be required by the City. If any money remains on deposit with the City without being claimed by the party rightfully entitled to it within three (3) years after notice has been made as provided in Section 62.0208(l), the money shall be forfeited to the City, and it shall be transferred to the general fund of the City.~~

~~§62.0209 **Centre City Review Committee**~~

~~(a) There is hereby established a Centre City Review Committee. The City Manager shall, pursuant to administrative regulations, appoint from among City staff and from appropriate City-owned corporations, a representative group of persons who will comprise the committee.~~

~~(b) The committee shall be advisory to the City Manager, City Engineer, and the Development Services Director in matters regarding improvements or encroachments within the public right-of-way of Centre City whenever such improvements are subject to the provisions of the Urban Design Program, including but not limited to the following:~~

~~(1) Light standards.~~

~~(2) Sidewalk pavement.~~

~~(3) Street landscaping.~~

~~(4) Sidewalk cafes.~~

~~(5) Pushcarts.~~

~~(c) The committee shall meet at such time and place as necessary for the conduct of its business and as often as required by administrative regulation to carry out its duties.~~

§62.0210 Unauthorized Public Improvements Prohibited

It is unlawful to do, cause to be done, or maintain any public improvement contrary to this Division without first obtaining a permit, City contract or franchise authorizing the public improvement.

DIVISION 3

Enroachments on Public Rights-of-Way or Public Property

§62.0301 Applications

This division applies to encroachments in the public right-of-way maintained by the Property Owner.

Applications submitted by the Property Owner for permits authorizing encroachment structures in the public right-of-way shall be made in accordance with section 62.0105 of this Article.

No encroachment application shall be approved when it is determined by the Permit Issuing Authority that the encroachment structures will adversely affect the public health, safety, or general welfare.

All encroachment applications within Centre City shall be subject to the review of the Centre City Advisory Committee.

A decision on an encroachment application for a wall or fence in the public right-of-way shall be made in accordance with Process Two, as defined in Chapter 11 of the Land Development Code.

Any encroachment that constitutes "development", as defined in Section 113.0103 of the Land Development Code, is subject to all applicable regulations of the Land Development Code

~~§62.0302 Encroachment Removal Agreement~~

~~Applications for encroachment permits shall be accompanied by an encroachment maintenance and removal agreement signed by the property owner. This agreement shall be prepared by the Permit Issuing Authority and shall contain the following provisions and such other provisions as may, in the opinion of the Permit Issuing Authority, be necessary to afford protection to the property owner, City, and public utilities.~~

~~(a) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.~~

~~(b) The Property Owner shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.~~

~~(c) The property owner must remove or relocate an encroachment within 30 days after notice by the Permit Issuing Authority or the Permit Issuing Authority may cause such work to be done, and the costs thereof shall be a lien upon said land.~~

~~(d) For structures encroaching over or under the public right-of-way, the owner agrees to provide an alternate right-of-way or to relocate said City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the Permit Issuing Authority that the City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching structure.~~

(e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment structure.

(f) The property owner shall maintain a policy of liability insurance in an amount satisfactory to the Permit Issuing Authority in order to protect the City from any potential claims which may arise from the encroachments.

Removal agreements for approved encroachment permits shall be recorded in the office of the County Recorder as an obligation upon the land involved.

§62.0303 **Encroachments Requiring City Council Authorization**

(a) Underground structures which extend into the public right-of-way farther than the ultimate curb line.

(b) Structures built over the public right-of-way.

(c) Other encroachments which, in the opinion of the Permit Issuing Authority, are of sufficient public interest to require City Council approval.

§62.0304 **Ramped Entries/Exits in Centre City**

Ramped entries or exits used for vehicular access to buildings in Centre City where ramps would extend into the public right-of-way in such a manner as to render any portion of the existing travel way unusable for public street purposes are hereby prohibited on any street identified as an activity corridor in the Urban Design Program. The Urban Design Program is defined in Section 62.0102 of this Article, and any action in denial shall be considered a decision of the Permit

~~Issuing Authority and, therefore, shall be subject to appeal in accordance with Section 62.0116 of this Article.~~

~~§62.0305 **Public Improvement Repair or Relocation**~~

~~The following provisions of this section shall apply unless provision is otherwise made by an agreement pursuant to this Division.~~

~~(a) In the event the City is required to place, replace or maintain a public improvement over which the property owner has constructed an encroachment structure, the property owner shall pay the City that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's permanent encroachment structure.~~

~~(b) The property owner shall pay the City for all the cost of placing, replacing or maintaining a public improvement within a public right-of-way when the City's facility has failed as a result of the construction or existence of the owner's encroachment structure.~~

~~(c) The costs of placing, replacing or maintaining the public improvement shall~~

~~include the cost of obtaining a necessary alternate easement.~~

~~(d) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.~~

~~§62.0306 Unauthorized Encroachments Prohibited~~

~~(a) It is unlawful to erect, place, construct, establish, plant or maintain any structure, vegetation or object on Public Property or Public Rights-of-Way without a permit, City contract or franchise.~~

Division 7: City Streets and Curbs ~~Painting~~

§~~62.07~~ 62.0701 **Curbs — Regulations for Painting Street Numbers**

[No change.]

§62.0702 **City Streets-Painting, Disfiguring Prohibited**

Unauthorized persons shall not paint, daub sticky substance, deface, mar or place any sign or advertisement upon any public street or alley or part of a public street or a public street or alley.

MJL:cfq
10/08/04
Or.Dept:DSD
O-2005-44

Cost Reimbursement District Ordinance

As a part of Fourth Update Issue 9, the Cost Reimbursement District code language currently in Section 62.0208 will be relocated from Chapter 6 Article 2 Division 2 to Section 142.0680 within the Land Development Code. The reformatted code language is provided under separate ordinance.

LRO

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

To: All California Mayors:

Re: Adoption of A Reasonable Accommodation Procedure

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).) [1] Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community. [2]

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[1] Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

[2] A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at < http://www.bazelon.org/cpfha/cpfha.html> [as of February 27, 2001].)

1300 I STREET • SUITE 1740 • SACRAMENTO, CALIFORNIA • 95814 • 916-324-

Exhibit No. 4
SDLCPA #2-04A
Letters from the Attorney General Re: Reasonable Accommodations

It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.[3] The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.[4] Further, most of this increase will likely be concentrated in California's nine largest counties.[5]

- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

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[3]See Tootelian & Gaedeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <http://www.calsilc.org/housing.html> [as of February 27, 2001].

[4]The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (*i.e.*, one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (*i.e.*, one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

[5]These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

discriminatory procedures such as these is not of itself a violation of the FHA.[6] Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.[7] This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.[8]

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential—Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

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[6] See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.)

[7] See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

[8] Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.[9] Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step[10] and from various nonprofit groups which provide services to people with disabilities, among others.[11] It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,

Bill Lockyer

BILL LOCKYER
Attorney General

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[9]Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

[10] Within California, these include the cities of Long Beach and San Jose.

[11] Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.

STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER
ATTORNEY GENERAL

April 29, 2002

Dear Local Building Official:

Re: Enforcement of California Disabled Access Laws and Regulations

As chief law officer of the State of California, I have a strong interest in seeing that disabled access laws and regulations are uniformly and adequately enforced. (Cal. Const., art. V, § 13.) Local building departments are the first line of enforcement authority for these laws and regulations. (Gov. Code, § 4453, subd. (b); Health & Saf. Code, § 19958.) Regrettably, I have received a number of complaints that allege certain local jurisdictions are failing to take all actions necessary to ensure compliance with these laws and regulations. (Gov. Code, § 4450 et seq; Health & Saf. Code, § 19955 et seq.; and Cal. Code Regs., tit. 24, part 2.[1]) For this reason, I urge you to evaluate your enforcement policies and practices in this area.

While local building officials are the primary enforcers of California access laws and regulations, I have been vested with the authority to investigate complaints and bring legal actions to remedy the violation of these laws and regulations. (Gov. Code, § 4558; Health & Saf. Code, § 19958.5.) This includes investigating allegations that a local building department is not adequately enforcing state access laws and regulations, and filing civil actions to remedy such problems when they are identified.

Consistent with the Legislature's mandate that local building departments be the primary enforcers of state access laws and regulations, I require that a complainant first lodge with the appropriate local building department an access complaint which alleges that a particular facility or

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[1] Title 24 of the California Code of Regulations is published separately as the California Building Code and is available through the Building Standards Commission at <<http://www.bsc.ca.gov>>. Further information on California's access laws and regulations is available in the *State of California Access Compliance Reference Manual*, which may be obtained from the Department of General Services, Division of the State Architect. Its web site is <<http://www.dsa.ca.gov>>.

building is being maintained in violation of state disabled access regulations. I expect every local building department to have a complaint procedure and to investigate these disabled access complaints promptly.

As a general rule, my office will only consider a request to review the action of a local building department on an access complaint to determine whether the agency has abused its discretion if: a) the agency has had a reasonable opportunity to resolve the complaint; and b) has either reached a final resolution or has failed to do so within a reasonable period of time. If we find such an abuse of discretion, we ask the local building department to reconsider its decision, and, if it fails to do so, I am prepared to take legal action to cure that abuse of discretion.

Another area for potential legal action by my office concerns local building departments' responsibilities under Government Code section 4452. That statute requires commencement of action to correct deviations from state disabled access regulations within 90 days of confirmation of the existence of such deviations.

I believe that a reasonable construction of this 90-day requirement is that a final resolution be reached with respect to the confirmed violations within 90 days of confirmation of the violations. A final resolution means that the violations have been corrected, a binding agreement has been reached with the owner to complete any construction necessary to correct the violations within a reasonable time, or the local building department has instituted legal action to compel the owner to correct the violations.[2]

Again, with respect to any agreement reached between a property owner and a local building department, this office will, upon request, review any such agreement for an abuse of discretion and will take legal action, if necessary, to correct any such abuse of discretion.

Through this office's disabled access enforcement work, we have found that deviations from disabled access requirements are often the result of a lack of adequate resources to carefully check plans, inadequate training of personnel and adherence to a philosophy that relaxes enforcement of state disabled access standards. I encourage you to evaluate your enforcement programs to determine whether these are areas that need to be addressed.

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[2] This construction takes into account that not all construction projects that might be necessary to correct certain disabled access regulations can, in reality, be completed (and the access violations corrected) within 90 days of confirmation.

In order to ensure that I have reached the person in your jurisdiction with whom the governing body has placed the responsibility for enforcing state access laws and regulations, I request that you contact Special Assistant Attorney General Alberto L. González of my staff and confirm that you are the correct person or, if not, provide him with the name of that person. Mr. González may be reached at (916) 324-5369, or at his e-mail address alberto.gonzalez@doj.ca.gov.

California was a pioneer in requiring that publicly-funded buildings and facilities and privately funded public accommodations be accessible to persons with disabilities. Our state laws predate the federal Americans With Disabilities Act by over 20 years. Please join me in a renewed commitment to strong and vigorous enforcement of state disabled access laws and regulations.

Sincerely,

BILL LOCKYER
Attorney General

§ 132.0403 Supplemental Use Regulations of the Coastal Overlay Zone

(a) If there is an existing or potential public view and the site is designated in the applicable *land use plan* as a public view to be protected,

(1) The applicant shall design and site the *coastal development* in such a manner as to preserve, enhance or restore the designated public view, and

(2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.

(b) A visual corridor of not less than the side *yard setbacks* or more than 10 feet in width, and running the full depth of the *premises*, shall be preserved as a deed restriction as a condition of Coastal Development Permit approval whenever the following conditions exist:

(1) The proposed *development* is located on *premises* that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and

(2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable *land use plan*.

(c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a *land use plan* as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side *yard setback* areas to cumulatively form functional view corridors and preventing a walled effect from authorized development.

(d) Where remodeling is proposed and existing legally established development is to be retained that precludes establishment of the desired visual access as delineated above, preservation of any existing public view on the site will be accepted, provided that the existing public view is not reduced through the proposed remodeling.

(e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.