

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



November 19, 2018

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**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
ALEX LLERANDI, COASTAL ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR LCP  
AMENDMENT NO. LCP-6-SAN-18-0064-2 (Placemaking) for Commission  
Meeting of December 12-14, 2018**

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**SYNOPSIS**

On August 22, 2018, the City of San Diego (City) submitted its second major LCP amendment package for the 2018 calendar year to the San Diego District office. The second submittal consists solely of a single amendment: LCP-6-SAN-18-0064-2 (Placemaking). Currently, the Placemaking amendment is before the Commission. Another pending LCP amendment for the City of San Diego, LCP-6-SAN-18-0049-1 (Vernal Pools), was granted a one-year time extension by the Commission at the August, 2018 hearing, and it will be brought before the Commission at a later date. At the October 2018 hearing, the Commission granted a one-year time extension to the Placemaking amendment, and thus the latest that this item can be heard by the Commission is the October 2019 hearing.

**SUMMARY OF AMENDMENT REQUEST**

The proposed amendment would amend the Land Development Code (LDC), which serves as the certified Implementation Plan (IP) of the City's certified Coastal Program (LCP), to introduce a new defined use, "Placemaking," and streamline the permit review process for Placemaking development that occurs within the public right-of-way or on vacant private property in certain zones so as to reduce cost and time required for approving them and in turn encourage their implementation by the public.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending the Coastal Commission first reject the proposed amendment as submitted and then approve the proposed amendment with suggested modifications. The issue to be resolved in the proposed amendment relates to potential long-term adverse impacts from Placemaking development to public access and visual resources along the segment of the City's coastal zone that is closest to the ocean and experiences the most public use.

The amendment proposes to formally define a long-existing use, “Placemaking,” described as a temporary use of public right-of-way or private property activates or enhances the pedestrian experience by providing “activities, experiences, or spaces,” such as plazas, shade structures, benches, decorative lighting, art installations, etc. However, while the amendment will formally define “Placemaking” in the LDC, the activities described by the definition are currently allowed to occur in the public right-of-way and private property, subject to appropriate development permit review.

The City believes that the permit review currently required for placemaking developments adds financial and temporal costs that deter many beneficial projects from being brought forward by non-profit entities or community groups. In response, the City’s proposed amendment would substantially streamline the review process for “placemaking” development.

Currently, development within the public right-of-way is required to obtain a Public Right-of-Way Permit (PROW Permit), which in turn requires first obtaining the applicable development permit(s), such as a Coastal Development Permit (CDP). The City’s proposed amendment would forego the requirement to obtain a development permit for qualifying placemaking events and simply grant PROW Permits of up to five years in duration, substantially longer than the term of most current PROW Permits. In order to qualify for the permit streamlining, the placemaking development would have to adhere to a list of regulations governing its operation. However, among those qualifying regulations are provisions allowing the development to occupy up to twenty-five percent of public parking along a street segment, which coupled with the multi-year permit duration could give rise to a long-term substantial adverse impact to public access or coastal views.

Regarding placemaking occurring on vacant private property, the City’s proposed amendment would allow it as a “limited use” in most zones, meaning it would be a use permitted by right subject to supplemental regulations. All the proposed amendment would require for placemaking on private property would be the issuance of a Temporary Use Permit (TUP), and in line with the PROW Permit, the duration of the placemaking TUP would also substantially increase to five years. While placemaking on private property would be out of the public right-of-way and also have to adhere to a list of qualifying regulations, those regulations forego setback and lot coverage requirements on commercially zoned properties, and forego parking requirements in all zones, meaning a large scale and popular placemaking event could exacerbate parking issues in already highly constrained coastal areas, in addition to blocking views due to alternate setbacks.

The City’s goal of activating pedestrian areas and public rights-of-way is in line with the Commission’s goals of promoting public access and lower-cost coastal visitation. However, as placemaking is by its nature a creative endeavor that can take myriad forms, ranging as small as placing decorative lights on street trees to as large as erecting multiple temporary structures many feet high, the potential for adverse impacts to public access due to the occupation of large amounts of public right-of-way or public parking spaces, or blocking public coastal views with structures is a distinct possibility. While it

is likely that a given placemaking development will provide a desirable community service or amenity, the potential to cause identifiable adverse impacts on surrounding public access and coastal resources is one that warrants the type of scrutiny that accompanies development permit review.

After discussions with City staff, it was agreed that the portions of the coastal zone that experience the highest use, and thus are the most sensitive to impacts from new competing uses or obstructions, are the areas between the first public road and the sea and within the Beach Impact Area, the area identified by the City as having especially high parking demand. Consequently, placemaking development in the specified areas should receive the appropriate discretionary review to determine the least impactful manner in which placemaking can occur. Thus, to allow the City to encourage placemaking in the majority of the coastal zone where the likelihood of substantial adverse impacts to public access and coastal views are lower, the near shore areas shall be excluded from the permit streamlining. This modification would not prohibit placemaking from occurring, rather it will continue to ensure that all such development will occur in the manner that best achieves its goals of enhancing the public experience while avoiding adverse impacts public parking reservoirs and coastal resources. The City is in agreement with the suggested modification.

Thus, after review, the City's proposed LCP amendment to the IP, as submitted, is not in conformance with the public access and visual protection policies of the City's certified Land Use Plans (LUP) and must be denied. As modified, the amendment will continue to conduct CDP review of placemaking development in the areas closest to the coast while allowing such development, and their enhancements, in the less sensitive inland areas to benefit from permit streamlining. Staff is therefore recommending approval of the LCP amendment, as modified herein.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 7. The findings for approval of the plan, if modified, begin on Page 9.

## **BACKGROUND**

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's LDC that primarily includes Chapters 11 through 15 of the municipal code. It replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

## **ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-18-0064-2 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to 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.

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, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

### **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**

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. 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 the Implementation Program Amendment No. LCP-6-SAN-18-0064-2 for the City of San Diego certified LCP, 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 the Implementation Program Amendment submitted for the City of San Diego and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan(s). 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 the Implementation Program Amendment No. LCP-6-SAN-18-0064-2 for the City of San Diego, 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 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 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 carry out the certified Land Use Plan(s). 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.

### **PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Please revise Chapter 12, Section 129.0710(d), to read as follows:

#### **§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 is required prior to issuance of a Public Right-of-Way Permit for the following:

(a) Through (c) [No change in text]

(d) Notwithstanding Section 129.0710(a)-(d), a development permit is not required prior to issuance of a Public Right-of-Way Permit for placemaking in the public right-of-way, subject to the following regulations:

[...]

(10) In the Coastal Overlay Zone, an applicant for placemaking in the public right-of-way located between the first public road and the sea or in the Beach Impact Area shall obtain a Coastal Development Permit pursuant to Section 126.0702.

2. Please revise Chapter 12, Section 141.0421, to read as follows:

#### **§141.0421 Placemaking on Private Properties**

Placemaking on private property is permitted as a limited use in the zones indicated with an “L” in the Use Regulation Tables in Chapter 13, Article 1 (Base Zones), subject to the following regulations:

[...]

(j) In the Coastal Overlay Zone, an applicant for placemaking on private property between the first public road and the sea or within the Beach Impact Area shall obtain a Coastal Development Permit pursuant to Section 126.0702.

## **PART IV. FINDINGS FOR REJECTION OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The proposed amendment formally defines a “Placemaking” development and streamlines the permit review process for qualifying Placemaking development, either within the public right-of-way or on private property that adheres to listed regulations regarding their operation.

The City of San Diego has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor). These community plans or LCP Land Use Plans contain policies that seek to reduce risk from coastal hazards and protect, or where possible enhance, public access and public views. The Commission’s review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified land use plans.

While the majority of the proposed amendment is acceptable, there are two provisions that raise Coastal Act concerns and cannot be found consistent with the certified LUPs, and require that the proposed amendment be rejected as submitted.

### **B. 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.

Placemaking is development that, by its nature, can take many forms and occur in many places. As defined in the proposed amendment:

*Placemaking means the temporary use of public right-of-way and private property that activates streetscapes by enhancing pedestrian experience and providing neighborhood-serving activities, experiences, or spaces and includes temporary, small-scale development specifically designed to support that temporary use. Projects that qualify as placemaking uses include, but are not limited to, those that provide areas for pedestrians to briefly rest (e.g. plazas, shade structures, and benches), promote the use of underutilized space (e.g. landscaping and decorative lighting), and improve and promote pedestrian activity and other uses of the public right-of-way (e.g. bicycle racks and refuse containers).*

Thus, by its nature, placemaking is a form of development that can take myriad forms and scales driven by the artistic goals of the party erecting the placemaking development and the community in which the development is located in. Currently, placemaking

development is treated no differently than other development in regards to permit review. However, the City believes that such permit review is not necessary for many placemaking projects and, hearing from public groups that the time and costs of such a review deters their implementation and ensuing benefits, is proposing to streamline the approval process to make it less discretionary and more ministerial.

This streamlining would first be achieved by substantially extending the permit term for the ministerial permits – Temporary Use Permit for placemaking on private property and Public Right-of-Way Permit for placemaking in the public right-of-way – to five years from the more common one-to-six months currently granted. This creates the risk that a placemaking development that impedes the public right-of-way, occupies public parking, or blocks a coastal view will remain in place for a significant amount of time, creating a long-term adverse impact.

Secondly, placemaking development would not need to obtain a development permit if it adheres to listed regulations regarding operations. While some of the regulations dictate responsibilities such as clean up, maintenance, and hours of operation if a commercial component is involved as an accessory use, the regulations also exempt the placemaking development from certain requirements, such as the provision of parking, or allow the occupation of up to twenty-five percent of public parking in a street segment. Such an impact coupled with the five-year permit duration would create a long standing impediment to public access and potentially exacerbate public traffic or view impacts in already heavily used areas. If the placemaking development itself generated additional traffic, that will further exacerbate the impacts.

The proposed amendment creates a potential conflict with coastal public access and visual protection policies of the certified LUPs, specifically with regard to maximization of public access through the protection of public rights-of-way, public parking, and public views. Listed below are resource protection policies contained in the certified Land Use Plan segments in the Coastal Zone for the City of San Diego.

### **Pacific Beach Community Plan**

- Create safe, pleasant, and useful pedestrian and bicycle pathways to connect the residential neighborhoods of Pacific Beach, such as Crown Point and Braemar, with commercial areas and community facilities, such as schools, parks, and the library. Remove barriers which impede pedestrian, bicycle, and disabled access.

### **Ocean Beach Community Plan**

- Efficiently manage on-street parking to better serve the beach and commercial areas.
- Protect and improve visual access at street ends in conjunction with coastal physical access projects. Such public improvements should consider inclusion of benches, landscaping, improved walkways, bicycle racks, and stairwells from street ends to the beaches below.



### **La Jolla Land Use Plan**

- Enhance existing public access to the ocean, beach, and park areas such as Ellen B. Scripps Park and Kellogg Park along the shoreline in order to be of greatest benefit to neighborhood residents and visitors to the community.
- Public views to the ocean from the first public roadway adjacent to the ocean shall be preserved and enhanced, including visual access across private properties at yards and setbacks.

Placemaking events can involve the erection of non-permanent structures, furnishings, and similar objects. While the enhancement of public spaces is in line with many Commission and City policies, there is still the potential for adverse impacts. Such impacts are typically identified through the development permit review process, such as the CDP, which looks at the proposed site and design of a development to identify potential impacts and alternative designs that might better avoid them while still achieving the development's goals.

The City, in listing the regulations a placemaking development must comply with in order to qualify for the permit streamlining, believes that it has addressed the main impacts, such as maintenance, litter, vehicular circulation, and, in certain cases, hours of operation for accessory commercial components. However, the criteria make no mention of public views, adequacy of nearby public parking, or noise and lighting spillover. These are all factors that can adversely affect public access or coastal resources and that are analyzed and mitigated for in development permits. Because the placemaking development has the potential to be in place for up to five years – or even longer as the amendment allows permit renewal – the developments exceed what the Commission has typically considered to be a “temporary” development, and more closely resemble a permanent one. Thus, because the City's amendment, as submitted, does not adequately anticipate and analyze potential adverse impacts to coastal access and public views in the coastal zone, it is not in conformance with the applicable policies of the certified LUPs and must be denied as submitted.

### **PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

Placemaking can be an adaptable, fairly low-cost method for a local government or members of the public to enhance a public space or introduce new community amenities. Much in the way that the Commission has supported regulations encouraging food trucks as a manner in which a previously neglected or under-utilized community segment can promote greater pedestrian traffic and community engagement, placemaking aligns with many policies of both the Commission and the City encouraging alternate transportation by enhancing non-vehicular rights-of-way. Examples of such placemaking include the erection of “parklets,” shaded seating areas located within public parking spaces on the side of the street, or shipping containers and crates on a vacant private parcel to create an event venue.

However, while placemaking can visibly enhance a public area and drive greater visitation, it remains a physical development that occupies space that – in the case of a public right-of-way – would otherwise be occupied by the public or allow a public coastal view or – in the case of a private vacant lot – could create greater demands on public parking. The occupation of public rights-of-way or the possibility of high popularity does not prohibit in and of itself the approval of a placemaking event. Rather, it serves as the basis for requiring the continued discretionary review of placemaking development.

There is merit to the City's belief that many placemaking developments are of a kind or location where the likelihood of adverse impacts to public access and coastal resources is minimal. However, it should be noted that Section 126.0704 already lists exemptions from obtaining a coastal development permit that certain types of lower-impact placemaking likely qualifies for and that members of the public can avail themselves to. Additionally, requiring development permit review is not a prohibition on such development; rather it ensures that the development will go forward in a manner that will actually achieve its goal without unforeseen consequences on the community it wishes to enhance.

Upon discussion of placemaking within the City's goals and review of various examples of such development provided by the City, the Commission agrees that there exist many areas of the coastal zone – namely the inland areas – wherein the streamlining of permit review of placemaking development can occur without high likelihood of adverse impacts. In these discussions, it was identified that the area most sensitive to impacts from impediments to the public right-of-way and occupation of public parking are those blocks and rights-of-ways closest to coastal waters, identified as the area between the first public road and the sea and the Beach Impact Area, an area identified in the LCP as being under especially high parking constraints.

In order to allow placemaking to benefit from the streamlining in the majority of the coastal zone while ensuring that such development obtains the necessary review in the most sensitive areas, the proposed amendment will be modified such that the streamlining will not apply to placemaking development located between the first public road and the sea or in the Beach Impact Area. This exclusion of the near-coastal area is not a prohibition on placemaking development; such development has been occurring in the City for years, and will still be able to occur in the future. The exclusion simply means that, should a placemaking development trigger the need for a CDP review pursuant to the LCP, such a review shall occur to best balance the goals of the placemaking's enhancement of the public space with protection of coastal access and views.

While reviewing the proposed amendment, the Commission was contacted by a public group that currently conducts placemaking in the coastal zone, specifically painting murals along streets that children use when walking to and from school in Pacific Beach. As part of the proposed amendment, the permit streamlining would not apply to placemaking development occurring in Residential-Single Unit (RS) zones. The public group communicated its opposition to this exclusion and requested a modification to include the zone in the streamlining. After discussion with the City and review of the

exclusion, it was found that the exclusion or inclusion of the Residential-Single Unit (RS) Zone is not a coastal issue, and its exclusion reflects the City's discretion on the scope of the amendment.

In conclusion, the proliferation of placemaking development to enhance public spaces aligns with the Commission's goals for such spaces, and the permit streamlining to encourage such development is appropriate for those portions of the coastal zone experiencing less demand on limited public space, parking, and coastal views. By excluding the area between the first public road and the sea and the Beach Impact Area from the streamlining, the Commission has made the most tailored modification necessary to ensure adequate review and protection of coastal access while still allowing the bulk of the proposed amendment to go into effect. Thus, the City's LCP amendment, as modified, can be found in conformance with the public access and coastal resource policies of the certified LUPs and be approved.

#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 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. 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.

An EIR (No. 96-0333) was prepared and certified by the City, on October 28, 1997, for the original project – the adoption of the Land Development code. City staff determined, in accordance with CEQA Guidelines Section 15162(a) (Cal. Code of Res., tit. 14), that no subsequent EIR or other environmental document is needed for the adoption of the Placemaking amendment, as all impacts were adequately addressed and disclosed in EIR No. 96-0333.

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 to CEQA provisions. In this particular case, as modified to require a coastal development permit for placemaking in delineated areas of the coastal zone, the LCP amendment as modified will not have any significant adverse effects on the environment, and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms to CEQA provisions.