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Date: November 21, 2022

To: COMMISSIONERS AND INTERESTED PERSONS

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Subject: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR
AMENDMENT NO. LCP-6-SAN-21-0091-3 (Spaces as Places) for
Commission Meeting of December 14, 2022

SYNOPSIS

On January 10, 2022, the City of San Diego Local Coastal Program (LCP) Amendment No. LCP-6-SAN-21-0091-3 (Spaces as Places) was filed in the San Diego District office as part of the City's third and final LCP submittal for 2021. The submittal consisted of two other amendments: LCP-6-SAN-21-0092-3 (Airport Amendments) and an amendment addressing Beach Curfews. The Airport Amendments were approved by the Commission at the June 2022 hearing, while the Beach Curfews amendment was withdrawn by the City for later resubmittal as a coastal development permit application.

Spaces as Places received a one-year time extension from the Commission at the February 2022 hearing, and the latest it can be heard is the February 2023 hearing.

SUMMARY OF AMENDMENT REQUEST

Spaces as Places, an amendment to the Land Development Code (LDC), which serves in part as the certified Implementation Plan (IP) of the LCP, is the City of San Diego's proposed program to transition temporary outdoor dining spaces in the public right-of-way erected in response to the COVID-19 pandemic to permanent places. The Spaces as Places amendment will introduce a set of ordinances to allow the erection of not just the outdoor dining spaces in the public-right-of-way, but also active sidewalks and public promenades. The amendment will also govern the erection of outdoor dining areas on private property within required off-street parking spaces. A design manual for Spaces as Places development will be added to the certified LCP that directs the design and siting requirements of outdoor dining areas to ensure that they conform to ADA requirements, allow adequate vehicular and pedestrian traffic in the public right-of-way, and do not interfere with stormwater prevention and other public infrastructure.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission deny the LCP amendment as submitted and approve it as modified by staff.

On August 4, 2020, the City approved an emergency ordinance allowing “Temporary Outdoor Business Operations” as an emergency response to the COVID-19 pandemic. The emergency ordinance allowed businesses to conduct outdoor dining within the public right-of-way as a means to provide for dining establishments to continue to operate when indoor operations were whole or partially limited due to public health orders. On May 18, 2021, the City extended the emergency ordinance for an additional year due to continuing limits on indoor operations at the time.

While the subsequent proliferation of outdoor dining spaces originally occurred in response to the pandemic, the City has determined the outdoor expansion promotes pedestrian-oriented communities and allows the public to enjoy the public right-of-way in a more active manner than experienced prior to the pandemic. The Spaces as Places program and design manual is intended to provide permanent options for outdoor dining, active sidewalks, and public promenades in the public right-of-way, as well as allowing outdoor dining on private property within required off-street parking spaces. The design manual has requirements regarding fire safety, stormwater, Americans with Disabilities Act (ADA) access, and traffic safety.

The Spaces as Places program creates a renewable two-year permit program and divides the covered uses into four categories, three in the public right-of-way – “streetaries” (street eateries), active sidewalks, and promenades – and one on private property – outdoor dining on private property. Streetaries are outdoor dining areas located in areas previously used for public parking that serve as an extensions of restaurants to sell food and drink, and will be allowed to be located by unpainted, yellow, or green parking curbs while prohibited from being adjacent to red, blue, and white curbs or within alleys. Active sidewalks consist of a permanent extension of the existing curb to extend into areas previously used for public parking, to facilitate creation of a space for recreation, rest, and outdoor dining not necessarily tied to a specific business. Active sidewalks will be limited to streets that can accommodate a Class IV bike lane (protected lane) after installation of the sidewalk. Promenades involve partial or complete street closure to vehicular traffic to allow pedestrian and bicycle traffic and can themselves contain streetaries and active sidewalks. Outdoor dining on private property would involve permanent outdoor dining space to replace existing off-street parking. Applicants would be required to enter into an encroachment, maintenance, and removal agreement (EMRA) ensure that the outdoor area is maintained.

While the Spaces as Places program is expected to improve pedestrian-oriented amenities and promote alternate modes of transit, there are potential adverse impacts to public access associated with the program, and limited information on how much of a benefit the program will have. In all or nearly all coastal areas in the City of San Diego, private cars and street parking are still the primary means by which the general public accesses the shoreline, and this is likely to be the case for some years to come. Allowing the expansion of private structures and uses into areas currently reserved for public parking, or into parking areas intended to meet the demand associated with private uses, could adversely

impact the ability of the general public to access and enjoy the shoreline. The City of San Diego is 375 square miles in size and 15 miles at its widest. While the City's Metropolitan Transit System (MTS) operates a system of light rail and buses, it can take over one-and-a-half hours to reach the coast from parts of eastern San Diego, which is also where many of the lower-income communities of the City are located, in addition to the cities in San Diego County located even further away. The occupation of public parking along the coast, while potentially encouraging nearby residents to walk or bike, will instead likely have a deterrent effect on visitors living much farther away in light of transit time. Because of the high cost of housing located within walking distance to the shoreline, measures that limit coastal access for people who are not within walking distance disproportionately impacts lower income communities, which raises environmental justice concerns.

Additionally, the amendment's proposal to place development under Spaces as Places in a new category of development exempt from having to obtain a coastal development permit would prevent the identification of adverse impacts to coastal resources and access and feasible less impactful alternative.

Commission staff worked closely with the City staff to develop revisions to the proposed LCPA that would address these issues. As modified, development under Spaces as Places would be required to obtain a streamlined coastal development permit, which must make the necessary findings regarding conformance with the environmental and public access policies of the LCP, among others. Development under Spaces as Places must also replace converted parking in the following circumstances:

Streetaries within the Beach Impact Area would be required to replace any public parking they occupy with an equivalent number of parking spaces at no cost to the public either on site or through a shared parking agreement pursuant to the LCP's requirements. Streetaries outside of the Beach Impact Area would not have such a requirement.

Private off-street parking spaces converted to dining area within the Beach Impact Area would have to be replaced with equivalent parking spaces either on site or through a shared parking agreement pursuant to the LCP's requirements regardless of whether the parking spaces are in excess of the LCP's parking requirements. Private off-street parking outside of the Beach Impact Area would only be required to replace parking spaces necessary to meet the LCP's parking requirements, and not parking spaces in excess to that requirement.

Active Sidewalks and Public Promenades within the Beach Impact Area will be required to replace public parking they occupy, while outside of the Beach Impact Area they will not be required to.

The City has agreed to all of the suggested modifications.

Thus, as modified in this report, the Spaces as Places program can be found in conformance with the public access and resource protection policies of the City of San Diego's certified LCP.

The appropriate motions and resolutions begin on page 6. The suggested modifications begin on page X. The findings for denial of the Implementation Plan Amendment as submitted begin on page 6. The findings for approval of the plan, if modified, begin on page 16.

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 Land Development Code, which primarily contains Chapters 11 through 15 of the Municipal Code. The LDC 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-21-0091-3 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370 or SanDiegoCoast@coastal.ca.gov.

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EXHIBITS

[Exhibit 1 – Strikeout/Underline Ordinance](#)

[Exhibit 2 – Spaces as Places Design Manual](#)

[Exhibit 3 – Map of Beach Impact Area](#)

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.

Since the effective certification of the City's LCP, there have been numerous major and minor amendments processed by the Commission. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of city-wide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC) and associated documents as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

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 opportunity 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.

II. MOTIONS AND 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.

1. MOTION:

I move that the Commission reject the Implementation Program Amendment No. LCP-6-SAN-21-0091-3 for the City of San Diego 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 AMENDMENT 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 Plans, and the 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.

2. MOTION:

I move that the Commission certify the Implementation Program Amendment No. LCP-6-SAN-21-0091-3 for the City of San Diego if it is modified pursuant to the staff recommendation.

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 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. 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. Section 126.0704 shall be modified as follows:

126.0704 Exemptions from a Coastal Development Permit

The following coastal development is exempt from the requirement to obtain a Coastal Development Permit:

[...]

~~(j) Outdoor dining on private property and Promenades, streetaries, and active sidewalks designed in accordance with the Land Development Code and the Spaces as Places Design Manual.~~

2. Section 126.0707 shall be modified as follows:

Section 126.0707 Decision Process for a Coastal Development Permit

- (a) A decision on an application for a City-issued Coastal Development Permit in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Process Two, which may be appealed to the Planning Commission in accordance with Section 112.0504, except as follows: ~~that a decision on an application for a capital improvement program project or public project in the non-appealable area or the appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(c), and a decision on an application for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(g).~~

(1) A decision on an application for a capital improvement program project or public project in the non-appealable or the appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(c).

(2) A decision on an application for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(g).

(3) A decision on an application in the non-appealable area of the Coastal Overlay Zone for sidewalk cafes, streetaries, and active sidewalks in accordance with Section 141.0621, outdoor dining on private property in

accordance with Section 141.0628, and promenades in accordance with Section 141.0629 shall be made in accordance with Section 126.0707(h).

[...]

- (d) Except for Coastal Development permits issued in accordance with Section 126.0707(g) and Section 126.0707(h), conditions may be imposed by the decision maker when approving a Coastal Development permit to carry out the purpose and the requirements of this division. The conditions may include a provision for public access, open space, or conservation easements or the relocation or redesign of proposed site improvements. In any subdivision or other land division, such conditions shall be imposed at the time of the subdivision or other land division, rather than through subsequent development permits. When conditions pertaining to public access, open space, or conservation easements are imposed, the City Manager shall notify the Executive Director of the Coastal Commission as set forth in Section 126.0719.

[...]

- (h) A decision on an application in the non-appealable area of the Coastal Overlay Zone for a City-issued Coastal Development Permit for sidewalk cafes, streetaries, and active sidewalks in accordance with Section 141.0621, outdoor dining on private property in accordance with Section 141.0628, and promenades in accordance with Section 141.0629 shall be made as follows:

(1) A Coastal Development Permit for sidewalk cafes, streetaries, active sidewalks, and promenades shall be issued as a Public Right of Way Permit in accordance with Process One as specified in Chapter 12, Article 9, Division 7, Section 112.0502, and Section 141.0621 or 141.0629, as applicable.

(2) A Coastal Development Permit for outdoor dining on private property shall be issued as a Building Permit in accordance with Process One as specified in Chapter 12, Article 9, Division 2, Section 112.0502, and Section 141.0628.

(3) Sections 126.0711, 126.0712, 126.0713, 126.0715 and 126.0716 related to recordation, issuance, initial utilization, time extension, and modification or amendment of a Coastal Development Permit shall not apply.

(4) If the proposed coastal development involves any of the activities in Section 126.0704(a)(1)-(2) or Section 126.0704(a)(4)-(8), a Coastal Development Permit shall be required in accordance with a Process Two as specified in Section 126.0707(a).

3. Section 126.0708 shall be modified as follows:

126.0708 Findings for Coastal Development Permit Approval

Except for Coastal Development Permits issued in accordance with Section 126.0606(g) - (h), an application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development. Coastal Development Permits issued in accordance with Section 126.0707(g) shall be approved if the administrative findings in Section 126.0708(c), and if applicable, the supplemental findings in Section 126.0708(b) are satisfied. Coastal Development Permits issued in accordance with Section 126.0707(h) shall be approved if the administrative findings in Section 126.0708(d), and if applicable, the supplemental findings in Section 126.0708(b) are satisfied.

[...]

(d) The following administrative findings shall be made for Coastal Development Permits required for sidewalk cafes, streetaries, active sidewalks, outdoor dining on private property, and promenades permitted in accordance with Section 126.0707(h) in order to ensure that the development conforms to the Local Coastal Program:

- (1) The proposed coastal development permit will preserve existing public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan and Chapter 13, Article 2, Division 4.
- (2) The proposed coastal development complies with the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1.
- (3) The proposed coastal development does not involve any of the activities in Section 126.0704(a)(1)-(2) or Section 126.0704(a)(4)-(8).
- (4) The proposed coastal development will not preclude public access to any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan.

4. Section 141.0621 shall be modified as follows:

141.0621 Sidewalk Cafes, Streetaries, and Active Sidewalks

The sidewalk cafes, streetaries, and active sidewalks regulations establish requirements for outdoor dining and other uses located within the public right-of-way. For the purposes of this Section, sidewalk cafes are defined as outdoor dining spaces located within the sidewalk area of the public right-of-way that are

associated with adjacent eating and drinking establishments; streetaries are defined as outdoor spaces located in a street space formerly dedicated to parking spaces that serves as an extension of an eating and drinking establishment; and active sidewalks are defined as the permanent extension of the curb into the public right-of-way to facilitate activation of the public right-of-way through recreational amenities, landscaped areas, seating areas, farmers market, artworks, or outdoor dining. Sidewalk cafes, streetaries, and active sidewalks are permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. It is not the intent of this Section to regulate outdoor eating and drinking establishment areas that are located on private property.

[...]

(b) Limited Use Regulations for Streetaries

[...]

(2) Permit Requirements

[...]

C. ~~Removal of parking, with the exception of accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be a basis of denial of a Public Right-of-Way Permit for an active sidewalk.~~ Removal of on-street parking spaces to construct streetaries shall comply with the following.

- i. On-street accessible parking spaces provided in accordance with Title 24 of the California Code of Regulations (California Building Standards Code) shall not be removed for the construction of a streetary.
- ii. Outside of Coastal Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way permit for a streetary, except as provided in 141.0621(b)(2)(C)(i).
- iii. Within the Coastal Overlay Zone and outside of the Beach Impact Area of the Parking Impact Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way permit for a streetary, except as provided in 141.0621(b)(2)(C)(i).
- iv. Within both the Coastal Overlay Zone and the Beach Impact Area of the Parking Impact Overlay Zone, all on-street parking removed to construct a streetary shall be replaced with an equivalent number of off-street parking spaces

provided at no cost to the public either on the same premises as the business proposing the streetary, or off-premises through shared parking in accordance with Section 142.0545.

[...]

(c) Limited Use Regulations for Active Sidewalks

[...]

(3) Permit requirements

[...]

~~B. Removal of parking, with the exception of accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be the bases of denial of a Public Right-of-Way Permit for an active sidewalk.~~
Removal of on-street parking spaces to construct active sidewalks shall comply with the following:

- i. On-street accessible parking spaces provided in accordance with Title 24 of the California Code of Regulations (California Building Standards Code) shall not be removed for the construction of active sidewalks.
- ii. Outside of the Coastal Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way Permit for active sidewalks, except as provided in 141.0621(c)(3)(B)(i).
- iii. Within the Coastal Overlay Zone and outside of the Beach Impact Area of the Parking Impact Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way permit for an active sidewalk, except as provided in 141.0621(c)(3)(B)(i).
- iv. Within both the Coastal Overlay Zone and the Beach Parking Impact Area, all on-street parking removed to construct an active sidewalk shall be replaced with an equivalent number of off-street parking spaces provided at no cost to the public either on the same premises as the business proposing the active sidewalk, or off-premises through shared parking in accordance with Section 142.0545.

[...]

5. Section 141.0628 shall be modified as follows:

141.0628 Outdoor Dining on Private Property

The permanent use of a private property for outdoor dining is permitted as a limited use in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), subject to the following regulations:

- (a) Permit Requirements:

[...]

5. ~~Removal of required off-street parking spaces on a premises where any portion of the premises is located within a transit priority area; with the exception of any existing accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code); shall not be a basis of denial of the permit. Removal of required off-street parking spaces to construct outdoor dining in private property shall comply with the following:~~
- A. Off-street parking spaces that are accessible in accordance with Title 24 of the California Code of Regulations (California Building Standards Code) shall not be removed for the construction of outdoor dining on private property.
 - B. Outside of a transit priority area, off-street parking spaces shall not be removed for the construction of outdoor dining on private property unless they are in excess of the minimum number of parking spaces required by Chapter 14, Article 2, Division 5.
 - C. Within a transit priority area and outside of the Coastal Overlay Zone, removal of street parking spaces shall not be the basis of denial of the permit, except as provided in 141.0628(a)(5)(A).
 - D. Within both a transit priority area and the Coastal Overlay Zone, the following regulations apply:
 - i. Outside of the Beach Impact Area of the Parking Impact Overlay Zone, off-street parking spaces in excess of the minimum number of spaces required by Chapter 14, Article 2, Division 5 may be removed for the construction of outdoor dining on private property. All parking required by Chapter 14, Article 2, Division 5 that is removed for the construction of outdoor dining on private property shall be replaced with an equivalent number of off-street parking spaces provided at no cost to the public through shared parking in accordance with Section 142.0545.
 - ii. Within the Beach Impact Area of the Parking Impact Overlay Zone, all off-street parking spaces removed to construct outdoor

dining on private property shall be replaced with an equivalent number of off-street parking spaces provided at no cost to the public through shared parking in accordance with Section 142.0545.

[...]

6. Section 141.0629 shall be modified as follows:

141.0629 Promenade

For the purposes of this Section, a promenade is defined as the partial or complete street closure to vehicular traffic to facilitate active transportation uses such as walking, biking, recreation, outdoor dining, and enjoyable public interaction. Promenades enhance pedestrian safety, encourage non-motorized transportation, and foster neighborhood interaction and outdoor activities, increasing the likelihood that more pedestrians will travel by foot or bicycle. Within the Coastal Overlay Zone, Promenades shall not be permitted along streets that are adjacent to exclusively residential uses. A promenade initiated by the City shall not be subject to the additional requirements of this Section.

[...]

- (b) Permit requirements:

[...]

~~(2) Removal of parking, with the exception of accessible spaces in accordance with Title 24 of the California Code of Regulations (California Building Standards Code), shall not be a basis of denial of the permit. Removal of on-street parking spaces to construct promenades.~~

- A. On-street accessible parking spaces provided in accordance with Title 24 of the California Code of Regulations (California Building Standards Code) shall not be removed for the construction of promenades.
- B. Outside of Coastal Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way Permit for promenades, except as provided in 141.0629(b)(2)(A).
- C. Within the Coastal Overlay Zone and outside of the Beach Impact Area of the Parking Impact Overlay Zone, removal of on-street parking spaces shall not be the basis of denial of a Public Right-of-Way permit for promenade, except as provided in 141.0629(b)(2)(A).
- D. Within both the Coastal Overlay Zone and the Beach Parking Impact Area, all on-street parking removed to construct a promenade shall be replaced with an equivalent number of off-street parking spaces provided at no cost to the public either on the same premises as the

business(es) proposing the promenade, or off-premises through shared parking in accordance with Section 142.0545.

[...]

IV. FINDINGS FOR REJECTION OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

The Spaces as Places program addresses four categories of uses, three in the public right-of-way – “streetaries” (street eateries), active sidewalks, and promenades – and one on private property – outdoor dining on private property. Streetaries are outdoor dining areas located in areas previously used for public parking that serve as extensions of restaurants to sell food and drink, which would be allowed along unpainted, yellow, and green curbs while prohibited from being adjacent to red, blue, and white curbs as well as in alleys. Active sidewalks consist of a permanent extension of the existing curb into areas previously used for public parking to facilitate creation of a space for recreation, rest, and outdoor dining not necessarily tied to a specific business and would be limited to streets that can accommodate a Class IV bike lane (protected lane) after installation of the active sidewalk. Promenades involve partial or complete street closure to vehicular traffic to allow pedestrian and bicycle traffic and could themselves contain streetaries and active sidewalks. Outdoor dining on private property would involve permanent outdoor dining space to replace existing off-street parking. Uses in the public right-of-way would be required to enter into an encroachment, maintenance, and removal agreement (EMRA) ensure that the outdoor area is adequately maintained and would remain public property. A Spaces as Places design manual would also be added to the LDC to regulate the design and siting of each of these categories of development.

A renewable two-year permit for the exclusive use of the streetary in the public right-of-way requires a fee would be charged to businesses that operate within the public right-of-way: \$10 per square foot in communities identified by the City as having low or very low access to opportunity within the Citywide Climate Equity Index (which analyzes communities based on environmental, health, housing, socioeconomic, and mobility factors), \$20 per square foot in moderate opportunity areas, and \$30 per square foot in high or very high opportunity areas. Streetaries would also be subject to Development Impact Fees (DIF), though due to the limited-term permits, only one-fifteenth of the DIF for commercial uses would be charged. The fee revenue would first be used by the City to fully recover the costs the administrative and enforcement costs of the program. The remaining funds would be used to fund pedestrian-oriented public improvements; at least fifty percent of the funds remaining after cost recovery would go to traffic calming investments, expanded sidewalks, bikeways, street trees, etc. As active sidewalks and promenades are long-term interventions in the public right-of-way that serves the public and require ongoing maintenance, an exclusive use fee would not be charged.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The certified LUP has a number of goals and policies relevant to the proposed amendment; the most applicable LUP standards are as follows:

In the Case of the City of San Diego, the City's LUPs are comprised of community planning areas based on its established neighborhoods and future urbanizing areas. 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, Olay-Nestor, Downtown, Barrio Logan, and others). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities 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 amendment to the Land Development Code must ensure that development is approved only when consistent with the certified LUPs.

Listed Below are representative policy excerpts contained in the certified LUP segments in the Coastal Overlay 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, bicycles 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 and from 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.

Mission Beach Precise Plan

- The provision of increased residential, commercial, and recreational parking in order to reduce the serious deficit that presently exists.

Peninsula Community Plan

- Curb cuts or street vacation requests which reduce available on-street parking should not be allowed unless comparable replacement parking is provided in the immediate vicinity.

1. FINDINGS FOR DENIAL

On August 4, 2020, the City approved an emergency ordinance allowing “Temporary Outdoor Business Operations” as an emergency response to the COVID-19 pandemic. The emergency ordinance allowed businesses to conduct outdoor dining within the public right-of-way as a means to provide for dining establishments to continue to operate when indoor operations were whole or partially limited due to public health orders. On May 18, 2021, the City extended the emergency ordinance for an additional year due to continuing limits on indoor operations at the time.

While the subsequent proliferation of outdoor dining spaces originally occurred in response to the pandemic, the City has determined the outdoor expansion promotes pedestrian-oriented communities and allows the public to enjoy the public right-of-way in a more active manner than experienced prior to the pandemic. The City’s general goals of its Spaces as Places program to foster pedestrian-oriented communities, reduce vehicular use, and promote alternate transit align with the goals of the Coastal Act and certified LUPs. However, in all or nearly all coastal areas in the City of San Diego, private vehicles and street parking are still the primary means by which the general public accesses the shoreline, and this is likely to be the case for some years to come. Allowing the expansion of private structures and uses into areas currently reserved for public parking, or into parking areas intended to meet the demand associated with private uses, could adversely impact the ability of the general public to access and enjoy the shoreline.

Coastal Permit Review

Despite the four categories of uses under Spaces as Places – streetaries, active sidewalks, promenades, and outdoor eating areas on private property – constituting “development” as defined by the LCP and actively supplanting public parking or increasing the possibility of private parking demand spilling out into public parking, the City’s proposal would exempt them from coastal permit review. Because these categories of development would not qualify for the currently certified exemptions listed in Section 126.0704 of the LDC, the amendment as proposed would create a whole new category explicitly exempting them.

The purpose in the Coastal Act’s, and by extension the certified LCP’s, requirement that development in the coastal zone obtain a coastal development permit is to ensure that development proposals receive a complete and thorough analysis to identify the least impactful alternative and, if impacts are unavoidable, the most effective mitigation feasible. Exemptions, while allowed in specific circumstances in the LCP, are appropriately reserved for development types that, due to their location or scale, are very unlikely to have substantial adverse impacts on public access and coastal resources. The developments described above in the Spaces as Places program, by their very nature, are

not those types of development due in no small part to their occupation of public right-of-way and public parking, and thus should not be exempted from a coastal development permit.

Loss of Public Parking and Alternate Transit

As proposed, the amendment would prohibit the use of any designated disabled parking spaces for streetaries, active sidewalks, or promenades. The amendment does not require that public parking spaces converted to these other uses be replaced. This is concerning given that there are many restaurants located near the shoreline that could potentially take advantage of the proposed program by expanding into either public parking areas or private parking lots, limiting opportunities for beach visitors. The City has long acknowledged there is insufficient parking to serve beach users, and this is reflected in its LUP policies. For example, the City for decades has had a “Beach Impact Area” segment of its “Parking Impact Overlay Zone,” which identifies the areas of the city that due to high visitor demand and inadequate parking supply experience chronic parking deficiencies, and thus off-street parking requirements are higher in these areas than elsewhere in the city ([Exhibit 3](#)).

Additionally, San Diego is somewhat unique among coastal jurisdictions in that, despite its size and tens of millions of visitors each year, it has relatively few parking meters along its coastal public parking. Most public parking spaces by the coast are free, with street parking more commonly having time limits rather than fee requirements. This allows lower-income visitors to the coast, many from the lower income communities on the east side of San Diego farthest from the coast, to be able to visit the coast in a cost-effective manner.

The City argues that the provision of outdoor dining in public parking spaces will foster pedestrian-oriented communities, greater use of active transport such as bicycles, and less reliance on vehicles and more use of alternate transit. While as described above, the usurpation of public parking by commercial eating areas will likely make visiting the coast more difficult by vehicle, the City has not provided any studies or evidence that these “streetaries” have actually had that effect to date, or projections as to what the effect on alternate transit use might be in the future. Furthermore, while the City does not have an estimate on the amount of revenue anticipated from permit fees associated with the program, some of which, as explained above, will go to pedestrian-oriented public improvements, City staff have indicated that it is not expected to be a major source of revenue, and thus is unlikely to result in significant improvements in public transit. While it may be that those already residing in proximity to the coast and commercial uses therein may be more inclined to walk or bike, based on current transit systems, the City of San Diego is 375 square miles, and it takes approximately 1.5 hours to travel from the eastern parts of the city to the coast by bus or trolley. Given this three-hour round trip by alternate transit, it is the likely that effect that usurpation of public parking by commercial uses without replacement will instead have the effect of discouraging coastal recreation by those members of the public not in close proximity to the coast. Because of the high cost of housing located within walking distance of the shoreline, measures that limit coastal access for people who are not within walking distance disproportionately impacts lower income communities, which raises environmental justice concerns.

Thus, as proposed, the amendment's exemption of outdoor eateries, active sidewalks, promenades, and outdoor dining on private property does not allow for necessary coastal permitting review of such proposals to identify potential adverse impacts to public access and coastal resources and the feasible means to minimize those impacts. Additionally, given the concentration of many outdoor eateries in the coastal communities that experience the heaviest visitation and the most acute parking constraints, the failure to require replacement or other mitigation for the loss of public parking and right-of-way space would further increase the public's challenge in visiting the coast and dissuade such visitation. The lack of such review and protection is not in conformance with the public access policies of the certified LUPs and the amendment must be denied as submitted.

2. FINDINGS FOR APPROVAL IF MODIFIED

Commission staff worked closely with City staff to develop revisions to the proposed LCPA that would address the issues identified above.

Understanding the requirement for coastal permit review of these categories of development and the role it plays in identifying and avoiding adverse impacts to public access and coastal resources, the City agreed to a suggested modification that removed the proposed permit exemption. Instead, given the large number of outdoor eating areas already in operation under temporary authorization associated with the pandemic and potential subsequent renewals, suggested modifications create a streamlined coastal permit review process for these uses in the public right-of-way that still makes the necessary findings regarding conformance to the resource and access protection policies of the LCP. Such a streamlined permit process was approved previously by the Commission for the City's LCP amendments addressing Accessory Dwelling Units (LCP-6-SAN-0005-5 2019 Housing Legislation). Applicants proposing development under Spaces as Places would apply for a coastal development permit that the City, upon making the necessary coastal policy findings, would process as a public right-of-way permit, which allows for an expedited processing time and fee.

The City has agreed to a suggested modification that would require development under Spaces as Places to replace occupied public parking in certain circumstances at no cost to the public either on site or through the LCP's shared parking regulations, so as to ensure that the existing levels of access are maintained. In order to maintain a balance between the advantages of allowing new visitor-serving outdoor dining improvements with the potential impacts on public access and recreation, the requirement for replacement parking will only apply in the Beach Impact Area of the Parking Overlay Zone. The BIA identifies the area where public beach parking is already extremely impacted and any further reduction would have a significant adverse impact. Eateries located outside the BIA, where street parking is less likely to be used for beach access, will not be required to replace parking uses for the newly allowed expansions.

Regarding off-street parking spaces on private property that are converted to outdoor dining areas, such as the parking lot of a restaurant, those parking reductions there could lead to spillover parking occupying public parking. To prevent such an impact, suggested modifications require that private parking lots located outside of the Beach Impact area

that convert required parking spaces into outdoor dining must replace those parking spaces so as to maintain minimum parking standards. Excess spaces need not be replaced. Private parking lots located within the Beach Impact Area will be required to replace any parking spaces converted to outdoor dining, whether in excess of the parking requirements or not. This modification will significantly reduce the likelihood of private parking spilling into public streets.

Finally, with regards to active sidewalks and public promenades, such developments, while in the public right-of-way, would create public pedestrian and bicycle amenities filled with recreational and artistic uses, as opposed to private commercial space in the case of streetaries. Nevertheless, because active sidewalks and public promenades would also occupy or eliminate public parking spaces, suggested modifications require such development to also replace public parking. Additionally, because the intent of promenades is to promote visitor-serving uses, not close residential streets used by the public to access the shoreline, suggested modifications clarify that roads wholly lined with residential uses cannot become promenades.

Thus, under the suggested modifications, development under Spaces as Places would occur as follows:

Streetaries within the Beach Impact Area would be required to replace any public parking they occupy with an equivalent number of parking spaces at no cost to the public either on site or through a shared parking agreement pursuant to the LCP's requirements. Streetaries outside of the Beach Impact Area would not have such a requirement.

Private off-street parking spaces converted to dining area within the Beach Impact Area would have to be replaced with equivalent parking spaces either on site or through a shared parking agreement pursuant to the LCP's requirements regardless of whether the parking spaces are in excess of the LCP's parking requirements. Private off-street parking outside of the Beach Impact Area would only be required to replace parking spaces necessary to meet the LCP's parking requirements, and not parking spaces in excess to that requirement.

Active Sidewalks and Public Promenades within the Beach Impact Area will be required to replace public parking they occupy, while outside of the Beach Impact Area they will not be required to.

Because of the large number of outdoor dining areas already in operation and their anticipated continued use, it is important to establish standardized safety, structural, and aesthetic requirements to ensure that impacts to public traffic, accessibility by members of the public with disabilities, and community character are minimized. Thus, along with the Spaces as Places ordinances, the City's amendment also contains a design manual ([Exhibit 2](#)) that will be incorporated into the LCP. The design manual will address each category of development under Spaces as Places and detail the structural requirements to comply with street safety, the Americans with Disabilities Act, and pedestrian traffic. To limit the visual impact and ease future removal of commercial eating areas, the design manual prohibits shade structures and permanent furniture, while requirements that they be flush with the curb and not impede storm flows along gutters will ensure they align with

existing public infrastructure. Development under Spaces as Places will also be required to obtain an Encroachment Maintenance and Removal Agreement (EMRA) to ensure that it is maintained during its operation. These standards and requirements are consistent with the certified LCP.

Thus, with the above suggested modifications addressing coastal permit review and public parking replacement, the amendment can be found consistent with the certified LUPs for the City of San Diego and approved, as modified.

V. 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. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. 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 submission.

For the City's action, an environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code, and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. The City has previously utilized these document for CEQA compliance in association with other code amendments. The City determined that this action would not result in new significant, indirect, or cumulative impacts over and above those disclosed in the aforementioned documents.

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. In this particular case, the LCP amendment will not have any significant adverse effect on coastal resources, and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. In summary, no adverse impacts to coastal resources are anticipated and approval of the proposed amendment is consistent with CEQA.