



New Development on a Site with a Utilized Development Permit

City of San Diego
Development Services Department

INFORMATION
BULLETIN
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This Information Bulletin assists in the implementation of San Diego Municipal Code (SDMC) [Section 126.0113](#), "Development on a Premises with a Utilized Development Permit."

I. BACKGROUND INFORMATION/CONTEXT

To better understand how [Section 126.0113](#) is implemented and how it differs from other review processes, the following background information is provided.

A. Land Use Planning

When the allowable land uses and development intensity for an area are established through the adoption of a community plan and associated zoning actions, the environmental impacts of those land use decisions are fully analyzed and mitigated to the extent feasible or a Statement of Overriding Considerations is adopted by the City Council along with the community plan and zoning package.

The City Council has adopted 10 comprehensive community plan updates since the adoption of the 2008 General Plan and City of Villages Strategy; and the Planning Department continues to pursue additional comprehensive updates that address housing needs and promote mobility alternatives through higher-density infill development.

B. Development Permits

Projects can be required to obtain development permits for a variety of reasons ranging from the use proposed, to the request for deviations from development regulations, to the location of the site in relation to overlay zones or sensitive resources, among other reasons. The City has been issuing development permits in some form since the 1940s.

When a property obtains a development permit such as a Variance, a Conditional Use Permit, or Planned Development Permit, etc., it is recorded against the property. Once the development permit is utilized in accordance with [SDMC Section 126.0108](#), the permit runs with the land in perpetuity unless it is rescinded or (in the case of some use permits) expires. Subsequent projects are reviewed for conformance with the conditions of approval, "Exhibit A", and other documents adopted as part of the development permit.

Projects that implement the scope outlined in the development permit are determined to be in conformance with the permit. Projects that largely implement the scope outlined in the development permit with some modifications or adjustments are reviewed for substantial conformance with the permit, as specified in [SDMC Section 126.0112](#) and outlined in [Information Bulletin 500](#). [Section 126.0113](#) is a separate review process for projects that implement the land use plan and base zone, but fall outside of the scope of the development permit.

II. PURPOSE OF [SDMC SECTION 126.0113](#)

Given the highly limited availability of undeveloped land and the General Plan's goal to increase density within developed areas, new infill development will often occur on a property that is already developed and may have an existing utilized development permit.

The purpose of [Section 126.0113](#) is to allow new development to occur on a property that has an existing utilized development permit when the proposed development is not included within the scope of the

utilized development permit but complies with the use and development regulations of the applicable base zone and/or overlay zone.

[Section 126.0113](#) allows such development to be approved without an amendment to the development permit in accordance with a Process 1 construction permit because the environmental impacts of new development that complies with the regulations of the applicable base zone and/or overlay zone was analyzed and mitigated during the adoption of the comprehensive community plan update and the associated zoning package.

III. IMPLEMENTATION AND PROCESSING OF [SDMC SECTION 126.0113](#)

A. Project Eligibility/Requirements

In order for a project on a site with an existing utilized development permit to be eligible for Section 126.0113, the project must meet all of the following requirements:

- ✓ The proposed use or uses of the new development must be listed as a permitted use in the applicable base zone and overlay zone. If the proposed use is listed as a limited use, it must comply with all of the limited use regulations.
- ✓ The proposed project must comply with all development regulations of the applicable base zone and overlay zone, except as provided in the [Affordable Housing Regulations](#) through the use of incentives or waivers.
- ✓ The proposed project itself must not require additional development permits, such as a Site Development Permit for Environmentally Sensitive Lands or a Coastal Development Permit.
- ✓ All development within the scope of the utilized development permit that has received a construction permit must continue to comply with all applicable conditions of the development permit. (The full scope of the development permit is not required to be constructed at the time of a new development proposal; and conditions tied to aspects of the utilized development permit that have not yet received a construction permit would be triggered at a future date in accordance with the requirements of the permit.)
 - ⇒ *For example, a premises with a development permit that allows for construction of Buildings A, B and C may propose new development under SDMC Section 126.0113 if they have only constructed Building A, provided that the premises continues to comply with all development permit conditions tied to Building A. Development permit conditions tied to Buildings B and C would only need to be complied with when and if the applicant proposes to construct those buildings in accordance with the permit.*

B. Ineligible Projects

Projects with a utilized development permit that were approved concurrently with an individual, project-specific rezone action cannot apply the provisions of Section 126.0113(a) unless:

- ✓ A comprehensive Community Plan Update has occurred after the approval of the utilized development permit; or
- ✓ The utilized development permit allowed and analyzed the maximum development under the base zone or overlay zone.

C. Project Processing

Review of a project and determination of compliance with SDMC Section 126.0113 occurs as part of a Process 1 construction permit application. A separate or initial review process is not required.

IV. HOW SDMC SECTION 126.0113 DIFFERS FROM SDMC SECTION 126.0112

It is important to note that [Section 126.0113](#) (“Development on a Premises with a Utilized Development Permit”) differs from [Section 126.0112](#) (“Modifications to a Development Permit”), the latter of which involves a review for substantial conformance to the utilized development permit.

A. SDMC Section 126.0112, “Modifications to a Development Permit”

- Used for projects that:
 - ✓ Fall within the scope of the utilized development permit with some modifications proposed, and require a substantial conformance review to determine if the proposed modifications fall within the parameters of the prior approval; or
 - ✓ Are implementing a utilized development permit that included conditions requiring a Substantial Conformance Review (SCR).
- Substantial conformance is required because the approved scope required a discretionary action with associated conditions.

B. SDMC Section 126.0113, “Development on a Premises with a Utilized Development Permit”

- Used for projects that:
 - ✓ Fall outside the scope of the utilized development permit; and
 - ✓ Are permitted by-right in the zone; and
 - ✓ Do not require discretionary action.
- Substantial conformance to the utilized development permit is not required because the proposed development has been fully analyzed through the adoption of the community plan or comprehensive community plan update and associated zoning package, and the proposed development does not require further discretionary action.

Documents referenced in this Information Bulletin

- San Diego Municipal Code ([SDMC Sections 126.0108, 126.0112 and 126.0113](#))
- [Information Bulletin 500](#), Substantial Conformance Review
- San Diego Municipal Code ([SDMC Chapter 14, Article 3, Division 7](#), Affordable Housing Regulations)
- Development Services Department: <https://www.sandiego.gov/development-services>
- Contact and Location Information: <https://www.sandiego.gov/development-services/contact>