



THE CITY OF SAN DIEGO

## REPORT TO THE PLANNING COMMISSION

**DATE ISSUED:** January 8, 2015 **REPORT NO. PC-15-008**

**ATTENTION:** Planning Commission, Agenda of January 29, 2015

**SUBJECT:** 9TH UPDATE TO THE LAND DEVELOPMENT CODE/LOCAL COASTAL PROGRAM AMENDMENT (PROCESS 5)

### SUMMARY

**Issue:** Should the Planning Commission recommend approval to the City Council of the 9<sup>th</sup> Update to the Land Development Code /Local Coastal Program Amendment?

**Staff Recommendation:** Recommend approval to the City Council of the amendments to the Land Development Code and Local Coastal Program (and related Municipal Code amendments) including Chapter 5, Article 4; Chapter 6, Article 12; Chapter 9, Article 8; Chapter 11, Articles 2-3; Chapter 12, Articles 1, 3, and 5-9; Chapter 13, Articles 1 and 2; Chapter 14, Articles 1-4; and Chapter 15, Articles 5-6, 10, 13 and 17.

**Environmental Review:** An Environmental Impact Report (EIR No. 96-0333) was prepared, and certified on November 18, 1997 for the original project, the adoption of the Land Development Code. The proposed amendments to the Land Development Code as part of the 9<sup>th</sup> Update, were reviewed by the Environmental Analysis Section for consistency with the above referenced environmental document. It was determined in accordance with Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Section 15162(a) that: (1) no substantial changes are proposed to the project which would require major revisions of the previous EIR; (2) no substantial changes occur with respect to the circumstances under which the project is undertaken that would require any revisions to the previous EIR; and (3) there is no new information of substantial importance that was not known and could not have been known at the time the previous EIR's were certified. Therefore, no subsequent EIR or other environmental document is needed for the 9<sup>th</sup> Update, as all of the impacts were adequately addressed and disclosed in EIR No. 96-0333. For a more detailed analysis, refer to CEQA 15162 Evaluation, Memorandum dated December 24, 2014.

**Fiscal Impact Statement:** Costs associated with implementation of the regulations in the future will be covered by project applicants.

**Code Enforcement Impact:** The proposed amendments would improve predictability and consistency in application of regulations in the Land Development Code. Issues #2 and #4 add flexibility within the permit process to better address code violations.

**Housing Impact Statement:** Issue #28 would facilitate approval of small companion units via Process One approval (including agricultural residential zones) where consistent with a set of objective regulations, which will allow for greater use of this housing option accessory to a single dwelling unit consistent with the goals of the City's Housing Element for a range of housing types and affordability. The 9<sup>th</sup> Update also includes various permit process improvements that will reduce process levels, time, and costs which can positively affect the cost of market rate and subsidized affordable homes.

## **BACKGROUND**

The 9<sup>th</sup> Update is part of the code monitoring work program that was created with the adoption of the original Land Development Code (LDC) to help maintain the code, simplify the City's development regulations, make the code more adaptable, eliminate redundancies and contradictions, standardize the code framework, and increase predictability in application of regulations. A total of 57 issues are included; the bulk of which are regulatory reform related.

The proposed amendments are intended to address past issues and minimize future conflicts by clarifying regulation applicability, removing burdensome requirements, and streamlining approval processes. The most significant changes would add greater certainty and predictability for regulation of previously conforming structures and uses, including restaurants with drive-throughs. A 7-year amortization period is proposed as a new tool to address the adverse effects of previously conforming late night drive through restaurants in residential neighborhoods, which would eventually curtail such operations between midnight and 6 a.m. Other changes would incorporate efficiencies in the processing of environmental documents and approval of minor work associated with non-designated historical resources.

The 9<sup>th</sup> Update also implements the City's economic development strategy by making applicable zoning regulations more predictable and adding flexibility for manufacturing businesses to develop and expand. Examples include a lower process for permit modifications to accommodate new industrial development, more predictable zone code classification for brewery related uses, allowances for breweries and live entertainment in additional industrial zones, exemptions from screening requirements, a lower parking rate for capital intensive manufacturing, and streamlined sign permit approvals.

The code update follows a public process that involves extensive review and input from the Community Planners Committee, Code Monitoring Team, Technical Advisory Committee, Planning Commission, City Council, Coastal Commission, and Airport Authority. A request for public input was posted on the City webpage and distributed via e-mail (October 1, 2014) to all planning group members and interested members of the public. Outreach also involved meetings with the Community Planners Subcommittee; presentations to the Regional Chamber of Commerce; Building Industry Association; and Commercial Real Estate Development Association (NAIOP); and coordination with the California Restaurant Association. Attachment 5 includes the public outreach summary to date. As is typical of the code amendment process, the following recommendations were provided:

**Community Planners Committee (CPC):** Staff presented the 9<sup>th</sup> update to CPC as an information item on October 28, 2014 and participated in subsequent meetings with the CPC Ad Hoc Subcommittee on October 28, November 19, and November 25, 2014, and January 7, 2015. CPC will provide a formal recommendation on January 27, 2015. Preliminary recommendations provided by the CPC Subcommittee are further described under Issue #16 previously conforming regulations.

**Code Monitoring Team (CMT):** Public input was collected at the July, August, and September 2014 CMT meetings, which helped staff organize potential code amendment items in accordance with the adopted goals for the Land Development Code (O-18451) and process for amending the Land Development Code (Section 111.0107). On December 10, 2014, CMT voted 8-0 to recommend adoption of the 9<sup>th</sup> Update, including a recommendation for DSD staff to implement Issue #13 through a streamlined Process Two (with clarification that the new Process Two should apply only if the original development permit must be amended for the permit holder to use new regulations and should not affect proposed development that is in substantial conformance).

**Technical Advisory Committee (TAC):** On December 10, 2014, the Technical Advisory Committee voted 9-0-1 to support approval of the 9<sup>th</sup> Update (Regional Chamber of Commerce abstained from vote).

## **DISCUSSION**

The 57 issues are organized in categories (Permit Process, Use, Measurement, Parking, Signs, and Minor Corrections) with analysis provided below. Report Attachments include a summary of each in issue matrix format (Attachment 1) and proposed code language (Attachments 2-4).

### **Permit Process**

The following 22 issues will streamline the permit process and incorporate greater flexibility in the regulations. The amendments will result in predictable permit process timelines (i.e. permit utilization, extension of time, and expiration); streamlined approvals (i.e. water supply assessments, modifications to recorded maps, easement vacations in the coastal zone); and a staff level decision for gas station electronic pricing signs. Attachment 2 includes the code language.

#### **1. Process for Grading and Right-of-Way Improvements**

The amendment will establish more predictable timelines for grading permits and public right-of-way permits. Currently, the code sets deadlines (180 days each) for “utilizing” and “maintaining utilization” of permits in addition to a permit expiration date, which means if work authorized by the permit has not begun within 180 calendar days, or if work is suspended or abandoned for 180 calendar days (continuous), the permit becomes void. The utilization requirement is proposed to be eliminated because work is already ensured to be completed (or restored to prior condition) by financial sureties/bonds (SDMC 129.0119). Eliminating the utilization requirement will allow applicants and staff to rely on a more predictable two year expiration period.

2. Expiration of Application

The amendment will add flexibility to better address code violations. Currently, the code does not specify whether additional time is allowed for the processing of Process One map or construction permit applications when corrective action is needed to respond to a civil penalty notice. The proposal will amend Section 112.0102 to clarify that applications associated with a code violation case under “civil penalty notice and order” will be automatically extended beyond the two year expiration period to accommodate the time set forth for “civil penalty notice & order” dates, and will include an additional 180 calendar days to allow for corrective action on the part of the applicant and time for staff issuance of the associated permit or map.

3. Process to Approve Water Supply Assessments

State law requires that water supply assessments (for projects where the City is the water provider) be approved in a noticed public hearing by the City Council. The amendment clarifies that the City Council is not required to consider a water supply assessment at the same hearing as the associated development permit applications. The change will allow the City Council to consider and approve a water supply assessment earlier in the process (for Process Two, Three and Four projects) to help inform subsequent decisions made by the lower decision making body regarding the environmental document and project. This will help applicants avoid unnecessary project delays and costs that would otherwise occur if all projects were instead required to be consolidated and processed at City Council.

4. Consolidation of Processing

The “consolidation of processing” code requirement has created issues for processing of corrective actions to address code violations when development permits are in process. The amendment will add flexibility in the code to better address code violations by clarifying that corrective actions to address a code violation shall not be consolidated for processing with other permit applications. This will help to expedite the corrective action and minimize potential for delay in the processing of associated development permits.

5. Published Notice Requirement for Ad Hoc Fees

The proposed amendment clarifies that a special noticing requirement applies when certain fees are considered by the City Council. The City’s typical requirement for published notice is that the Notice of Public Hearing be published (in addition to mailed notice) at least 10 business days before the date of the public hearing. However, the Mitigation Fee Act, which applies to certain fees imposed by the City Council (i.e. some fees related to Community Plan Amendments) also requires special noticing per the Government Code. The change adds a specific reference to the applicable state code.

6. Clarification Regarding Claims of Failure to Receive Notice

Section 112.0309 was modeled after Government Code Section 65093 and provides that failure

to receive notice shall not constitute grounds to invalidate an action taken by the City for which notice was provided. The amendment would clarify that an action shall not be held invalid for a noticing error unless a court determines the noticing error was prejudicial, caused substantial injury, or had the error not occurred, a different result would have been probable per the standard set forth in Government Code section 65010(b). This would codify the existing legal standard.

7. Appeal Period for EOT Applications for Map Waivers and Tentative Maps

The proposed amendment clarifies that the time for filing a Process Two appeal for an extension of time (EOT) is 12 business days, except where more time is afforded by State law. This is necessary because the Subdivision Map Act section 66452.6(e) provides an applicant at least 15 calendar days to file an appeal if their EOT application for a map waiver or tentative map is denied. The state's 15 calendar day requirement is a different way of calculating than the 12 business days that the City uses for other appeal types. To help clarify and ensure compliance with state law for such cases, the amendment identifies that an applicant must file an appeal of a decision to deny their EOT application within 15 calendar days or 12 business days, whichever is greater.

8. Process to Modify Conditions of Approval of a Recorded Map

The proposed amendment will help streamline the process and reduce associated time and costs for requests to amend recorded maps. Currently, City Council approval is required for all requests to modify conditions of approval for recorded maps, while a lower process level applies to new map applications. The proposed change would allow amendments to a map to be processed through the same decision process level that would apply to a new application for an equivalent map proposal. The proposed process is consistent with what applies when amendments to recorded development permits are requested.

9. Extension of Time Applications for Tentative Maps and Development Permits

The proposed amendment will facilitate processing of extension of time applications for tentative maps and development permits. Extension of time requests are Process Two staff level decisions appealable directly to the City Council. Extensions of time may be granted up to a maximum period of 72 months for tentative maps and development permits. Currently, applications to extend a permit's expiration date must be submitted within a 60 day window of the expiration date. Applicants have indicated this is problematic because it is too narrow a time period at the end of the 3 year permit and is easily missed. The proposal would allow EOT applications to be submitted earlier (within 12 months of the permit expiration date), which is more predictable for permit holders to track. If granted, the extended time period would still begin from the date of expiration, which means the total time of the permit extension remains the same. In addition, the language for development permit EOTs would be modified to be consistent with the Subdivision Map Act language, which will clarify that EOT applications automatically extend the permit expiration for 60 days or until a decision is made on the application, "whichever occurs first".

#### 10. Processing Time for Easement Vacations

The proposed amendment would reduce the processing time for easement vacations in the coastal zone. Currently, easement vacations decided by the City Council are not required to obtain a Planning Commission recommendation prior to City Council. The proposed amendment would allow easement vacations with a Coastal Development Permit (CDP) to be exempt from a Planning Commission recommendation if the CDP is required solely for the easement vacation. Other types of Process Five coastal development would still be required to obtain a Planning Commission recommendation.

#### 11. Utilization of a Development Permit

The proposed amendment would eliminate the maintaining utilization section of the code, which will provide greater predictability regarding permit expiration and will facilitate enforcement of the existing 36 month permit expiration date. The change will provide greater predictability about what vests the permit in order to avoid the need to unnecessarily go back and start over with a new permit. The purpose of the utilization requirement is to ensure that at least one of the following occurs before expiration: significant investment has been incurred to meet the permit conditions, substantial work has been performed in reliance of the permit granted, or the use of the property is occurring in the manner granted by the permit. The burden of proof is on the permit holder to establish with evidence that the permit shall not expire. Examples of evidence include a construction permit for the entire project or a substantial portion, a phasing program, evidence of substantial use in progress, final or parcel map approval, or acceptance of an easement to meet a permit condition.

#### 12. Cancellation of a Development Permit

A permit holder may request cancellation of a development permit before utilization of the permit, or can submit an application to rescind the development permit after it has been utilized. Currently the code specifies that the permit is not void until recorded with the County Recorder, which places an administrative burden on the City to act. The amendment clarifies that the decision to cancel a development permit does not need to be recorded with the County Recorder. The cancellation takes effect on the date of the decision and is documented as part of the City's administrative record. The amendment also clarifies that the City may require the owner or permittee to record the cancellation or rescission with the County Recorder.

#### 13. Ability to Use New Regulations Without Amending a Development Permit

The proposed amendment would allow permit holders to request a Process Two Neighborhood Development Permit to have the benefit of new land development regulations without a need to amend their development permit through a higher decision process level. This will result in streamlined permit processing with associated reductions in time and processing costs. The new Process Two option would apply only in cases where utilization of a new regulation would otherwise require the development permit to be amended. The amendment is intended as a flexible option for projects to more easily utilize new regulations and in no way should be

interpreted as a requirement to increase the process level for new development determined to be in substantial conformance.

#### 14. Flexibility for Modifications to Industrial Development

The proposed amendment will streamline the process for changes to design guidelines and planned industrial development permit requirements that don't otherwise meet the criteria for staff level approval based on substantial conformance. This will effectively reduce the decision process level from a Process Four (Planning Commission decision appealable to the City Council) to a Process Two Neighborhood Development Permit (staff level decision appealable to the Planning Commission). The reduced permit process would only apply to development that meets specified criteria (i.e. no impact to public health, safety, and welfare; conformance to the code; no adverse affect to the land use plan; and location at least 1,000 feet from residential development). The reduced permit process for industrial development is part of the City's adopted economic development strategy intended to support the growth of local manufacturing. One example of the potential benefit to local beer manufacturers is that it will allow them to more easily utilize outdoor silos for grain in older industrial developments where existing development permits typically exclude outdoor tanks.

#### 15. Encroachments

Sections 129.0710 and 129.0715 are being amended to facilitate the processing of encroachments in the public right-of-way. The amendment will clarify that pedestrian plazas in the right-of-way beyond the ultimate curb line require a Process Two Neighborhood Development Permit prior to City Engineer approval of an Encroachment Maintenance and Removal Agreement (EMRA). The amendment will also clarify that permit holders may execute EMRAs in cases where they are not the property owner.

#### 16. Previously Conforming

Previously conforming is a term that refers to structures that were legally built, and to uses that were legally established, in accordance with the regulations that applied at that time, but due to a change in regulation or zoning beyond the control of the property owner or tenant are "previously conforming". The previously conforming regulations identify what rights the owner has to voluntarily make improvements to maintain, repair, alter, replace, or expand what they have; and what rights the owner has to reconstruct the structure and/or resume the use if destroyed by a fire, natural disaster or act of the public enemy.

The City takes a unique approach to such development whereby some previously conforming scenarios allow improvements by right, some require discretionary permit approval, and others do not allow improvements at all. By allowing flexibility for compatible previously conforming properties to more easily maintain, repair, alter or replace existing development, the City has been able to minimize the potential for blight. Amortization periods are designed to provide a reasonable grace period before requiring previously conforming uses to comply with new regulations. An amortization period is proposed with 9<sup>th</sup> update Issue #27 to address the adverse

effects of previously conforming restaurants with drive throughs that operate between midnight and 6:00 a.m. adjacent to residential. (Refer to Issue #27 for the analysis.)

Most of the City is currently affected by, or will be affected at some point in the future, by a previously conforming development or use scenario. It is therefore critical for applicants, staff, decision makers and the public to have a common understanding of how the regulations apply. The proposed clarifications and process improvements will facilitate a more consistent and predictable outcome for applicants and the community, which are in turn expected to increase opportunities and the likelihood for reinvestment in the City's older neighborhoods.

In general, previously conforming structures may be maintained, repaired, altered or replaced in accordance with Process One. As proposed, Process One and Process Two permit approvals are available for certain limited expansion options depending on whether the proposed expansion meets current development regulations, is necessary to meet California Building Code or Fire Code requirements, or would expand on existing development consistent with the previously conforming setback and specified criteria. Previously conforming uses are also subject to either Process One or Process Two permit approvals depending on how much of the structure's existing exterior walls would be retained. Reconstruction after a fire, natural disaster or act of the public enemy would be allowed in accordance with Process One.

Key amendments include a proposed change in the permit threshold (from market value to removal of exterior walls), clarifications to the methodology for calculation and measurement of exterior walls, new allowances for limited expansion of a previously conforming structure within a setback, clarification of the circumstances where a previously conforming use may be resumed after discontinuance, and clarification of the type of previously conforming industrial development that is not eligible to request approval for expansion within residential zones. This item deals with a highly complex and contentious subject matter that involves property rights. Refer to Report Attachment 6 for additional information.

Widespread support has been expressed for the proposed amendments and the City's adopted approach that allows compatible previously conforming development to continue to exist and even expand under limited circumstances. Many of the opposing views are representative of a more traditional approach taken in smaller cities to get rid of all "non-conforming" development. The CPC Subcommittee recommended a potential compromise that would require a Process Two discretionary permit for major alterations or replacement of multiple dwelling unit structures (with a previously conforming structural envelope or previously conforming density). Their proposal would also require such development to comply with all current landscape requirements applicable to the street yard, provide street trees per current standards, and comply with the Street Design Manual standard for maximum curb cut width. Their intent is to provide a discretionary tool that will allow the City to prevent multiple dwelling unit developments from rebuilding in a manner that is not sensitive to community plan policies and the community character. The Planning Commission should consider the CPC suggestion and make a recommendation accordingly.



## 17. CEQA Document Processing Requirements

The City currently enforces local requirements to implement the California Environmental Quality Act (CEQA) that are more restrictive than what is required by state law. The proposed amendment will create consistency between the City's requirements and state law to protect the City from unreasonable CEQA document challenges because of different local requirements regarding review periods, cover letters, and supplemental findings that address the conclusions of a final environmental impact report (EIR) regarding a project's potential impacts, while still effectively disclosing potential environmental impacts to decision makers and the public.

The proposal would revise LDC Section 128.0306(b) to make the required time period for public review and comment on a draft environmental document consistent with what is required by state law. The proposal would also remove the local requirement for a cover letter to be prepared when a previously certified document is used. Instead, the typical procedure (for a cover letter to be prepared) would be published in the City's environmental review procedures and information bulletin 401. The change will reduce the potential for legal challenge while still providing the same level of detail in support of the City's environmental determination.

Most significantly, LDC Section 128.0310 would be amended to address unnecessary delay to the release of final EIRs caused by the current requirement for final EIRs to be released together with the candidate findings and statement of overriding considerations (SOC). CEQA provides for the City to establish its own timelines for final environmental documents to be made available, which the City currently has set as 14 calendar days. However, the local requirement to also provide candidate findings and SOCs at least 14 calendar days prior to the hearing has caused unnecessary project delays. The amendment would remove the 14 day requirement for providing candidate findings and SOCs. This would in no way reduce the amount of information available to the public or decision makers regarding a proposed project. Instead, it recognizes the typical sequence for documents of this nature to be prepared and removes a current code requirement identified as causing project delay.

CEQA does not require an advisory body to have an environmental document in final form. However, as proposed, final environmental documents, including Final EIRs, would continue to be available at least 14 calendar days prior to 1) a decision by the City Manager to adopt or certify an environmental document (i.e. process two decisions), 2) a decision by an advisory body required by the Land Development Code to make a recommendation regarding adoption or certification of an environmental document (Historic Resources Board or Planning Commission) or 3) a decision by the Hearing Officer, Planning Commission, or City Council to adopt or certify an environmental document. The candidate findings and SOCs would be made available with all other project materials to be considered in the public hearing in accordance with applicable public hearing procedures, CEQA, and the Brown Act.

## 18. When a Public Right-of-Way Permit is Required

The proposed amendment would clarify that a public right-of-way permit is required for public improvements by a private entity or a public entity other than the City (i.e. SANDAG). The code

allows the City Engineer to waive the permit requirement if the other governmental agency has an agreement in place with the City pursuant to Section 129.0702(b).

19. Qualifications to Prepare Plans and Perform Work in the Public Right-of-Way

The proposed amendment is a clarification that would replace the term “required” with the term “regulated” to clarify that right-of-way work subject to Chapter 12, Article 9 must be performed by a licensed contractor, unless otherwise specified. For example, exceptions are provided for work by public utilities and for homeowners to perform grading at their primary residence.

20. Applying OP Zone to City Parkland Prior to Dedication

As requested by the Planning Department, Section 131.0202 would be amended to allow the open space-park (OP) zone to be applied to City fee-owned designated parkland that is not formally dedicated by City ordinance or State statute. The goal is to facilitate application of the OP zone to future parkland during the community plan update process. It is common for parkland to be acquired by the City, designated for developed park purposes during the planning process, and then held until park facilities can be constructed, or until the property can be traded or sold to acquire land of a higher value for park purposes.

21. Clarification of Street Light Requirement

Street lights are a public improvement required of private applicants as part of a new subdivision design. However, the existing code does not specify the public improvement requirement is tied to subdivision maps, which has caused the need for frequent conflict resolution meetings for businesses in existing subdivisions who have been asked to provide new street lights while processing minor improvements via a grading permit or public right-of-way permit. The code change will facilitate permit processing for future applicants without reducing the threshold of the existing requirement. Street lights will continue to be required of new subdivisions, or will otherwise be provided subject to available funding via the capital improvement program in accordance with Council Policy 200-18 (Mid-Block Street Light Policy for Developed Areas).

22. Exemptions from Historic Resources Site Survey

Section 143.0212 applies to all development that is 45 years or older and that has not been designated a historic resource. The ordinance would provide new exemptions from the requirement for a historic resources site survey for in-kind foundation repair and replacement (except that structures with decorative block or cobblestone foundation would still require historic review), and for construction of swimming pools in the rear yard (except that property with a likelihood of archaeological sites would still require historic review). The code already exempts in-kind roof repair/replacement, and minor interior modifications limited in scope to an electrical, plumbing, or mechanical permit.

### Use Amendments

The following 11 issues would streamline the approval process for various uses (i.e. companion units in agricultural-residential zones, live entertainment in industrial zones, satellite antennas in industrial zones, and indoor theaters); address uses that are part of the City's Economic Development Strategy (i.e. manufacturing, including breweries); and clarify other use category types (i.e. brewery tasting rooms and retail tasting stores). Refer to Attachment 2.

#### 23. Manufacturing Uses (Light manufacturing versus Heavy manufacturing)

The proposed amendment would help clarify the difference between the light manufacturing and heavy manufacturing use category descriptions in the City's zoning code. Heavy manufacturing involves the use of large outdoor equipment such as cranes and large tanks to produce unpackaged bulk products such as steel, paper, lumber, fertilizer, or petrochemicals, and includes manufacturing that typically produces disturbing noise, dust, or other pollutants capable of harming or annoying adjacent uses.

Light manufacturing involves the manufacturing of a wide variety of products including, but not limited to food, beverages, durable goods, machinery and equipment; and includes the manufacturing of beer. Like heavy manufacturing, light manufacturing also involves processing, fabricating, assembling, treating and/or packaging finished parts or products, but does so without the use of explosives or unrefined petroleum. This is an important distinction because in the past businesses that manufacture other petroleum based products have been treated as heavy manufacturing and as a result were forced out of light manufacturing areas that would have been more compatible with such operations. The most significant change is the proposed exception to LDC Section 131.0623(e) that would allow beverage manufacturing in the IP-1-1 and IP-3-1 zones where only a limited spectrum of light manufacturing uses is currently allowed (i.e. manufacturing of pharmaceutical products and medical instruments).

#### 24. Tasting Rooms versus Retail Tasting Stores

Tasting rooms and retail tasting stores are use types associated with breweries. The proposed amendment would create new commercial zoning subcategories for tasting rooms and retail tasting stores to help differentiate the uses. The proposal is consistent with the City's Economic Development strategy to support the growth of local beverage manufacturing.

As clarified by Issue #23, breweries are establishments that manufacture beer. They are classified as a light manufacturing industrial use in the zoning code and are permitted in industrial zones and heavy commercial zones. Each brewery is permitted to have an accessory tasting room on-site that offers alcoholic beverage tastings and sales of alcohol (for on-site or off-site consumption) in accordance with the Type 1 beer manufacturer or Type 23 small beer manufacturer license issued by the California Department of Alcoholic Beverage Control (ABC).

State law allows California beer manufacturers to obtain "duplicate licenses" of their original Type 1 or Type 23 alcohol license to operate up to six off-site retail tasting stores (also known as "branch offices") anywhere in the state of California. This use type has recently become popular

for beer manufacturers to grow their operations. Retail tasting stores are essentially off-site tasting rooms that allow a beer manufacturer to provide tastings and sales of the beer they produce (for on-site or off-site consumption) at locations separate from the brewery. Retail tasting stores are precluded from manufacturing any beer on-site per state law (Business and Professions Code section 23389).

The proposed amendment initially included a Process Two for retail tasting stores located adjacent to residential zones. However, it was removed after the AB 2010 urgency measure was signed into law by Governor Brown on September 29, 2014, with a public review and protest component for the alcohol licensing process. Prior to AB 2010, duplicate licenses were issued by the ABC without any public notice or opportunity for participation, which was of concern to adjacent residents and members of the local craft brewery industry concerned about repercussions of this type of unresolved neighborhood conflict on the industry.

As proposed, these commercial establishments would be allowed as a limited use in most commercial zones and industrial zones subject to limits on hours of operation in CN zones and adjacent to residential zones. By comparison, new restaurants and bars in CN zones and locations abutting residential zones are already limited to the same hours (6am and midnight); and require similar public notice and opportunity for participation via the state licensing process.

#### 25. Distribution and Storage Uses

The proposed amendment would clarify the description of the distribution and storage use category and subcategories, and eliminate duplicative language. Use of the terms “wholesale” (a type of sales transaction) and “warehouse” (a type of building) as use category types has created confusion for applicants seeking to locate their businesses, especially since the category descriptions are very similar. The amendment will result in three subcategories: equipment and materials storage yards (outdoors), moving and storage facilities, and distribution facilities. This amendment was recommended by the City’s Economic Development Department.

#### 26. Assembly and Entertainment Uses, Including Churches

The proposed amendment would create a new separately regulated use category for assembly and entertainment uses, including churches, to better regulate these facilities based on the size of the establishment. The proposal would set the permit process level based on the maximum capacity for assembly (i.e. allowing up to 300 people as limited use and creating conditional use criteria for larger facilities subject to CUP). Currently, the City regulates “churches and places of religious assembly” and “assembly and entertainment” as “permitted by right” or “not permitted” in most zones, but still requires a CUP for churches in a few specialized zones (i.e. AR, SEPDO, and CUPDO). The City can best avoid legal challenge by treating churches like other assembly. The ordinance would also amend two planned district ordinances (PDOs) to reflect citywide changes, including amendment of the Central Urbanized PDO to reflect citywide changes in the CU-1, 2, and 3 zones; and amendment of the La Jolla Shores PDO to require a CUP for churches in the VC and CC zones, and “not permitted” in the SF zones consistent with the citywide zones.

## 27. Drive-In and Drive-Through Eating and Drinking Establishments

The proposed amendment would create a new separately regulated use category for drive-in and drive-through eating and drinking establishments. The current code treats drive-in and drive-through components as a design feature of a restaurant, which has resulted in confusion in cases where existing establishments have previously conforming rights. The new separately regulated use category will allow for new development to occur where it is appropriate for the location and will add controls to address previously conforming establishments particularly with respect to hours of operation. Drive-in and drive through eating and drinking establishments will continue to be allowed by right without limitation in locations where they are currently allowed.

As proposed, a conditional use permit would be required in zones where restaurants are allowed, but where a drive-through component currently requires a discretionary permit deviation (CN-1-2, IP-2 and 3, IL-1-1, IL-2-1, IH-2-1, and IBT zones). The proposed change will allow for new drive-in and drive-through establishments to be developed where they are appropriate for the location and where they will not adversely affect the applicable community plan. Through the conditional use permit, conditions of approval can be applied to minimize the potential for detrimental effects to neighboring properties.

A 7 year amortization period is proposed for the hours of operation of drive-in and drive-throughs located either in neighborhood commercial zones or adjacent to residential zones in order to bring the hours of operation into compliance with similarly situated commercial operations (6:00 a.m. through midnight). To address neighborhood concerns, the new use category would consider a drive through to be adjacent to residential even where the properties are separated by an alley. The proposed limit on hours of operation is a concern to the California Restaurant Association and fast food industry. If desired, an alternative would be to allow impacted establishments to request approval of extended hours via a conditional use permit by making a permit finding that the hours of operation are appropriate for the location.

## 28. Companion Units

A companion unit is a small dwelling unit (maximum of 700 square feet) that is accessory to a single dwelling unit on a residential lot that provides complete living facilities, including a kitchen, independent of the primary dwelling. Companion units are typically permitted as a limited use and can be approved in accordance with Process One if they meet the requirements in Section 141.0302. However, the existing code indicates that a Conditional Use Permit is required for a companion unit in the agricultural-residential (AR) zones. The proposed amendment would allow companion units as a limited use if they meet the requirements in Section 141.0302 consistent with the applicable permit process and review criteria applicable to other low density residential zones. The proposed amendment would also remove the existing requirement that the siding and roof materials of the primary dwelling unit and companion unit must be the same. This will facilitate the conversion of existing small accessory buildings to companion units in the City's older, established neighborhoods where affordable housing options are needed.

An additional option for the Planning Commission to consider is whether to remove the existing requirement in Section 141.0302(j) for an alley to be improved in order to allow a companion unit. The Normal Heights Community Planning Group recommended removal of this provision, which to date has effectively prohibited companion units in such circumstances because alley improvements are cost prohibitive for home owners.

29. Allowance for Live Entertainment in Industrial Zones

The proposed amendment would allow eating and drinking establishments to have live entertainment in industrial zones, except for heavy industrial zones (IH zones). This amendment was recommended by the City's Economic Development Department as a means to support the growth of local beer manufacturing businesses and to address what has become a frequent request within the context of industrial development.

30. Satellite Antennas in Industrial Zones

Existing LDC Section 141.0405 is unclear as to what permit process applies to satellite antennas in industrial zones. The existing code exempts satellite antennas in industrial zones from a conditional use permit, and suggests that the use is permitted by right as an accessory use in industrial zones. The proposed amendments would clarify that accessory satellite antennas in industrial zones are exempt from a discretionary permit.

31. Historic Buildings Occupied by Uses Otherwise Not Allowed

The proposed amendment would clarify that in cases where reuse of a historic building would include a separately regulated use subject to LDC Chapter 14, the proposed use must be designed to meet the Chapter 14 separately regulated use requirements applicable to that use in order to minimize detrimental effects to the neighborhood. As requested by Civic San Diego, the ordinance would also amend the Centre City Planned District Ordinance (CCPDO) to make the CCPDO consistent with citywide regulations for reuse of a historic resource.

32. Plant Nurseries

A "plant nursery" is a place where plants are cultivated and grown for transplant, distribution, and sale. There has been confusion as to why "plant nurseries" is a separately regulated use category. The amendment clarifies that the use is permitted by right in commercial zones and will help distinguish this use type from horticulture nurseries and greenhouses (agricultural use) and garden centers (a retail sales use). Currently, the code requires a Conditional Use Permit for plant nurseries in agricultural zones if the facility would include a retail space larger than 300 feet or allow non-plant retail sales. Retail sales of plants from garden centers in retail stores are also allowed by right in all zones that allow the sale of consumer goods.

33. Marine-Related Uses in the Coastal Zone

The proposed amendment would clarify that where the use is permitted (as indicated by a "P" in

the Ch 13 use table in various industrial zones), no limitations apply. Commercial zones that require a conditional use permit will continue to be subject to the separately regulated use criteria identified in Section 141.1003.

Measurement:

Refer to Attachment 3 for draft code sections for the following five issues.

34. Bay Windows

The proposed amendment to Section 113.0234 (Rules for Calculation and Measurement for Gross Floor Area) would help clarify under what circumstances bay windows are exempt from the calculation of gross floor area. Bay windows are exempt from the calculation of gross floor area if they are standard window sill height and have no structural supports, or have less than 5 feet of height between the finish-floor and the roof elevation immediately above.

35. Garages and Accessory Structures

Encroachments associated with garages and non-habitable structures are limited in accordance with LDC Section 131.0461. The proposed amendment would strike the term "detached" in reference to garages. The accessory building can't exceed 525 square feet in RS zones. Clarify that an accessory building in the setback can't share a common wall with the primary dwelling unit, but can be attached via a design element and still be considered a separate building.

36. Roof Projection into the Angled Building Envelope Plane

The existing regulation in Section 131.0461(a)(1)(D), which is depicted in Diagram 131-04S, has led to multiple interpretations about what is intended to be a limited allowance for a roof design to project into the angled building envelope plane (facing the front yard) under specified limitations. The proposed amendment would clarify that the roof design may project into the angled building envelope, but may not encroach into the setback.

37. Retaining Walls

The proposed amendment would create an exception for the measurement of retaining wall height (per Sections 113.0270(b) and 142.0340) in order to allow retaining walls over 3 feet in height in the front and street side yards when the elevation of the street grade is higher than the building pad since the majority of the wall is not visible from the street. In such cases, the measurement of wall height (for zoning height compliance) would be taken from the adjacent street grade. The proposed amendment would also clarify when a building permit is required for retaining walls greater than 3 feet (as measured from the top of the footing to the top of the wall) by referring to Section 129.0203 as an applicable regulation in Section 142.0305 Table 142-03A.

38. Mechanical Equipment Used in the Manufacturing Process

Provide an exception from the requirement in Section 142.0910(a) and (b) for mechanical

equipment screening for industrial development that involves light or heavy manufacturing when the appurtenances are not readily visible from any residential development.

Parking:

Refer to Attachment 3 for the draft code sections for the following two issues.

39. Parking Requirement for Capital Intensive Manufacturing

Create a new specified parking requirement at rate of 1 space per 1,000 square feet of gross floor area for capital intensive manufacturing involving the use of large equipment, tanks, vessels, automated machinery, or any similar combination of such machinery and equipment. This amendment was requested by the City's Economic Development Department to provide regulatory relief and facilitate occupancy of vacant tenant spaces for manufacturing businesses.

40. Driveway Design to Meet Engineering Standards

The proposed amendment would clarify the requirements to meet the minimum driveway gradient standards in response to confusion that has resulted for staff and applicants because of the wording in the existing code.

Signs:

Refer to Attachment 3 for draft code sections for the following four issues.

41. Signage in Planned Commercial and Industrial Developments

The proposed amendment would provide for commercial and industrial development to add signage in accordance with the sign code without a need to amend applicable development permits that are outdated with respect to sign regulations. The amendment would also allow Process One approval per the current sign code for any sites subject to old comprehensive sign plans adopted prior to January 1, 2000. The following signs would still require a development permit in order to minimize the potential for detrimental effects on the surrounding neighborhood: comprehensive sign plans (adopted January 1, 2000 or later), revolving projecting signs, signs with automatic changing copy, or a theater marquee. Any sign that involves an alteration to the building where the proposed building alteration is not in substantial conformance to the applicable development permit; and any proposal that involves an advertising display sign would also not be eligible for the proposed Process One exception.

42. Utilization of Sign Permits, Sign Stickers, and Sign Inspections

Delete the requirement for initial utilization and maintaining utilization of a sign permit. A two year permit expiration period applies. Remove outdated code language that references "sign stickers" and inspections. Sign inspections will occur only in association with a related building permit or code violation case.



43. Gas Station Electronic Pricing Signs

State law sets requirements for posting of gas station pricing. However, the City currently requires a Process Two Neighborhood Use Permit for any signs with changeable copy, including gas station electronic pricing signs. The amendment will allow gas stations to obtain staff approval (Process One) of signs that display gas prices electronically, and will eliminate the unnecessary discretionary permit expense for what is considered basic signage consistent with the industry trend.

44. Wall Signs and Ground Signs

Currently, the wall sign area for an establishment is regulated with respect to the size of any ground signs. Ground signs, however, are tied to the street frontage and the adjacent street classification and speed limit of the premises as a whole. This has created unnecessary processing complications for new commercial tenants seeking approval of a wall sign, especially because the sign companies that process the permits tend to be different for wall signs versus ground signs. The change will help simplify the regulations and facilitate processing with a minimal increase, if any, to the signage as a whole. The existing requirement is a processing complication for applicants and can be especially unfair to businesses that aren't represented by the ground signage. The existing La Jolla Shores PDO sign requirement (applicable to a small specialized area) would remain unchanged.

Minor Corrections

Refer to Attachment 4 for following 13 issues that fix incorrect references and formatting errors.

45. Vacant Structures- Incorrect Section References

When the ordinance was adopted, section 54.0308 was reformatted so that subsections (a)(1) through (9) became (a) through (i). However, references to old code sections remain. References to (a)(8) should be (h) and (a)(9) should be (i). This change was requested by the City Attorney.

46. Fee Payment- Incorrect Term

The amendment would fix a typo in the spelling of the term "fee payment", which is currently incorrectly published in Municipal Code Section 98.0425 as "free payment".

47. Definition of Reasonable Accommodation- Incorrect Term

The amendment would replace "dwelling unit" with the correct term "dwelling" per the state law definition of reasonable accommodation.

48. Zoning and Rezoning Actions- Missing Section Reference

The code currently provides procedures for applying zoning to property in accordance with zones in Chapter 13. A reference would be added to clarify that the procedures also apply to

zoning and rezoning of planned district bases zones identified in Chapter 15.

49. Capital Improvement Program (CIP) Projects- Incorrect Reference

The Council adopted a lower process for CIP projects in various circumstances. However, Section 126.0502(c)(4) and (5) regulates only private improvements. The amendment will delete the incorrect CIP reference and restore the original code language.

50. Regulation of Residential in Commercial Zones- Incorrect Table Reference

The code contains an incorrect reference to a residential table 131-04B in a context where it should be referencing the commercial zone table 131-05B.

51. Child Care Centers in Industrial Zones

The 7<sup>th</sup> Update to the Land Development Code (Ordinance O-20081) adopted a conditional use permit requirement for child care centers in the IP-1-1, IP-2-1, IL-2-1, IL-3-1, IH-2-1, and IS-1-1 zones in order to protect prime industrial lands from encroachment by public assembly uses and other sensitive receptors in accordance with the General Plan. It appears that when the section was subsequently amended with the Otay Mesa Plan Update (O-20361) the new zones IP-3-1 and IBT were added as limited uses (the former process for that use in industrial lands) instead of conditional uses requiring a CUP consistent with the adopted requirement. Child care will now be correctly reflected as a "C" in the IP-1-1, IP-2-1, IP-3-1, IL-2-1, IL-3-1, IH-2-1, IS-1-1, and IBT zones. This correction is important to protect prime industrial lands. Consistent with the General Plan, child care facilities can be approved via a CUP in prime industrial lands where they are sited appropriately as an on-site, ancillary use to a base sector use.

52. Push Carts and the Retail Food Code- Incorrect Section References/Punctuation Errors

The pushcart regulations refer to outdated references in SDMC Chapter 4. Instead they should just reference the CA Retail Food Code/Health and Safety Code, which establishes the health regulations that apply to food handling, storage, etc. The health regulations are enforced by the County via the required health permit.

53. General Fence Regulations- Grammatical Error

Replace the term "an" with "a" under 142.0310(a)(1) in reference to a Public Right-of-Way permit.

54. Street System and Development- Italicization Errors

Under the section relating to acceptance of dedications, "street system" should not be italicized. The term "street" is a defined term and can remain in italics, but the term "system" should not be italicized. The term "development" is a defined term and needs italics added.

55. Findings for Tentative Map Approval

The term “findings” should be italicized to make reference to the defined term in Section 113.0103. The reference to LDC Sections should begin with a capital “S”.

56. Mission Beach Planned District Ordinance (MBPDO) Errors

In MBPDO Section 1513.0304(d), the correct term “for” is misspelled as “or” and to change the term “deep” to “depth” in the context where it is incorrectly published as “3 feet in deep” to read “3 feet in depth”.

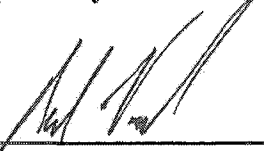
57. Otay Mesa Planned District Ordinance (Repealed)

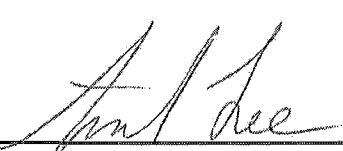
The Otay Mesa Planned District was repealed by the City Council (O-2014-87). However, the titles for the article and divisions were accidentally left in the code. This action will clarify that the PDO was repealed in its entirety. This amendment was requested by the City Attorney.

**Conclusion:**

Staff recommends approval of the proposed 9th Update to the Land Development Code and Local Coastal Program Amendment. The proposed code amendments are consistent with the original goals of the Land Development Code to simplify land development regulations, to make land development regulations more objective, to make the code more adaptable, to eliminate redundancies and contradictions, to standardize the land development code framework, and to increase predictability in the application of land development regulations.

**Respectfully submitted,**

  
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**Robert Vacchi**  
**Director,**  
**Development Services Department**

  
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**Amanda Lee**  
**Project Manager, Land Development Code**  
**Development Services Department**

VACCHI/AJL

**Attachments:**

1. Issue Matrix
2. Draft Code Language: Permit Process and Use
3. Draft Code Language: Measurement, Parking, and Signs
4. Draft Code Language: Minor Corrections
5. Public Outreach and Recommendations Summary
6. Summary of the Previously Conforming Regulations

Following is a summary of the 57 amendments organized into Permit Process, Use, Measurement, Parking, and Sign Regulations, and Minor Corrections categories. Within each category the amendments are listed in order of the associated code sections to be amended.

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
<b>Permit Process Amendments:</b> The following 22 amendments are proposed to improve the permit process and address inconsistencies.			
1	Regulatory Reform	62.1205 129.0642 129.0643 129.0743 129.0744	<p><b><u>Process for Grading and Right-of-Way Improvement Permits</u></b> The code sets deadlines (180 days each) for “utilizing” and “maintaining utilization” of permits in addition to a permit expiration date. If work authorized by the permit has not begun within 180 calendar days, or if work is suspended or abandoned for a continuous period of 180 calendar days the permit becomes void. Eliminating the 180 day utilization requirement will provide greater predictability for enforcement of the 2 year expiration. Work is already ensured to be completed or restored to prior condition by financial sureties/bonds (SDMC 129.0119).</p>
2	Regulatory Reform	112.0102	<p><b><u>Expiration of Application</u></b> The application expiration date for Process One maps and construction permits should allow time for corrective action in response to code enforcement civil penalty notices. Amend 112.0102 to clarify that applications associated with a code violation case under “civil penalty notice &amp; order” will be automatically extended beyond the two year expiration period to accommodate the time set forth for “civil penalty notice &amp; order” dates plus an additional 180 calendar day extension to allow for corrective action on the part of the applicant and time for staff issuance of the permit or map.</p>
3	Regulatory Reform	112.0103	<p><b><u>Process to Approve Water Supply Assessments</u></b> A water supply assessment required by CEQA and the state Water Code requires a noticed public hearing by the City Council. However, the water supply assessment is not required to be consolidated for processing with associated development permit applications. The amendment will clarify that the City Council must consider and approve a water supply assessment for a project prior to the lower decision making body’s consideration of the project and environmental document.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
4	Regulatory Reform	112.0103	<p><b><u>Consolidation of Processing in Relation to Code Violations</u></b> This code section has created issues for processing of corrective actions to address code violations when development permits are in process. The amendment will clarify that corrective actions to address a code violation shall not be consolidated for processing with other permit applications in order to expedite the corrective action and minimize potential for delay.</p>
5	Clarification/ Consistency with State Law	112.0301 112.0303	<p><b><u>Published Notice Requirement for Ad Hoc Fees</u></b> Section 112.0301(c)(3) requires that the City Manager publish the Notice of Public Hearing (in addition to mailed notice) in accordance with Section 112.0303 at least 10 business days before the date of the public hearing. The Mitigation Fee Act applies to ad hoc fees imposed by the City Council (i.e. Community Plan Amendment) and requires special noticing per Government Code Section 6062a. Amend the code as advised by the City Attorney to clarify that special notice for ad hoc fees is required to be published in the newspaper as two published notices with at least 5 days intervening between the first and last publication dates (not counting the publication dates).</p>
6	Clarification/ Regulatory Reform	112.0309	<p><b><u>Clarification Regarding Claims of Failure to Receive Notice</u></b> Section 112.0309 was modeled after Government Code Section 65093 and provides that failure to receive notice shall not constitute grounds to invalidate an action taken by the City for which notice was provided. Amend the code as advised by City Attorney to clarify that the action shall not be held invalid for noticing errors, unless the court invalidates the action because error was prejudicial, caused substantial injury, or a different result would have been probable had the error not occurred.</p>
7	Clarification/ Consistency with State Law	112.0504	<p><b><u>Appeal Period for EOT Applications for Map Waivers and Tentative Maps</u></b> Amend Section 112.0504(a)(2) to clarify that the time for filing an appeal is 12 business days, except where more time is afforded by State law. The code would clarify that pursuant to Subdivision Map Act section 66452.6(e), an applicant has at least 15 calendar days to file an appeal if their application for EOT for a map waiver or tentative map is denied. In that case, the maximum time period for filing an appeal would be the greater of 15 calendar days or 12 business days.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
8	Regulatory Reform	125.0141	<p><b><u>Process to Modify Conditions of Approval of Recorded Maps</u></b>                      The existing code requires City Council approval for requests to modify conditions of approval for recorded maps, but sets a lower process level for new map applications. The proposed change would allow for requests to amend a map to be processed through the same process level that would apply to a new application for an equivalent map proposal.</p>
9	Regulatory Reform	125.0461 126.0108 126.0111	<p><b><u>Extension of Time Applications for Tentative Maps and Development Permits-</u></b>                      Sections 125.0461 (tentative maps) and 126.0111 (development permits) provide for extensions of time (EOT) up to a maximum period of 72 months total.</p> <ul style="list-style-type: none"> <li>• Currently, EOT applications must be submitted within a 60 day window of the expiration period. Applicants have indicated the existing 60 day requirement is problematic and easily missed. Amend the code to allow EOT applications for TMs and development permits to be submitted within 12 months of expiration date instead of the existing narrow 60 day application window.</li> <li>• Clarify that if granted, the time period for development permit EOTs begins from the date of expiration of the previously approved development permit.</li> <li>• The code currently provides for timely submitted development permit EOT applications to be extended 60 days or until a decision is made on the application, whichever occurs last. This has created confusion on what should happen in cases where a decision on the application does not occur until after the 72 month expiration. Modify the provision for development permit EOTs to be consistent with language applicable to tentative map EOTs to read “whichever occurs first”.</li> </ul>
10	Clarification	125.1030	<p><b><u>Process for Easement Vacations</u></b>                      Easement vacations decided by the City Council are not required to obtain a PC recommendation prior to City Council (Section 125.1030). Section 112.0509(d) allows the PC recommendation requirement to be waived. Amend the code to allow easement vacations with a Coastal Development Permit to be exempt from a PC recommendation if the CDP is required solely for the easement vacation.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
11	Regulatory Reform	126.0108 126.0109	<p><b><u>Utilization of a Development Permit</u></b> Eliminate the maintaining utilization section of the code. The amendment will provide greater predictability regarding permit expiration and will facilitate enforcement of the existing 36 month expiration date by clarifying what must occur prior the permit expiration date and clarifying the types of evidence that must be provided to demonstrate utilization so that a permit will not be void.</p>
12	Clarification	126.0110	<p><b><u>Cancellation or Rescission of a Development Permit</u></b> A permit holder may request cancellation of a development permit before utilization of the permit, or can submit an application to rescind the development permit after it has been utilized. Currently the code specifies that the permit is not void until recorded with the County Recorder, which places an administrative burden on the City to act. The amendment clarifies that the decision to cancel a development permit does not need to be recorded with the County Recorder. The cancellation takes effect on the date of the decision and is documented as part of the City's administrative record.</p>
13	Regulatory Reform	126.0112	<p><b><u>Ability to Use New Regulations Without Amending a Development Permit</u></b> Allow projects to have the benefit of new regulations (adopted subsequent to the permit effective date) without a need to amend their development permit (i.e. CUP) if a Process Two Neighborhood Development Permit is obtained or if the applicant can otherwise demonstrate to the satisfaction of the City Manager that the resulting development is in substantial conformance with the permit.</p>
14	Regulatory Reform/ Economic Development	126.0113	<p><b><u>Flexibility for Modifications to Industrial Development</u></b> Streamline the process for changes to design guidelines and planned industrial development permit requirements that don't meet the criteria for Substantial Conformance Review. Reduce from a Process Four Permit Amendment to a Process Two NDP (staff level decision appealable to Planning Commission) if the development meets specified criteria, including: no impact to public health, safety, and welfare; conformance to the code; no adverse affect to the land use plan; and location at least 1,000 feet from residential development. This change in permit process will benefit manufacturers (i.e. breweries that utilize outdoor silos for grain) because it's common for older industrial development permits to have explicitly excluded outdoor tanks in the permit conditions.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
15	Clarification/ Regulatory Reform	129.0710 129.0715	<p><b><u>Encroachments</u></b>                      Sections 129.0710 and 129.0715 are being amended to facilitate the processing of encroachments in the public right-of-way. The amendment will clarify that pedestrian plazas in the right-of-way beyond the ultimate curb line require a Process Two Neighborhood Development Permit prior to City Engineer approval of an Encroachment Maintenance and Removal Agreement. The clarification will allow for permit holders to execute EMRAs in cases where they are not the property owner.</p>
16	Clarification/ Regulatory Reform	127.0102 127.0103 127.0104 127.0105 127.0106 127.0108 127.0109	<p><b><u>Previously Conforming</u></b>                      The City's previously conforming regulations are in need of clarification due to the potential for multiple interpretations counter to the intent of the Land Development Code. The amendments will facilitate consistent application of the regulations and a more predictable outcome for applicants and the community. The greater predictability and certainty will increase opportunities and the likelihood for reinvestment in the City's older neighborhoods. This item deals with a highly complex subject matter. See the attached "Summary of Previously Conforming Regulations" for additional details regarding the purpose and intent and an explanation of the proposed permit process for various previously conforming development scenarios.</p>



No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
17	Regulatory Reform/ Consistency with State Law	128.0209 128.0306 128.0310 128.0312	<p><b><u>CEQA Document Processing Requirements</u></b></p> <p>The following changes will create consistency between the City’s CEQA requirements and state law, and will protect the City from certain CEQA document challenges that are currently being filed based on existing local requirements that are more restrictive than state law:</p> <ul style="list-style-type: none"> <li>• Strike 128.0209(b). There is no requirement under state law to provide a cover letter when a previously certified document is used. Transfer this project submittal requirement from the code to instead be published in the City’s environmental review procedures and information bulletin 401. Staff reports will continue to include environmental determination statements for projects.</li> <li>• Revise 128.0306(b) to be consistent with the time period provided for by state law.</li> <li>• Revise 128.0310 and 128.0312 to separate references to the final EIR from the candidate findings and statement of overriding considerations (SOC) for the project. Remove the reference to the 14 day requirement for providing candidate findings and SOC before a public hearing in order to be consistent with state law criteria. The current requirement is unnecessarily causing delay to the processing of final EIRs. The candidate findings and SOC will still be available to the public for review with other project materials before the public hearing.</li> </ul>
18	Clarification	129.0702	<p><b><u>When a Public Right-of-Way Permit is Required</u></b></p> <p>Amend the code to clarify that a public right-of-way permit is required for public improvements by a private entity or a public entity other than the City. The existing code allows the City Engineer to waive the permit requirement pursuant to Section 129.0702(b)(2) when the other governmental agency has an agreement in place with the City.</p>
19	Clarification	129.0720	<p><b><u>Qualifications to Prepare Plans and Perform Work in the Public Right-of-Way</u></b></p> <p>Replace the term “required” with the term “regulated” in Section 129.0720, and clarify that right-of-way work (regulated by Ch 12, Art 9) must be performed by a licensed contractor, with stated exceptions for public utilities and for homeowners to perform grading at their primary residence.</p>

No.	PURPOSE	CODE SECTION	AMENDMENT DESCRIPTION
20	Regulatory Reform	131.0202	<p><b><u>Applying OP Zone to City Parkland Prior to Dedication</u></b>                      As requested by the Planning Department, to the amendment will allow the OP (open space-park) zone to be applied to City fee-owned designated park lands that have not, or will not, be formally dedicated by City ordinance or State statute. The goal is to facilitate application of the OP zone to future parkland during the community plan update process. It is common for parkland to be acquired by the City, designated for developed park purposes, and held until park facilities can be constructed, or until the property can be traded or sold to acquire land of a higher value for park purposes.</p>
21	Regulatory Reform/ Economic Development	142.0670	<p><b><u>Clarification of Street Light Requirement</u></b>                      Street lights are a public improvement that is required of private applicants as part of a new subdivision design. The existing code does not specify the public improvement requirement is tied to subdivision maps, which has caused the need for frequent conflict resolution for businesses in existing subdivisions who have been asked to provide new street lights while processing minor improvements via a grading permit or public right-of-way permit. Street lights will continue to be required of new subdivisions, or will otherwise be provided subject to available funding via the capital improvement program in accordance with Council Policy 200-18 (Mid-Block Street Light Policy for Developed Areas).</p>
22	Regulatory Reform	143.0212	<p><b><u>Exemptions from Historic Resources Site Survey</u></b>                      Section 143.0212 applies to all development that is 45 years or older and that has not been designated a historic resource. The code already exempts in-kind roof repair/replacement, and minor interior modifications limited in scope to an electrical or plumbing/mechanical permit. Amend 143.0212 to provide new exemptions from the requirement for a historic resources site survey for: 1) in-kind foundation repair and replacement (except that structures with decorative block or cobblestone foundations still require historic review), and 2) construction of swimming pools in the rear yard (except that property with a likelihood of archaeological sites still require historic review).</p>

**Use Amendments:** The following 11 items clarify the application of existing use categories, create new use subcategories, and streamline the process for approval of various use types:

23	Regulatory Reform/ Economic Development	131.0112 131.0623	<p><b><u>Manufacturing Uses (Light manufacturing v.s. Heavy manufacturing)</u></b></p> <p>Provide an exception to Section 131.0623(e) to identify beverage production as an allowable light manufacturing use in the IP-1-1 and IP-3-1 zones. Clarify that light manufacturing does not allow the use of explosives or unrefined petroleum. (Petroleum based products are okay.) Also clarify that the use category for light manufacturing includes the manufacturing of a wide variety of products including, but not limited to food, beverages, durable goods, machinery and equipment. (Manufacturing of beer fits in this category.) Heavy manufacturing involves large outdoor equipment such as cranes and large tanks to produce unpackaged bulk products such as steel, paper, lumber, fertilizer, or petrochemicals, and manufacturing that typically produces disturbing noise, dust, or other pollutants capable of harming or annoying adjacent uses.</p>
24	Regulatory Reform/ Economic Development	131.0112 131.0222 131.0322 131.0422 131.0522 131.0622 141.0507	<p><b><u>Tasting Rooms versus Retail Tasting Stores</u></b></p> <p>Amend Section 131.0112 and Ch 13 use tables to create a new commercial subcategory for tasting rooms, and allow them by right where accessory to beverage manufacturing. Create a new separately regulated use category for stand-alone retail tasting stores that sell beer (for on and off premises consumption) and offer tastings of the beer product the business manufactures at a separate location pursuant to a duplicate license (Type 1 or Type 23). Allow as a limited use in commercial and industrial zones subject to parking requirement and limit on hours (CN zones/by residential).</p>
25	Regulatory Reform/ Economic Development	131.0112 131.0222 131.0422 131.0522 131.0622 142.0530 Table 142-05G	<p><b><u>Distribution and Storage Uses</u></b></p> <p>Clarify the description of the distribution and storage use category and subcategories, and eliminate duplicative language. Use of the terms “wholesale” (a type of sales transaction) and “warehouse” (a type of building) as use category types has created confusion for applicants seeking to locate their businesses, especially since the category descriptions are very similar. The amendment will result in three subcategories: equipment and materials storage yards (outdoors), moving and storage facilities, and distribution facilities. Revise the Chapter 13 use tables and associated parking table 142-05G accordingly to reflect the name of the new use categories.</p>

26	Regulatory Reform	<p>131.0112 131.0222 131.0422 131.0522 131.0622 141.0602 142.0530 Table 142-05G 155.0238 Table 155-02C 1510.0303 1510.0307 1510.0309</p>	<p><b><u>Assembly and Entertainment Uses, Including Churches</u></b> Create a new separately regulated use category (Section 141.0602) to regulate Assembly and Entertainment Uses and places for religious assembly together as one use category that regulates assembly and entertainment facilities based on the size of the establishment. Set the process level based on the maximum capacity for assembly (i.e. allowing up to 300 people as limited use and creating conditional use criteria for larger facilities subject to a CUP). The City currently regulates “churches and places of religious assembly” and “assembly and entertainment” as “permitted by right” or “not permitted” in most zones, but still requires a CUP for churches in a few specialized zones (i.e. AR, SEPDO, and CUPDO).</p> <ul style="list-style-type: none"> <li>• Amend CUPDO: Require CUP in CU-1 zone, and allow as limited use in the CU-2 and 3 zones.</li> <li>• Amend La Jolla Shores PDO: Do not allow in SF. Require a CUP in the CC and Visitor zones.</li> </ul>
27	Regulatory Reform	<p>131.0222 131.0322 131.0422 131.0522 131.0622 141.0607</p>	<p><b><u>Drive-in and Drive-through Eating and Drinking Establishments</u></b> Create a new use category for drive-in and drive-through eating and drinking establishments to regulate this type of development as a separately regulated use. The current code treats drive-in and drive-through components as a design feature of a restaurant. The new separately regulated use category will allow for this type of development to occur where it is appropriate for the location. This includes requirements for conditions to be placed on development in certain zones to minimize detrimental effects to neighboring properties. Set 7 year amortization period for drive through hours of operation in previously conforming establishments adjacent to residential.</p>

28	Regulatory Reform	131.0322 141.0302	<p><b><u>Companion Units</u></b> A companion unit is a small dwelling unit that is accessory to a single dwelling unit on a residential lot that provides complete living facilities, including a kitchen, independent of the primary dwelling.</p> <ul style="list-style-type: none"> <li>• The existing code indicates that a Conditional Use Permit is required for a companion unit in the agricultural-residential zones. Change to a “limited” use to allow companion units via Process One approval if they meet the requirements in Section 141.0302 like in other citywide zones.</li> <li>• Remove existing requirement that a companion unit be constructed with the same siding and roof materials of the primary dwelling unit. The requirement is an unnecessary obstacle to the conversion of existing accessory buildings to companion units in established neighborhoods.</li> </ul>
29	Regulatory Reform/ Economic Development	131.0623	<p><b><u>Allowance for Live Entertainment in Industrial Zones</u></b> Amend Section 131.0623 to allow eating and drinking establishments to have live entertainment in industrial zones, except for heavy industrial zones (IH zones).</p>
30	Clarification/ Regulatory Reform	141.0405	<p><b><u>Satellite Antennas in Industrial Zones</u></b> The amendment clarifies the existing discretionary permit exemptions that apply to accessory satellite antennas in industrial zones and to satellite antennas (in any zone) that are 5 feet in diameter or smaller.</p>
31	Clarification	141.0411 156.0315	<p><b><u>Historic Buildings Occupied by Uses Otherwise Not Allowed</u></b> Clarify that in cases where proposed reuse of a historic building includes a separately regulated use, the proposed use must be designed to meet the separately regulated use requirements as applicable to that use in order to minimize detrimental effects on the neighborhood. As requested by Civic San Diego, also amend the Centre City PDO to make it consistent with citywide regulations for this separately regulated use category.</p>

32	Clarification	141.0504	<p><b><u>Plant Nurseries</u></b>                  A “plant nursery” is a place where plants are cultivated and grown for transplant, distribution, and sale. There has been confusion as to why “plant nurseries” is a separately regulated use category. The amendment clarifies that the use is permitted by right in commercial zones and will help distinguish this use type from horticulture nurseries and greenhouses (agricultural use) and garden centers (a retail sales use). Currently, the code requires a Conditional Use Permit for plant nurseries in agricultural zones if the facility would include a retail space larger than 300 feet or allow non-plant retail sales. Retail sales of plants from garden centers in retail stores are also allowed by right in all zones that allow the sale of consumer goods.</p>
33	Clarification/ Regulatory Reform	141.1003	<p><b><u>Marine-Related Uses in the Coastal Zone</u></b>                  Clarify that no limitations apply to this use category in industrial zones where the use is permitted (as indicated by a “P” in the Ch 13 use table). Commercial zones that require a conditional use permit will continue to be subject to the separately regulated use criteria in Section 141.1003.</p>

<b>Measurement Amendments:</b> The following 5 items clarify how various things are defined or measured in the Land Development Code.			
34	Clarification	113.0234	<p><b><u>Bay Windows</u></b> Amend Section 113.0234 (Rules for Calculation and Measurement for Gross Floor Area) to help clarify under what circumstances bay windows are exempt from the calculation of gross floor area. Bay windows are exempt if the window height is less than 5 feet, there is at least 3 feet of space between the bottom of the window sill and the grade below (with no structural supports), and the interior space does not project more than 4 feet outward.</p>
35	Clarification/ Regulatory Reform	131.0448 131.0461	<p><b><u>Garages and Accessory Structures</u></b> Strike the term “detached” in subsection (c) in reference to garages. Encroachments associated with garages and non-habitable structures are limited in accordance with LDC Section 131.0461. The accessory building can’t exceed 525 sq ft in RS zones. Clarify that an accessory building in the setback can’t share a common wall with the primary dwelling unit, but can be attached via a design element and still be considered a separate building.</p>
36	Clarification	131.0461	<p><b><u>Roof Projection into the Angled Building Envelope Plane</u></b> The existing regulation in Section 131.0461(a)(1)(D), which is depicted in Diagram 131-04S, has led to multiple interpretations about what is intended to be a limited allowance for a roof design to project into the angled building envelope plane (facing the front yard) under specified limitations. The proposed amendment would clarify that the roof design may project into the angled building envelope, but may not encroach into the setback.</p>

37	Regulatory Reform	142.0305 142.0340	<p><b><u>Retaining Walls</u></b> Clarify when a building permit is required for a retaining wall by adding a reference in Table 142-03A to Section 129.0203. Create an exception for measurement of the height of retaining walls for zoning purposes when the elevation of the adjacent street grade is higher than the building pad. In such cases, the measurement of any portion of the wall or attached fence above grade would be taken from the adjacent street grade. This also will help clarify that the portion of the retaining wall at or below grade is not required to be broken into smaller wall sections (where it is greater than 3 feet in height) since it is interior to the private property and the majority of the wall is not visible from the public right-of-way.</p>
38	Regulatory Reform/ Economic Development	142.0910	<p><b><u>Mechanical Equipment Used in the Manufacturing Process</u></b> Provide an exception from the requirement in Section 142.0910(a) and (b) for mechanical equipment screening for industrial development that involves light or heavy manufacturing when the appurtenances are not readily visible from any residential development.</p>
<p><b>Parking:</b> The following 2 items address parking and driveway related regulations.</p>			
39	Regulatory Reform/ Economic Development	142.0530 Table 142-05G	<p><b><u>Parking Requirement for Capital Intensive Manufacturing</u></b> Create a new specified parking requirement at rate of 1 space per 1,000 square feet of gross floor area for capital intensive manufacturing involving the use of large equipment, tanks, vessels, automated machinery, or any similar combination of such machinery and equipment.</p>
40	Regulatory Reform	142.0560	<p><b><u>Driveway Design to Meet Engineering Standards</u></b> Clarify that the driveway gradient engineering design standards in 142.0560(j)(9)(C) apply to driveway ramps to clarify that subsections (B) and (C) are intended to apply in different circumstances. The requirement for two 8 foot transitions on driveway ramps with gradients greater than 14 percent is typically associated with parking structures and low vehicle travel speeds. Subsection (B) applies to private driveways with higher vehicle travel speeds and instead requires a 20 foot long flat transition between the driveway apron and any gradient greater than 5 percent.</p>
<p><b>Signs:</b> The following 4 items address the corresponding regulations and approval process for signs.</p>			



41	Regulatory Reform/ Economic Development	126.0113 142.1208	<p><b><u>Signage in Planned Commercial and Industrial Developments</u></b> Provide for commercial and industrial development to add signage in accordance with the sign code without a need to amend applicable development permits that are outdated with respect to sign regulations. Also allow Process One approval per the current sign code for any sites subject to old comprehensive sign plans adopted prior to January 1, 2000. Clarify that the following signs would still require a development permit: comprehensive sign plans (adopted January 1, 2000 or later), revolving projecting signs, signs with automatic changing copy, or a theater marquee. Also, a <i>sign</i> that involves an alteration to the building where the proposed building alteration is not in substantial conformance to the applicable <i>development permit</i>; or any proposal that involves an <i>advertising display sign</i> would not be eligible for the proposed Process One exception.</p>
42	Regulatory Reform	121.0203 121.0504 121.0505 129.0802 129.0804 129.0806 129.0811 129.0812 129.0813 129.0815 142.1206 142.1210	<p><b><u>Utilization of Sign Permits, Sign Stickers, and Sign Inspections</u></b></p> <ul style="list-style-type: none"> <li>• Delete the requirement for initial utilization and maintaining utilization of a sign permit. A two year permit expiration period applies.</li> <li>• Remove outdated code language that references “sign stickers” and inspections. Sign inspections will occur only in association with a related building permit or code violation case.</li> </ul>
43	Regulatory Reform	141.1105 142.1210 142.1260	<p><b><u>Gas Station Electronic Pricing Signs</u></b> State law sets requirements for posting of gas station pricing. However, the City currently requires a Process Two Neighborhood Use Permit for any signs with changeable copy, including gas station electronic pricing signs. The amendment will allow gas stations to obtain staff approval (Process One) of signs that display gas prices electronically, and will eliminate the unnecessary discretionary permit expense for what is considered basic signage consistent with the industry trend.</p>

44	Regulatory Reform	142.1220 Table 142-12B 142.1225 Table-12C	<p><b><u>Walls Signs and Ground Signs</u></b></p> <p>Currently, the wall sign area for an establishment is regulated with respect to the size of any ground signs. Ground signs, however, are tied to the street frontage and the adjacent street classification and speed limit of the premises as a whole. This has created unnecessary processing complications for new commercial tenants seeking approval of a wall sign, especially because the sign companies that process the permits tend to be different for wall signs versus ground signs. The change will help simplify the regulations and facilitate processing with a minimal increase, if any, to the signage as a whole. The existing requirement is a processing complication for applicants and can be especially unfair to businesses that aren't represented by the ground signage. The existing La Jolla Shores PDO sign requirement (applicable to a small specialized area) would remain unchanged.</p>
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<b>Minor Corrections:</b> The following 13 items would fix typos, punctuation and formatting errors, incorrect terms, and incorrect section references.			
45	Incorrect Section References	54.0308 54.0309	<b><u>Vacant Structures</u></b> When the abandoned properties ordinance was adopted, section 54.0308 was reformatted so that subsections (a)(1) through (9) became (a) through (i). However, three references to the old code sections remain. The police department uses this section to enforce against trespassers in vacant structures and need these section references fixed. References to (a)(8) should be (h) and (a)(9) should be (i). Non-LDC change requested by City Attorney.
46	Incorrect Spelling	98.0425	<b><u>Fee Payment</u></b> The term fee payment is misspelled as “free” payment. Change requested by City Attorney.
47	Incorrect Term	113.0103	<b><u>Definition of Reasonable Accommodation</u></b> Replace “dwelling unit” with “dwelling” per state law definition of reasonable accommodation.
48	Missing Section Reference	123.0101	<b><u>Zoning and Rezoning Actions</u></b> The code currently provides procedures for applying zoning to property in accordance with zones in Chapter 13. A reference would be added to clarify that the procedures also apply to zoning and rezoning of planned district bases zones identified in Chapter 15.
49	Incorrect Reference	126.0502	<b><u>Capital Improvement Program (CIP) Projects</u></b> The Council adopted a lower process for CIP projects in various circumstances. However, Section 126.0502(c)(4) and (5) only regulates private improvements and should not refer to a separate CIP process. Delete the incorrect CIP reference and restore to the original code language.
50	Incorrect Reference	131.0540	<b><u>Regulation of Residential in Commercial Zones</u></b> The code contains an incorrect reference to a residential table 131-04B in a context where it should be referencing the commercial zone table 131-05B.

51	Incorrect Permit Reference	131.0622	<p><b><u>Child Care Centers in Industrial Zones</u></b> The 7<sup>th</sup> Update to the Land Development Code (Ordinance O-20081) adopted a conditional use permit requirement for child care centers in the IP-1-1, IP-2-1, IL-2-1, IL-3-1, IH-2-1, and IS-1-1 zones to protect prime industrial lands in accordance with the General Plan. It appears that when the section was subsequently amended with the Otay Mesa Plan Update (O-20361) the new zones IP-3-1 and IBT were added as limited uses “L” (the former process for that use in industrial lands) instead of a conditional use requiring a CUP. The IP-1-1, IP-2-1, IP-3-1, IL-2-1, IL-3-1, IH-2-1, IS-1-1, and IBT should all show “C”. This correction is important to protect prime industrial lands.</p>
52	Incorrect Section References/ Punctuation Errors	141.0619	<p><b><u>Push Carts and Retail Food Code</u></b> The pushcart regulations refer to outdated references in SDMC Chapter 4. Instead they should just reference the CA Retail Food Code/Health and Safety Code, which establishes the health regulations that apply to food handling, storage, etc. The health regulations are enforced by the County via the required health permit.</p>
53	Grammatical Error	142.0310(a)	<p><b><u>General Fence Regulations</u></b> Replace the term “an” with “a” under 142.0310(a)(1) in reference to a Public Right-of-Way permit.</p>
54	Italicization Error	144.0233	<p><b><u>Street System and Development</u></b> “Street system” is not a defined term and should not be italicized under the section relating to acceptance of dedications. The term “street” is a defined term and can remain in italics, but the term “system” should not be italicized. The term “development” is a defined term and needs italics.</p>
55	Capitalization error/ Italicization Error	144.0242	<p><b><u>Findings for Tentative Map Approval</u></b> The term “findings” should be italicized to make reference to the defined term in Section 113.0103. The reference to LDC Sections should begin with a capital “S”.</p>
56	Incorrect Terms	1513.0304	<p><b><u>Mission Beach Planned District Ordinance (MBPDO) Errors</u></b> In MBPDO Section 1513.0304(d), the correct term “for” is misspelled as “or” and to change the term “deep” to “depth” in the context where it is incorrectly published as “3 feet in deep” to read “3 feet in depth”.</p>

57	Incorrect Section Titles	Ch 15, Art 17 Div 1-4	<b><u>Otay Mesa Planned District Ordinance (Repealed)</u></b> The Otay Mesa Planned District ordinance was repealed by the City Council (O-2014-87). However, the titles for the article and divisions were accidentally left in the code. This minor clean up action will clarify that the PDO was repealed in its entirety. Change requested by City Attorney.
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**DRAFT: 9<sup>th</sup> Update Code Language—Process and Use Changes**

**PROCESS AMENDMENTS:**

**ISSUE #1: Process for Grading and Right-of-Way Improvement Permits**

**§62.1205 Duration of a *Public Right-of-Way Permit* to Excavate Within a Public Street**

It shall be unlawful for any person or *public utility* to excavate within the roadway section of a street in the *public right-of-way* without a valid *Public Right-of-Way Permit* ~~under~~ issued in accordance with Section ~~129.0702~~ 129.0741. Notwithstanding Chapter 12, Article 9, Division 7, Section ~~129.0743~~ and Section ~~129.0744~~, a *Public Right-of-Way Permit* to excavate within the roadway section of a public street shall be void if the excavation has not begun within ninety calendar days of the start date specified in the permit, if the excavation is not pursued diligently to its conclusion, or if the excavation and restoration has not been completed within one calendar year from the permit issuance.

~~§129.0642 — Initial Utilization of a Grading Permit~~

~~A Grading Permit shall become void if the work authorized by the permit had not begun within 180 calendar days of the date of permit issuance.~~

~~§129.0643 — Maintaining Utilization of Grading Permit~~

~~A Grading Permit shall become void if, at any time after the work has begun, the *grading* or other work authorized by the Grading Permit is suspended or abandoned for a continuous period of 180 calendar days, unless the Grading Permit is associated with a valid Building Permit.~~

~~§129.0743 — Initial Utilization of a Public Right-of-Way Permit~~

~~A Public Right-of-Way Permit shall become void if the work authorized by the permit has not begun within 180 calendar days of the date of permit issuance.~~

~~§129.0744 — Maintaining Utilization of a Public Right-of-Way Permit~~

~~A Public Right-of-Way Permit shall become void if, at any time after the work has begun, the work authorized by the permit is suspended or abandoned for a period of 180 calendar days, unless the Public Right-of-Way Permit is associated with a valid Building Permit.~~

**ISSUE #2: Expiration of Application**

**§112.0102 Application Process**

An application for a permit, map, or other matter shall be filed with the City Manager in accordance with the following requirements:

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

(d) Expiration of Application.

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

(3) The expiration period for an application related to a *premises* for which a civil penalty notice and order establishes a future date for corrective action of a code violation shall be automatically extended an additional 180 calendar days from the date set in the civil penalty notice and order. If the date set forth for corrective action in the civil penalty notice & order is less than 2 years from the date the permit or map application is *deemed complete*, then the existing application may be extended in accordance with Section 112.0102(d)(2).

~~(3)~~(4) Once expired, the application, plans, and other data submitted for review may be returned to the *applicant* or destroyed by the City Manager.

~~(4)~~(5) To reapply, the *applicant* shall submit a new application with required submittal materials and shall be subject to all applicable fees and regulations in effect on the date the new application is *deemed complete*.

**ISSUE #3: Process to Approve Water Supply Assessments**

**§112.0103 Consolidation of Processing**

(a) 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, except as otherwise provided by Section 112.0103(b) and (c).

(1) The decision maker shall act on the consolidated application at the highest level of authority for that *development* as set forth in Section 111.0105.

(2) The *findings* required for approval of each permit shall be considered individually, consistent with Section 126.0105.

(3) Where the consolidation of processing combines Process Two, Process Three, Process Four, or Process Five with Process CIP-Two or Process CIP-Five, the consolidation shall be made as follows:

~~(a)~~(A) Consolidation of Process Two and Process CIP-Two shall be consolidated into Process CIP-Two.

~~(b)~~(B) Consolidation of Process Three, Process Four, or Process Five with Process CIP-Five shall be consolidated into Process CIP-Five, except that any consolidation with a Process Five for rezoning shall be consolidated into Process Five.

(b) When the California Environmental Quality Act and California Water Code require that the City prepare a Water Supply Assessment (WSA), the WSA shall be considered for approval by the City Council. The associated *development permit* applications are not required to be consolidated with City Council approval of the WSA as further described below:

(1) Action by a lower decision maker to approve a project in accordance with Process Two, Three, or Four shall occur after City Council approval of the WSA.

(2) City Council action to approve a project with a WSA shall occur after approval of the WSA. The City Council's adoption or certification of an environmental document that incorporates a WSA shall constitute approval of the WSA.

(c) [See Issue #4.]

**ISSUE #4: Consolidation of Processing in Relation to Code Violations**

**§112.0103 Consolidation of Processing**

(a) through (b) [See Issue #3 for proposed changes.]

(c) An application for an approval required to comply with a civil penalty notice and order related to a code violation is not required to be consolidated for processing with any other application.

**ISSUE #5: Published Notice Requirement for Ad Hoc Fees**

**§112.0301 Types of Notice**

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

(c) Notice of Public Hearing. A Notice of Public Hearing shall be provided before a decision is made on an application for a permit, map, or other matter acted upon in accordance with Process Three, Process Four, Process Five, or Process CIP-Five, or an appeal of a Process Two, Process CIP-Two, Process Three, or Process Four decision, or of an *environmental* determination. A Notice of Public Hearing shall also be provided before a decision is made by the City Council in accordance with Section 132.1555 (Overrule Process).

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

(3) Distribution. Except as otherwise provided by the Municipal Code, the City Manager shall publish the Notice of Public Hearing in accordance with sSection 112.0303, and shall mail the Notice of Public Hearing to the persons described in sSection 112.0302(b), at least 10 *business days* before the date of the public hearing.

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



**§112.0303 Published Notice**

- (a) When the Land Development Code requires a Notice of Public Hearing to be published, the City shall submit the Notice of Public Hearing for publication in at least one newspaper of general daily circulation within the City, except as identified in Section 112.0303(b) where special published notice is required in accordance with state law. A published notice is effective on the date of publication.
- (b) The imposition of ad hoc fees pursuant to the Mitigation Fee Act (Cal. Gov't Code section 66000-66025) is subject to the published notice requirements of Cal. Gov't Code section 6062a.

**ISSUE #6: Clarification Regarding Claims of Failure to Receive Notice**

**§112.0309 Failure to Receive Notice**

The failure of any person to receive notice given in accordance with this division and the State of California Planning and Zoning Laws shall not constitute grounds for any court to invalidate any action taken by the City for which the notice was provided. Furthermore, the action shall not be held invalid for noticing errors in the absence of a court's final determination of invalidity on that basis under the standard set forth in Cal Gov't Code section 65010(b) that the error was prejudicial, caused substantial injury, and a different result would have been probable if the error had not occurred.

**ISSUE #7: Appeal Period for EOT Applications for Map Waivers and Tentative Maps**

**§112.0504 Process Two Appeal Hearing**

- (a) The Planning Commission shall hear appeals of Process Two decisions subject to the following requirements, unless otherwise specified in the Land Development Code.
  - (1) [No change.]
  - (2) Request for a Process Two Appeal Hearing.
    - (A) A Process Two decision may be appealed by filing an application for a Process Two appeal hearing with the City Manager no later than 12 *business days* after the *decision date*; and
    - (B) ~~If an *applicant* appeals the denial of an Extension of Time for a map waiver or *tentative map* in accordance with Sections 125.0124 and 125.0461, the decision may be appealed no later than 15 calendar days after the *decision date* in accordance with Subdivision Map Act section 66452.6(e).~~ Pursuant to Subdivision Map Act section 66452.6(e), an

applicant may file an appeal within 15 calendar days of a decision to deny their application for an Extension of Time for a map waiver or tentative map. In such cases, the maximum time period for filing an appeal is 12 business days or 15 calendar days after the decision date, whichever is greater.

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

(b) [No change.]

**ISSUE #8: Process to Modify Conditions of Approval of a Recorded Map**

**§125.0141 Decision Process for Correction and Amendment of Maps**

A decision on an application to correct or amend a recorded map shall be made in accordance with the following:

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

(c) Modified Conditions: If the proposed amendments modify or eliminate conditions of approval of the recorded map or do not substantially conform with the approved *tentative map*, ~~the City Council shall make the decision on the application for the amended map in accordance with Process Five~~ shall be acted upon in accordance with the process that would apply to the same map as a new application.

**ISSUE #9: Extension of Time Applications for Development Permits**

**§125.0461 Extension of Time for a Tentative Map**

The expiration date of a *tentative map* may be extended as follows:

(a) The expiration date of a *tentative map* may be extended one or more times if the extensions do not exceed a total of 72 months in accordance with the *Subdivision Map Act*. This time frame does not include any legislative extensions enacted pursuant to state law.

(1) Request for Extension. An application for Extension of Time for a *tentative map* shall be filed before the expiration date of the *tentative map* but not more than ~~60 calendar days~~ 12 months before the expiration date, in accordance with Section 112.0102. When an application for Extension of Time is filed, the *tentative map* shall be automatically extended for a period of 60 calendar days from the expiration date or until the Extension of Time is approved, conditionally approved, or denied, whichever occurs first.

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

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

**§126.0111 Extension of Time of a Development Permit**

(a) Expiration Date. The expiration date of an approved *development permit* may be extended one or more times, ~~provided the~~ The *development permit* approval and subsequent permit extensions do shall not exceed a total of ~~36 months~~ 72 months beyond the ~~expiration of the initial utilization period.~~ initial *development permit* approval date with the following exceptions:

(1) This time frame does not include any legislative extensions enacted pursuant to state law, or any *development permit* time extensions granted by the City Council by ordinance that extend the expiration of a *development permit* beyond the maximum 72 month permit expiration period.

(2) When a *development permit* is associated with a *tentative map*, any map extensions granted pursuant to state law shall automatically extend the expiration of associated *development permits* to coincide with the expiration of the *tentative map*. ~~This extension of time shall not be subject to the 36 month restriction.~~

(b) Request for Extension. Before the expiration of an approved *development permit*, but not more than ~~60 calendar days~~ 12 months before the expiration date, an *applicant* may file an application for an extension of time to a *development permit* in accordance with Section 112.0102. If an application for extension of time is timely filed, the *development permit* shall be automatically extended for a period of 60 calendar days from the expiration date or until a decision on the extension of time has been made, whichever occurs ~~last~~ first.

(c) through (i) [No change in text.]

(j) If the extension of time is granted, the time period for the extension of time shall begin from the date of expiration of the previously approved *development permit*.

**ISSUE #10: Process for Easement Vacations**

**§125.1030 Decision Process for an Easement Vacation**

(a) A decision on an application to vacate a *public service easement* requested in accordance with Section 125.1010(b) or to vacate any other type of easement requested in accordance with Section 125.1010(c) shall be made by the City Council in accordance with Process Five, except that a recommendation by the Planning Commission is not required. The requirement for a Planning Commission recommendation hearing shall also be waived for any associated coastal development permit that is required solely for the easement vacation.

(b) [No change.]

**ISSUE #11: Utilization of a Development Permit**

**§126.0108 Initial Utilization of a Development Permit**

- (a) *A development permit grants the applicant 36 months to initiate utilization of the permit. If none of the actions listed in Section 126.0108(b) has occurred within 36 months after the date on which all rights of appeal have expired, and an application for extension of time was not timely filed, the *development permit* shall be void.*
  
- (b) *To demonstrate utilization, the permit holder shall establish with evidence identified in Section 126.0108(c) that at least one of the following circumstances occurred before expiration of the development permit:*
  - (1) Significant investment was incurred to meet permit conditions;
  - (2) Substantial work was performed in reliance of the permit granted; or
  - (3) Use of the property has occurred in the manner granted by the permit.
  
- (c) *A development permit may be utilized by the following methods. Upon request, the permit holder shall provide evidence of the following to the satisfaction of the City Manager to demonstrate utilization in accordance with Section 126.0108(b):*
  - (1) Issuance of a *construction permit* for the entire project or for a substantial portion of the activity regulated by the *development permit*, as determined by according to standards developed by the City Manager;
  - (2) Compliance with the terms contained in the individual permit, such as a phasing program, or the terms contained in an approved Development Agreement;
  - (3) Evidence of substantial use in progress in the manner granted by the development permit, according to standards as developed by the City Manager; or
  - (4) Approval of a *final map* or a *parcel map*, or acceptance of an easement, if the map or easement was a condition of, or was processed concurrently with, the *development permit*; or
  - (5) Other facts demonstrating occurrence of one of the circumstances described in Section 126.0108(b).

**§126.0109 Maintaining Utilization of a Development Permit**

- (a) ~~If issuance of a *construction permit* in accordance with Section 126.0108 is the method used for initial utilization of the *development permit*, the *construction permit* shall be kept active until completion of the final inspection or issuance of the certificate of occupancy to maintain utilization of the *development permit*.~~

- (b) ~~If the *construction permit* is allowed to expire before completion of the project, the initial utilization of the *development permit* gained by that *construction permit* shall become void.~~
- (c) ~~A *development permit* that is voided in accordance with 126.0109(b) may be reactivated by obtaining a new *construction permit* either during the original 36-month timetable for that *development permit*, or during the timeline as may have been extended in accordance with Section 126.0111.~~

### **ISSUE #12: Cancellation or Rescission of a Development Permit**

#### **§126.0110 Cancellation or Rescission of a Development Permit**

- (a) An owner or permittee may request cancellation of a *development permit* at any time before initial utilization of the permit. The owner or permittee shall submit the request for cancellation in writing to the City Manager. The City shall may forward a written declaration of the cancellation to the County Recorder for recordation in accordance with Section 126.0106 or may require the owner or permittee to do so. ~~The *development permit* shall be void on the date that the declaration of cancellation is recorded with the County Recorder. The City shall mail a copy of the declaration of cancellation to the owner and permittee.~~
- (b) Once a *development permit* has been utilized, an owner or permittee may submit an application to rescind the development permit in accordance with the following:
- (1) through (2) [No change in text.]
- (3) The City may forward a written declaration of the rescission to the County Recorder for recordation in accordance with Section 126.0106 or may require the owner or permittee to do so.

### **ISSUE #13: Ability to Use New Regulations Without Amending a Development Permit**

#### **§126.0112 Minor Modifications to a Development Permit**

- (a) A proposed minor modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit.
- (b) If the revision is determined to be in *substantial conformance* with the approved permit, the revision shall not require an amendment to the *development permit*.
- (c) Where a *development permit* requires compliance with a regulation applicable to the *development* as of the date of the *development permit* approval, but that regulation is subsequently amended, the *permit holder* may utilize the amended regulation without obtaining an amendment to its *development permit* if it obtains a Process Two

Neighborhood Development Permit or can otherwise demonstrate to the satisfaction of the City Manager that the resulting *development* is in *substantial conformance* with the approved permit.

- (d) Within the Coastal Overlay Zone, any *substantial conformance* determination shall be reached through a Process Two review, except that a *substantial conformance* determination for a *capital improvement program project* shall be reached through a Process CIP-Two review.

**ISSUE #14: Flexibility for Modifications to Industrial Development**

**§126.0113 Amendments to a Development Permit**

- (a) A proposed revision to an approved *development permit* that would significantly reduce the scope of the *development* or is not in *substantial conformance* with the approved permit requires an amendment to the approved permit or an application for a new permit, except as follows:

- (1) Industrial *development* in an IP, IL, or IH zone may request a Process Two Neighborhood Development Permit to modify approved *development permit* requirements instead of being required to amend the applicable *development permit* via a higher decision process.

- (2) The exception in Section 126.0113(a)(1) does not apply to industrial *development* within 1,000 feet of a residential zone.

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

(f) [See Issue #39]

**ISSUE #15: Encroachments**

**§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~~ 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~~ Section 126.0402 (j) except for the following which are subject to approval in accordance with Process One by the City Engineer:

- (1) through (8) [No change in text.]

(b) through (c) [No change in text.]

(d) A Neighborhood Development Permit in accordance with Process Two shall be required for pedestrian plaza encroachments in the public right-of-way beyond the ultimate curb line.

**§129.0715 Encroachment Maintenance and Removal Agreement**

(a) An Encroachment Maintenance and Removal Agreement is required for any privately owned or privately maintained facilities or structures located in the public right-of-way or in a public service easement ~~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~~ permit holder and successors in interest and shall not adversely affect the public's health, safety or general welfare.
- (2) The ~~property owner~~ permit holder shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.
- (3) The ~~property owner~~ permit holder 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~~ permit holder 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~~ permit holder agrees to provide an alternate *public 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) [No change in text.]
- (6) Except as provided in Section 129.0715(a)(7), the ~~property owner~~ permit holder 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~~ For encroachments serving a single dwelling unit, the permit holder 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~~ *permit holder* has constructed an encroaching *structure*, the ~~property owner~~ *permit holder* 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~~ *permit holder* 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) [No change in text.]
- (11) The ~~property owner~~ *permit holder* shall pay the City or public utility for all costs of relocating, replacing, or protecting a facility within the *public right-of-way* or *public service easement* when such relocation, replacement, or protection results from the construction of the *encroachment*.

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

#### **ISSUE #16: Previously Conforming Regulations**

##### **§127.0102 General Rules for Previously Conforming Premises and Uses**

The following general rules apply to all *previously conforming premises* and uses:

- (a) *Previously conforming premises* or uses must have been established in compliance with all permit requirements and must have been lawful until a change in the applicable zoning regulations made the *premises* or uses *previously conforming*.
- (b) The property owner or person asserting *previously conforming* rights for a *premises* or use has the burden to provide the City Manager with sufficient documentation to establish the existence of the *previously conforming premises* or use.
- ~~(c)~~ Documentation of *market value* shall be in accordance with procedures established by the City Manager.
- ~~(d)~~(c) *Previously conforming premises* and uses that comply with the provisions of this division may continue to exist and operate unless an amortization period is specified elsewhere in the Municipal Code.



- (e)(d) Sale or transfer of the property or change of ownership does not terminate rights to the *previously conforming premises* or use, unless the owner agrees to such a condition as part of a permit or administrative or judicial order.
- (f)(e) *Previously conforming premises* and uses are subject to all other regulations and any *development permits* that may otherwise be required by the Land Development Code. The required review process shown in Tables 127-01A and 127-01B, and described in Sections 127.0103 through ~~127.0108~~ 127.0109, pertains only to the review required for the *previously conforming premises or use aspects of a proposed development*. Proposed *development* sites located in the Coastal Overlay Zone or other geographic overlay zones are also subject to the regulations of, and may require *development permit* review in accordance with, those overlay zones.
- (f) The *previously conforming* regulations do not grant any deviation from the height regulations of the Coastal Height Limit Overlay Zone or any other height limit overlay zone.
- (g) If a *previously conforming premises* or use is brought into conformance by a change in use or new *development*, the *previously conforming* status is terminated and the *premises* or use cannot revert to a *previously conforming* status. A temporary discontinuance of operations in accordance with Section 127.0108(d) shall not be considered to have brought the *previously conforming* use into conformance or to have terminated the *previously conforming* status. See Section 127.0108 for additional regulations regarding abandonment of *previously conforming* uses.
- (h) Regulations for *premises* that have *previously conforming* parking are found in Section 142.0510(d).
- (i) Regulations for *premises* that have *previously conforming* landscaping are found in Section 142.0410.
- (j) Regulations for *premises* in the Airport Land Use Compatibility Overlay Zone that were legally established in an airport influence area prior to adoption of an Airport Land Use Compatibility Plan, or amendment thereto, are located in Section 132.1535.

**§127.0103 Review Process for Previously Conforming Premises and Previously Conforming Uses**

The required review process for different types of proposed *development* or activity, varies based on the *previously conforming category aspects of the development*, such as ~~existing structural envelope, density,~~ and uses are as shown in Tables 127-01A through

and 127-01CB. If the proposed *development* includes more than one *previously conforming* category, all corresponding regulations, as described in Sections 127.0104 through 127.0108 127.0109 apply.

**Table 127-01A**  
**Review Process for Previously Conforming Structural Envelope**

<b>Type of Development Proposal</b>	<b>Applicable Sections</b>	<b>Required Development Permit/Decision Process</b>
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	127.0105(a), (b) and (e)	CP/Process 1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	127.0105(c) and (d)	NDP/Process 2
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a), (b) and (e).	CP/Process 1
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(e).	NDP/Process 2

**Table 127-01A**  
**Review Process for Previously Conforming Structural Envelope**

<b>Type of Development Proposal</b>	<b>Applicable Sections</b>	<b>Required Development Permit/Decision Process</b>
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<u>Maintenance, repair, alteration, or replacement of a structure with previously conforming structural envelope</u>		
<u>Maintenance, repair, alteration, or replacement that is outside the coastal zone or that is exempt from a Coastal Development Permit in accordance with Section 126.0704(b)</u>	<u>127.0104</u>	<u>CP/Process One</u>
<u>Maintenance, repair, alteration, or replacement that requires a Coastal Development Permit (because it does not meet the permit exemptions in Section 126.0704(b))</u>	<u>126.0704</u> <u>127.0104</u>	<u>NDP/Process Two</u>
<u>Reconstruction (following fire, natural disaster, act of the public enemy) of a structure with previously conforming structural envelope</u>		
<u>Reconstruction in accordance with Section 127.0105(b)</u>	<u>127.0105</u>	<u>CP/Process One</u>
<u>Reconstruction that does not meet criteria for Process One approval</u>	<u>127.0105</u>	<u>NDP/Process Two</u>
<u>Expansion/enlargement of a structure with previously conforming structural envelope, or of a structure on a premises with previously conforming density</u>		
<u>Where proposed expansion/enlargement conforms with current development regulations for setbacks, floor area ratio, and structure height and does not increase the level of non-conformity</u>	<u>127.0106</u>	<u>CP/Process One</u>
<u>Expansion or enlargement of a previously conforming multiple dwelling unit or non-residential structure as necessary to incorporate required public exits or fire walls that bring the existing structure into compliance with the California Building Code or California Fire Code</u>	<u>127.0106</u>	<u>CP/Process One</u>
<u>Expansion or enlargement of a previously conforming structure in accordance with Section 127.0106(b)</u>	<u>127.0106</u>	<u>NDP/Process Two</u>

(b) — Previously Conforming Density

**Table 127-01B**  
**Review Process for Previously Conforming Density**

<b>Type of Development Proposal</b>	<b>Applicable Sections</b>	<b>Required Development Permit/Decision Process</b>
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	<del>127.0104.</del>	CP/Process-1
Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	<del>127.0104.</del>	NDP/Process-2
Reconstruction (following fire, natural disaster, act of the public enemy) for residential <i>structures</i> or for nonresidential <i>structures</i> when the cost of reconstruction is less than 50 percent of <i>market value</i> .	<del>127.0105(a), (b) and (c)</del>	CP/Process-1
Reconstruction (following fire, natural disaster, act of the public enemy) for nonresidential <i>structures</i> when the cost of reconstruction is greater than 50 percent of <i>market value</i> .	<del>127.0105(c) and (d)</del>	NDP/Process-2
Expansion/enlargement, where new construction conforms with all current development regulations.	<del>127.0106(a) and (b).</del>	NDP/Process-2
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	<del>127.0106(c).</del>	NDP/Process-2

(e)(b) *Previously Conforming Use*

**Table 127-01C**  
**Review Process for Previously Conforming Use**

<b>Type of Development Proposal</b>	<b>Applicable Sections</b>	<b>Required Development Permit/Decision Process</b>
Maintenance, repair or alteration (less than or equal to 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	CP/Process-1

Maintenance, repair or alteration (greater than 50% of <i>market value</i> of entire <i>structure</i> or improvement) that does not expand the <i>structural envelope</i> .	127.0104	NDP/Process 2
Reconstruction (following fire, natural disaster, act of the public enemy).	127.0105	CP/Process 1 <sup>(4)</sup>
		NDP/Process 2 <sup>(2)</sup>
Expansion/enlargement, where new construction conforms with all current development regulations.	127.0106(a) and (b)	NDP/Process 2 <sup>(3)</sup>
Expansion/enlargement where new construction requests a reduction of up to 20% from required <i>setbacks</i> .	127.0106(e)	NDP/Process 2 <sup>(3)</sup>
Change to another <i>previously conforming use</i> within the same use category.	127.0107	CP/Process 1
Operating a <i>previously conforming use</i> , including resumption of <i>previously conforming use</i> up to 2 years after discontinuance.	127.0108(a) and (c)	CP/Process 1
Resumption of a <i>previously conforming use</i> after 2 years discontinuance.	127.0108(b) and (e)	NUP/Process 2
Increase in <i>floor area</i> to a <i>previously conforming use</i> (less than or equal to 20% of <i>gross floor area</i> of the existing <i>structure</i> ).	127.0109	NUP/Process 2 <sup>(3)</sup>

**Table 127-01B**  
**Review Process for Previously Conforming Use**

<u>Type of Development Proposal</u>	<u>Applicable Sections</u>	<u>Required Development Permit/Decision Process</u>
<u>Maintenance, repair or alteration of a <i>structure</i> containing a <i>previously conforming use</i></u>		
<u>Removal of less than 50 percent of the exterior walls of a <i>structure</i> containing a <i>previously conforming use</i></u>	<u>127.0104</u>	<u>CP/Process One</u>
<u>Removal of 50 percent or more of the exterior walls of a <i>structure</i> containing a <i>previously conforming use</i></u>	<u>127.0104</u>	<u>NDP/Process Two</u>
<u>Reconstruction (following fire, natural disaster, act of the public enemy) of a <i>structure</i></u>		

<u>associated with a <i>previously conforming</i> use and resumption of the use</u>		
<u>Reconstruction that meets specified criteria in Section 127.0105(b)</u>	<u>127.0105</u>	<u>CP/Process One</u>
<u>Reconstruction that does not meet criteria for Process One approval</u>	<u>127.0105</u>	<u>NDP/Process Two</u>
<u>Expansion/enlargement of a <i>previously conforming</i> use</u>		
<u>Increase in floor area to a <i>previously conforming</i> use (up to 20 percent expansion of <i>gross floor area</i> of the <i>existing structure</i> or up to the maximum <i>floor area ratio</i> of the underlying base zone, whichever is less)</u>	<u>127.0109</u>	<u>NUP/Process Two</u>
<u>Operation changes involving <i>previously conforming</i> uses</u>		
<u>Change to another <i>previously conforming</i> use within the same use category</u>	<u>127.0107</u>	<u>CP/Process One</u>
<u>Operating a <i>previously conforming</i> use, including resumption of <i>previously conforming</i> use up to 2 years after discontinuance</u>	<u>127.0108</u>	<u>CP/Process One</u>
<u>Resumption of a <i>previously conforming</i> use after 2 years discontinuance</u>	<u>127.0108</u>	<u>NUP/Process Two</u>

Footnotes to Table 127-01C:

- (1) Applies to reconstruction of *previously conforming structures*, with *previously conforming density* or *previously conforming residential uses* with no limitation on cost. Applies to partial reconstruction of *structures* with *previously conforming nonresidential uses* (less than or equal to 50 percent of *market value* of entire *structure* or improvement)
- (2) Applies to reconstruction of *previously conforming nonresidential uses*, when the cost of reconstruction is greater than 50 percent of *market value*
- (3) Findings of fact for this permit shall include the presumption that expansion of the following *previously conforming uses* would be detrimental to the public health, safety, and welfare: industrial uses in residential zones, auto repair or dismantling uses in residential zones and any use in a zone that would require a Conditional Use Permit in accordance with Section 126.0303.

**§127.0104 Maintenance, Repair, or Alteration, or Replacement of Previously Conforming Structures**

- (a) Maintenance, repair, or alteration, or replacement of a *previously conforming structure*, with a *previously conforming structural envelope* is permitted in accordance with Process One, where the new construction would not expand beyond the existing *structural envelope*, is subject to the review procedures required for *conforming structures* except as described in Section 127.0104(b). unless the proposed *development* requires a Coastal Development Permit because it does not meet the permit exemptions in Section 126.0704(b).
- (b) Maintenance, repair, or alteration, or replacement of a *structure* with a *previously conforming structural envelope structure*, containing *previously conforming density* or a *previously conforming use*, where the cost of the new construction would be greater than 50 percent of the *market value* of the existing *structure*, and the new construction would not expand beyond the existing *structural envelope*, requires a Neighborhood Development Permit, shall require a Neighborhood Development Permit in accordance with Process Two for proposed *development* that requires a Coastal Development Permit because it does not meet the permit exemptions in Section 126.0704(b).
- (c) Maintenance, repair, alteration, or replacement of a *dwelling unit*, or *multiple dwelling unit structure*, that makes the *premises previously conforming for density* is permitted in accordance with Process One.
- (d) Maintenance, repair, alteration, or replacement of a non-residential *structure* containing a *previously conforming use* is permitted in accordance with Process One if the proposed *development* would retain 50 percent or more of the exterior walls of the *structure*. If the proposed *development* would retain less than 50 percent of the exterior walls of the *previously conforming structure*, the proposed *development* shall require a Neighborhood Development Permit in accordance with Process Two. The calculation of exterior walls shall be measured in accordance with Section 127.0111.
- (e) Maintenance, repair, alteration, or replacement must comply with Section 132.0505 in the Coastal Height Limit Overlay Zone and Section 132.0305 in the Clairemont Mesa Height Limit Overlay Zone.
- (f) In the coastal overlay zone, *previously conforming rights* are not retained for a *structure* located within 50 feet of a *coastal bluff edge* if 50 percent or more of the *previously conforming structure's* exterior walls are destroyed, demolished, or removed.

**§127.0105 Reconstruction of Previously Conforming Structures Following Fire, Natural Disaster, or Act of the Public Enemy**

- (a) The reconstruction provisions of this section Section 127.0105 apply only to the rebuilding of a *previously conforming structure* that has been destroyed, in whole or in part, as a result of fire, natural disaster, or act of the public enemy, where

prior to the event that caused destruction, the structure met one or more of the following conditions:

- (1) The structure had a previously conforming structural envelope;
  - (2) The structure was a dwelling unit, or a structure that included a dwelling unit or dwelling units, that made the premises previously conforming for density; or
  - (3) The structure contained a previously conforming use.
- (b) Reconstruction of any previously conforming structure, including a structure with previously conforming density or a previously conforming residential use, is subject to the same review procedures required for conforming structures. Reconstruction of a previously conforming structure described in Section 127.0105(a) is permitted in accordance with Process One as follows:
- (1) Reconstruction of a non-residential structure containing a previously conforming use where less than 50 percent of the structure's exterior walls were destroyed; or
  - (2) Reconstruction of a structure with a previously conforming structural envelope or previously conforming density where:
    - (A) The new structure would not exceed the gross floor area or structure height of the destroyed structure by more than 10 percent; and
    - (B) The new structure would be located in generally the same location as the destroyed structure or in a location that would reduce the level of non-conformity.
  - (3) The calculation of exterior walls shall be measured in accordance with Section 127.0111.
- (e) Partial reconstruction of a structure containing a previously conforming nonresidential use is subject to the review procedures required for conforming structures, if the cost of the reconstruction is less than or equal to 50 percent of the market value of the structure prior to destruction.
- (c)(d) Reconstruction of a structure containing a previously conforming nonresidential use requires a Neighborhood Development Permit if the cost of the reconstruction is greater than 50 percent of the market value of the structure prior to the



destruction, in accordance with Process Two where the proposed *development* does not meet the criteria for Process One approval in Section 127.0105(b).

(d) In the coastal overlay zone, *previously conforming* rights are not retained for a *structure* located within 50 feet of a *coastal bluff edge* if 50 percent or more of the *previously conforming structure's* exterior walls are destroyed, demolished, or removed.

(1) In such cases, reconstruction is subject to a Coastal Development Permit and the regulations applicable to conforming *development*.

(2) The calculation of exterior walls for the purpose of *previously conforming* rights shall be measured in accordance with Section 127.0111.

(e) This section, or any Neighborhood Development Permit issued for reconstruction, Section 127.0105 does not exempt any person from any requirement to obtain other applicable *development permits* and does not grant any deviation from the height limit regulations of the Coastal Height Limit Overlay Zone or any other applicable height limit overlay zone. Reconstruction must comply with Section 132.0505 in the Coastal Height Limit Overlay Zone and Section 132.0305 in the Clairemont Mesa Height Limit Overlay Zone.

(f) All *construction permits* that would be required for conforming *premises* or uses must be obtained for reconstruction of *previously conforming premises* or uses pursuant to Section 127.0105.

**§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures On a Premises with Previously Conforming Density**

(a) Proposed expansion or enlargement of a *structure with a previously conforming structural envelope* is subject to the procedural requirements for conforming *structures* if the existing *density* and use comply with all applicable development regulations of the Land Development Code and if the new construction will comply with all applicable development regulations, or of a *structure on a premises with previously conforming density* is permitted in accordance with Process One as follows:

(1) Expansion or enlargement where all new construction conforms with current development regulations for setbacks, *floor area ratio*, and *structure height* and does not increase the level of non-conformity.

(2) Expansion or enlargement of a *previously conforming multiple dwelling unit* or nonresidential *structure* is permitted as necessary to meet public

safety requirements of the California Building Code or California Fire Code for a conforming use as long as the need per the California Building Code or California Fire Code is not a situation created by the *applicant* due to the proposed expansion or enlargement.

- (b) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope*, where the existing *previously conforming structure* does not comply with applicable zoning regulations as to *density* or use requires including a *structure* on a *premises* with *previously conforming density*, that does not meet the provisions for expansion in accordance with Section 127.0106(a), may nevertheless still be approved with a Neighborhood Development Permit; in accordance with Process Two if the proposed *development* within a *setback* meets all of the following criteria:
- (1) The proposed expansion or enlargement conforms to the *setback* observed by the existing *structure*;
  - (2) The proposed expansion or enlargement complies with the *floor area ratio* and maximum *structure height* of the underlying base zone;
  - (3) The proposed expansion or enlargement does not encroach into a *front yard* or extend outside of the developable area of the current zone to within 10 feet of the *front yard setback line*, unless the proposed expansion would reduce the level of non-conformity of existing *development on a coastal bluff*;
  - (4) The proposed expansion or enlargement does not exceed a maximum 15 foot length in any required side or rear *yard*;
  - (5) The proposed expansion or enlargement would not result in a total *structure length* within the required *yard* that is greater than 50 percent of the length of the adjacent *property line*;
  - (6) The proposed expansion or enlargement would not result in any new habitable construction within 3 feet of the *property line*; and
  - (7) The proposed expansion or enlargement is limited to additions at the *first story level* (as measured in accordance with Section 113.0261) and shall not exceed the height of the existing *structure* within the *setback*.
  - (8) No expansion of the number of *dwelling units* is permitted beyond what is allowed in accordance with the underlying base zone.

- (9) No expansion is permitted within a required *coastal bluff setback*.
- ~~(e) Proposed expansion or enlargement of a *previously conforming structural envelope* where the expansion would comply with regulations, but which proposes a reduction less than or equal to 20 percent from a required *setback*, requires a Neighborhood Development Permit.~~
- ~~(d)(c) 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 *structure*, the *previously conforming previously conforming* rights are not retained for the new structure *structure*. The calculation of exterior walls shall be measured in accordance with Section 127.0111.~~
- ~~(d) Any expansion or enlargement proposed in accordance with Section 127.0106 must comply with Section 132.0505 in the Coastal Height Limit Overlay Zone and Section 132.0305 in the Clairemont Mesa Height Limit Overlay Zone.~~
- ~~(e)(e) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* 100,000 square feet or greater *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.~~

#### §127.0108 Abandonment of Previously Conforming Uses

- (a) A *previously conforming* use may continue to operate in accordance with Section 127.0102(c). ~~or may resume operations if~~ If a *previously conforming use* is discontinued for a period of less than 2 consecutive years, operations may be resumed, or changed to another use in the same use category in accordance with Section 127.0107, except where otherwise indicated in Section 127.0108(c). Resumption of operations within 2 years is subject to the review procedures for conforming uses.
- (b) It is unlawful to reinstate any *previously conforming* use after the use has been discontinued for a period of 2 or more consecutive years, unless the property owner has obtained a Neighborhood Use Permit. ~~Discontinuance of the use for a period of 2 or more consecutive years creates a presumption in favor of abandonment, against which the owner or person asserting *previously conforming* rights may offers evidence to support resumption in accordance with one of the following:~~

- (1) That the discontinuance occurred pursuant to an active *construction permit* in accordance with Section 127.0108(d); or
- (2) A Neighborhood Use Permit was obtained in accordance with Process Two approving or conditionally approving resumption of the *previously conforming* use.
- (c) Resumption of operations pursuant to Section 127.0108 (a) or (b) is prohibited in circumstances where a *previously conforming* use was brought into conformance by a change in use to a conforming use. In such cases, the *previously conforming* status is terminated and future *development* cannot revert to that *previously conforming* status. A *previously conforming* use can maintain *previously conforming* rights during construction in accordance with Section 127.0108(d) without being considered to have been abandoned.
- (d) If the *previously conforming* use is discontinued temporarily while repairs, remodeling, or major alterations of the *structure* are under construction, maintenance of an active *construction permit* and continuance of the Business Tax Certificate constitutes conclusive evidence that the use has not been abandoned during the construction. A temporary discontinuance of operations in accordance with Section 127.0108(d) shall not be considered to have brought the *previously conforming* use into conformance or to have terminated the *previously conforming* status.

**§127.0109 Expansion of a Previously Conforming Use**

- (a) A 20 percent or less ~~gross floor area~~ *gross floor area* expansion of a structure with a *previously conforming* use requires a Neighborhood Use Permit in accordance with Process Two.
- (b) ~~When making the findings for a Neighborhood Use Permit for the proposed expansion of a *previously conforming* use, Where located in residential zones, the following uses are conclusively presumed to be detrimental to public health, safety, and welfare and shall not be eligible to expand:~~
- (1) Industrial uses in residential zones Hazardous waste facilities subject to Section 141.1001 or 141.1002;
- (2) Very Heavy Industrial Uses subject to Section 141.1007;
- (3) Wrecking and Dismantling of Motor Vehicles subject to Section 141.1008; and

- (4) Commercial and personal vehicle repair and maintenance facilities that meet the use category description in Section 131.0112(a)(8)(A) or (C) in residential zones; and
- (3) Any use that requires a Conditional Use Permit in the applicable zone in accordance with Section 126.0303.

**§127.0110 Previously Conforming Density**

- (a) For the purpose of Chapter 12, Article 7, Division 1, *previously conforming density* shall be regulated in accordance with the same regulations and permit process applicable to *previously conforming structural envelope*. The regulations applicable to *previously conforming* uses shall not apply to *multiple dwelling unit* development in a *single dwelling unit zone*.
- (b) The *previously conforming* regulations shall in no way be interpreted to allow for additional *dwelling units* to be added to a *premises with previously conforming density*.

**§127.0111 Methodology for Measurement of Exterior Walls**

- (a) For the purpose of Chapter 12, Article 7, Division 1, the following shall apply to determine whether the threshold for removal of a *structure's* exterior walls has been exceeded:
  - (1) An exterior wall shall be considered removed if the structural integrity of that wall is demolished or removed.
  - (2) The length of the exterior walls shall be measured in linear feet.
- (b) The *applicant* shall provide sufficient information to demonstrate the extent of proposed wall removal, including but not limited to:
  - (1) A site plan of the existing *structure* with all existing exterior walls identified and dimensioned in linear feet;
  - (2) A demolition plan with dimensions specified in linear feet for any existing exterior walls that are proposed to be demolished or removed and replaced in accordance with Section 127.0111(a)(1); and
  - (3) Structural calculations and details regarding the proposal for all walls within the *structure* that would be modified.

**ISSUE #17: CEQA Document Processing Requirements**

**§128.0209 When a Previous Environmental Document May Be Used**

- (a) A previously certified EIR or Negative Declaration, including any supplement or addendum, may be used when changes in the project or circumstances have occurred, unless the Planning Director determines that one or more of the situations identified in State CEQA Guidelines, Section 15162, exist.
- ~~(b) If a previously certified document is to be used, the Planning Director shall provide the decision-making body with an explanatory cover letter stating that none of the conditions specified in State CEQA Guidelines, Section 15162, exists.~~
- (b)(e) An EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the same and are consistent with the State CEQA Guidelines, Section 15153.

**§128.0306 Required Time Periods for Public Review and Comment of Draft Environmental Documents**

Other public agencies and members of the public shall have the following time periods to review and comment on draft environmental documents:

- (a) The public review period for Negative Declarations, Mitigated Negative Declarations, and Environmental Impact Reports, and Addenda to environmental documents shall be consistent with that established by CEQA and the State CEQA Guidelines.

~~The public review period shall be consistent with that established by CEQA and the State CEQA Guidelines.~~

- (b) Addenda

~~All addenda for environmental documents certified more than 3 years before the date of application shall be distributed for public review for 14 calendar days along with the previously certified environmental document. However, this review period for the addenda shall not extend the time for action beyond that required under law, and the failure to allow review of addenda, or allow sufficient time to review addenda, shall not invalidate any discretionary approval based upon an addendum under review.~~

**§128.0310 Final Environmental Document Preparation, Distribution and Availability for Public Review**

A final environmental document consisting of all information required by CEQA and the State CEQA Guidelines and any other information the Planning Director may add shall be prepared and ~~distributed~~ made available for review, as follows:

(a) Final Environmental Document Distribution and Availability

~~At least 14 calendar days before the first public hearing or discretionary action on the project, the~~ After distribution of final environmental documents to the decision maker, the Planning Director shall make all final environmental documents available on the City web page, including EIR Candidate Findings and Statements of Overriding Consideration if applicable, available to the public and decision makers and shall also mail copies of final environmental documents to the officially recognized community planning groups and members of the public who commented on the draft document. Final environmental documents will be available for review at least 14 calendar days prior to:

- ~~(1)~~ A decision made by the City Manager without a public hearing to adopt or certify an final environmental document, in accordance with the powers granted under City of San Diego Charter Section 28, including Process Two decisions;
- ~~(2)~~ A decision made by the Historic Resources Board or Planning Commission to make a recommendation on a project that requires action to adopt or certify an final environmental document; and
- ~~(3)~~ A decision made by the Hearing Officer, Planning Commission, or City Council to adopt or certify a final environmental document.
- ~~(4)~~ Failure to provide this 14-calendar-day review period shall not be treated as a procedural defect and shall not preclude discretionary action on the project when necessary to avoid conflict with time limits imposed by law.

(b) Final EIR Distribution to Public Agencies

The Planning Director shall provide a final EIR to any public agency that commented on the draft consistent with CEQA.

~~(b)~~ (c) Comment on Final Environmental Document

The intent of the final review period in Section 128.0310(a) is to provide other public agencies, the public, and the decision makers the opportunity to review the final document ~~before the first public hearing or discretionary action~~ prior to a decision being made on the project. No comments will be solicited and no written responses to comments on final environmental documents shall be prepared.

**§128.0312 Adoption of Candidate Findings and Statement of Overriding Considerations by the Decision Maker**

Before approving a project for which the final EIR identifies one or more significant effects, the decision maker shall adopt the required *findings* in accordance with the State CEQA Guidelines, Section 15091. When the decision to approve the project allows the occurrence of significant

effects that are identified in the final EIR but are not at least substantially mitigated, the decision maker shall make a statement of overriding considerations stating the specific reasons to support the decision based on the final EIR and other information in the record in accordance with the State CEQA Guidelines, Section 15093.

- (a) [No change.]
- (b) Preparation of ~~Adopted~~ Candidate *Findings* and Statement of Overriding Considerations

The adopted candidate findings and the statement of overriding considerations shall be in writing and shall be based on the entire record of proceedings.

- (c) Availability of Candidate Findings and Statement of Overriding Considerations

Where candidate findings and a statement of overriding considerations are required in accordance with Section 128.0312, the Planning Director shall make them available to the public and decision makers before the first public hearing to consider approval of the project.

**ISSUE #18: When a Public Right-of-Way Permit is Required**

**§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) The ~~private~~ construction of *public improvements* by a private entity or a public entity other than the City;
  - (2) through (4) [No change.]
- (b) [No change.]

**ISSUE #19: Qualifications to Prepare Plans and Perform Work in the Public Right-of-Way**

**§129.0720 Qualifications to Prepare Plans and Perform Construction Work in the Public Right-of-Way or Public Service Easement**

The preparation of plans for, and the construction of, work regulated by this division shall only be performed by persons with the following qualifications:

- (a) through (e) [No change.]
- (f) All construction work ~~required~~ regulated by this division shall be performed by a contractor licensed by the State of California ~~except for~~ with the following exceptions:



- (1) any Any person owning property that is or will be that person's primary residence may perform *grading* on that property.
- (2) any Any construction work authorized by a Public Right-of-Way Permit as a result of application by a *public utility* may be performed by the *public utility*.

**ISSUE #20: Applying OP Zone to City Parkland Prior to Dedication**

**§131.0202 Purpose of the OP (Open Space--Park) Zones**

- (a) The purpose of the OP zones is to be applied to *public parks* and facilities, ~~once they are dedicated as park land pursuant to City Charter Section 55~~ in order to promote recreation and facilitate the implementation of *land use plans*. The uses permitted in these zones will provide for various types of recreational needs of the community.
- (b) [No change.]

**ISSUE #21: Clarification of Street Light Requirement**

**§142.0670 Standards for Public Improvements**

- (a) through (d) [No change]
- (e) Street lights are a public improvement required as a condition of approval for a new subdivision map and shall be constructed in accordance with the standards established in the Land Development Manual.
- (f) [No change.]

**ISSUE #22: Exemptions from Historic Resources Site Survey**

**§143.0212 Need for Site-Specific Survey and Determination of Location of Historical Resources**

- (a) The City Manager shall determine the need for a site-specific survey for the purposes of obtaining a *construction permit* or *development permit* for *development* proposed for any parcel containing a *structure* that is 45 or more years old and not located within any area identified as exempt in the Historical Resources Guidelines of the Land Development Manual or for any parcel identified as sensitive on the Historical Resource Sensitivity Maps. The following *development* does not have the potential to adversely impact historical resources and shall be exempt from the requirements of Section 143.0212:
  - (1) Interior *development* and any modifications or repairs that are limited in scope to an electrical or plumbing/mechanical permit ~~shall be exempt from the requirement to obtain a site-specific survey prior to approval of the applicable *construction*~~

~~permit~~ where the *development* would not include a change to the exterior of existing *structures*;

- (2) ~~In kind roof repair and replacement shall be exempt from the requirement to obtain a site-specific survey prior to approval of the applicable *construction permit*;~~
- (3) ~~In kind foundation repair and replacement, except for *structures* with a decorative block or cobblestone foundation; and~~
- (4) ~~Construction of a swimming pool in a rear *yard*, except on a property that requires a survey in accordance with Section 143.0212(b).~~

(b) [No change.]

(c) The City Manager shall determine the need for a site-specific survey within 10 *business days* of application for a *construction permit* or within 30 calendar days of application for a *development permit*. A site-specific survey shall be required when the City Manager determines that a *historical resource* may exist on the parcel, and if the *development* proposes a substantial alteration consistent with SDMC 143.0250(a)(3). If the City Manager determines that a site-specific survey is not required within the specified time period, a permit in accordance with Section 143.0210 shall not be required.

(d) [No change.]

**USE AMENDMENTS:**

**ISSUE #23: Manufacturing (Light vs Heavy)**

**§131.0112 Descriptions of Use Categories and Subcategories**

(a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

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

(6) [See Issues #24 and #26.]

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

(9) [See Issue #25.]

(10) Industrial Use Category

This category includes uses that produce goods from extracted and raw materials or from recyclable or previously prepared materials, including the design, storage, and handling of these products and the materials from which they are produced. The industrial subcategories are:

- (A) Heavy Manufacturing — Uses that process, ~~fabricate, or assemble,~~ or treat materials for the fabrication of large base-sector products. ~~Assembly of large equipment and machines is included in this~~ using large outdoor equipment such as cranes and large tanks to produce unpackaged bulk products such as steel, paper, lumber, fertilizer, or petrochemicals. This subcategory as well as includes heavy manufacturing uses that typically produce disturbing noise, dust, or other pollutants capable of harming or annoying adjacent uses.
- (B) Light Manufacturing — Uses that process, fabricate, assemble, treat, or package finished parts or products without the use of explosives or unrefined petroleum materials. ~~(This subcategory does not include the assembly of large equipment and machinery.)~~ This subcategory includes light manufacturing uses that produce a wide variety of products including, but not limited to, food, beverages, durable goods, machinery, and equipment.
- (C) through (F) [No change.]

(b) [No change.]

**§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

- (a) [No change.]
- (b) [See Issues #27 and 29]
- (c) through (d) [No change.]
- (e) Light manufacturing and assembly uses in the IP-1-1 zone and IP-3-1 zone are limited to the following:
  - (1) through (5) [No change.]
  - (6) Manufacturing of biological, biomedical, and pharmaceutical products; and
  - (7) Manufacturing of scientific, engineering, and medical instruments; and
  - (8) Beverage manufacturing and production, which may include an accessory tasting room.

**ISSUE #24: Tasting Rooms and Tasting Stores**

**§131.0112 Descriptions of Use Categories and Subcategories**

(a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

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

(6) Commercial Services Use Category

This category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The commercial services subcategories are:

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

(C) Eating and Drinking Establishments — Uses that prepare or serve food or beverages for consumption on or off the *premises*.

(D) through (I) [No change.]

(J) [See Issue #26.]

~~(K)~~(J)

~~(L)~~(K)

(L) Tasting rooms - Uses associated with a beverage manufacturer that offer tastings and sell beverages manufactured on the premises for on-site or off-site consumption. This subcategory includes establishments such as a brewery, winery, or distillery that offer tastings and sales of alcoholic beverages in accordance with a license issued by the California Department of Alcoholic Beverage Control. (This subcategory does not include retail tasting stores subject to Section 141.0507.)

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

(9) [See Issue #25.]

(10) [See Issue #23.]

Add new use categories to Ch 13 use tables. Allow retail tasting stores as limited use in all commercial (except CP), IL and IS. Not permitted in open space, Agricultural, Residential, CP, IP, IBT or IH.

#### **§141.0507 Retail Tasting Stores**

Retail tasting stores are branch locations affiliated with a licensed beer manufacturer, which sell or deliver alcoholic beverages that are manufactured by the business at another premises for consumption on or off of the premises of the retail tasting store. Retail tasting stores include any establishment for which a Duplicate Type 1 Beer Manufacturer License or a Duplicate Type 23 Small Beer Manufacturer License has been obtained from, or for which an application has been submitted to, the California Department of Alcoholic Beverage Control. This use category does not apply to tasting rooms located on the premises of a licensed beer manufacturer.

Retail tasting stores are permitted as a limited use in the zones indicated with a "L" in the Use regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) Off-street parking shall be provided in accordance with Section 142.0530 Table 142-05E (Parking Ratios for Retail Sales, Commercial Services, and Mixed-Use Development).
- (b) In CN zones and on properties abutting residentially zoned property, retail tasting stores shall not operate between the hours of midnight and 6:00 a.m.

#### **ISSUE #25: Distribution and Storage Uses**

##### **§131.0112 Descriptions of Use Categories and Subcategories**

- (a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

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

(6) [See Issues #24 and #26.]

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

- (9) ~~Wholesale, Distribution, and Storage Use Category~~

~~This category includes uses that provide and distribute and store goods in large quantities, especially to retail sales establishments. Long-term and short-term storage of commercial goods and personal items is included. The wholesale, distribution, storage subcategories are:~~

- (A) Equipment and Materials Storage Yards – Uses related to engaged in the outdoor storage of large equipment or products or large quantities of material.
- (B) Moving and Storage Facilities – Uses engaged in the moving and storage of household or office furniture, personal items, appliances, and equipment from one location to another, including the temporary storage of those same items.
- (C) Warehouse — Uses engaged in long-term and short-term storage of goods in bulk as well as storage by individuals in separate storage compartments.
- (D)(C) Wholesale Distribution Facilities — Uses engaged in the bulk commercial storage and distribution of goods. Wholesale showrooms with limited retail sales to the public are also included.

(10) [See Issue #23.]

Amend Chapter 13 Use Tables accordingly.

**§142.0530 Nonresidential Uses — Parking Ratios**

**Table 142-05G  
Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of <i>Floor Area</i> Unless Otherwise Noted ( <i>Floor Area</i> Includes <i>Gross Floor Area</i> plus below <i>Grade Floor Area</i> , and Excludes <i>Floor Area</i> Devoted to Parking)		
	Required Automobile Parking Spaces <sup>(1)</sup>		
	Minimum Required Outside a <i>Transit Area</i>	Minimum Required Within a <i>Transit Area</i> <sup>(2)</sup>	Maximum Permitted
<b>Wholesale, Distribution, and Storage<sup>(4)</sup></b>			
All wholesale, distribution and storage uses	1.0 <sup>(5)</sup>	1.0 <sup>(5)</sup>	4.0
Self Storage Facilities	1.0 space/10,000 sq ft plus 3.3 space per 1,000 square foot of accessory office space	N/A	N/A

**ISSUE #26: Assembly and Entertainment Uses, Including Churches**

**§131.0112 Descriptions of Use Categories and Subcategories**

(a) The following are descriptions of each use category and subcategory found in the Use Regulations Tables of each base zone. These descriptions shall be used to classify specific uses into use subcategories for the purpose of determining applicable use regulations, in accordance with Section 131.0110. A description of separately regulated uses is located in Section 131.0112(b).

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

(6) Commercial Services Use Category

This category includes uses that provide for consumer or business services, for the repair and maintenance of a wide variety of products, and for entertainment. The commercial services subcategories are:

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

(C) [See Issue #24.]

(D) through (I) [No change.]

(J) ~~Assembly and Entertainment - Uses that provide gathering places for large numbers of people for recreation, physical fitness, entertainment, or other assembly.~~

~~(K)~~(J) Radio and Television Studios - Uses that provide for the production, recording, and broadcasting of radio and television shows and motion pictures.

~~(L)~~(K) Visitor Accommodations - Uses that provide lodging, or a combination of lodging, food, and entertainment, primarily to visitors and tourists. (Outside the Coastal Overlay Zone, includes *single room occupancy hotels*.)

~~(L)~~ [See Issue #24.]

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

(9) [See Issue #25.]

(10) [See Issue #23.]

(b) [No change.]

Amend Ch 13 use tables accordingly to remove the “churches” and “assembly and entertainment” use categories. Add the new separately regulated use category. Change all church and assembly entertainment uses with “P” to the new assembly use with “L”.

Not permitted: OP-2-1, OC, OR, OF, AG, RE, RX, RS, RT; CP; IP, IL-1-1, IH, IBT

Limited: L<sup>(2)</sup> in OP-1-1; RM; CC; CR; CO; L<sup>(10)</sup> in CV and CN; IL-2-1; IL-3-1; IS

Conditional: keep as “C” in AR zone (since other assembly is currently not permitted)

### **§141.0602 Assembly and Entertainment Uses, Including Churches**

This use category applies to facilities that serve as gathering places for large numbers of people, typically at least 25 people, for recreation, physical fitness, entertainment, or other assembly, including religious assembly. Assembly and entertainment uses may be permitted as a limited use in accordance with Process One in zones indicated with a “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and are subject to the regulations in Section 141.0602(a) and (b). Assembly and entertainment uses may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and are subject to the regulations in Section 141.0602(a) and (c).

#### (a) General regulations

##### (1) Assembly and entertainment uses are not permitted:

(A) Within the *MHPA*;

(B) Within *floodplains* located in the Coastal Overlay Zone; or

(C) On a *premises* that is identified as Prime Industrial Land in a *land use plan*.

##### (2) Off-street parking shall comply with one of the following ratios:

(A) If seating is fixed, 1 parking space per 3 seats in the assembly area; or 1 parking space per 60 inches of bench or pew seating space;

(B) If seating is not fixed, 30 parking spaces per 1,000 square feet of assembly area; or

(C) Other specified off-street parking standard in Table 142-05G applicable to the type of assembly and entertainment use.

##### (3) The *premises* and adjacent *public right-of-way* shall be kept free of litter.

##### (4) Auditoriums accessory to professional office or industrial *development* are not subject to the limitations in Section 141.0602.



(b) Limited use regulations

- (1) The facility shall be designed to accommodate a maximum of 300 people. Larger facilities are subject to approval of a Conditional Use Permit in accordance with Section 141.0602(c).
- (2) Assembly facilities adjacent to residentially zoned property shall not operate between the hours of 10:00 p.m. and 6:00 a.m.; except for churches and religious facilities; and facilities hosting events on Fridays and Saturdays which may operate until 11:00 p.m.
- (3) Off-street parking for the facility shall be accommodated on-site.

(c) Conditional use regulations

- (1) Hours of operation shall be limited to minimize disturbance to neighboring development.
- (2) Structures shall be placed on the site so that larger or high-activity buildings are placed away from adjacent property with smaller structures and lower levels of activity.
- (3) Off-street parking areas shall be located away from adjacent residential property where possible to minimize disturbance to neighboring development.
- (4) The maximum capacity, including limits on the intensity of accessory uses, shall be limited to a level commensurate with the size of the premises, the intensity of surrounding development, and the capacity of streets serving the facility.
- (5) Structures shall be designed to incorporate a variety of architectural elements that help to diminish building bulk.

§142.0530 Nonresidential Uses — Parking Ratios

**Table 142-05G  
Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of Floor Area Unless Otherwise Noted (Floor Area Includes Gross Floor Area plus below Grade Floor Area, and Excludes Floor Area Devoted to Parking)		
	Required Automobile Parking Spaces <sup>(1)</sup>		
	Minimum Required Outside a Transit Area	Minimum Required Within a Transit Area <sup>(2)</sup>	Maximum Permitted
Institutional			
Separately regulated			

<b>uses</b>			
<i>Churches and places of religious assembly</i>	1 per 3 seats; or 1 per 60 inches of pew space; or 30 per 1,000 square feet assembly area if seating is not fixed	85% of Minimum	N/A
<b>Commercial Services</b>			
<b>Public assembly &amp; entertainment</b>			
Theaters	1-3 screens: 1 per 3 seats 4+ screens: 1 per 3.3 seats Per assembly area if not fixed seats: 50.0	85% of Minimum	N/A
Health clubs	5.0 Clubs with Courts: 1 additional space per the maximum number of authorized players (Amateur Athletic Union) per court	85% of Minimum	N/A
Swimming pools	Commercial: 1 per 100 sq. ft. of pool surface area Community: 1 per 175 sq. ft. of pool surface area	85% of Minimum	N/A
All other public assembly and entertainment	1 per 3 seats; <u>1 per 60 inches of bench or pew seating; or</u> 30.0 if no fixed seats	85% of Minimum	N/A

Footnotes For Table 142-05G [No change]

**Central Urbanized Planned District Ordinance**

**§155.0238 Use Regulations Table of CU Zones**

The uses allowed in the CU zones are shown in Table 155-02C:

**Table 155-02C  
Use Regulations Table for CU Zones**

	<b>CU-1</b>	<b>CU-2</b>	<b>CU-3</b>
<i>Churches and places of religious assembly</i>	C	C	C
<b>Commercial Services</b>			
<b>Assembly &amp; Entertainment</b>	-	P	P
<b>Separately Regulated Commercial Services</b>			

<u>Assembly and Entertainment Uses, Including Churches</u>	<u>C</u>	<u>L</u>	<u>L</u>
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**Chapter 15, Article 10: La Jolla Shores Planned District**

**§1510.0303 Single-Family Zone - Permitted Uses**

In the Single-Family (SF) Zone, designated on that certain map referenced in Section 1510.0102, no building or improvement or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any premises be used except for one or more of the following uses:

- (a) through (d) [No change.]
- ~~(e) Churches, temples or buildings of a permanent nature, used primarily for religious purposes.~~
- ~~(f)~~(e) Electric distribution and gas regulating stations as a conditional use subject to a Process Three Conditional Use Permit in accordance with Land Development Code Section 141.0408 (Separately Regulated Use Regulations).
- ~~(g)~~(f) Golf courses as a conditional use subject to a Process Four Conditional Use Permit in accordance with Land Development Code Section 141.0609 (Separately Regulated Use Regulations).

**§1510.0307 Visitor Zone-Permitted Uses**

In the Visitor (V) Zone, designated on that certain map referenced in Section 1510.0102, no building or improvement or portion thereof, shall be erected, constructed, converted, established, altered or enlarged, nor shall any premises be used except for one or more of the following purposes:

- (a) through (c) [No change.]
- ~~(d) Assembly and entertainment uses, including churches and places of religious assembly as a conditional use subject to a Process Three Conditional Use Permit in accordance with Land Development Code Section 141.0602 (Separately Regulated Use Regulations).~~
- ~~(d)~~ (e) In the portion of Pueblo Lot 1286 bounded by La Jolla Shores Drive, Torrey Pines Road and La Jolla Parkway (dedicated but unimproved as a roadway) a restaurant and automobile service station will be permitted in addition to any of the other visitor area uses.
- ~~(e)~~(f) Any other uses the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses, including accessory uses, enumerated above and consistent with the purpose and intent of the Visitor Zone and the La Jolla Shores

Planned District Ordinance. The adopted resolution embodying such finding shall be filed in the office of the City Clerk.

**§1510.0309 Commercial Center Zone-Permitted Uses**

[No change to intro paragraph through (e).]

(f) Assembly and entertainment uses, including churches and places of religious assembly as a conditional use subject to a Process Three Conditional Use Permit in accordance with Land Development Code Section 141.0602 (Separately Regulated Use Regulations).

~~(f)~~(g) Any other use which the Planning Commission may find, in accordance with Process Four, to be similar in character to the uses enumerated above and consistent with the purpose and intent of the Commercial Center Area (CC) and the La Jolla Shores Planned District. The adopted resolution embodying such finding shall be filed in the office of the City Clerk.

**ISSUE #27: Drive-in and Drive-through Eating and Drinking Establishments**

Amend Ch 13 Zones: Chapter 13 Tables:

- Add new Footnote 16 to Table 131-05B and apply to the eating and drinking establishment category in all zones where the use is allowed. Text should state: "Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight."
- Revise existing Footnote 4 to Table 131-05B to state: "Live entertainment and the sale of intoxicating beverages other than beer and wine are not permitted in CN zones, unless a Planned Development Permit is granted in accordance with Section 126.0602(b)(1)."
- Remove old use category for "Eating and Drinking Establishments Abutting Residentially Zoned Property". Add new use category for Drive-in and Drive-through Eating and Drinking Establishments.  
Not permitted: open space, agricultural or residential; IS, IP-1-1, IH-1-1; or in pedestrian oriented CN-1-1 or CN-1-3, CV-1-2; CC-3; CC-4-4, 5; CC-5-4, 5  
Permitted: CR; CV-1-1; CC-1, 2; CC-4-1, 2, 3, CC-5-1, 2, 3; and IL-3-1  
Conditional: CN-1-2; IP-2-1; IP-3-1; IL-1-1; IL-2-1; IH-2-1; IBT

**§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

(a) [No change.]

(b) Eating and drinking establishments are permitted subject to the following:

- (1) [No change.]
- (2) [See Issue #28.]
- (3) No Drive-in or drive-through services are permitted subject to approval in accordance with Section 141.0607; and
- (4) Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight.

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

(e) [See Issue #22]

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

~~§141.0607 — Eating and Drinking Establishments Abutting Residentially Zoned Property~~

~~Eating and drinking establishments on premises abutting residential zones 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 regulations in Section 141.0607(a). Eating and drinking establishments abutting residentially zoned property that do not comply with Section 141.0607(a) may be permitted with a Neighborhood Use Permit subject to the regulations in Section 141.0607(b).~~

~~(a) — Limited Use Regulations~~

- ~~(1) — Eating and drinking establishments abutting residential zones may operate only during the hours between 6:00 a.m. and 12:00 midnight.~~
- ~~(2) — In the IL 3-1 zone, eating and drinking establishments shall also comply with Section 131.0623(b).~~
- ~~(3) — Drive-in and drive through restaurants, live entertainment, and the sale of intoxicating beverages other than beer and wine are not permitted in the CN zones.~~

~~(b) — Neighborhood Use Permit Regulations. Except in the CN zones, eating and drinking establishments abutting residential zones that do not comply with Section 141.0607(a) may be permitted with a Neighborhood Use Permit subject to the following regulations.~~

- ~~(1) — All activities associated with the establishment shall occur within an enclosed building between the hours of 12:00 midnight and 6:00 a.m.~~
- ~~(2) — Drive-up or drive-through service is not permitted between the hours of 12:00 midnight and 6:00 a.m.~~

- (3) ~~Live entertainment is not permitted between the hours of 12:00 midnight and 6:00 a.m.~~
- (4) ~~The operator of the establishment shall take reasonable steps to prevent loitering on the premises, in parking lots serving the premises, and on public sidewalks adjacent to the premises.~~
- (5) ~~In the IL-3-1 zone, eating and drinking establishments shall also comply with Section 131.0623(b).~~

**§141.0607 Eating and Drinking Establishments with a Drive-in or Drive-through Component**

Eating and drinking establishments with a drive-in or drive-through component are permitted by right in the zones indicated with a "P" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). Eating and drinking establishments with a drive-in or drive-through component in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) may be permitted with a Conditional Use Permit decided in accordance with Process Three subject to the following regulations:

- (a) The decision maker shall impose conditions that minimize adverse impacts on adjacent properties and surrounding neighborhoods by addressing issues that may include:
  - (1) Adequate parking to address customer and employee parking demand;
  - (2) A pedestrian and vehicular circulation plan that ensures public safety;
  - (3) Space for vehicle queuing for the associated drive-in or drive-through component:
    - (A) Queue space for a minimum of five cars shall be provided for each drive-up service window or position as measured from the food/beverage pick-up window. The queue space for each car shall be 10 feet wide and 20 feet long.
    - (B) Required queue spaces shall not obstruct access to parking aisles or parking spaces.
  - (4) Limits on the hours of operation:
    - (A) In CN zones and on properties abutting residentially zoned property, eating and drinking establishments with a drive-in or drive-through component shall not operate between the hours of midnight and 6:00 a.m.

- (B) For the purpose of Section 141.0607, the limit on hours of operation in Section 141.0607(a)(4)(A) shall also apply to any property that is separated from a residentially zoned property by an alley.
- (C) Hours may be further limited by the decision maker as appropriate for the location.
- (5) Noise reduction techniques, including measures to ensure that speaker systems are not audible beyond the *property line* above daytime ambient noise levels and do not exceed 65 decibels at the *property line*;
- (6) Lighting control plan to minimize potential off-site impacts; and
- (7) Litter control plan to keep the establishment and adjacent properties free of litter attributable to the establishment.

  - (A) A minimum of one outdoor trash and one outdoor recycling receptacle shall be provided on-site adjacent to each driveway exit. At least one additional on-site outdoor trash receptacle shall be provided for every 10 required parking spaces.
  - (B) The operator of the establishment shall be responsible for collecting litter attributable to the establishment or its customers, including food wrappers, containers, and packaging from restaurant products within a 300 foot radius of the *premises* at a frequency of at least once a day each day the establishment is open for business.
- (8) The operator of the establishment shall take reasonable steps to prevent loitering on the *premises*, in parking lots serving the *premises*, and on public sidewalks adjacent to the *premises*.
- (b) Amortization period for *Previously Conforming* Hours of Operation

  - (1) An amortization period of 7 years shall apply to any eating and drinking establishment with a drive-in or drive-through component that is *previously conforming* with respect to the hours of operation required by Section 141.0607(a)(4). Seven years from the effective date of the ordinance [that established this amortization period]; such establishments shall cease operation of the drive-in or drive-through window component between the hours of midnight and 6:00 a.m.
  - (2) Establishments with an approved Planned Development Permit that authorizes less restrictive hours of operation are permitted to operate in accordance with the hours specified in the *development permit* and shall not be subject to the amortization period in Section 141.0607(b)(1), unless the *development permit* is

revoked in accordance with Section 121.0313 or is otherwise cancelled or rescinded by the *permit holder* in accordance with Section 126.0110.

**ISSUE #28: Companion Units**

**§131.0322 Use Regulations Table for Agricultural Zones**

Amend Table 131-03B. Keep “Companion Units” as not permitted in AG; Change from “C” to “L” in AR zones

**§141.0302 Companion Units**

A companion unit is a *dwelling unit* that is an *accessory use* for a *single dwelling unit* on a residential *lot* that provides complete living facilities, including a kitchen, independent of the primary *dwelling unit*. Companion units are permitted as a limited use in accordance with Process One in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) and Chapter 15, Article 1, Division 4 (General and Supplemental Regulations), subject to the following regulations:

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

~~(p) The companion unit shall be constructed with the same siding and roofing materials as the primary *dwelling unit*.~~

~~(e)~~(p) Within the Coastal Overlay Zone, companion units are subject to the provisions of Chapter 12, Article 6, Division 7.

**ISSUE #29: Allowance for Live Entertainment in Industrial Zones**

**§131.0623 Additional Use Regulations of Industrial Zones**

The additional use regulations identified in this section are applicable to uses where indicated in Table 131-06B.

(a) [No change.]

(b) Eating and drinking establishments are permitted subject to the following:

(1) [No change.]

(2) No live entertainment is permitted on ~~the~~ a premises in an IH zone or on any premises abutting a residential zone; and

(3) [See Issue #26.]

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



(e) [See Issue #22]

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

**ISSUE #30: Satellite Antennas in Industrial Zones**

**§141.0405 Satellite Antennas**

Satellite antennas are permitted as a limited use subject to Section 141.0405(b), and may be permitted with a Neighborhood Use Permit subject to Section 141.0405(c), or with a Conditional Use Permit decided in accordance with Process Three subject to Section 141.0405(d).

(a) Exemption. ~~Satellite antennas that are 5 feet in diameter or smaller are permitted in all zones and~~ The following satellite antennas are exempt from the requirements under Sections 141.0405 and 141.0420:

(1) In all zones, satellite antennas that are 5 feet in diameter or smaller; and

(2) In industrial zones, satellite antennas that are accessory uses.

(b) Limited Use Regulations. Satellite antennas that exceed 5 feet in diameter are permitted as a limited use in zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations:

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

(5) Ground-mounted satellite antennas shall not be located in the ~~street yard~~ street yard, front yard yard, or ~~street~~ street side yard yard of a premises premises.

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

(c) [No change.]

(d) Conditional Use Permit Regulations. ~~Except for satellite antennas which are accessory uses in industrial zones, satellite~~ Satellite antennas that exceed 10 feet in diameter, except where permitted in accordance with Section 141.0405(a)(2), may be permitted only with shall require a Conditional Use Permit decided in accordance with Process Three subject to the following regulations:

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

**ISSUE #31: Historic Buildings Occupied by Uses Not Otherwise Allowed**

**§141.0411 Historical Buildings Occupied by Uses Not Otherwise Allowed**

*Historical buildings* occupied by uses not otherwise allowed may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

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

(c) The proposed use of the building shall be compatible with the uses in the surrounding area or shall be consistent with the purpose for which the building was originally designed. In order to minimize detrimental effects to neighboring properties, any proposed separately regulated uses in a *historical building* shall be required to comply with the regulations in Chapter 14, Article 1 (Separately Regulated Use Regulations) for each separately regulated use as applicable.

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

**§156.0315 Separately Regulated Uses**

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

(h) *Historical Buildings* Occupied by Uses Not Otherwise Allowed

*Historical buildings* occupied by uses not otherwise allowed may be permitted with a Conditional Use Permit in accordance with Process Three subject to the following regulations:

- (1) The building must be designated as a *historical resource* by the City of San Diego Historical Resources Board before approval of the Conditional Use Permit.
- (2) The proposed use of the *historical resource* shall be compatible with the uses in the surrounding area or shall be consistent with the purpose for which the building was originally designed. In order to minimize detrimental effects to neighboring properties, any separately regulated uses proposed in a *historical resource* shall be required to comply with the regulations in Section 156.0315 (Centre City Planned District Ordinance Separately Regulated Uses) or Land Development Code Chapter 14, Article 1 (citywide Separately Regulated Use Regulations) for each separately regulated use as applicable.
- (3) The *historical resource* shall be preserved, restored, rehabilitated, reconstructed, or maintained in its original historical appearance in accordance with Land Development Code Chapter 14, Article 3, Division 2 of this Code.

- (4) Any facilities that are constructed as part of the new use shall be designed to be similar in scale and style with the historical use, and cause no more than a minor alteration to the *historical resource* in accordance with Historical Resources Regulations unless the *development* is approved through a Site Development Permit or Neighborhood Development Permit in accordance with Land Development Code Chapters 11 through 14 of this Code.

(i) through (j) [No change]

**ISSUE #32: Plant Nurseries**

**§141.0504 Plant Nurseries**

For the purpose of Section 141.0504 plant nurseries are commercial establishments where plants are cultivated and grown for transplant, distribution, and sale that have a sales transaction area greater than 300 feet. Plant nurseries are permitted without limitation in the zones indicated with a “P” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). Plant nurseries may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) The location, number, and intensity of other nonagricultural establishments located in the vicinity will be evaluated to determine the appropriate size and intensity of the proposed establishment.
- (b) The proximity and capacity of *freeways*, primary arterials, and major *streets* will be evaluated to determine the appropriate size and intensity of the proposed establishment.
- (c) Off-street parking shall be provided at a level sufficient to serve the facility without impacting adjacent or nearby property.
- (d) Section 141.0504 shall not apply to the sale of plants from a garden center or other retail store in zones where the sale of consumer goods is permitted.

**ISSUE #33: Marine-Related Uses in the Coastal Zone**

**§141.1003 Marine-Related Uses in the Coastal Zone**

Marine-related uses in the Coastal Overlay Zone are permitted without limitation in the zones indicated with an “P” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones). Marine-related uses in the Coastal Overlay Zone may be permitted with a Conditional Use Permit decided in accordance with Process Four in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

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

9<sup>th</sup> Update Code Language—Measurement, Parking, and Signs

Measurement Changes

ISSUE #34: Bay Windows

**§113.0234 Calculating Gross Floor Area**

*Gross floor area* is calculated in relationship to the *structure* and *grade* adjacent to the exterior walls of a building. The elements included in the *gross floor area* calculation differ according to the type of development proposed and are listed in Section 113.0234(a)-(c). *Gross floor area* does not include the elements listed in Section 113.0234(d). The total *gross floor area* for a *premises* is regulated by the *floor area ratio* development standard.

- (a) through (c) [No change.]
- (d) Elements Not Included in *Gross Floor Area*
  - (1) through (3) [No change.]
  - (4) Bay windows designed to meet the following:
    - (A) The window height is 5 feet or less;
    - (B) The interior space created by the bay window does not project outward more than 4 feet;
    - (C) At least a 3 foot clear space is provided between the bottom of the bay window projection and the grade below; and
    - (D) No structural support is needed to support the bay window projection.

ISSUE #35: Garages and Accessory Structures

**§131.0448 Accessory Buildings in Residential Zones**

This section is intended to clarify the regulations applicable to non-habitable *accessory buildings* in residential zones.

- (a) through (b) [No change.]
- (c) Non-habitable *accessory buildings* or ~~detached~~ garages may encroach into required *yards* subject to the requirements in Section 131.0461.
- (d) [No changes.]

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

(a) The following are permitted *architectural projections* and *encroachments* into required *yards* and the angled *building envelope* plane for RS and RX zones and the RM-1-1, RM-1-2, and RM-1-3 zones. These projections and *encroachments* are not permitted in the required yards within view corridors that are designated by *land use plans* in the Coastal Overlay Zone and may not be located in a required *visibility area* or a required turning radius or vehicle back-up area except where development regulations may allow.

(1) [See Issue #36.]

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

(12) Garages or non-habitable *accessory buildings* may encroach into a required side or rear *yard* as follows:

(A) The *lot* size shall not exceed 10,000 square feet of area; and

(B) The encroaching *accessory building* shall be limited to a maximum *structure height* of 15 feet within the *setback*; and

(C) The encroaching *accessory building* shall not share a common wall with the primary *dwelling unit*, but can be attached via a non-structural design element. Any *development* attached to the *accessory building* above one *story* shall comply with the *setback*; and

~~(D)~~ (D) The *accessory building* shall not exceed a maximum length of 30 feet within any given *setback*; and

~~(E)~~ (E) An encroaching *accessory building* shall not exceed 525 square feet in *gross floor area*.

(b) [No change.]

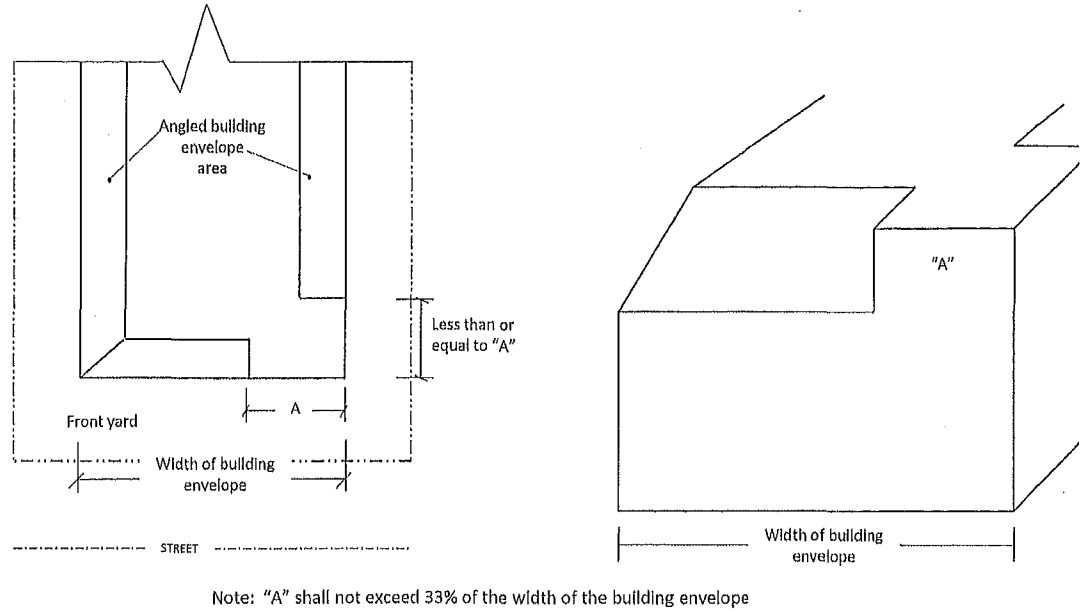
**ISSUE #36: Roof Projection into the Angled Building Envelope Plane**

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

(a) The following are permitted *architectural projections* and *encroachments* into required *yards* and the angled *building envelope* plane for RS and RX zones and the RM-1-1, RM-1-2, and RM-1-3 zones. These projections and *encroachments* are not permitted in the required yards within view corridors that are designated by *land use plans* in the Coastal Overlay Zone and may not be located in a required *visibility area* or a required turning radius or vehicle back-up area except where development regulations may allow.

- (1) Roof projections such as eave, cornice, and eyebrow projections may extend into the required *yard* or into the space above the angled *building envelope* subject to the following:
- (A) through (C) [No change.]
- (D) ~~The projection~~ A roof design element may project into the space above the required angled *building envelope* plane, as depicted in Diagram 131-04S, subject to the following:
- (i) The roof design element must face the front *yard*;
  - (ii) The roof design element shall not encroach into any required *yard*;
  - (iii) The roof design element shall comply with all applicable *structure height* limits in accordance with Section 113.0270; and
  - (iv) The roof design element shall be is limited to a maximum of 33 percent of the width of the *building envelope* facing the front *yard*, and a maximum depth equal to or less than its width. ~~See Diagram 131-04S.~~

Diagram 131-04S  
Exception for Angled Building Envelope Area



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

(12) [See Issue #35]

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

**ISSUE #37: Retaining Walls**

**§142.0305 When Fence Regulations Apply**

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

**Table 142-03A  
Fence Regulations Applicability**

TYPE OF DEVELOPMENT PROPOSAL	APPLICABLE REGULATIONS	REQUIRED PERMIT TYPE/ DECISION PROCESS
Any fence with a height less than 6 feet	Sections <u>129.0203</u> , 142.0310-142.0330, 142.0360-142.0380	No permit required by this division
Any fence with a height of 6 feet or greater	Sections 142.0310-142.0330, 142.0360-142.0380	Building Permit/Process One
Any retaining wall with a	Sections <u>129.0203</u> , 142.0340, 142.0370, 142.0380	No permit required by this

TYPE OF DEVELOPMENT PROPOSAL	APPLICABLE REGULATIONS	REQUIRED PERMIT TYPE/ DECISION PROCESS
height less than 3 feet		division
Any <i>retaining wall</i> with a height of 3 feet or greater	Sections 142.0340, 142.0370, 142.0380	Building Permit/ Process One
Any <i>fence</i> or <i>retaining wall</i> exceeding the height permitted in Section 142.0310, 142.0320, 142.0330, and 142.0340.	Section 142.0350	Neighborhood Development Permit/Process Two
Any <i>fence</i> or <i>retaining wall</i> located on premises that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731.	Section 142.0310-142.0380	Coastal Development Permit/Process Three - Appealable

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

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

(c) *Retaining Wall* Height in Required Front Yards and Required Street Side Yards

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

(3) *Retaining walls* of 3 feet in height or greater shall have at least one horizontal or vertical offset for each 120 square feet of wall area, except where otherwise provided in accordance with Section 142.0340(f). The horizontal or vertical offset shall be at least 12 inches wide with a minimum reveal of 4 inches. See Diagram 142-03B.

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

(f) Exceptions to *Retaining Wall* Height

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

(4) When the elevation of the adjacent street grade is higher than the building pad, the following shall apply:

(A) The portion of the retaining wall located at or below the adjacent street grade is not subject to Section 142.0340(c)(3).



(B) Measurement of any portion of the wall or attached fence above *grade* shall be taken from the adjacent *grade* on the higher side of the retaining wall.

**ISSUE #38: Mechanical Equipment Used in the Manufacturing Process**

**§142.0910 Mechanical and Utility Equipment Screening Regulations**

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

(d) Mechanical and utility equipment screening associated with industrial *development* that involves light manufacturing or heavy manufacturing is exempt from the requirements in Section 142.0910(a) and (b) if the location is not adjacent to residentially zoned property.

**Parking**

**ISSUE #39: Parking Requirement for Capital Intensive Manufacturing**

**§142.0530 Nonresidential Uses — Parking Ratios**

**Table 142-05G  
Parking Ratios for Specified Non-Residential Uses**

Use	Parking Spaces Required per 1,000 Square Feet of <i>Floor Area</i> Unless Otherwise Noted ( <i>Floor Area</i> Includes <i>Gross Floor Area</i> plus below <i>Grade Floor Area</i> , and Excludes <i>Floor Area</i> Devoted to Parking)		
	Required Automobile Parking Spaces <sup>(1)</sup>		
	Minimum Required Outside a <i>Transit Area</i>	Minimum Required Within a <i>Transit Area</i> <sup>(2)</sup>	Maximum Permitted

<b>Industrial</b>			
Heavy Manufacturing (except in IS Zone)	1.5; or 1.0 for facilities with majority of floor area dedicated to large equipment, tanks, vessels, automated machinery, or any similar combination of equipment	1.5; or 1.0 for facilities with majority of floor area dedicated to large equipment, tanks, vessels, automated machinery, or any similar combination of equipment	4.0
Light manufacturing (except in IS Zone)	2.5; or 1.0 for facilities with majority of floor area dedicated to large equipment, tanks, vessels, automated machinery, or any similar combination of equipment	2.1; or 1.0 for facilities with majority of floor area dedicated to large equipment, tanks, vessels, automated machinery, or any similar combination of equipment	4.0
Research & development (except in IS Zone)	2.5	2.1	4.0
All industrial uses in the IS Zone	1.0 <sup>(5)</sup>	1.0 <sup>(5)</sup>	4.0

Footnotes For Table 142-05G [No change]

**ISSUE #40: Driveway Design to Meet Engineering Standards**

**§142.0560 Development and Design Regulations for Parking Facilities**

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

(j) Driveway and Access Regulations

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

(9) Driveway Gradient Regulations

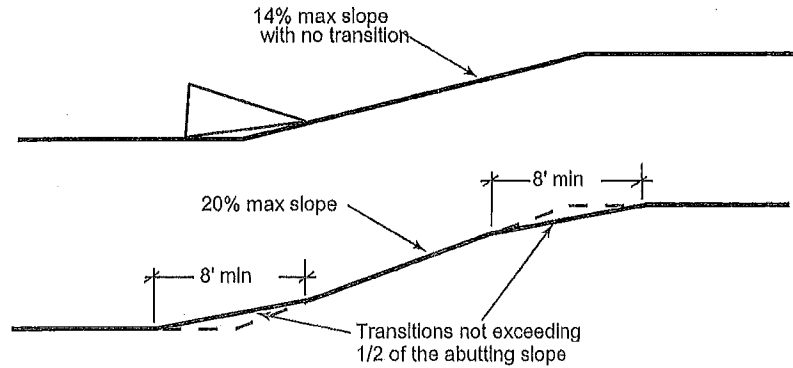
(A) Driveways may be up to 5 percent gradient with no transitions.

(B) Between the driveway apron and any driveway gradient greater than 5 percent, there shall be a 20-foot-long flat transition not exceeding a 5 percent gradient. A shorter transition may be approved by the City Manager according to accepted engineering practices.

(C) For driveways driveway ramps with a gradient greater than 14 percent up to the maximum permitted gradient of 20 percent, there shall be transitions

for the first and last 8 feet of the ramp. The transitions shall not exceed one-half of the abutting slope of the driveway ramp, as illustrated in Diagram 142-05D.

**Diagram 142-05D**  
**Maximum Driveway Ramp Slope**



(10) [No change.]

(k) [No change.]

**Signs**

**ISSUE #41: Signage in Planned Commercial and Industrial Developments**

**§126.0113 Amendments to a Development Permit**

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

(f) An amendment to a *development permit* shall not be required for approval of a *sign* application in accordance with Section 142.1208.

**§142.1208 Signs in Planned Commercial and Industrial Developments**

(a) Where a *development permit* for a commercial or industrial *development* specifies a *sign* requirement, new *signs* may nevertheless be approved without an amendment to that *development permit* in accordance with the Land Development Code regulations for *signs*, except as follows:

(1) Any *sign* that is subject to a *development permit* in accordance with the following separately regulated use regulations (Chapter 14, Article 1):

(A) Comprehensive sign plans (Section 141.1103) adopted January 1, 2000 or later

- ~~(B) Revolving projecting signs (Section 141.1104)~~
- ~~(C) Signs with automatic changing copy (Section 141.1105)~~
- ~~(D) Theater marquee (Section 141.1106)~~
- ~~(2) A sign that involves an alteration to the building where the building alteration is not in *substantial conformance* to the applicable *development permit*.~~
- ~~(3) Any proposal that involves an *advertising display sign*.~~
- ~~(b) New signs for commercial or industrial *development* with a comprehensive sign plan adopted prior to January 1, 2000, may be approved through Process One if the proposed signs comply with the current Land Development Code regulations for signs.~~

**ISSUE #42: Utilization of Sign Permits, Sign Stickers and Inspections**

**§121.0203 Authority to Inspect Private Property**

- (a) [No change.]
- (b) In addition to the powers set forth in Section 121.0203(a), the City Manager or designated Code Enforcement Official has the authority to enter any *structure*, during reasonable hours or at any time that extreme danger exists, in the discharge of official duties to do the following:
  - (1) through (4) [No change.]
  - (5) Inspect any *sign* that is required to have a Sign Permit Sticker for compliance with Chapter 14, Article 2, Division 12 (Sign Regulations).

**§121.0504 Inspection and Abatement**

- (a) ~~All signs that are required to have a Sign Permit Sticker are subject to inspection. The City Manager or designated code enforcement official is authorized to enter any property to inspect the any sign for placement of the sticker in accordance with Section 121.0203 compliance with Chapter 14, Article 2, Division 12 (Sign Regulations).~~

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

**§121.0505 Sign Permit Violations**

- (a) ~~It is unlawful to erect or maintain a *sign* contrary to any provision of Chapter 14, Article 2, Division 12 (Sign Regulations).~~
- (b) ~~It is unlawful to erect or maintain a *sign* subject to Chapter 14, Article 2, Division 12 (Sign Regulations) without a Sign Permit Sticker as required by the Sign Regulations.~~

**§129.0802 When a Sign Permit Is Required**

A Sign Permit is required for the installation or alteration of any *sign*, except for those *signs* specifically exempted in Section 129.0803. ~~Sign Permit Stickers are required for each *sign*. The sticker is applicable to one *sign* at one location only, and is transferable to a new owner or lessee.~~

**§129.0804 General Rules for Sign Permits**

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

~~(e) — A Sign Permit Sticker will be issued for each *sign* for which a Sign Permit is issued. Each sticker is applicable to only one *sign* and for only the location specified in the permit. The sticker is not transferable from one *sign* to another; however, the sticker is transferable to a new owner or lessee. Stickers must be maintained in a legible state.~~

**§129.0806 Sign Permit Fees**

(a) A fee for each Sign Permit application shall be paid at the time of application. Fees for Sign Permits shall be paid in accordance with the schedule of fees established by resolution of the City Council and filed in the office of the City Clerk.

~~(b) — The City Manager is authorized to issue refunds for all or a portion of the fees, in the event that the work authorized by the Sign Permit has not been performed and no inspections have been made. The refund will be issued within 90 calendar days from the date of permit issuance. Before a refund is issued, the *applicant* shall return the permittee's copy of the issued permit and the Sign Permit Sticker.~~

**§129.0811 — Initial Utilization of a Sign Permit**

~~A Sign Permit shall become void if the work authorized by the permit has not begun within 180 calendar days of the date of permit issuance. If a Sign Permit becomes void before the authorized work has begun, the *applicant* shall apply for a new permit and shall pay the full permit fee.~~

**§129.0812 — Maintaining Utilization of a Sign Permit**

~~A Sign Permit shall become void if the work that is authorized by the permit has begun, but is suspended or abandoned for a period of 180 calendar days. If the work is suspended or abandoned for 180 calendar days, a new permit application is required. The permit fee shall be one-half the standard permit fee, provided that no change has been made to the original plans and that the work has not been abandoned or suspended for more than one year.~~

**§129.0813 Expiration of a Sign Permit**

A Sign Permit shall expire by limitation and become void 24 months after the date of permit issuance. If the work authorized by the Sign Permit has not been completed and has not received final inspection approval by the permit expiration date, all work shall stop until a new permit is issued. If a Sign Permit expires, a new permit application, with the full permit fee, is required.

**§129.0815 — Sign Permit Inspections**

All work authorized by a Sign Permit shall be inspected in accordance with Section 129.0111 and the inspection requirements of the Land Development Manual.

**§142.1206 Violations of Sign Regulations**

(a) It is unlawful to do the following:

(1) [No change.]

(2) Place any lettering, card, poster, or notice of any kind on any curb, sidewalk, *street*, pole, post, utility box, hydrant, bridge, tree, building, or other surface that is located on public property or in the *public right-of-way* unless otherwise provided in the Municipal Code or specific state statute; or

(3) ~~Display any sign without the required Sign Permit Sticker; or~~

(4) Erect any sign on any premises contrary to the provisions of this division.

(b) [No change.]

**§142.1210 General Sign Regulations**

This section is divided into subsections for copy regulations, locational regulations, structural regulations, and *sign* maintenance regulations.

(a) [See Issue #43]

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

(d) *Sign* Maintenance Regulations

All *signs* shall comply with the following maintenance regulations whether or not a Sign Permit is required.

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

~~(5) A Sign Permit Sticker shall be provided for each sign that is required to receive a Sign Permit. The sticker shall bear an assigned number that is used to identify the sign. No sign may be displayed without the required Sign Permit Sticker.~~

~~(6) The Sign Permit Sticker shall be installed on the lower right corner of the sign or other location as directed by the City Manager so that it is visible from the public right-of-way or some equally accessible place.~~

~~(7) Owners of newly annexed property shall obtain Sign Permit Stickers for existing signs located on the property within 3 months after the effective date of the annexation.~~

**ISSUE #43: Gas Station Electronic Pricing Signage**

**§141.1105 Signs with Automatic Changing Copy**

*Signs* with automatic changing copy may be permitted with a Neighborhood Use Permit in the zones indicated with an "N" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations. Section 141.1105 does not apply to automobile service station gasoline pricing signage designed in accordance with state law.

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

**§142.1210 General Sign Regulations**

This section is divided into subsections for copy regulations, locational regulations, structural regulations, and *sign* maintenance regulations.

(a) Copy Regulations

(1) [No change.]

(2) *Signs* may have changeable copy, such as letters, numbers, symbols, pictorial panels, and other similar characters. Changeable copy shall be manually or mechanically changeable only in the field and not remotely or electronically changeable, except for the following *signs*:

(A) Public service messages in compliance with Section 142.1220(f); and

(B) *Signs* with automatic changing copy may be permitted with a Neighborhood Use Permit in compliance with Section 141.1105; and

(C) Automobile service station gasoline pricing signage designed in accordance with state law.

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

**§142.1260 Signs Permitted by Higher Process**

The following *signs* may be permitted with a Neighborhood Use Permit in accordance with Chapter 12, Article 6, Division 2 and Chapter 14, Article 1, Division 11:

(a) [No change.]

(b) Signs with automatic changing copy, (except that automobile station gasoline pricing signage may be approved through Process One),

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

**ISSUE #44: Wall Signs and Ground Signs**

**§142.1220 Primary Sign Regulations**

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

**Table 142-12B  
Permitted Primary Signs**

Sign Types	Category A General Citywide Commercial and Industrial Zones	Category B CO and IP Zones	Category C CN and Commercial and Industrial Zones in the Coastal Overlay Zone
<p><i>Wall Signs</i> (See regulations in Section 142.1225)</p>	<p>Minimum of One <i>Sign</i> per Establishment Number and square footage of <i>wall signs</i> is limited only by the area calculation which is based on establishment's <i>street wall, public right-of-way width, and street speed limit</i>. The permitted <i>sign copy area</i> is reduced by the addition of <del>roof, projecting, or ground signs</del> <u>roof signs or projecting signs</u>.</p>	<p>Minimum of One <i>Sign</i> per Establishment Number and square footage of <i>wall signs</i> is limited only by the area calculation which is based on establishment's <i>street wall, public right-of-way width, and street speed limit</i>. The permitted <i>sign copy area</i> is reduced by the choice of <del>projecting or ground signs</del> <u>projecting signs</u> with a maximum display area limitation.</p>	<p>Minimum of One <i>Sign</i> per Establishment Number and square footage of <i>wall signs</i> is limited only by the area calculation which is based on establishment's <i>street wall, public right-of-way width, and street speed limit</i>. The permitted <i>sign copy area</i> is reduced by the choice of <del>projecting or ground signs</del> <u>projecting signs</u> with a maximum display area limitation.</p>
<p><b>Projecting Signs through Roof Signs</b> [No change.]</p>			
<p><i>Ground Signs</i> (See regulations in Section 142.1240)</p>	<p>One Sign <i>Sign</i> per Frontage <u>street frontage</u> for Each Premises-Having-Street Frontage <u>each premises having street frontage</u>. The Number Increases <u>number of signs increases</u> as Frontage Increases <u>street frontage increases</u>. <del>Ground signs</del> <u>Ground signs</u></p>	<p>One Sign <i>Sign</i> per Premises <u>premises</u> per Frontage <u>street frontage</u> with a Minimum <u>minimum</u> of 100 Feet <u>feet</u> in-Street-Frontage <del>Ground signs</del> <u>Ground signs</u> are permitted in lieu of <del>projecting signs</del> <u>projecting signs</u>. The area is based on <del>street-wall</del> <u>street wall</u>,</p>	<p>One Sign <i>Sign</i> per premises <u>premises</u> per Street-Frontage <u>street frontage</u> <del>Ground signs</del> <u>Ground signs</u> are permitted in lieu of <del>projecting signs</del> <u>projecting signs</u>. The area is based on <del>street-wall</del> <u>street wall</u>,</p>



Sign Types	Category A General Citywide Commercial and Industrial Zones	Category B CO and IP Zones	Category C CN and Commercial and Industrial Zones in the Coastal Overlay Zone
	<p>are permitted in lieu of <del>roof signs</del> <i>roof signs</i> and <del>projecting signs</del> <i>projecting signs</i>; however, one <del>projecting sign</del> <i>projecting sign</i> may replace one <del>ground sign</del> <i>ground sign</i> when more than one <del>ground sign</del> <i>ground sign</i> is allowed on the <del>premises</del> <i>premises</i>. In addition, one of the <del>ground signs</del> <i>ground signs</i> may revolve when more than one <del>ground sign</del> <i>ground sign</i> is allowed. The permitted sign area for <del>ground signs</del> <i>ground signs</i> is based on <del>street wall</del> <i>street wall</i>, <del>public right-of-way</del> <i>public right-of-way</i> width, and street speed limit. The use of a <del>ground sign on a premises</del> <i>ground sign on a premises</i> reduces the allowable <del>wall sign copy area</del> <i>wall sign copy area</i> for that <del>premises</del> <i>premises</i>.</p>	<p><del>public right-of-way</del> <i>public right-of-way</i> width, and street speed limit, with a maximum display area limitation.</p>	<p><del>public right-of-way</del> <i>public right-of-way</i> width, and street speed limit, with a maximum display area limitation.</p>

**§142.1225 Wall Signs in Commercial and Industrial Zones**

The following regulations apply to *wall signs* in all commercial and industrial zone *sign* categories, unless otherwise indicated.

- (a) A minimum of one *wall sign* per establishment is permitted. *Wall signs* are permitted alone or in combinations with other primary *signs*; ~~however, the maximum permitted wall sign area is decreased by the use of other primary signs.~~
- (b) Table 142-12C provides the basis for calculating the *wall sign copy area* for establishments along a single *street frontage*. The permitted *sign copy area* is based on the length of the establishment's *street wall*, and the width of the adjacent *public right-of-way*, ~~and the other types of signs located on the premises.~~

**Table 142-12C**  
**Calculation of Wall Sign Copy Area**  
**on a Single Street Frontage**

<i>Public Right-of-way Width</i>	<i>Sign Category</i>			<i>Sign Category</i>	<i>Sign Category</i>
	<i>A</i>			<i>B</i>	<i>C</i>
	<i>Wall Signs Only. No Roof, ground, or Roof Signs or Projecting Signs</i>	<del><i>Wall Signs and One Ground Sign. No Roof or Projecting Signs</i></del>	<i>1) Wall Signs and Roof <u>Roof Signs</u> or Projecting Signs. No Ground Sign; or 2) Wall Signs on a Building with One High-rise Wall Sign</i>	<del><i>Wall Signs and Projecting Sign or Wall Signs and Ground Sign</i></del>	<del><i>Wall Signs and Projecting Sign or Wall Signs and Ground Sign</i></del>
<i>Public right-of-way width 60 feet or less <sup>(1)</sup></i>	<i>For wall sign copy area, multiply the establishment's street wall by 3 feet</i>	<del><i>For wall sign copy area, multiply the establishment's street wall by 1-1/4 feet</i></del>	<i>For wall sign copy area, multiply the establishment's street wall by 3/4 feet</i>	<i>For wall sign copy area, multiply the establishment's street wall by 3/4 feet</i>	<i>For wall sign copy area, multiply the establishment's street wall by 3/4 feet</i>
<i>Public right-of-way width 60 feet or greater</i>	<i>For wall sign copy area, multiply the establishment's street wall by 3-3/4 feet</i>	<del><i>For wall sign copy area, multiply the establishment's street wall by 1-1/2 feet</i></del>	<i>For wall sign copy area, multiply the establishment's street wall by 1 foot</i>	<i>For wall sign copy area, multiply the establishment's street wall by 1 foot</i>	<i>For wall sign copy area, multiply the establishment's street wall by 1 foot</i>
<i>Maximum wall sign copy area</i>	<i>350 square feet</i>	<del><i>250 square feet</i></del>	<i>200 square feet</i>	<i>200 square feet</i>	<i>100 square feet</i>
<i>Minimum wall sign copy area for each establishment</i>	<i>75 square feet or 25 percent of the total area of establishment's street wall, whichever is less</i>	<del><i>30 square feet or 25 percent of the total area of establishment's street wall, whichever is less</i></del>	<i>20 square feet or 25 percent of the total area of establishment's street wall, whichever is less</i>	<i>20 square feet or 25 percent of the total area of establishment's street wall, whichever is less</i>	<i>20 square feet or 25 percent of the total area of establishment's street wall, whichever is less</i>

Footnote to Table 142-12C [No change.]

(c) [No change.]

(d) Locational Regulations for all *Wall Signs*

(1) through (4)

(5) *Wall Signs* on Architectural Appendages

*Wall signs* may be placed on an architectural appendage that is an integral part of the building, projects over the *roof line*, and is perpendicular to the *public right-of-way* subject to the following regulations.

(A) [No change.]

(B) The *sign* must be in lieu of any ~~ground, roof,~~ *roof signs* or *projecting signs* on the *premises*.

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

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

(e) [No change.]

9<sup>th</sup> Update Code Language—Minor Corrections

ISSUE #45: Vacant Structures (Incorrect Section References)

**§54.0308 Standards for Boarding a Vacant Structure**

Except as provided in Section 54.0308(a)(9)(i), the *responsible person* or *Director* shall board a *vacant structure* according to all of the following specifications and requirements:

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

**§54.0309 Entry or Interference with Notice Prohibited**

- (a) It is unlawful for any person to enter or occupy any structure or premises which has been posted pursuant to Section 54.0308(a)(8)(h) of this Division, except to repair or demolish the structure under proper permit or for a purpose authorized by the owner.
- (b) It is unlawful for any person to remove or deface any notice posted pursuant to Section 54.0308(a)(8)(h) of this Code until the required repairs or demolition have been completed or a Certificate of Occupancy has been issued in accordance with appropriate provisions of the California Building Code as in Chapter IX of the Municipal Code.

ISSUE #46: Fee Payment (Incorrect Spelling)

**§98.0425 Free Fee Payment**

When fees are to be paid, the payment or an offer for payment shall be made to and accepted by the school district prior to the issuance of a building permit for the proposed development.

ISSUE #47: Definition of Reasonable Accommodation (Incorrect Term)

**§113.0103 Definitions**

*Abutting property* 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~~ *dwelling unit*.

*Reclamation* through *Yard* [No change.]

**ISSUE #48: Zoning and Rezoning Actions (Missing Section Reference)**

**§123.0101 Purpose of Zoning and Rezoning Procedures**

The purpose of these procedures is to establish the process for the inclusion or placement of any property within the City of San Diego into any zone as established and defined in Chapter 13 (Zones) or Chapter 15 (Planned Districts).

**ISSUE #49: Capital Improvement Program Projects (Incorrect Reference)**

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

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

(c) A Site Development Permit in accordance with Process Three is required for the following types of *development*.

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

(4) *Public improvements* required in association with private *development* that involve *development* of more than 3,000 feet of property frontage, as described in Section 142.0612, ~~except that *capital improvement program projects* shall be subject to Process CIP Two.~~

(5) *Public improvements* required in association with private *development* for which adopted City standards do not apply, as described in Section 142.0612, ~~except that *capital improvement program projects* shall be subject to Process CIP Two.~~

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

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

**ISSUE #50: Regulation of Residential in Commercial Zones (Incorrect Reference)**

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

The following regulations apply to residential *development* within commercial zones where indicated in Table 131-04B 131-05B:

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

**ISSUE #51: Child Care in Industrial Zones (Incorrect Permit Reference)**

§131.0622

**Table 131-06B  
Use Regulations for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones									
	1st & 2nd >>	IP-			IL-			IH-		IS-	<u>IBT-</u>
	3rd >>	1-	2-	<u>3-</u>	1-	2-	3-	1-	2-	1-	<u>1-</u>
	4th >>	1	1	<u>1</u>	1	1	1	1	1	1	<u>1</u>
Child Care Centers		<u>LC</u>	<u>LC</u>	<u>LC</u>	-	<u>LC</u>	<u>LC</u>	-	<u>LC</u>	<u>LC</u>	<u>LC</u>

**ISSUE #52: Pushcarts/Retail Food Code (Incorrect Section Reference, Punctuation Errors)**

§141.0619 Pushcarts

This section regulates pushcarts on private property and pushcarts in the *public right-of-way*. Pushcarts are moveable, wheeled, non-motorized vehicles used by vendors for the sale of food or beverage products, fresh-cut flowers, or live plants in pots. Pushcarts are a health regulated business subject to Municipal Code Section 42.0102.

(a) Pushcarts on Private Property

Pushcarts are permitted on private property as a limited use in the zone indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

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

~~(5) — The operation of the pushcart shall be in conformance with Municipal Code Sections 42.0160 through 42.0167.~~

(b) Pushcarts in the *Public Right-of-Way*

Pushcarts may be permitted in the *public right-of-way* with a Neighborhood Use Permit in the zones indicated with an “N” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

(1) [No change.]

(2) The decision maker will consider the appropriateness of the pushcart design and color scheme, *signs*, and graphics for the products for sale

and the proposed location. ~~This provision supersedes Municipal Code Section 42.0163(Q).~~

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

(12) Pushcarts shall not be left unattended, nor shall they remain in the *public right-of-way* between 12:00 midnight and 6:00 a.m. except for special events as provided for in Municipal Code ~~Section 42.0130.1~~ Chapter 2, Article 2, Division 40.

~~(13) The operation of the pushcart shall be in conformance with Municipal Code Sections 42.0160 through 42.0167.~~

~~(14)~~(13) An *applicant* that has received a Neighborhood Use Permit for a pushcart shall have an operating cart on the specified site within 60 calendar days of approval or the permit will be void.

~~(15)~~(14) The permit is valid only when used at the location designated on the permit. The permit shall be displayed in a prominent and visible place on the pushcart.

~~(16)~~(15) A Neighborhood Use Permit for a pushcart may not be transferred, but there may be more than one *applicant* for a single permit.

~~(17)~~(16) A Neighborhood Use Permit for a pushcart can be revoked or modified in accordance with Sections 121.0313 through 123.0316.

~~(18) A Neighborhood Use Permit for a pushcart can be revoked on any of the grounds listed in Municipal Code Section 42.0168.~~

**ISSUE #53: General Fence Regulations (Grammatical Error)**

**§142.0310 General Fence Regulations for All Zones**

(a) Location and Height of *Fences*

(1) No portion of a *fence* shall extend beyond the *property line* of the premises into the *public right-of-way* unless an a Public Right-of-Way permit has been obtained.

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

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

**ISSUE #54: Street System and Development (Italicization Errors)**

**§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 *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 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 system* and open to public use until improvements are constructed pursuant to the requirements of this Code.

**ISSUE #55: Findings for Tentative Map Approval**

**§144.0242 Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities**

- (a) [No change.]
- (b) Process. Requests to waive the undergrounding requirement in ~~s~~Section 144.0240(b) shall be considered concurrently with the approval of a *tentative map* or amendment thereto. Supporting facts for a decision to grant a waiver shall be documented in the ~~findings~~ *findings* for *tentative map* approval.
- (c) through (d) [No change.]

**ISSUE #56: Mission Beach Planned District Ordinance (Capitalization/Incorrect Term)**

**§1513.0304 Property Development Regulations – Residential Subdistricts**

- (a) through (c) [No change in text.]
- (d) Encroachments
  - (1) [No change in text.]
  - (2) Encroachments into yards for Courts, Places, and all yards on Ocean Front and Bayside Walks
    - (A) The following encroachments, in addition to those identified in Table 1513-03B, are permitted in yards for Courts, Places, and Walks:
      - (i) An encroachment of up to 18 inches ~~or~~for a vertical offset extending full height of the building that is a maximum of 3 feet in deep depth and not less than 45 degrees for at least 50 percent of



the building as illustrated in Diagram 1513-03D provided that the width of the encroaching offset is not more than one-half of the total building width, and an insert area equal to the width of the encroaching offset at a minimum depth of 18 inches is undeveloped behind the required setback line parallel to the Court, Place, or Walk.

(ii) [No change in text.]

(B) [No change in text.]

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

**ISSUE #57: Otay Mesa Planned District Ordinance (Remove Titles of Repealed Sections)**

~~Article 17: Otay Mesa Development District~~

~~Division 1: General Rules~~

~~Article 17: Otay Mesa Development District~~

~~Division 2: Permits and Procedures~~

~~Article 17: Otay Mesa Development District~~

~~Division 3: Zones and Subdistricts~~

~~Article 17: Otay Mesa Development District~~

~~Division 4: General and Supplemental Regulations~~

*(Repealed 4-11-2014 by O-20361 N.S.; effective 5-18-2014.)*

### **9<sup>th</sup> Update: Public Outreach Summary**

The 9<sup>th</sup> Update package is a collection of issues vetted in multiple public meetings since July 2014. An early draft was posted on the City web page and widely distributed for public review on October 1, 2014. The proposed amendment package has been revised throughout the outreach process consistent with the adopted process to amend the Land Development Code. As is typical of the code amendment process, the following recommendations were provided:

**Code Monitoring Team (CMT):** Public input was collected at the July, August, and September 2014 CMT meetings, which helped staff organize potential code amendment items in accordance with the adopted goals for the Land Development Code (O-18451) and process for amending the Land Development Code (Section 111.0107). On December 10, 2014, CMT voted 8-0 to recommend adoption of the 9<sup>th</sup> Update, including a recommendation for DSD staff to implement Issue #13 through a streamlined Process Two (with clarification that the new Process Two should apply only if the original development permit must be amended for the permit holder to use new regulations and should not affect proposed development that is in substantial conformance).

**Community Planners Committee (CPC):** Staff presented the 9<sup>th</sup> update to CPC as an information item on October 28, 2014 and participated in subsequent meetings with the CPC Ad Hoc Subcommittee on October 28, November 19, and November 25, 2014, and January 7, 2015. CPC will provide a formal recommendation on January 27, 2015. Preliminary recommendations provided by the CPC Subcommittee are further described in the PC Report under Issue #16 previously conforming regulations.

**Technical Advisory Committee (TAC):** On December 10, 2014, the Technical Advisory Committee voted 9-0-1 to support approval of the 9<sup>th</sup> Update (Regional Chamber of Commerce abstained from vote).

Additional stakeholder groups participated as follows:

**Building Industry Association (BIA):** On October 17, 2014, the BIA Legislation Committee received a presentation on the 9<sup>th</sup> Update per their request.

**San Diego Commercial Real Estate Development Association (NAIOP):** On November 6, 2014, the NAIOP legislative Affairs Committee received a presentation on the 9<sup>th</sup> Update per their request.

**San Diego Regional Chamber of Commerce:** On November 10, 2014, the Public Policy Committee voted to support the 9<sup>th</sup> Update with emphasis on the importance of the need for approval of proposed changes in Issue #13 benefit of new regulations, Issue #16 previously conforming regulations, and Issue #17 CEQA document processing. The Committee flagged Issue #27 relating to eating and drinking establishments with drive-in or drive-throughs as an issue in need of follow up.

**Rancho Bernardo Community Planning Board:** On November 20, 2014 the Rancho Bernardo Community Planning Board approved recommendations relating to seven different issues in the 9<sup>th</sup> Update by a vote of 12-0, summarized as follows:

Support for Issue #14 Flexibility for Modifications to Industrial Development because the lower Process 2 decision will still allow planning groups the opportunity to review and appeal the proposed decision if they choose to;

Support for Issue #18 When a Public Right-of-Way Permit is Required;

Support for Issue #20 Applying OP Zone to City Parkland Prior to Dedication;

Support for Issue #24 Tasting Rooms vs Retail Tasting Stores because of limit on hours (closed midnight to 6 a.m.) abutting residentially zoned property;

Support for Issue #26 Assembly and Entertainment Uses, Including Churches;

Support for Issue #27 Drive-Through Eating and Drinking Establishments with a request to further limit the proposed limit on hours of operation where abutting single dwelling unit zones to be closed 10 p.m. to 6 a.m.; and

Support for Issue #29 Allowance for accessory live entertainment in Industrial Zones because operations abutting residentially zoned property would not be permitted midnight to 6 a.m.

**Normal Heights Community Planning Board:** On January 6, 2015, the Normal Heights Community Planning Board recommended approval of the 9<sup>th</sup> Update, with specific recommendations to:

Modify Issue #17 CEQA Document Processing Requirements. Recommend restoring a short review period of 5 business days for final EIRs to ensure thorough review of complex projects and prevent unnecessary litigation.

Modify Issue #28 Companion Units. Recommend removal of the requirement for an improved alley in LDC Section 141.0302(j). The requirement effectively prohibits companion units where the adjacent alley is unimproved because it is cost prohibitive for most homeowners. Recommend Process 2 so planning groups can spot street view idiosyncrasies and incompatibilities that might otherwise go unnoticed under Process 1.

## **9<sup>th</sup> Update Issue#16: Summary of Previously Conforming Regulations**

The City of San Diego takes a unique approach to address the operation of, and maintenance, repair, alteration, replacement, and expansion of previously conforming development that was legally established in compliance with applicable regulations at the time of development, but that no longer complies due to a change in zoning regulations. Currently, previously conforming situations are dealt with in a variety of ways where some development improvements are allowed by right, some require discretionary review, and others are not permitted at all.

The proposed changes are intended to:

- Facilitate consistent application of the regulations and a more predictable outcome for applicants and the community.
- Increase certainty and predictability for the reconstruction of development following a fire, natural disaster, or act of public enemy.
- Increase opportunities and the likelihood for reinvestment in the City's older neighborhoods.
- Increase certainty and predictability for communities undergoing land use plan/zoning updates.
- Clarify the regulations applicable to previously conforming fast food restaurants with a drive-through component, and establish an amortization period for previously conforming hours of operation past midnight in locations adjacent to residential.
- Clarify the regulations applicable to proposed expansion of separately regulated industrial uses.

### **What does "previously conforming" mean?**

- Applies to structures that were legally built, or uses that were legally established, in compliance with applicable regulations at the time of development.
- Structures and uses become "previously conforming" when changes in zoning cause the structure or use to no longer comply.
- The property owner has the burden to demonstrate that the structure or use has previously conforming rights.
- Previously conforming rights do not apply to situations where structures and uses were not established legally.

### **Background**

- The existing regulation has been in effect since January 1, 2000. It sets the review process for development, maintenance, and operation of previously conforming premises and uses.
- The purpose and intent is:
  - To minimize the potential for blight by allowing previously conforming properties to maintain, repair, alter or replace existing development
  - To allow flexibility for compatible uses to continue and even in expand in limited cases
  - To remove or phase-out uses that are detrimental to public health, safety, and welfare
- Previously conforming structures and uses are prevalent citywide:

January 8, 2015

- The City has an extensive history of zoning code changes, including a major citywide rezone in 1997 that applied new zones citywide as part of the adoption of the original Land Development Code that took effect January 1, 2000.
- Previously conforming situations continue to be created in association with the update process for land use plans, rezones, and amendments to the Land Development Code.

### Proposed Changes

The proposed 9<sup>th</sup> Update would modify the existing previously conforming rules in the following ways:

- Allows maintenance, repair, alteration or replacement of a structure containing previously conforming density through Process One, instead of requiring a Process Two Neighborhood Development Permit (NDP) based on the market value of the improvements.
- Would change the threshold for discretionary permit review from market value to the removal of 50 percent or more of the structure's exterior walls.
- Provides flexibility for minor modifications per the zone to be approved in accordance with Process One for reconstruction following a fire, natural disaster, or act of public enemy.
- Requires a Process Two NDP for alteration or replacement of a previously conforming structure in the coastal zone that does not meet the coastal development permit exemption for repair and maintenance in Section 126.0704(b).
- Implements coastal commission policy that terminates previously conforming rights to a structure within 50 feet of a coastal bluff edge if 50 percent or more of the structure's exterior walls are destroyed, demolished or removed. New development must conform to the local coastal program.
- Allows for limited expansion through a Process One for previously conforming multiple dwelling unit or non-residential development as necessary to comply with the Building Code or Fire Code.
- Provides flexibility through a Process Two NDP to allow expansion for structures with a previously conforming structural envelope if the proposed expansion meets specified criteria per Section 127.0106(b) to facilitate reasonable improvements, to maintain the character of existing development, and minimize potential impacts on surrounding development.
- Creates a new use category for eating and drinking establishments with a drive-in or drive-through component that will create greater certainty regarding the associated process, and will establish an amortization period for previously conforming hours of operation past midnight in neighborhood-commercial locations adjacent to residential (see also 9<sup>th</sup> Update Issue #27).
- Clarifies the type of industrial development in residential zones considered detrimental to public health, safety, and welfare (no expansion allowed) and allows potentially compatible uses to request approval to expand up to 20 percent via a Process Two NDP .

### Previously Conforming Development Scenarios

The proposed changes address the most frequent conflict resolution issues that City staff faces in applying the current regulations. Property owners want to be able to make improvements and build back what they already have by right without the added expense or uncertainty of discretionary permit review. This was particularly a challenge when owners were looking to rebuild following the wildfires. It has also been a concern for owners who must demonstrate to financial lenders and insurance companies that the existing development can be improved or replaced. Following are details regarding applicability of the proposed regulations to various previously conforming scenarios:

January 8, 2015

Maintenance, Repair, Alteration, and Replacement

The goal is to continue to allow maintenance, repair, alteration, and replacement improvements to previously conforming structures via a staff level decision.

- Structures with a previously conforming structural envelope (where existing development was constructed lawfully, but due to a change in zoning, now exceeds the height, setbacks, or floor area ratio of the current zone) can be maintained, repaired, altered, or replaced in accordance with Process One consistent with the existing code. This means a previously conforming structure can be completely torn down and built back.
- Proposed changes will facilitate improvements to properties with previously conforming density by reducing the process to a staff level decision. Structures with previously conforming density (where an existing residential development was constructed with a lawful number of dwelling units, but due to a change in the zone or zoning regulations now has a greater number of dwelling units than is allowed by the zone) can be maintained, repaired, altered or replaced in accordance with Process One. This means any structure with previously conforming density can be completely torn down and built back.
- The permit process for structures with a previously conforming use (where an existing use was constructed lawfully, but due to a change in the zone or zoning regulations is no longer allowed by the zone) would be the same, but with a different calculation for the permit threshold. Structures with previously conforming uses can be maintained, repaired, altered or replaced in accordance with Process One if less than 50 percent of the exterior walls are removed. If 50 percent or more of the exterior walls are removed, then a Process Two NDP would be required. This means that the structure can be partially torn down to make improvements, but requires discretionary permit review for anything involving the removal of more than 50 percent of the structures exterior walls.
- Creation of a new separately regulated use category for eating and drinking establishments with a drive-through component will mean that type of development is treated as a "use" in the future (instead of what is currently regulated as a previously conforming design feature of a conforming use in zones where eating and drinking establishments are allowed by right). If adopted, previously conforming eating and drinking establishments with a drive-through component would be subject to the previously conforming "use" regulations for future improvements.

Reconstruction (following fire, natural disaster, or act of public enemy)

The goal is to establish certainty in the process to reconstruct structures that have been destroyed. This is important for owners who need the ability to quickly rebuild following a fire, natural disaster, or act of public enemy.

- A structure with a previously conforming structural envelope or previously conforming density, can generally be reconstructed in accordance with Process One. Non-residential structures containing previously conforming uses would continue to require a Process Two in certain cases (as proposed in cases where 50 percent or more of the structure's exterior walls are destroyed).
- New flexibility was incorporated (consistent with what the Coastal Act already provides) so that the associated permits for reconstruction can also include some minor changes via Process One as long as the new structure does not exceed the gross floor area or structure height of the destroyed structure by more than 10 percent and the new structure is sited in generally the

January 8, 2015

same location as the destroyed structure. Any additional changes requested would require a Process Two NDP for approval.

- In the coastal zone, previously conforming rights are not retained for a structure located within 50 feet of the coastal bluff edge if 50 percent or more of the previously conforming structure's exterior walls are destroyed, demolished, or removed.

#### Expansion or Enlargement

The goal is to provide limited expansion opportunities for potentially compatible development. By right approvals would continue to be allowed where in accordance with the current zone, or in narrowly defined circumstances to meet state law requirements. The proposal also expands on the parameters for small expansions via a discretionary permit, which will allow for small residential remodels to better integrate into existing development with a design that better respects the existing neighborhood development pattern (appealable permit). The existing discretionary permit provision only allows for a 1-2 foot extension beyond the existing setback line, which does not account for the context of the existing structure and does not contain the desired flexibility of a discretionary permit process.

- Expansion of a structure with a previously conforming structural envelope or previously conforming density where the proposed development complies with the current base zone requirements for structure height, setbacks and gross floor area can be approved in accordance with Process One consistent with the existing code.
- Expansion of a multiple dwelling unit or non-residential structure with a previously conforming structural envelope or previously conforming density is permitted in accordance with Process One as necessary to meet public safety requirements of the California Building Code or California Fire Code as long as the need per the California Building Code or Fire Code is not a situation created by the applicant due to the proposed expansion or enlargement.
- Expansion or enlargement of a structure with a previously conforming structural envelope can be approved with a Process Two NDP if the proposed expansion complies with the following:
  - Does not encroach into a front yard
  - Does not extend within 10 feet of the front yard setback line
  - Complies with floor area ratio and maximum structure height of base zone
  - Conforms to setback established by the existing structure
  - Does not exceed a maximum 15 foot length in any required side yard or rear yard
  - Would not result in a total structure length within the required yard that is greater than 50 percent of the length of the adjacent property line.
  - Would not result in new habitable construction within 3 feet of the property line.
  - Would be limited to a first story addition and can't exceed the height of the existing structure in the setback.
  - No expansion of the number of dwelling units beyond what is allowed per the base zone.
- A previously conforming use can continue to request approval of a Process Two NDP to expand the gross floor area up to 20 percent consistent with the existing code.
- The current code limits which previously conforming uses can apply for a 20 percent expansion via a discretionary permit, which was an issue raised during the Barrio Logan Community Plan Update. The 9<sup>th</sup> Update allows more businesses the opportunity to request approval to expand up to 20 percent with a discretionary permit to demonstrate they are compatible. Any existing hazardous waste collection and treatment facilities, very heavy industrial uses, auto wrecking and dismantling, auto repair/maintenance facilities in residential zones may continue to operate per their previously conforming rights, but would not be permitted to expand.