



THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: June 10, 2010 **REPORT NO. PC-10-047**

ATTENTION: Planning Commission, Agenda of June 17, 2010

SUBJECT: Aroma Sidewalk Café - Project No. 203566
Process 2

**OWNER/
APPLICANT:** Oved Haskel, owner (Attachment No. 10)
and Mark Bausback, Architect, applicant

SUMMARY

Issue(s): Should the Planning Commission approve or deny an appeal of the City staff decision approving a Neighborhood Use Permit for a sidewalk café at 909 Prospect Avenue in La Jolla?

Staff Recommendation: Deny the appeal and Approve Neighborhood Use Permit No. 722059.

Community Planning Group Recommendation: On April 1, 2010 the La Jolla Community Planning Association voted 12-3-1 to deny the sidewalk café because the project does not conform to the eight-foot path clearance requirement of the La Jolla Planned District Ordinance which supersedes San Diego Municipal Code Section 141.0621 (Attachment No. 9).

Environmental Review: The City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15303, New construction or conversion of small structures (Attachment No. 6). This project is not pending an appeal of the environmental determination. The environmental exemption determination for this project was made on April 29, 2010, and the opportunity to appeal that determination ended May 13, 2010.

Fiscal Impact Statement: All costs associated with the processing of this project are paid from a deposit account maintained by the applicant.

Code Enforcement Impact: None

Housing Impact Statement: The proposed sidewalk café is located in the La Jolla Community Plan's commercial office area and La Jolla Planned District Ordinance (PDO) Zone 1. No residential units are proposed as part of this project.

BACKGROUND

The project site is located at 909 Prospect Avenue (Attachment No. 2) and proposes to establish a sidewalk café fronting an existing restaurant building along portions of Prospect Avenue and Fay Avenue within the La Jolla Planned District (LJPD) area's Zone 1 of the La Jolla Community Plan (Attachment 3). Pursuant to the San Diego Municipal Code (SDMC), sidewalk cafés may be permitted throughout the LJPD area except in Zone 5, which requires a Process Two, Neighborhood Use Permit (NUP).

City staff reviewed the NUP application and on April 29, 2010, the City of San Diego's Development Services Department issued the project's Notice of Decision to approve the NUP for the sidewalk café. On May 10, 2010, the La Jolla Community Planning Association (LJCPA) filed an appeal of the City's decision (Attachment No. 8).

DISCUSSION

Project Description:

The project site is located at 909 Prospect Avenue on the southeast corner of Prospect Avenue and Fay Avenue in La Jolla, and proposes to establish a sidewalk café fronting an existing restaurant building along portions of Prospect Avenue and Fay Avenue. The existing 16-foot to 24-foot area along the building frontage is comprised of tiled paving, and contains nine mature California Fan Palm trees, three along Prospect Avenue and six along Fay Avenue.

The proposed sidewalk café includes the construction of a three-foot high wrought iron fence railing and two entry gates in the public right-of-way (Attachment No. 7). The open fencing would be located between five feet to eight feet from the existing building facade in the tile paved sidewalk area, and between 8'-11" to 12'-3" from the existing street curb and gutter. An unobstructed pathway with a minimum of 6'-0" to 16'-9" would be provided between the fencing and the existing street curb and gutter. Within the approximate 972 square-foot fenced area, the sidewalk café would provide a combination of two and four guest seating tables.

Community Plan Analysis:

The project proposes to establish a sidewalk café fronting an existing restaurant building structure along portions of Prospect Avenue and Fay Avenue within the La Jolla Community Plan's (LJCP) commercial office designation and Zone 1 of the La Jolla Planned District (LJPD).

Although designated as commercial office, the existing retail and restaurant uses on the project site have existed consistent with the LJPD Zone 1 vision with primary retail and visitor oriented commercial uses in the core of La Jolla with pedestrian activity. Standards for this zone are designed to maintain the pedestrian scale and continuity, and preserve and enhance the retail

development pattern of department stores, small retail shops, and restaurants. The proposed commercial use extension for a sidewalk café is consistent with implementing Zone 1 requirements.

Consistent with the General Plan's Urban Design Element for Mixed Use Villages and Commercial Areas, Policies for Pedestrian-Oriented Design (pages UD-22 and 23), the project also promotes the design to include pedestrian-friendly entrances, outdoor dining areas, plazas, transparent windows, public art, and a variety of other elements to encourage pedestrian activity and interest at the ground floor level at this project site. In addition, the proposed project furthers the goals of the LJCP's stated Commercial Land Use Element Goals (LJCP page 97) and specifically, "...to strengthen the existing commercial districts by requiring pedestrian related amenities with development, such as plazas and courtyards, by limiting office commercial uses to the existing office-commercial areas identified in this plan, and by prohibiting the encroachment of new commercial uses into existing residential neighborhoods" (LJCP, No. 1, page 98).

Appeal Issues:

The project proposes to establish a sidewalk café fronting an existing restaurant building along portions of Prospect Avenue and Fay Avenue in La Jolla. Consistent with the LJCPA's earlier recommendation to the deny the project, the planning group appealed the City's decision to approve the project because the "Decision failed to recognize Municipal Code Section 159.0103 states, 'Where there is a conflict between the Land Development Code (LDC) and the La Jolla Planned District, the Planned District applies.' Therefore, the 8-foot minimum clear path specified in 159.0405(e)(2) can not be overridden by an exception for a lesser width as allowed in Section 141.0621(e)(3). The approval erroneously provides for an exception to a reduced clear path of 6 feet where the LJPDO specifies 8-foot minimum."

The La Jolla Planned District Ordinance (LJPDO), codified in the SDMC Chapter 15, Article 9, provides specific regulations for sidewalk café development. City staff evaluated the project consistent with SDMC Chapter 15, Article 9 which also directs review and compliance with Land Development Code's (LDC), SDMC sec. 141.0621, Sidewalk Cafés. The SDMC sec. 141.0621(e)(3) allows for the decision maker to grant an exception to the minimum clear path width if pedestrian volumes and existing street conditions are such that no congestion would result.

City staff evaluated the location of the proposed fencing opposite all potential obstructions including existing street signage, hydrants, and street trees. The nearest obstruction to the proposed fencing would be the existing California Fan Palm street trees. The existing mature trees, at least 60 feet in height with trunk diameters ranging from 16 to 24 inches, are located approximately two feet from curb edge in a square, un-grated, sidewalk opening. Based upon the tree spacing and the overall remaining width (8'-11" to 16'-11") of the existing sidewalk area outside of the fence area, City staff determined that the proposed sidewalk café would not infringe on the use of the public right of way for pedestrian circulation or create unsafe conditions.

Therefore, the Development Services Department approved the NUP for the proposed sidewalk café allowing for a minimum of 6 feet of clear path to accommodate the fence areas opposite the

existing street trees. City staff does not believe a conflict exists for regulating the proposed sidewalk café development in the LJPDO area.

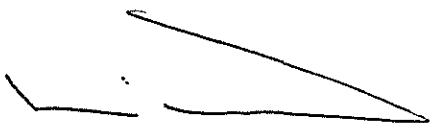
Conclusion:

City staff has reviewed and approved the proposed development consistent with the adopted land use plans, policies, SDMC regulations, and has prepared the permit and necessary findings to support the project as proposed. Therefore, City staff recommends that the Planning Commission deny the appeal and reaffirm Development Services Department's decision to approve Neighborhood Use Permit No. 722059.

ALTERNATIVES

1. **Deny** the appeal and **Approve** Neighborhood Use Permit No. 722059, with modifications.
2. **Approve** the appeal and **Deny** Neighborhood Use Permit No. 722059, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,



Mike Westlake
Program Manager
Development Services Department



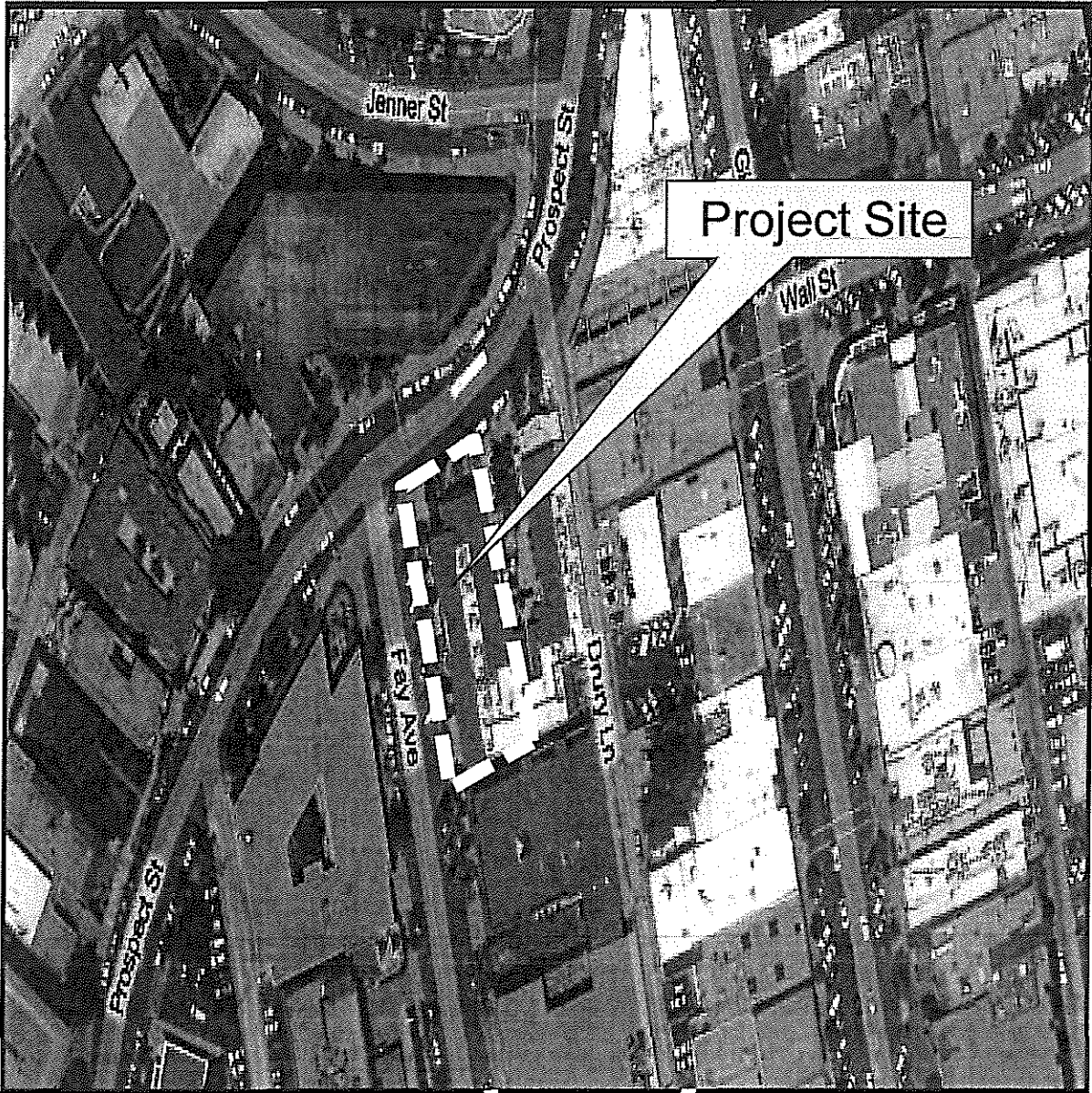
Tim Daly
Project Manager
Development Services Department

BROUGHTON/TPD

Attachments:

1. Aerial Photograph
2. Project Location Map
3. Community Plan Land Use Map
4. Draft Permit Resolution with Findings
5. Draft Permit with Conditions
6. Environmental Exemption
7. Project Site Plan(s)
8. Copy of Appeal
9. Community Planning Group Recommendation
10. Ownership Disclosure Statement
11. Project Chronology
12. LJPDO SDMC sec. 159.0405, Streetscape Development Regulations/Encroachment Permits

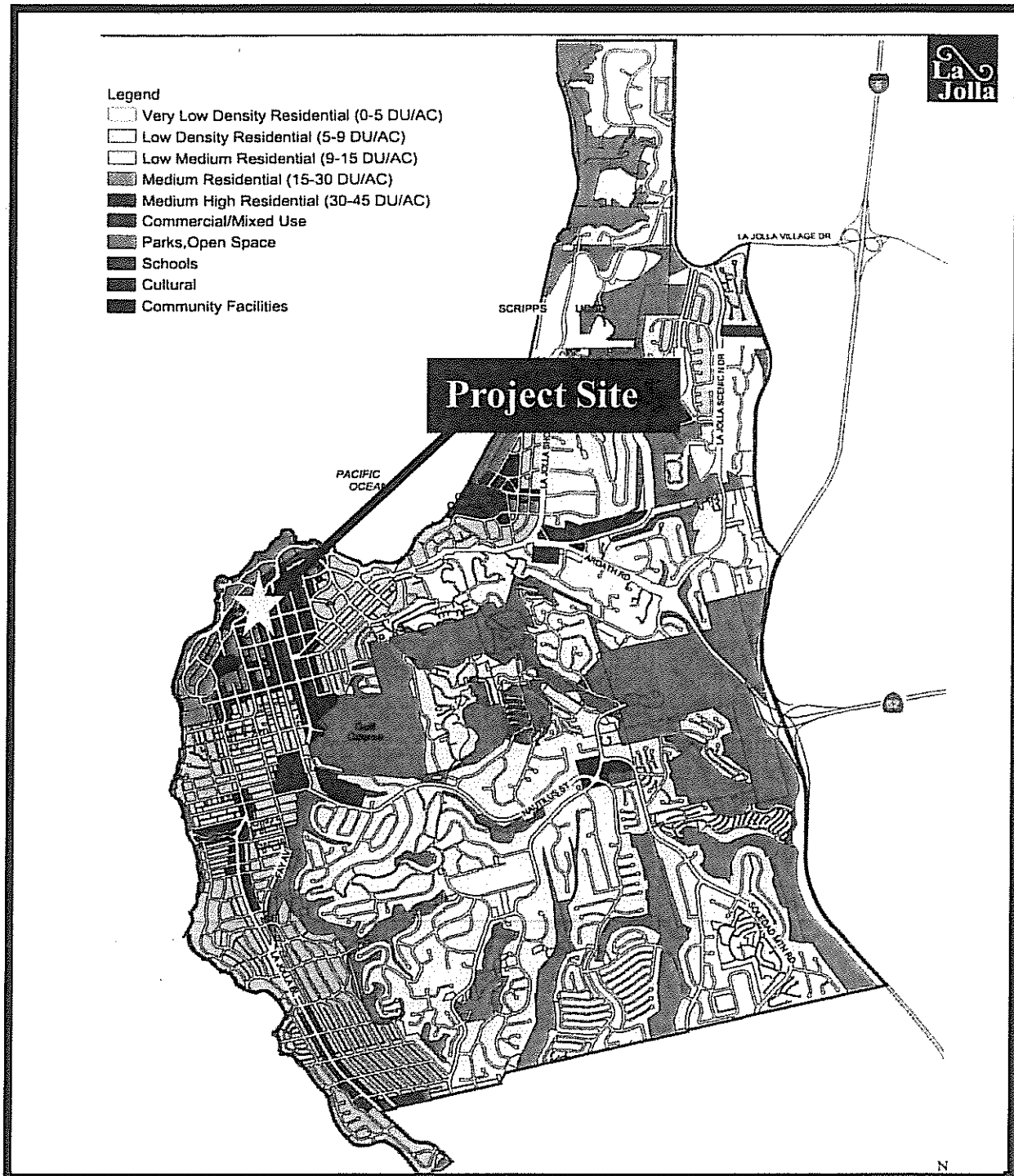
13. SDMC sec. 151.0401, Uses Permitted in the Planned Districts
14. SDMC sec. 141.0621, Sidewalk Cafés



Aerial Photo

**AROMA SIDEWALK CAFE, Project No. 203566
909 Prospect Avenue**

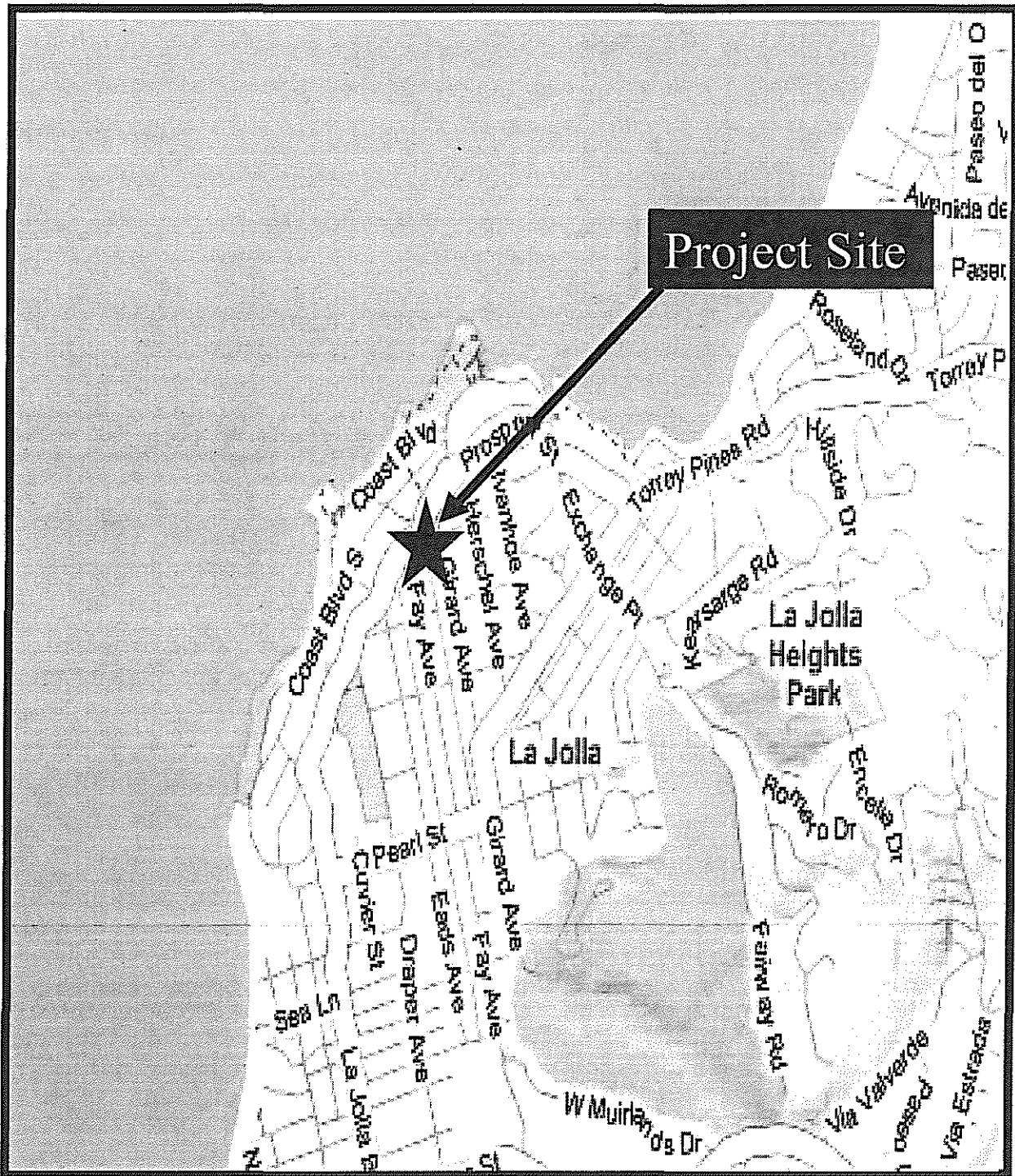




La Jolla Community Land Use Map

AROMA SIDEWALK CAFE, Project No. 203566
909 Prospect Avenue





Project Location

AROMA SIDEWALK CAFE, Project No. 203566
909 Prospect Avenue



DEVELOPMENT SERVICES RESOLUTION NO. CM-6099
NEIGHBORHOOD USE PERMIT NO. 722059
AROMA SIDEWALK CAFÉ PROJECT NO. 203566

WHEREAS, PROSPECT PLAZA HOLDINGS, L.L.C, Owner, and OVED HASKEL, Permittee, filed an application with the City of San Diego for a permit to construct a three-foot high wrought iron fence railing in the public rights-of-way for a sidewalk cafe (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 722059;

WHEREAS, the project site is located at 909 Prospect Avenue in the La Jolla Planned District Ordinance Zone 1, Parking Impact, Transit Area, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay Zones of the La Jolla Community Plan;

WHEREAS, the project site is legally described as Lots 1, 2, 3, 4, 5 and 6 in Block 38, Map 352, filed in the Office of the County Recorder of San Diego County, March 22, 1887;

WHEREAS, on April 29, 2010, the Development Services Department of the City of San Diego considered Neighborhood Use Permit No. 722059 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on April 29, 2010, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guideline Section 15303, New construction or conversion of small structures; and there has not been an appeal of the Environmental Determination filed provided by San Diego Municipal Code Section 112.0520; NOW, THEREFORE,

BE IT RESOLVED by the Development Services Department of the City of San Diego as follows:

That the Development Services Department adopts the following written Findings, dated April 29, 2010.

FINDINGS:

Neighborhood Use Permit - Section 126.0205:

- 1. The proposed development will not adversely affect the applicable land use Plan.** The project site, located at 909 Prospect Avenue, proposes to construct three-foot high wrought iron fence railing in the public rights-of-way to establish a sidewalk café fronting their existing restaurant building structure along portions of Prospect Avenue and Fay Avenue within the La Jolla Community Plan's (LJCP) commercial office designation and Zone 1 of the La Jolla Planned District (LJPD).

Although designated as commercial office, the existing retail and restaurant uses on the project site have existed consistent with the LJPD Zone 1 vision with primary retail and visitor oriented commercial uses in the core of La Jolla with pedestrian activity. Standards for this zone are designed to maintain that pedestrian scale and continuity, and preserve and enhance the retail development pattern of department stores, and small retail shops

and restaurants. The proposed commercial use extension for a sidewalk café is consistent with implementing Zone 1 requirements.

Consistent with the City of San Diego General Plan's Urban Design Element for Mixed Use Villages and Commercial Areas, Policies for Pedestrian-Oriented Design (pages UD-22 and 23), the project also promotes the design to include pedestrian-friendly entrances, outdoor dining areas, plazas, transparent windows, public art, and a variety of other elements to encourage pedestrian activity and interest at the ground floor level at this project site. In addition, the proposed project furthers the goals of the LJCP's stated Commercial Land Use Element Goals (LJCP page 97) and specifically, "...to strengthen the existing commercial districts by requiring pedestrian related amenities with development, such as plazas and courtyards, by limiting office commercial uses to the existing office-commercial areas identified in this plan, and by prohibiting the encroachment of new commercial uses into existing residential neighborhoods" (LJCP, No. 1, page 98). Therefore, the project will not adversely affect the applicable land use plan.

2. **The proposed development will not be detrimental to the public health, safety, and welfare.** The project site, located at 909 Prospect Avenue, proposes to construct three-foot high wrought iron fence railing in the public rights-of-way to establish a sidewalk café fronting their existing restaurant building structure along portions of Prospect Avenue and Fay Avenue in the La Jolla Community Plan area. The proposed development is consistent with the San Diego Municipal Code (SDMC) section 141.0621, which establishes safe and effective guidelines for sidewalk cafes and SDMC Chapter 15, Article 9, La Jolla Plan District. The Environmental Analysis section has reviewed the proposed project and determined that it would be exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15303, New construction or conversion of small structures. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and City regulations governing the construction and continued operation of the development apply to this project and incorporated into the development's permit to prevent adverse affects to those persons or properties in the vicinity of the project. Therefore the project will not be detrimental to the public health, safety and welfare.
3. **The proposed development will comply with the applicable regulations of the Land Development Code.** The project site, located at 909 Prospect Avenue, proposes to construct three-foot high wrought iron fence railing in the public rights-of-way to establish a sidewalk café fronting their existing restaurant building structure along portions of Prospect Avenue and Fay Avenue within the La Jolla Community Plan's (LJCP) commercial office designation and Zone 1 of the La Jolla Planned District (LJPD). The project is consistent with and complies with the development standards of the underlying Zone 1 and the San Diego Municipal Code (SDMC) regulations and specifically SDMC section 141.0621(e)(3) that allows for the City's decision maker to grant the exception of no less than 6 feet in certain locations as shown on the development's Exhibit "A" plans, to the minimum clear path for this sidewalk café. The proposed project does not require any deviation from the applicable regulations and therefore, the proposed development complies with the applicable regulations of the Land Development Code.

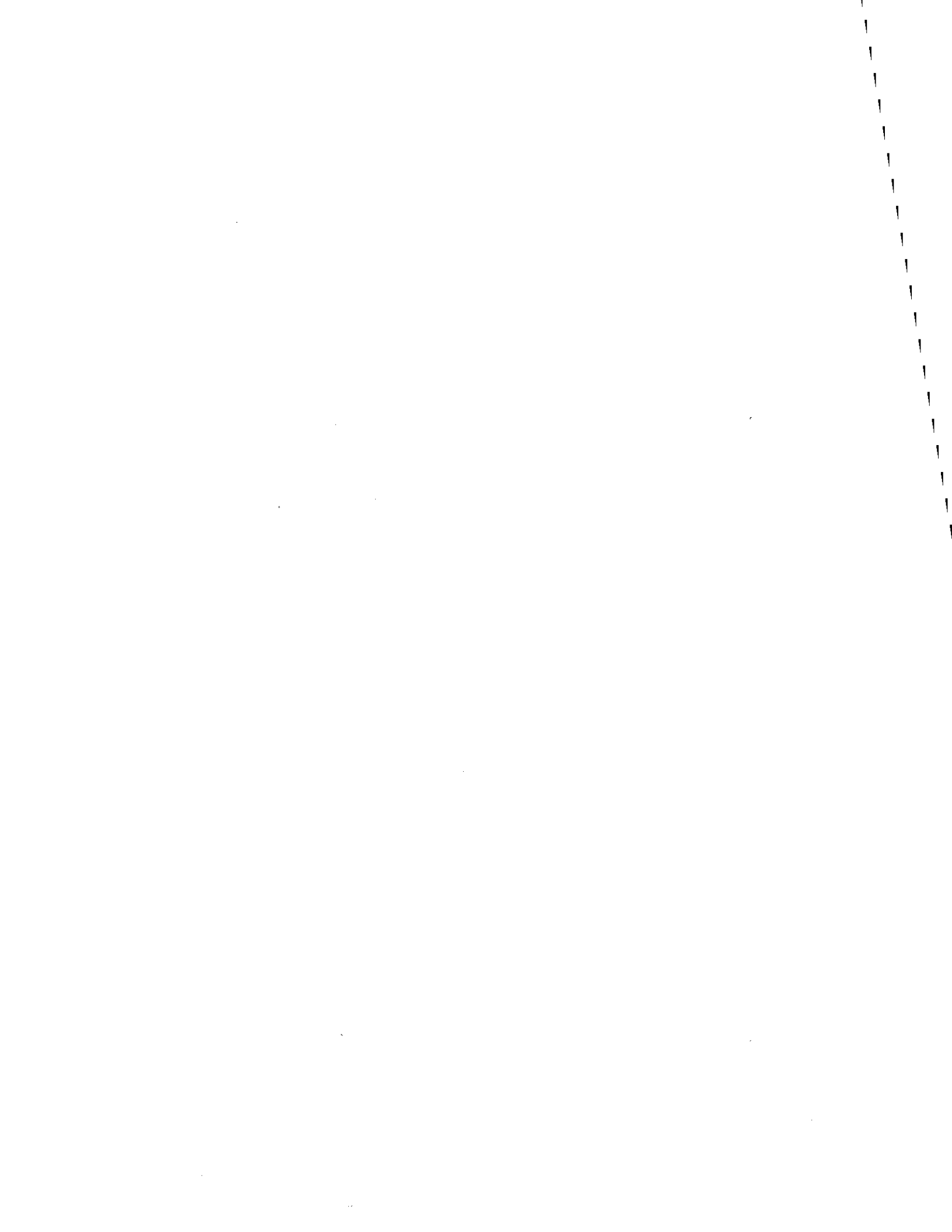
Attachment 4

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Development Services Department, Neighborhood Use Permit No. 722059 is hereby GRANTED by the Development Services Department to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in Neighborhood Use Permit No. 722059, a copy of which is attached hereto and made a part hereof.

Tim Daly
Development Project Manager
Development Services

Adopted on: April 29, 2010

Internal Order No. 24000642



RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24000642

NEIGHBORHOOD USE PERMIT NO. 722059
AROMA SIDEWALK CAFÉ PROJECT NO. 203566
Development Services Department

This Neighborhood Use Permit No. 722059 is granted by the Development Services Department of the City of San Diego to Prospect Plaza Holdings, L.L.C, Owner, and Oved Haskel, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0201. The site is located at 909 Prospect Avenue in the La Jolla Planned District Ordinance Zone 1, Parking Impact, Transit Area, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay Zones of the La Jolla Community Plan. The project site is legally described as Lots 1, 2, 3, 4, 5 and 6 in Block 38, Map 352, filed in the Office of the County Recorder of San Diego County, March 22, 1887.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner and Permittee to construct a three-foot high wrought iron fence railing in the public rights-of-way for a sidewalk cafe described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated April 29, 2010, on file in the Development Services Department.

The project shall include:

- a. Construction of a three-foot high wrought iron fence railing in the public rights-of-way for a sidewalk café along a portion of Prospect Avenue and Fay Avenue;
- b. Landscaping (planting, irrigation and landscape related improvements);
- c. Off-street parking; and
- d. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act

[CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

STANDARD REQUIREMENTS:

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the SDMC within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
2. No permit for the construction, occupancy, or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Owner/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
3. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
4. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Owner/Permittee and any successor(s) in interest.
5. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
6. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
7. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
8. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

9. All of the conditions contained in this Permit have been considered and were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

10. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ENGINEERING REQUIREMENTS:

11. The sidewalk cafe area shall be surrounded by the approved railing not to exceed three feet (3'-0") in height and the sidewalk cafe shall maintain a minimum clear path of six feet (6'-0") to all obstructions in the public right-of-way as shown in the Exhibit "A" plans.

12. The Owner/Permittee shall obtain an Encroachment Maintenance and Removal Agreement (EMRA) and a Right of Way Permit from the City of San Diego prior to the installation of the sidewalk café, satisfactory to the City Engineer.

LANDSCAPE REQUIREMENTS:

13. In order to maintain previously conforming rights to the existing landscape, any landscape area that is proposed to be removed shall be replaced by the Owner/Permittee with a landscape

area of a similar size and function. Landscaping can be provided through hanging plants or planter boxes located on the existing building structure that fronts Fay Avenue.

PLANNING/DESIGN REQUIREMENTS:

14. Owner/Permittee shall maintain a minimum of 131 off-street parking spaces on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the appropriate City decision maker in accordance with the SDMC.

15. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Owner/Permittee.

16. All signs associated with this development shall be consistent with sign criteria established by either the approved Exhibit "A" or City-wide sign regulations.

17. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

INFORMATION ONLY:

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Development Services Department of the City of San Diego on April 29, 2010 and Resolution No. CM-6099.

Permit Type/PTS Approval No.: NUP No. 722059
Date of Approval: April 29, 2010

AUTHENTICATED BY THE CITY OF SAN DIEGO DEVELOPMENT SERVICES
DEPARTMENT

Tim Daly
Development Project Manager

**NOTE: Notary acknowledgment
must be attached per Civil Code
section 1189 et seq.**

**The undersigned Owner/Permittee, by execution hereof, agrees to each and every condition of
this Permit and promises to perform each and every obligation of Owner/Permittee hereunder.**

Prospect Plaza Holdings L.L.C.
Owner

By _____
NAME
TITLE

Oved Haskel
Permittee

By _____
NAME
TITLE

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1189 et seq.**

NOTICE OF EXEMPTION

ATTACHMENT 6

(Check one or both)

TO: X RECORDER/COUNTY CLERK
P.O. BOX 1750, MS A-33
1600 PACIFIC HWY, ROOM 260
SAN DIEGO, CA 92101-2422

FROM: CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
1222 FIRST AVENUE, MS 501
SAN DIEGO, CA 92101

 OFFICE OF PLANNING AND RESEARCH
1400 TENTH STREET, ROOM 121
SACRAMENTO, CA 95814

PROJECT TITLE/NO.: AROMA BAKERY SIDEWALK CAFÉ/203566

PROJECT LOCATION-SPECIFIC: 909 Prospect Street, City and County of San Diego, 92037

PROJECT LOCATION-CITY/COUNTY: San Diego/San Diego

DESCRIPTION OF NATURE AND PURPOSE OF THE PROJECT: A Neighborhood Use Permit is being requested to construct a three-foot height rail fencing for a sidewalk café encroachment into public right of way at 909 Prospect Street in Zone 1 of La Jolla Planned District, Parking Impact, Transit Area, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay Zones within the La Jolla Community Plan area.

NAME OF PUBLIC AGENCY APPROVING PROJECT: City of San Diego

NAME OF PERSON OR AGENCY CARRYING OUT PROJECT: Mark Bausback Architect, 7144 Teasdale Avenue, San Diego, CA 92122, (858) 623-0557

EXEMPT STATUS: (CHECK ONE)

- () MINISTERIAL (SEC. 21080(b)(1); 15268);
- () DECLARED EMERGENCY (SEC. 21080(b)(3); 15269(a));
- () EMERGENCY PROJECT (SEC. 21080(b)(4); 15269 (b)(c))
- (X) CATEGORICAL EXEMPTION: Section 15303 (New Construction or Conversion of Small Structures).
- () STATUTORY EXEMPTIONS:

REASONS WHY PROJECT IS EXEMPT: The City of San Diego conducted an Initial Study that determined that the project would not have the potential for causing a significant effect on the environment in that the project would be consistent with the commercial designation as determined by the community plan and implemented by the applicable zone. The project would not result in any significant impacts to biological resources, historical resources, traffic, noise, air quality, or water quality. The project meets the criteria set forth in CEQA Section 15303 allows for the construction of a sidewalk café in an urbanized area. In addition, the exceptions listed in CEQA Section 15300.2 would not apply.

LEAD AGENCY CONTACT PERSON: Martha Blake

TELEPHONE: (619) 446-5375

IF FILED BY APPLICANT:

1. ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING.
2. HAS A NOTICE OF EXEMPTION BEEN FILED BY THE PUBLIC AGENCY APPROVING THE PROJECT?
() YES () NO

IT IS HEREBY CERTIFIED THAT THE CITY OF SAN DIEGO HAS DETERMINED THE ABOVE ACTIVITY TO BE EXEMPT FROM CEQA

Anna L. McPherson / Senior Planner
SIGNATURE/TITLE

04/29/10
DATE

CHECK ONE:

- SIGNED BY LEAD AGENCY
 SIGNED BY APPLICANT

DATE RECEIVED FOR FILING WITH COUNTY CLERK OR OPR:

AROMA SIDEWALK CAFE'

909 PROSPECT AVE

LAJOLLA, CALIFORNIA 92037

DEVELOPMENT SUMMARY

LEGAL DESCRIPTION:

000352 LOTS 1 THRU 6 BLK 38
APN # 350-082-01-00

BUILDING DATA

ZONING: C
BLDG TYPE: V-A
OCCUP.: A-2
PATIO AREA: +/- 972 S.F.
OVERLAY ZONE :
LAJOLLA PLAN DISTRICT
ZONE 1

SCOPE OF WORK:

- NEW 3' HIGH WHROUGHT IRON
RAILING FOR SIDEWALK CAFE

OWNER:

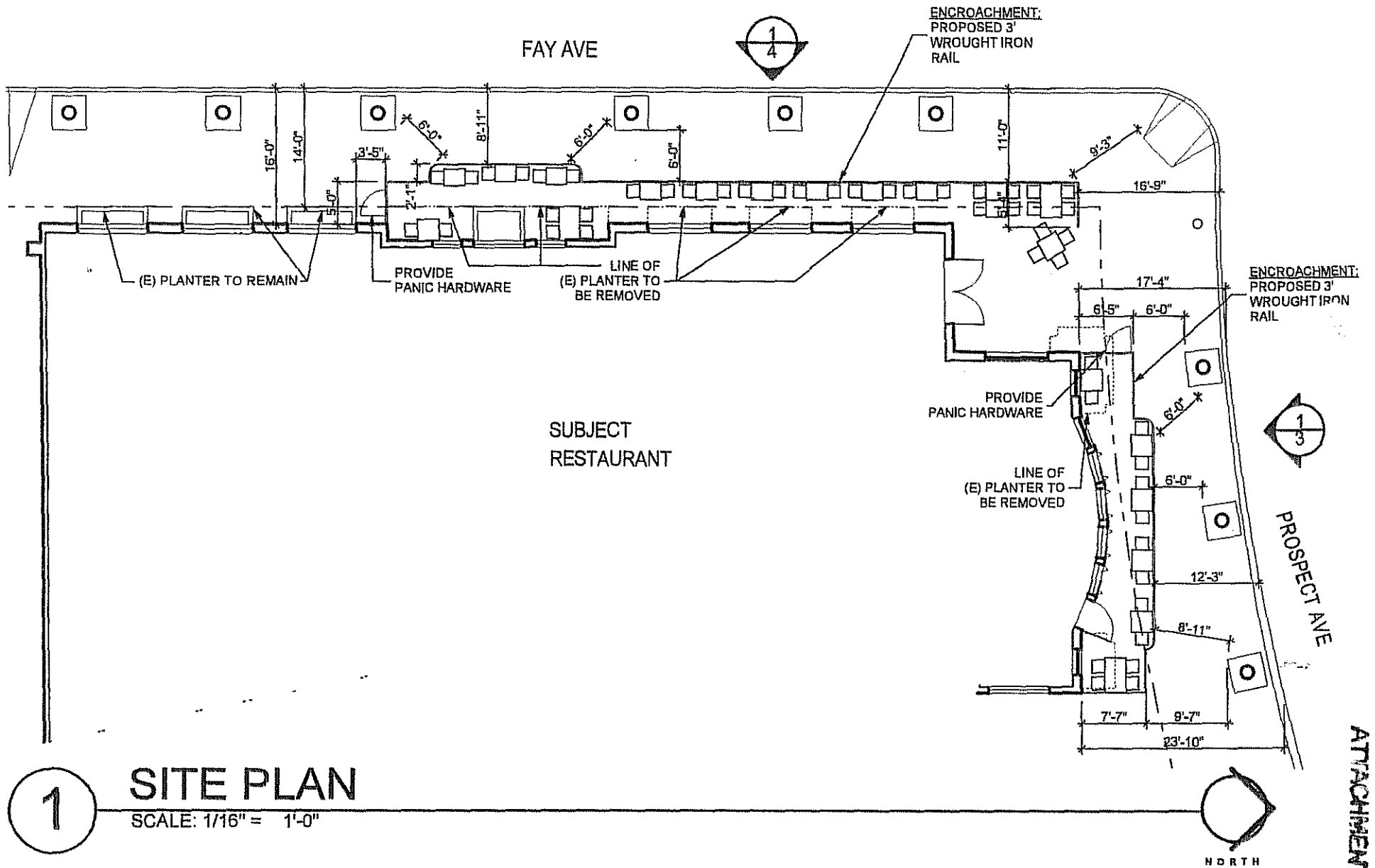
PROSPECT PLAZA HOLDINGS LLC
625 BROADWAY
SUITE 915
SAN DIEGO, CA 92101-5416

TENANT/BUILDER:

OVED HASKEL
909 PROSPECT AVE
LAJOLLA, CA 92037

PROJECT TEAM:

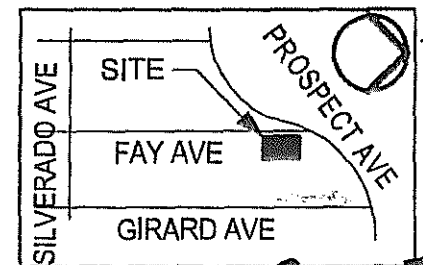
ARCHITECT
MARK BAUSBACK ARCHITECT
7144 TEASDALE AVE
SAN DIEGO, CA 92122
(858) 623-0557



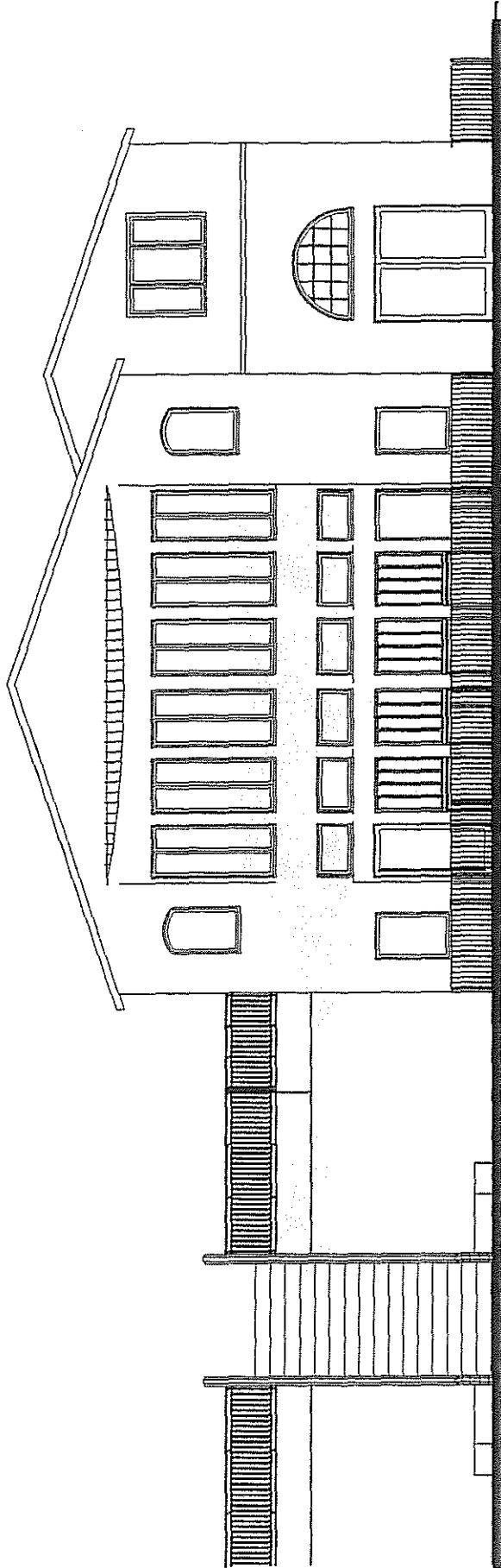
OWNER:
 PROSPECT PLAZA HOLDINGS LLC
 625 BROADWAY
 SUITE 915
 SAN DIEGO, CA 92101-5416

TENANT:
 OVED HASKEL
 909 PROSPECT AVE
 LAJOLLA, CA 92037

LEGAL DESCRIPTION:
 000352 LOTS 1 THRU 6 BLK 38
 APN # 350-082-01-00



2/28/20

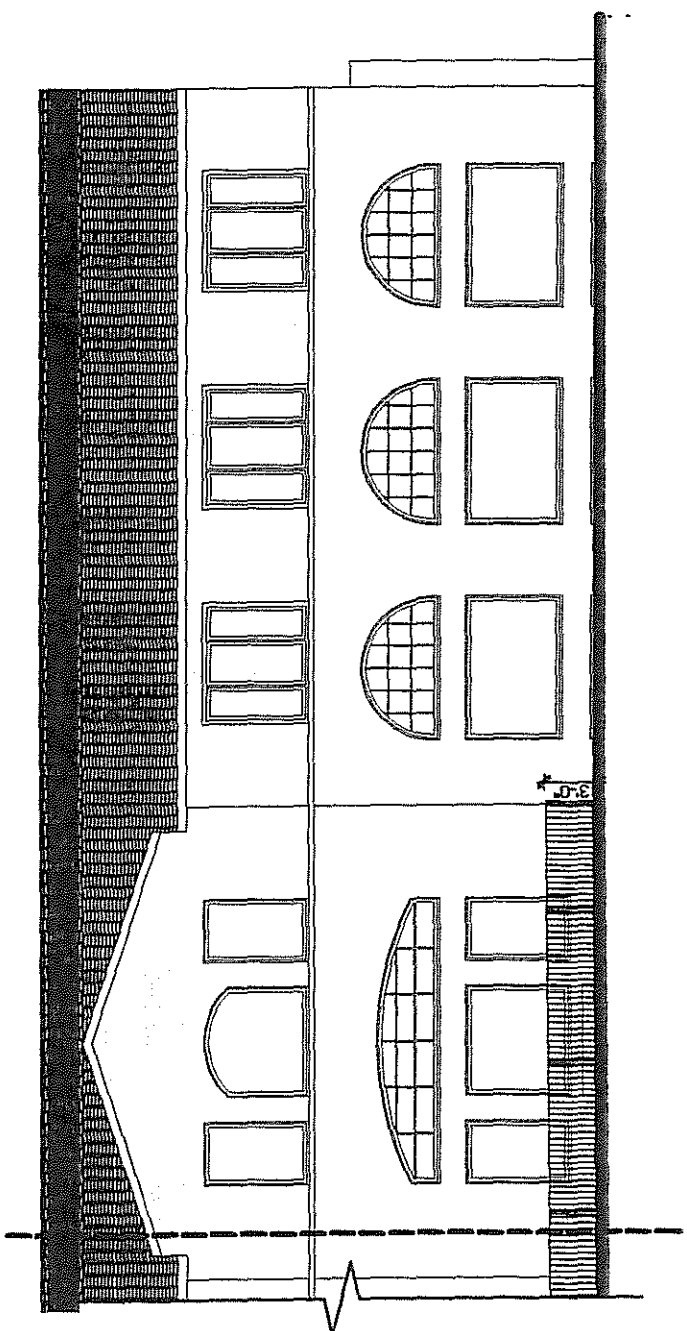
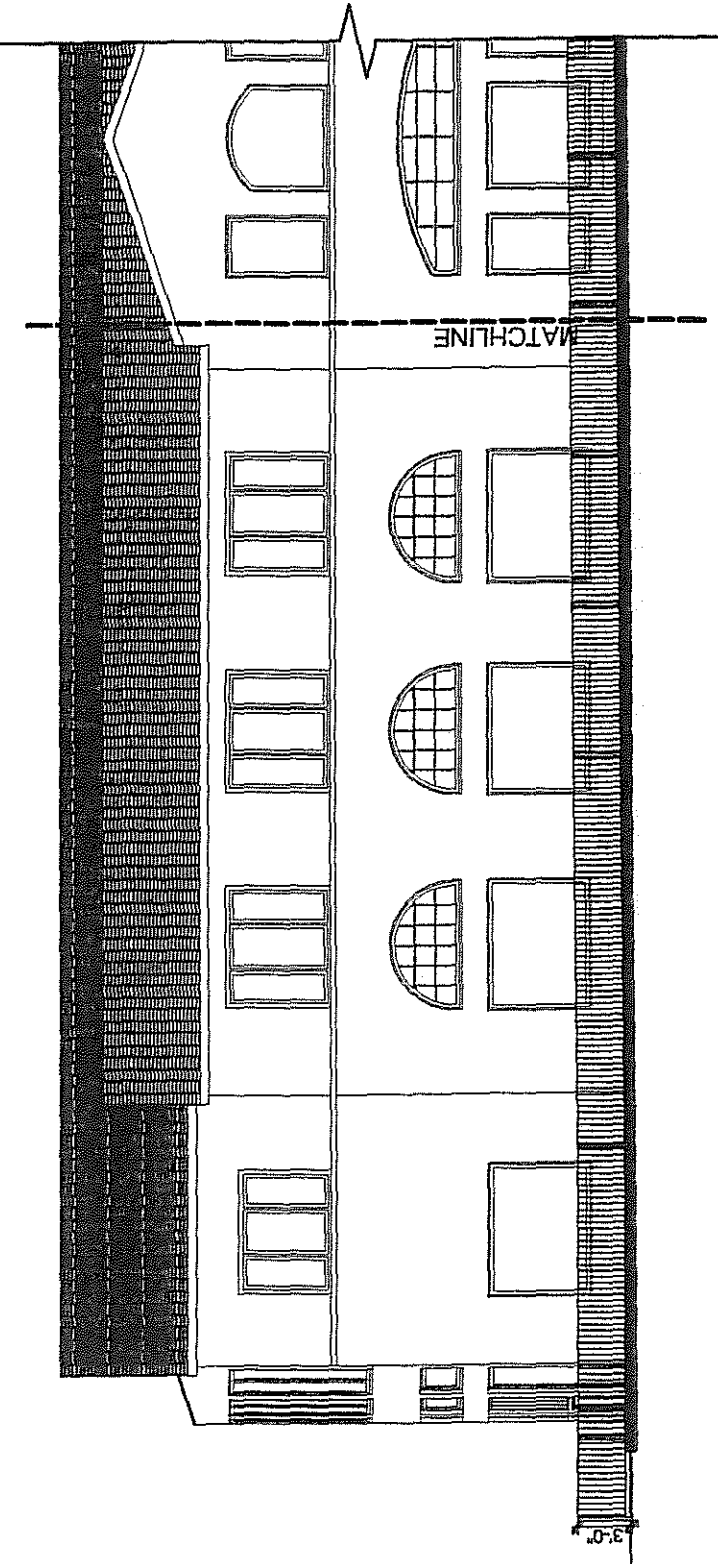


EXTERIOR ELEVATION

SCALE: 3/32" = 1'-0"

1

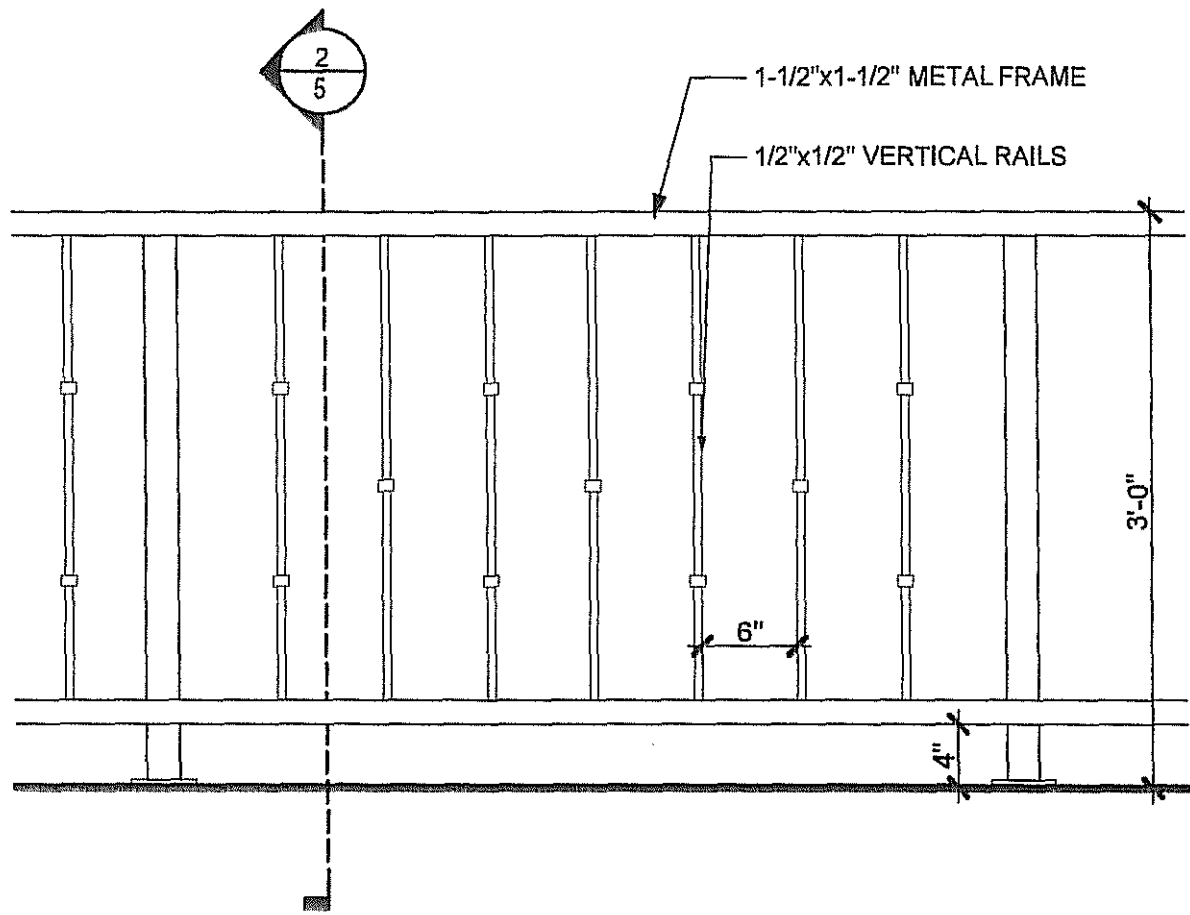
420 C



EXTERIOR ELEVATION

SCALE: 3/32" = 1'-0"

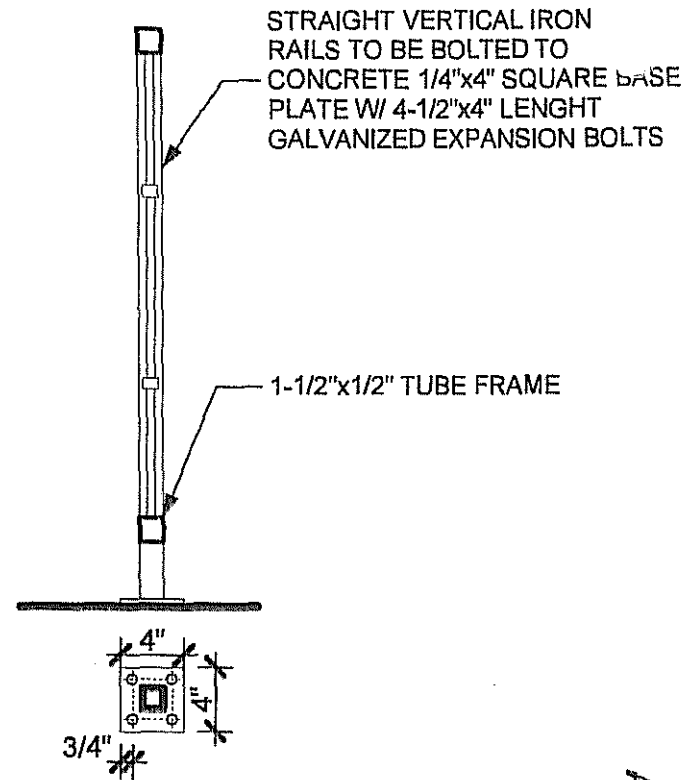
1



1

RAILING DETAIL

SCALE: 1" = 1'-0"



2

RAIL SECTION

SCALE: 1" = 1'-0"

ATTACHMENT 7

5005



City of San Diego
 Development Services
 1222 First Ave. 3rd Floor
 San Diego, CA 92101
 (619) 446-5210

**Development Permit/
 Environmental Determination
 Appeal Application**

FORM
DS-3031
 MAY 2010

See Information Bulletin 505, "Development Permits Appeal Procedure," for information on the appeal procedure.

1. Type of Appeal:

- Process Two Decision - Appeal to Planning Commission
- Process Three Decision - Appeal to Planning Commission
- Process Four Decision - Appeal to City Council
- Environmental Determination - Appeal to City Council
- Appeal of a Hearing Officer Decision to revoke a permit

2. Appellant Please check one Applicant Officially recognized Planning Committee "Interested Person" (Per M.C. Sec. 113.0103)

Name: La Jolla Community Planning Association E-mail Address: info@lalollacpa.org
 Address: P. O. Box 889 City: La Jolla State: CA Zip Code: 92038 Telephone: (858) 456-7900

3. Applicant Name (As shown on the Permit/Approval being appealed). Complete if different from appellant.

Mark Bausback, Architect

4. Project Information

Permit/Environmental Determination & Permit/Document No.:	Date of Decision/Determination:	City Project Manager:
Aroma Bakery Sidewalk Café / Project No. 203566	April 29, 2010	Tim Daly

Decision (describe the permit/approval decision):

Approved a Process 2 Neighbor Use Permit to construct a three-foot height rail fencing for a sidewalk café encroachment into the public right of way.

5. Grounds for Appeal (Please check all that apply)

- Factual Error (Process Three and Four decisions only)
- Conflict with other matters (Process Three and Four decisions only)
- Findings Not Supported (Process Three and Four decisions only)
- New Information (Process Three and Four decisions only)
- City-wide Significance (Process Four decisions only)

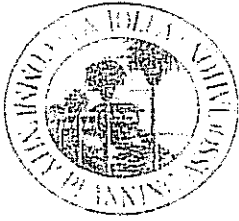
Description of Grounds for Appeal (Please relate your description to the allowable reasons for appeal as more fully described in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code. Attach additional sheets if necessary.)

Decision failed to recognize that Municipal Code Section 159.0103 states "Where there is a conflict between the Land Development Code and the La Jolla Planned District, the Planned District applies." Therefore, the 8-foot minimum clear path specified in 159.0405(e)(2) can not be overridden by an exception for a lesser width as allowed in Section 141.0621(e)(3). The approval erroneously provides for an exception to a reduced clear path of 6 feet where the LJPD specifies 8-foot minimum.

6. Appellant's Signature: I certify under penalty of perjury that the foregoing, including all names and addresses, is true and correct.

Signature: Joseph La Cour Date: 10 May 2010

Note: Faxed appeals are not accepted. Appeal fees are non-refundable.



Box 889, La Jolla, CA 92038
<http://www.LaJollaCPA.org>
Voicemail: 858.456.7900
info@LaJollaCPA.org

ATTACHMENT 2

FILE # 203566, AROMA

La Jolla Community Planning Association
Regular Meetings: 1st Thursday of the Month

Thursday, 1 April 2010

La Jolla Recreation Center, 615 Prospect Street

D R A F T MINUTES – REGULAR MEETING

Present: Michele Addington, Tom Brady, Devin Burstein, Michael Costello, Dan Courtney, Tony Crisafi, Jim Fitzgerald, Orrin Gabsch, Joe LaCava, David Little, Tim Lucas, Nancy Manno, Phil Merten, Glen Rasmussen, Greg Salmon, Rob Whittemore.

Absent: Laura Ducharme Conboy, Ray Weiss.

1. Welcome and Call To Order: **Joe LaCava**, President @ 6:10 PM.

2. Adopt the Agenda

Approved Motion: To adopt the Agenda, (Gabsch/Fitzgerald 14/0/1).

In favor: Addington, Brady, Burstein, Costello, Crisafi, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Salmon, Whittemore.

Abstain: LaCava

3. Elections

A. Certify Election Results: President LaCava stated there were no protests.

Approved Motion: To certify the results of the March 2010 Election, (Fitzgerald/Gabsch 10/0/5).

In favor: Addington, Brady, Crisafi, Fitzgerald, Gabsch, Little, Manno, Merten, Rasmussen, Salmon.

Abstain: Burstein, Costello, LaCava, Lucas, Whittemore.

B. Swear in Newly Elected Trustees

President LaCava invited the newly elected Trustees to come forward and administered the LJCPA Trustees oath to Rob Whittemore, Michael Costello, Devin Burstein, Tim Lucas. Newly elected Trustees Laura Ducharme Conboy and Ray Weiss were absent and will be sworn in at the May 2010 LJCPA meeting.

4. Election of Officers

Trustee Gabsch nominated Joe LaCava for President of the LJCPA:

Approved Motion: To elect Joe LaCava President of the La Jolla Community Planning Association, (Gabsch/Addington 14/0/1)

In favor: Addington, Brady, Burstein, Crisafi, Costello, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Salmon, Whittemore.

Abstain: LaCava.

Trustee Whittemore nominated Tony Crisafi for Vice President of the LJCPA:

Approved Motion: To elect Tony Crisafi Vice President of the La Jolla Community Planning Association, (Whittemore/Gabsch 15/0/1).

In favor: Addington, Brady, Burstein, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Salmon, Whittemore.

Abstain: LaCava.

If a Sign Language Interpreter, aids for the visually impaired, or Assisted Listening Devices (ALDs) are required, please contact the City's Disability Services Coordinator at 619-321-3208 at least (5) five work days prior to the meeting date to insure availability.

B. Pet Parade Street Closure

T&T ACTION: To Approve Proposal, 6-0-0.

Herschel south of Silverado – Closure for Pet Parade and Festival similar to last year's event. Sunday, May 23, 2010, 8:00 am to 3:00 pm.

C. San Diego Triathlon: Pulled: President LaCava

T&T ACTION: To Approve Proposal, 6-1-0.

La Jolla – Street closures for cycling leg of triathlon centered in Mission Bay. Route goes up Soledad Avenue, left on Soledad Mesa, left on La Jolla Scenic South, right on Nautilus, right on Fay, right on Pearl, left on Girard, right on Torrey Pines Road continuing on to La Jolla Village Drive. Sunday, March 20, 2011, 7:45 am to 10:30 am. See minutes for additional details.

Approved Motion: Motion to accept the recommendation of the PDO Committee, (A) 1006-1010 Torrey Pines Road – Spencer & Co. Interiors: new awning and signage, and forward the recommendation to the City. To accept the recommendation of the T & T Committee (B) Herschel south of Silverado – Closure for Pet Parade and Festival similar to last year's event. Sunday, May 23, 2010, 8:00 am to 3:00 pm., and forward the recommendation to the City, (Gabsch/Salmon 15/0/1).
In favor: Addington, Brady, Burstein, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Salmon, Whittemore.
Abstain: LaCava.

11. REPORTS FROM OTHER ADVISORY COMMITTEES

Information only unless otherwise noted

A. LA JOLLA COMMUNITY PARKING DISTRICT ADVISORY BOARD – Inactive

This committee is currently inactive

B. COASTAL ACCESS AND PARKING BOARD – Meets 1st Tues, 4pm, Rec Center

This committee, although active, will not meet in April.

13. V-Calm Sign on Lower Cardeno Drive

T&T – Recommend approval of new V-Calm Sign, 6-0-0.

Pulled from March 4 Consent Agenda

Proposed Location: Just north of Kaimalino Lane for Southbound Traffic

President LaCava presented: **Trustee Courtney** commented in opposition: stated Torrey Pines Road V Calm signs deserved priority. **Trustees Gabsch, Manno, Merten, Rasmussen** commented. **Member Bob Collins** commented. Councilmember Lightner's representative **Erin Demorest** commented. **President LaCava** explained the current City process regarding V-Calm signs on Torrey Pines Road.

Failed Motion: Motion to support V-Calm sign on Cardeno, with the understanding that prioritizing for the funding for the sign would rank behind the funding for V-Calm signs for Torrey Pines Road, (Courtney/No second). Motion failed: lack of second to Motion. At the discretion of the Chair, President LaCava, no vote was taken.

Approved Motion: Motion to support the action of the T & T Committee: Approval of V-Calm Sign on Lower Cardeno Drive, (Fitzgerald/Addington 15/0/1).

In favor: Addington, Brady, Burstein, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Salmon, Whittemore.

Abstain: LaCava.

14. Aroma and Barfly Sidewalk Café

PDO – Voted 7-0-0 to table the project to give the applicant the opportunity to revise the project and return to the PDO Committee, objected to sidewalk "clear path"

Moved to CPA Agenda to resolve for timely response.

909 Prospect - (PROCESS 2) Neighborhood Use Permit for a sidewalk café encroachment into public right of way at 909 Prospect Street in Zone 1 of La Jolla Planned District within the La Jolla Community Plan, Parking Impact, Transit Area, Coastal Overlay (non-appealable), and Coastal Height Limit Overlay zones

President LaCava noted: The Planned District Ordinance sub-committee voted 7/0/0 to table this project to give the Applicant the opportunity to revise the project design and return to the PDO. The Applicant indicated they preferred not to change the design and requested the project be brought to the LJCPA for full consideration of the project.

Project presented: **Mark Bausback, Architect: Mr. Bausback**, for Applicant **Mr. Oved Haskell**, (present), described the Project, with a focus on the Sidewalk Café encroachment into Public Right of Way. **Trustee Fitzgerald** discussed the reasons behind the PDO decision, indicated the PDO Committee considered the Project attractive, however the Project as currently proposed does not conform to the LJPDO, therefore the Project cannot be approved. **Trustees Crisafi, Little, Lucas, Salmon** commented. **Trustee Merten** commented/quoted from the Municipal Code: the LJPDO absolutely does prevail. **Members Bob Collins, Don Schmidt, Esther Viti** commented. **President LaCava** referred to/discussed the Municipal Code/the PDO relating to Sidewalk Cafes. There was general discussion, primarily relating to variances, among **Trustees Crisafi, Courtney, Fitzgerald, Merten, Rasmussen, Whittemore, and President LaCava**. **Trustee Gabsch**, who serves on the PDO Committee stated: the PDO Committee has never approved less than an eight foot clearance/has always maintained an eight foot clearance for a Sidewalk Café.

Failed Motion: Motion to support the Aroma and Barfly Sidewalk Café as proposed because it is consistent with San Diego Municipal Code, Section 141.0621, (Rasmussen/Salmon 4/11/1)

In favor: Brady, Burstein, Rasmussen, Salmon.

Opposed: Addington, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Whittemore.

Abstain: LaCava.

During discussion of the Motion and prior to the vote on the Failed Motion: **Trustees Fitzgerald, Costello, Crisafi, Whittemore** spoke to a Trustee obligation to preserve the integrity of the La Jolla PDO.

Approved Motion: Motion to deny the Aroma Café and Barfly Sidewalk Café on the basis of non-conformity to the eight foot clearance requirement, (Public Right of Way encroachment), of the La Jolla Planned District Ordinance, which supersedes San Diego Municipal Code, Section 141.0621, (Fitzgerald/Little 12/3/1)

In favor: Addington, Brady, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Whittemore.

Opposed: Burstein, Rasmussen, Salmon.

Abstain: LaCava.

15. Whitney Mixed Use – Mitigated Negative Declaration

CPA – Vote 14-1-1 to recommend denial of the project (October 2009)

2202 & 2206 Avenida de la Playa – Consideration of submitting a response on the Mitigated Negative Declaration (Deadline of March 28 delayed to April 2 for CPA).

President LaCava presented a draft letter in response to the MND. **Trustee Fitzgerald** thanked **President LaCava** and **Trustee Merten** for their preparation of the letter. **Trustee Merten**, during discussion of the Motion, offered and read an addition to the letter. The maker of the Motion accepted the addition.

Approved Motion: Motion to approve the La Jolla Community Planning Association Draft Letter in response to the Whitney Mixed Use – Draft Mitigated Negative Declaration, with an addition by Trustee Merten and corrections by Trustee Gabsch: (Burstein/Fitzgerald 13/2/1).

In favor: Addington, Burstein, Crisafi, Costello, Courtney, Fitzgerald, Gabsch, Little, Lucas, Manno, Merten, Rasmussen, Whittemore.

Opposed: Brady, Salmon.

Abstain: LaCava.

16. ADJOURNED: 8:00 PM to Next Regular Meeting on May 6, 2010, 6:00 pm



City of San Diego
Development Services
1222 First Ave., MS-302
San Diego, CA 92101
(619) 446-5000

Ownership Disclosure Statement

Approval Type: Check appropriate box for type of approval (s) requested: Neighborhood Use Permit Coastal Development Permit
 Neighborhood Development Permit Site Development Permit Planned Development Permit Conditional Use Permit
 Variance Tentative Map Vesting Tentative Map Map Waiver Land Use Plan Amendment Other

Project Title: U.S. Entertainment, LLC Project No. For City Use Only: 203566

Project Address: 909 Prospect St, La Jolla C.A 92037

Part I - To be completed when property is held by individual(s)

By signing the Ownership Disclosure Statement, the owner(s) acknowledge that an application for a permit, map or other matter, as identified above, will be filed with the City of San Diego on the subject property, with the intent to record an encumbrance against the property. Please list below the owner(s) and tenant(s) (if applicable) of the above referenced property. The list must include the names and addresses of all persons who have an interest in the property, recorded or otherwise, and state the type of property interest (e.g., tenants who will benefit from the permit, all individuals who own the property). A signature is required of at least one of the property owners. Attach additional pages if needed. A signature from the Assistant Executive Director of the San Diego Redevelopment Agency shall be required for all project parcels for which a Disposition and Development Agreement (DDA) has been approved / executed by the City Council. Note: The applicant is responsible for notifying the Project Manager of any changes in ownership during the time the application is being processed or considered. Changes in ownership are to be given to the Project Manager at least thirty days prior to any public hearing on the subject property. Failure to provide accurate and current ownership information could result in a delay in the hearing process.

Additional pages attached Yes No

Name of Individual (type or print): Oved Haskal
 Owner Tenant/Lessee Redevelopment Agency
Street Address: 909 prospect st
City/State/Zip: La Jolla C.A
Phone No: 619-985 7665 Fax No: 619-272 8612
Signature: [Signature] Date: 1-28-10

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: Fax No:
Signature: Date:

Name of Individual (type or print): Prospect Plaza Holdings, LLC
 Owner Tenant/Lessee Redevelopment Agency
Street Address: 625 Broadway, Suite 915
City/State/Zip: San Diego C.A
Phone No: 619-238 2393 Fax No: 619-238 2393
Signature: [Signature] Date: 1/29/10

Name of Individual (type or print):
 Owner Tenant/Lessee Redevelopment Agency
Street Address:
City/State/Zip:
Phone No: Fax No:
Signature: Date:

Project Chronology
Aroma Sidewalk Café – Proj. No. 203566

Date	Action	Description	City Review Time	Applicant Response
2/2/10	First Submittal	Project Deemed Complete		
2/23/10	First Assessment Letter		21 days	
3/4/10	Second Submittal			9 days
3/22/10	Second Assessment Letter		18 days	
4/2/10	Issues Resolved			11 days
4/29/10	CEQA Exemption			
4/29/10	Notice of Decision		27 days	
5/10/10	Appeal			
6/17/10	Planning Commission Appeal Hearing		38 days	
TOTAL STAFF TIME			104 days	
TOTAL APPLICANT TIME				20 days
TOTAL PROJECT RUNNING TIME		From Deemed Complete to Planning Commission	4 months, 15 days	

lockers or racks) easily accessible to the public, on the same premises as follows:

- (1) Business and professional offices including banks and savings and loans -- one bicycle space for each 2,500 square feet of gross floor area. Additionally, any business or professional office containing more than 7,500 square feet of gross office floor area shall be required to provide shower facilities.
- (2) Restaurants and similar establishments -- one bicycle space for every 20 seats.
- (3) Retail establishments -- one bicycle space for each 3,500 square feet of gross floor area.
- (4) For hotels and motels -- one bicycle space for 10 guest units, or provision of bicycle rental facilities on-site.

§159.0405 Streetscape Development Regulations/Encroachment Permits

- (a) Within all zones no building or portion thereof shall be erected, constructed, converted, established, altered or enlarged, nor shall any such premises be used unless the lot or premises and buildings shall comply with the following requirements and special regulations pertaining to the development and use of the abutting public right-of-way. The above shall apply to all projects.
- (b) The following Streetscape and Encroachment Permit Standards shall be the basis for project review by the City Manager. Final approval for encroachment permits shall be by the City Engineer based on the City

Manager's recommendations of consistency with the La Jolla Planned District Ordinance (see Appendix D.).

(c) Driveways and Curb Cuts

Driveways and curb cuts shall be provided in accordance with Land Development Code Chapter 14, Article 2, Division 5 (Parking Regulations).

(d) Underground Parking Encroachments

(1) Encroachment into the public right-of-way for underground parking spaces may be permitted only if a more efficient underground parking design can be provided without resulting in a major expansion to the underground parking area.

(2) No encroachments into the public right of way for parking access ramps (underground and above-ground) parallel to the street shall be permitted.

(3) Any access from underground parking areas to the street shall give the pedestrian the right-of-way at all times. Safety design, stop signs and other signage are required.

(e) Sidewalk Development

(1) Minimum Width

For existing projects all sidewalks shall maintain their present width and shall also maintain standard sidewalk elevation in relation to the curb for the entire distance between the curb and property line.

(2) Clear Path

For new construction a minimum clear path (free of obstructions) of 8 feet in width shall be maintained at all points within the sidewalk right-of-way. The clear path may be linear, angled or curved, provided that the configuration will not impede handicapped access. A clear path of greater than 8 feet may be required if necessary to maintain a line of sight essential for traffic or pedestrian safety. Where there are street trees, the clear path shall be measured from the trunk of the tree, provided tree grates conforming to the requirements of Section 159.0405(f)(9) of the La Jolla Planned District Ordinance are installed and maintained at all times.

(3) Surface Treatment (sidewalk paving)

(A) All development proposing sidewalk improvements through an encroachment permit shall be required to improve the abutting sidewalk areas in accordance with the provisions listed herein.

(B) The sidewalk surface (exclusive of permanently landscaped areas) shall be paved with brick, clay or ceramic tile or interlocking concrete pavers. Standards for each of these materials shall be as set forth below. The objective of these standards is to provide a complementary palette of paving materials and colors which provide an element of unity and

continuity throughout the district, while encouraging the development of improved pedestrian sidewalk areas.

(i) Materials

Brick: Bricks shall be standard size 8 inches by 4 inches, and shall be set in mortar.

Tile: Tile shall be square, not to exceed 10 inches on any side. Minimum tile thickness shall be 0.25 inch for ceramic or quarry tile, and 0.75 inch for clay tile. Tiles shall be set in mortar.

Concrete Pavers: Concrete pavers and interlocking pavers may be of any uniform shape provided each unit does not exceed 10 inches across its longest dimension. Pavers shall be set in mortar.

(ii) Surface Textures

All paving materials shall provide an even, slip resistant surface at least equal to the City standard broom sweep sidewalk. All grouting shall be placed flush with the top of the pavers.

(iii) Pavement Patterns

The pavement patterns shall be perpendicular to the curb and be maintained constant except to define an entrance or an adjacent public plaza in which case paving patterns may be integrated with other paving

to form bands or dividers in harmony with architectural themes. Pavement patterns shall be consistent with the safety standards required for the handicapped.

(iv) Colors

The color of paving shall generally be within the red to orange range (including reddish browns) with muted (non-bright) tones. Dark brown and other dark tones and colors, including grey are not appropriate.

(f) Street Trees

- (1) Existing street trees shall be preserved to enhance the character of the street through the continuity of existing street trees.
- (2) New street trees shall be of the same species as the existing trees fronting the site or alternatively of the most prevalent species located on the same street provided they are listed on the Approved Street Tree List as shown in Appendix G.
- (3) Where neither the species of existing street trees fronting the site or the most prevalent species located on the same street appears on the Approved Street Tree List, the City Manager shall designate the species of trees to be used which, is in keeping with the surrounding area.

- (4) For all portions of La Jolla Boulevard and Pearl Street within the Planned District, the Jacaranda Mimosifolia is the designated tree.
- (5) Unless otherwise stated above, where appropriate, the preservation, planting and maintenance of approved palm trees and approved eucalyptus trees shall be given special consideration in order to maintain the unique subtropical character of La Jolla.
- (6) Trees shall be planted in the ground. The minimum size tree shall be a standard 48-inch box. Trees with a low spreading branch structure shall typically not be used in the street rights-of-way. Individual specimens shall be selected, planted, and pruned, if necessary, such that major scaffold branches are at least 8 feet above the finish surface or finish grade, as measured at the trunk.
- (7) Trees shall be positioned and kept maintained so that any branches that extend out over dedicated street rights-of way have a minimum of 14 feet 6 inches of clearance above the surface of the street.
- (8) **Tree Spacing**
Trees may be grouped or planted in a straight line. The placement of street trees shall be coordinated with the placement of light standards. Spacing shall be in accordance with the Landscape Standards.
- (9) **Tree Grates**

(O-2007-77)

Tree grates shall meet safety requirements of Title 24 of the State Building Code. The maximum size of grid opening shall be no larger than 0.5 inch. All tree grates shall be installed flush with the sidewalk surface and shall be set a minimum of 2 inches above a gravel base. The grates shall be factory primed and painted black.

(10) Root Control Barriers

A root control barrier shall be provided for each tree to avoid possible root damage to sidewalks and other facilities in the public right-of-way or surrounding buildings.

(11) Street Tree Irrigation

All landscaping in the public right-of-way, shall have a permanently installed and maintained irrigation system designed by registered Landscaped Architect, or as approved by the City Engineer and Parks and Recreation Department as follows:

- (A) All street trees shall be irrigated.
- (B) Irrigation water shall be metered through the property owner's meter.
- (C) PVC pipe (SCH 40) or better to each tree well shall be in place prior to pouring public sidewalk or paving.
- (D) PVC pipe to each tree well shall be laid perpendicular to the curb and connected to the irrigation system on private property.

- (E) Each tree well shall have a minimum of one adjustable bubbler-type head or approved equal.
- (F) All irrigation systems shall have anti-syphon, backflow prevention and shall be operated by an approved automatic timer on private property.
- (g) **Curbs, Gutters and Handicapped Ramps**
The design and surface finish of curbs, gutters, and handicap ramps shall meet City of San Diego standards.
- (h) **Utility Covers**
 - (1) For all areas finished in brick, tile or concrete pavers, all concrete utility covers shall be replaced with metal covers. All covers shall be painted black.
 - (2) Large utility covers (exceeding 8 square feet) if not avoidable, shall be covered with matching brick or tile veneer to match the sidewalk paving.
- (i) **Street Furniture**
 - (1) **Light Standards**
Light standards shall be equivalent to the street lamp shown in Appendix D.
 - (2) **Benches**
 - (A) Benches located in the sidewalk shall be constructed to one or more of the following materials:
 - (i) Wood;

- (ii) Wrought iron, cast iron, or formed iron
 - (B) Placement of benches
 - (i) Benches shall not encroach into the required 8-foot sidewalk clear path.
 - (ii) Benches shall not be located within 5 feet of the center of the sidewalk.
 - (iii) A bench located parallel to the sidewalk shall face the center of the sidewalk.
 - (iv) If two or more benches are situated perpendicular to the sidewalk, the benches shall be sited to face each other.
 - (C) Advertisement on benches located in the public right-of-way shall be prohibited.
- (3) Awnings and Canopies

Awnings and canopies made of plastic, canvas material or any other material permitted by the La Jolla Planned District and approved by the City Engineer, and the City Manager may be permitted to encroach on the street right-of-way to provide shade or sun protection for retail exhibit areas (see Appendix B).
- (j) Sidewalk Cafes

Sidewalk cafes may be permitted throughout the La Jolla Planned District except in Zone 5, as regulated by Section 151.0401(c) and Land Development Code Section 141.0621.

(k) Maintenance and Repairs

- (1) All encroachment permits shall require adequate maintenance consistent with City Engineer's standards. Except for those improvements which are the responsibility of public utilities, private improvements to the public right-of-way shall be maintained privately until an alternative maintenance program is available.
- (2) All public utility and improvement repairs and maintenance, undertaken in an improved sidewalk area shall match existing materials and colors.

(l) In-lieu Streetscape Improvement Fees

In ZONE 1 - Alternate, landscaping requirements may be satisfied by the contribution of "in lieu fees" for Streetscape improvements as described in Section 159.0211(k) of the La Jolla Planned District Ordinance.

§159.0406 External Effects

- (a) Artificial lighting used to illuminate any premises shall be directed away from adjacent properties. (see Appendix B).
- (b) The following effects shall not be permitted to emanate beyond the premises in which the permitted use is located:
 - (1) Air contaminants such as smoke, fumes, odors or other gases.
 - (2) Loud, unnecessary or unusual noise.
 - (3) Electrical disturbances which unduly interfere with the normal operation of equipment, appliances or instruments.

by subdivision roads or any other sources, and the protection of watershed areas;

- (5) A capital improvements program indicating the sources and means of financing all required capital improvements within the planned district; and
- (6) Standards for solar systems:
 - (A) Shadow Plans. When, in the opinion of the City Manager, structures and major landscaping at maturity for a development project may have an impact on the solar access of adjacent property, the applicant shall submit a satisfactory shadow plan prior to the approval of a planned district development permit.
 - (B) Design Criteria. Wherever possible, maximum feasible energy conservation measures, including both active and passive solar systems, shall be utilized.

Section 4. That Chapter 15, Article 1, Division 4, of the San Diego Municipal Code is amended by adding Section 151.0401, to read as follows:

Article 1: Planned Districts

Division 4: General and Supplemental Regulations

§151.0401 Uses Permitted in the Planned Districts

- (a) Where not otherwise specified in the planned district, the uses in Section 151.0401 may be permitted as limited uses or in accordance with the rules and procedures for Neighborhood Use Permits and Conditional Use

Permits in Land Development Code Chapters 11 and 12. In addition to the uses listed in this section, other uses may be approved with a Conditional Use Permit as provided in each planned district.

(b) Limited Uses

- (1) The following uses, when permitted by the applicable planned district, are subject to the regulations for limited uses in the Land Development Code section specified for each use.
 - (A) Adult entertainment establishments, subject to Land Development Code Section 141.0601
 - (B) Alcoholic beverage outlets, subject to Land Development Code Section 141.0502
 - (C) Pushcarts on private property, subject to Land Development Code Section 141.0619.
- (2) The following uses are permitted in the planned districts subject to the regulations for limited uses in the Land Development Code section specified for each use and the location restrictions specified for each use.
 - (A) Companion units in single dwelling unit and multiple dwelling unit residential zones, subject to Land Development Code Section 141.0302
 - (B) Garage and yard sales in residential zones, subject to Land Development Code Section 141.0305

(O-2007-65)

- (C) Home occupations in residential zones, subject to Land Development Code Section 141.0308
- (D) Large family day care homes in zones where residential use is permitted, except in agricultural zoned areas of the Coastal Overlay Zone that contain the 100-year floodplain, subject to Land Development Code Section 141.0606
- (E) Recycling facilities as follows:
 - (i) Drop-off facilities in all commercial and industrial zones, subject to Land Development Code Section 141.0620;
 - (ii) Reverse vending machines in all industrial zones, subject to Land Development Code Section 141.0620;
 - (iii) Small collection facilities in all industrial zones, subject to Land Development Code Section 141.0620;
 - (iv) Small processing facilities accepting at least 98 percent of total annual weight of recyclables from commercial and industrial traffic in general industrial zones, subject to Land Development Code Section 141.0620; and
 - (v) Large processing facilities accepting at least 98 percent of total annual weight of recyclables from

commercial and industrial traffic in general
industrial zones, subject to Land Development Code
Section 141.0620.

(c) Neighborhood Use Permits

Except as otherwise provided in the planned district, the following uses may be permitted with a Neighborhood Use Permit decided in accordance with Process Two, subject to the location restrictions and the Land Development Code section specified for each use.

- (1) Pushcarts in the public right-of-way, subject to Land Development Code Section 141.0619
- (2) Recycling facilities as follows:
 - (A) Large collection facilities in all commercial and industrial zones, subject to Land Development Code Section 141.0620;
 - (B) Small processing facilities in general industrial zones, subject to Land Development Code Section 141.0620;
 - (C) Large processing facilities in general industrial zones, subject to Land Development Code Section 141.0620; and
 - (D) Green materials composting facilities in general industrial zones, subject to Land Development Code Section 141.0620.
- (3) Sidewalk cafes, subject to Land Development Code Section 141.0621

- (7) Material shall not be stockpiled higher than 15 feet. Stockpiled material shall be located at least 30 feet from the adjacent *public right-of-way*.
- (8) Space shall be provided on the site for the anticipated peak customer load to circulate and deposit or load material or finished product.
- (9) The facility shall be clearly marked with the name and telephone number of the facility operator and the hours of operation.
- (10) The site shall be kept free of litter.
- (11) The site shall be secured from unauthorized entry and removal of material when attendants are not present.
- (12) Any permit issued by the City of San Diego shall be void if the facility does not obtain other required local and state permits or does not comply with regulations enforced by the local enforcement agency, the Air Pollution Control District, or other applicable regulatory agencies.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 3-1-2006 by O-19467 N.S.; effective 8-10-2006.)

§141.0621 Sidewalk Cafes

Sidewalk cafes 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 provisions of this section.

- (a) The decision maker will evaluate the following to determine if a sidewalk cafe is a suitable use for the proposed site and will not infringe on the use of the *public right-of-way* by pedestrians:
 - (1) The width of the sidewalk;
 - (2) The design and relationship of the cafe to other existing or planned uses in the vicinity;
 - (3) The amount of pedestrian use and the impact of the cafe's location on pedestrian activity; and
 - (4) The ability of the cafe to fit the character of the area, create an outdoor pedestrian plaza, intensify pedestrian activity, and make the *street* activity more attractive.

- (b) A sidewalk cafe may be located within the *public right-of-way* only in conjunction with, and adjacent to, a street-level eating or drinking establishment.
- (c) A sidewalk cafe shall be used only for dining, drinking, and circulation. The cafe may provide either waiter/waitress service or self-service.
- (d) The area of the sidewalk cafe shall be delineated by a barrier consisting of railings, *fences*, or a combination of railings and *fences*, and planter boxes that are 3 feet in height or less; solid walls are not permitted. The barrier may be either permanently installed or moveable; if it is moveable, it shall be affixed to the sidewalk while the cafe is open for business. A clear, transparent, shatterproof glass or similar material may be used on top of the 3-foot barrier to enclose the cafe to minimize windy or cold climatic conditions. The enclosure must meet the following requirements.
 - (1) The height of the sidewalk cafe barrier plus the clear enclosure shall not exceed 5 feet.
 - (2) If an enclosure is used, *awnings* shall not be used as a cafe covering.
- (e) A clear path, free of all obstructions to the flow of pedestrian traffic, shall be provided in the *public right-of-way* and shall be maintained at all times. Obstructions include traffic signals or *signs*, light standards, parking meters, phone booths, bus stops, trash receptacles, benches, trees, and similar objects. The clear path shall be a paved sidewalk that is at least 8 feet wide. The clear path shall be measured in the following manner:
 - (1) The clear path shall be measured from the outermost point of the sidewalk cafe to the curb or to the nearest obstruction within the flow of pedestrian traffic;
 - (2) Recesses in the *building facade* shall not be used to satisfy the clear path requirement; and
 - (3) The decision maker may grant an exception to the minimum clear path width if pedestrian volumes and existing *street* conditions are such that no congestion would result.
- (f) The sidewalk cafe shall be designed and operated so that unsafe conditions are not created for the physically disabled, blind, or partially sighted. Gates or other objects placed within a sidewalk cafe shall not swing or project beyond the delineated perimeter of the cafe. Cantilevered projections are not permitted. A change in paving pattern and texture may be required to alert pedestrians of a change in sidewalk use.

- (g) No portion of a sidewalk cafe may be located within 8 feet of the entrance to a ground *floor* commercial use other than the entrance to the adjacent restaurant. An exception to the minimum distance between sidewalk cafes and adjacent business entrances may be granted by the decision maker after a review of existing conditions in the surrounding commercial area and on the *street* adjacent to the sidewalk cafe if the affected, adjacent property owners and first *floor* tenants give notarized, written permission for the encroachment. The decision maker's review will take into consideration the effect that the exception may have on adjoining businesses in terms of visibility and access.
- (h) *Awnings* shall be secured to the main building.
- (i) The furnishings of the interior of a sidewalk cafe shall consist solely of moveable tables, moveable chairs, and moveable umbrellas. Landscaping may be placed in moveable planters or planted in the ground inside the delineated cafe area adjacent to the barrier. Lighting fixtures may be permanently affixed to the front of the main building.
- (j) The name and type of establishment may be placed on umbrellas or on the valance of an *awning*. Other *signs* are not permitted on the sidewalk cafe.
- (k) Trash or storage areas shall not be located on or adjacent to the *public right-of-way*.
- (l) Musical instruments or sound reproduction devices shall not be operated or used within a sidewalk cafe. For purposes of enforcement of Municipal Code Section 59.5.0101 et. seq., the *property line* shall be considered the boundary of the sidewalk cafe.
- (m) Sidewalk cafes shall be free of litter at all times.
- (n) The hours of operation of a sidewalk cafe shall be limited to the hours of operation of the associated eating or drinking establishment.
- (o) Within the beach impact area of the Parking Impact Overlay Zone, sidewalk cafes shall not exceed 200 sq ft in area without providing parking. Required parking shall be provided at a ratio not less than one parking space for every additional 200 sq ft (or portion thereof) above the first 200 sq ft.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

