

**CITY OF SAN DIEGO
M E M O R A N D U M**

DATE: March 23, 2006

TO: Planning Commission

FROM: Vena Lewis, Development Project Manager/DSD

SUBJECT: Business Improvement District Public Right-of-Way Enhancement Program -
Planning Commission Report No. PC-06027

At the January 12, 2006, Planning Commission public hearing, staff and applicant requested that the Business Improvement District Public Right-of-Way Enhancement Program be continued. It was determined that additional time was needed in order to give each of the affected Community Planning Groups enough time to discuss the proposal and offer their recommendations. On January 12, 2006, the project was not heard but continued to the March 30, 2006 Planning Commission docket.

Sincerely,

Vena Lewis
Development Project Manager
Customer Support and Information Division
Development Services Department

Attachments:

1. Planning Commission Report No. PC-06027

DATE ISSUED: March 23, 2006 **REPORT NO. PC-06-027**

ATTENTION: Planning Commission, Agenda of March 30, 2006

SUBJECT: BUSINESS IMPROVEMENT DISTRICT PUBLIC RIGHT-OF-WAY
ENHANCEMENT PROGRAM - PROCESS FOUR

**OWNER/
APPLICANT:** Business Improvement District Council

SUMMARY

Issue(s): Should the Planning Commission approve twelve Site Development Permits for the Adams Avenue, City Heights, College Area, Hillcrest, La Jolla, Little Italy, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach and San Ysidro Business Improvement Districts to implement the Public Right-of-Way Enhancement Program?

Staff Recommendation:

APPROVE the proposed twelve Site Development Permits for the twelve Business Improvement Districts (Attachment 1) to implement a Public Right-of-Way Enhancement Program (Attachment 7).

Community Planning Groups Recommendations (Attachment 5):

Adams Avenue BID: On November 7, 2005, the Normal Heights Community Planning Committee voted 7-0-0 to recommend the project be approved.

City Heights BID: On March 9, 2006, the City Heights Area Planning Committee voted on the project twice to recommend approval with conditions. Each time the motion to approve failed.

College Area BID: On March 8, 2006, the College Area Community Council voted 12-2-

3 to recommend approval of the project with conditions.

Hillcrest BID: On February 7, 2006, the Uptown Planners voted 10-1-1 to recommend approval of the project with conditions: 1) No storage be allowed in encroachment areas; and 2) As offered by the BID, a representative of Uptown Planners be appointed to the PROW Enhancement Program committee.

La Jolla BID: The La Jolla Community Planning Association (LJCPA) has submitted a letter requesting that the La Jolla BID be considered at the March 30, 2006, Planning Commission hearing. The project is slated for their April 6, 2006, LJCPA meeting. See Attachment 8.

Little Italy BID: On November 16, 2005, the Center City Advisory Committee voted 26-0-0 to recommend approval of the project.

Mission Hills BID: On February 7, 2006, the Uptown Planners voted 10-1-1 to recommend approval of the project with conditions: 1) No storage be allowed in encroachment areas; and 2) As offered by the BID, a representative of Uptown Planners be appointed to the PROW Enhancement Program committee.

North Park BID: On November 15, 2005, the Greater North Park Community Planning Committee voted 10-0-1 to recommend approval with the condition that the clear path of travel be increased from four feet to five feet.

Ocean Beach BID: The subject project was presented at the Ocean Beach Planning Board's General Meeting on January 4, 2006 at which a quorum was present. A motion was made to support the project. This motion was passed unanimously by an 8-0-0 vote.

Old Town BID: On February 8, 2006, the Old Town San Diego Community Planning Committee (OTSDCPC) voted 8-0-1 to approve with the provision that the Old Town PROW Design Guidelines and Use Applications are approved by the OTSDCPC before going to BID for management.

Pacific Beach BID: On February 22, 2006, the Pacific Beach Community Planning Committee voted 13-0-0 to recommend approval of the project.

San Ysidro BID: On December 6, 2005, the San Ysidro Planning and Development Group (SYPDG) voted 6-0-2 to recommend approval for a 24-month period after which it would automatically "sunset" (expire) unless a renewal recommendation is made following evaluation, review, and vote by the SYPDG.

Environmental Review: The twelve proposed projects are exempt from environmental review pursuant to Article 19, Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) (Attachment 13).

Fiscal Impact Statement: None with this action.

Code Enforcement Impact: Approval of the proposed Program and Permits would shift enforcement for the operation of the Program to the respective Business Improvement District's. Cases that are unresolved by the Business Improvement District will be referred to the Neighborhood Code Compliance Department for enforcement actions.

Housing Impact Statement: Not Applicable.

BACKGROUND

On June 12, 2003, the Planning Commission approved a two (2) year Business Improvement District Demonstration Public Right-of-Way Enhancement/Use Program for four Business Improvement Districts (BIDs) including Adams Avenue, Little Italy, North Park and Ocean Beach. During the implementation of the pilot program, Little Italy did not participate.

The demonstration program was designed as a possible mechanism to address the requests of several BIDs to create a process by which their members could display merchandise/goods on the sidewalk in front of their stores. Prior to implementation of the program there were meetings held for 128 individual businesses within the three participating BIDs. As a result of those meetings 36 window sticker type permits were issued.

City regulations currently do not allow for the placement of signs nor the display of merchandise/goods on sidewalks in front of businesses. Putting tables and chairs out on the sidewalk are also not permitted. Sidewalk Cafes are regulated by the City and require a Neighborhood Use Permit (Process 2) and compliance with Municipal Code Section 141.0621. The major difference between the City's sidewalk café regulations and the proposed Program is that the path of travel between the barrier/railing and obstructions in the sidewalk (trees, fire hydrants, signs, parking meters, etc.) must be eight feet. The proposed Program does not require a barrier/railing and the clear path of travel can be reduced to four feet, the minimum required by the Americans with Disabilities Act Guidelines and Title 24.

Based on the Public Right-of-Way Enhancement/Use Program Final Report (Attachment 10), none of the permitted participating businesses have violated or changed their outdoor displays in a manner that would impede a clear path of travel. To date no complaints have been received by any of the three business improvement districts, nor the Business Improvement District Council.

At the January 12, 2006, Planning Commission hearing, the proposed project was docketed but not heard. Staff and the applicant requested a continuance for the Business Improvement District (BID) Public Right-of-Way (PROW) Enhancement Program Site Development Permits in order to give each of the affected Community Planning Groups enough time to discuss the proposal and offer their recommendations. The Planning Commission voted to continue the project to the

March 30, 2006 Planning Commission docket.

DISCUSSION

The two year BID Demonstration Public Right-of-Way Enhancement/Use Program permits have expired. Since it has been determined the demonstration program was a success, the applicant is seeking to make the program permanent. The program would expand from four participating districts to twelve.

Project Description:

The projects as proposed would allow the participating members of the twelve Business Improvement Districts (BIDs) to place freestanding "A" frame signs, display merchandise/goods and establish outdoor dining areas on sidewalks within the public right-of-way of the respective businesses consistent with the General Requirements Standards and Conditions of the BID Public Right-of-Way (PROW) Enhancement Program dated March 2006 (Attachment 7).

Only the businesses fronting on the public right-of-way and located on the first floor are eligible to participate in the Program.

Project-Related Issues:

The Program takes into consideration a number of factors related to improvements within the public right-of-way including but not limited to insurance, enforcement, restrictions on participation, obligation on the part of the participants, safety and accessibility requirements.

Participating businesses must maintain liability insurance to indemnify and hold the City free and harmless from any claims (Attachment 11), etc. that the City may incur resulting from the operation of the Program. There shall also be a system of spot checking on the part of the BID's to ensure that businesses have maintained the insurance.

The BIDs would have the authority through their permits to administer and enforce the Program within their respective districts. The type of improvements allowed by the Program already occur throughout the commercial areas of San Diego, and the Neighborhood Code Compliance Department has been overwhelmed in attempting to achieve compliance with City regulations that prohibit, in some cases, what would be allowed through the Program. Approval of the proposed permits would provide the BIDs with a Program that many of their members wish to participate in and in addition would relieve the City from an ever increasing code compliance workload.

Neighborhood Code Compliance:

During the two years the demonstration program has been existence, the Neighborhood Code Compliance Department (NCCD) received no formal complaints. Any future approved Site

Development Permits (SDP) for the BID PROW Enhancement Program must be renewed every two years, after a review has been made by the NCCD. If the NCCD has had no complaints the SDP renewal will be automatic.

Community Plan Analysis:

Adams Avenue and City Heights BIDs are both a part of the Mid-City Communities Plan. The Mid-City Communities Plan encourages the development of specific regulations for the outdoor display of merchandise and signage, particularly in the public right-of-way. Although the Land Use Element and Transportation element of the Plan, states that commercial storefronts should open up to provide ample display windows that are free of obstructions and that sidewalk widths should not be reduced by encroachments, or by any other means, guidelines proposed in the Program would adhere to transparency requirements for storefront businesses as prescribed in the City's Land Development Code. Additionally, proposed enhancements as defined by the Program would not represent a permanent reduction in sidewalk width where they are established; that these enhancements can be removed or relocated at the City's discretion; and that the proposed enhancements (except for flowerpots, planter boxes, and statuary) would be only permitted during business hours and stored within the building during non-business hours. Further, the Program would allow for a minimum four-foot wide clear path of travel to be maintained within the existing public right-of-way in order to facilitate pedestrian circulation. Based on the provisions within the proposed Enhancement Program that address transparency and maintaining adequate pedestrian circulation, the proposed Enhancement Program would not adversely impact the goals and objectives of the Mid-City Communities Plan.

College Area BID: The College Area Community Plan states that the College BID should contribute to the revitalization of El Cajon Boulevard by coordinating marketing efforts and physical improvements of business in the District. The proposed PROW Enhancement Program would provide the BID with an enhancement program that would be coordinated among the various commercial businesses within the College BID and therefore, would not adversely impact the goals and objectives of the College Area Community Plan.

Hillcrest BID: The Hillcrest BID PROW Enhancement Program would implement several recommendations enumerated in the Uptown Community Plan. Specifically, the Program would implement the objectives of the Plan's Urban Design element regarding the preservation of existing street trees and increasing the quality and quantity of landscaping in the PROW, and eliminating visual clutter through the use of unified signs, coordinated lighting, and street furniture. The Program would implement the Plan's recommendations for Hillcrest regarding streetscape design and landscaping, including the provision of street trees; incorporating street furniture, coordinated signage and lighting, planters, kiosks, public art, and plant material whenever possible; and enriching the pedestrian quality of all areas by increasing sidewalk widths when appropriate; and

minimizing “sign clutter”. Also, the Plan’s objectives specify preserving and enhancing the pedestrian scale and human orientation within the area, and would be implemented by the Program.

La Jolla BID: The La Jolla Community Plan encourages the growth and vitality of retail businesses and restaurants in older downtown neighborhoods. The proposed BID PROW Enhancement Program will encourage pedestrian traffic and encourage beautification of the streetscape in the La Jolla neighborhood. Currently, “Promote La Jolla” has a 1992 Streetscape agreement with the City of San Diego that permits “Promote La Jolla” to install street furniture and other beautification items in the public right of way. The BID PROW Enhancement Program is in keeping with these efforts.

Little Italy BID: The Centre City Community Plan and the Little Italy Focus Plan provides for the retention and enhancement of the Little Italy Neighborhood with emphasis on India Street as the restaurant, café, and commercial center of the neighborhood creating a distinct destination downtown. Although, the use of the public right-of-way is limited to outdoor cafes, allowing outdoor displays and signage with an encroachment removal agreement along a portion of India Street would not significantly impact the vision of the community plan provided the suggested modifications be made and the guidelines in the BID PROW Enhancement Program are adhered to.

Mission Hills BID: The Mission Hills BID PROW Enhancement Program would implement several recommendations enumerated in the Uptown Community Plan. Specifically, the Program would implement the objectives of the Plan’s Urban Design Element regarding the preservation of existing street trees and increasing the quality and quantity of landscaping in the public right-of-way, and eliminating visual clutter through the use of unified signs, coordinated lighting, and street furniture. The Program would implement the Plan’s recommendations for Mission Hills regarding streetscape design and landscaping, including the provision of street trees; incorporating street furniture, coordinated signage and lighting, planters, kiosks, public art, and plant material whenever possible; and enriching the pedestrian quality of all areas by increasing sidewalk widths when appropriate; and minimizing “sign clutter”. Also, the Plan’s recommendations specify improving the pedestrian quality of the commercial nodes surrounding Washington and Goldfinch Streets, would be implemented by the Program.

North Park BID: The North Park BID PROW Enhancement Program would implement several recommendations enumerated in the Greater North Park Community Plan. Specifically, the Program would implement the recommendations of the Urban Design Guidelines to alleviate cluttered sidewalks by widening sidewalks and using locational criteria for street furniture, and encouraging trees, lighting bollards and sidewalk textures. The Program would also implement the Plan’s objectives and recommendations of improving the urban experience by enhancing pedestrian activity in the central business core, and developing a coordinated program for street improvements including trees, landscape islands and unified paving.

Ocean Beach BID: The Program is within the community commercial designation as identified in the Ocean Beach Precise Plan. The Program allows participating members (i.e. Newport Avenue BID) to place freestanding “A” frame signs, display merchandise/goods and establish outdoor dining areas within the public right-of-way in front of the businesses’ store fronts on the public right-of-way, or to set up outdoor dining areas within the public right-of-way, all of which shall be consistent with the General Requirements, Standards and Conditions of the BID PROW Enhancement Program. The Program would improve the pedestrian right-of-way and not adversely affect the Commercial element goal by, “...upgrading of those existing commercial facilities characterized by physical deterioration and lack of maintenance.” It would also implement the Commercial element goal, “That the physical appearance of the three commercial areas be upgraded.” It would not adversely affect the Community Appearance and Design element goal to, “...upgrade the physical character of the community.” It would also implement recommendations of the Community Appearance and Design element in that, “...specific criteria be developed in order to preserve the overall scale and character of existing commercial districts.” and “...street furniture be designed and provided to enhance the Ocean Beach Physical environment.”

Old Town BID : The proposed project is consistent with the Old Town Community Plan (OTCP). Specifically, in addition to many supportive policies and recommendations in the OTCP, in the Circulation Element of the OTCP, there is the following recommendation regarding Pedestrian Walks on page 84: "Create an environment in Old Town San Diego that is fundamentally pedestrian in character and scale for the benefit of the local citizen or visitor."

Pacific Beach BID: The proposed PROW Enhancement Program is in conformance with the goals and objectives of the Pacific Beach Community Plan related to pedestrian design including enhancing the aesthetic value of major circulation routes, promoting safe and pleasant bicycle and pedestrian routes and creating a pleasant experience through commercial areas to enhance the commercial district. The Program’s enhancements include signs, outdoor displays and street furniture, which are intended to encourage pedestrian traffic and beautify the streetscape. Therefore, the proposed project conforms with the Pacific Beach Community Plan.

San Ysidro BID: The Progress Guide and General Plan’s Urban Design Element has as a goal the improvement of the neighborhood environment to increase personal safety, comfort, pride, and opportunity. Guidelines to achieve this goal include improving the pedestrian environment in the commercial areas and removing distracting and cluttering elements. The Commercial Element of the Progress Guide and General Plan recommends the development of an integrated system of commercial facilities that effectively meets the needs of San Diego residents and visitors. Through enhanced streetscapes, outdoor eating areas, and pedestrian-oriented displays and signs, the proposed enhancement program would improve community character and pride while

activating the street for increased safety. The Program would enhance business opportunities which would meet the needs of both residents and visitors. As an aside, the Progress Guide and General Plan is currently in the update process and the draft Urban Design Element has policy recommendations on pedestrian-oriented design, signs, lighting, outdoor eating areas, and landscaping that the proposed enhancement program would help implement. The proposed public right-of-way enhancement program, with its outdoor displays, signs, and eating areas, does not adversely affect the goals and objectives of the Progress Guide and General Plan.

The Urban Design Element of the San Ysidro Community Plan recommends that commercial development be well landscaped and pedestrian oriented with the use of fountains, outdoor cafes, outdoor sitting areas, plazas, and window displays in shops on the ground level. The proposed program's use of sidewalk space as outdoor eating areas does not adversely affect this objective of the San Ysidro Community Plan.

While the Urban Design Element is silent with regards to outdoor displays, it does recommend that signage be designed as an integral element of the total design of development. It further recommends that roof-top, tall free-standing or off-premise signs and billboards not be permitted, and that signs should be designed with decorative graphics to be compatible with the neighborhood. With the proposed two foot by three-foot footprint and three to four foot height limit for freestanding signs, the free-standing signs would not be considered tall. The proposed program's free-standing signs would not adversely affect the goals and recommendations for sign design.

Center City Development Corporation (CCDC) Input:

The CCDC has a strong preference that the Little Italy BID provide a minimum clear path of travel of eight feet. However, they would support a six-foot clear path as opposed to the four-foot from ANY vertical obstructions (including street signs, trees, utility boxes etc.) Assuming a three-foot curb to tree trunks distance, this would allow a three foot minimum (six feet typical) zone against the building for merchandize racks, planters, cafes etc.

The CCDC would also prefer that A-frame signs be restricted to the street furniture zone equal to a three-foot strip along the curb. In addition, A-frame signs should be two feet wide by four feet high.

The applicant acknowledges the CCDC preferences and has included this exception within the revised BID Public Right-of-Way Enhancement Program dated December 27, 2005.

City Heights Area Planning Committee Input:

At its March 2006 meeting, the Committee heard the subject application. After discussion it was moved and seconded to recommend approval with the conditions that: 1) this Committee be a partner in designing the final details of the program as it might be conducted in City Heights, 2) the City Heights Business Association and the businesses demonstrate an increased commitment

to code compliance, and 3) that the clear path for the pedestrian rights of way be set at 5 feet rather than 4 feet. The Committee voted 4-8-0 (chair not voting) and the motion failed.

After further discussion, it was moved and seconded to recommend approval with the conditions that 1) the City Heights Business Association and the businesses demonstrate an increased diligence in code compliance and 2) that the clear path for the pedestrian rights of way be set at 5 feet rather than 4 feet. The Committee voted 3-9-0 (chair not voting) and the motion failed. No other motions were offered.

College Area Community Council Input:

The College Area Community Council (CACC) voted to approve the project with conditions Attachment 5):

1. Encroachment permits shall be reviewed annually.
2. The College Area BID Office shall report enforcement review efforts and the status of the code violation process to the CACC Planning Committee quarterly.
3. City Neighborhoods Code Compliance shall retain full enforcement rights and responsibilities.
4. Permits issued through the PROW should not supersede the NCCD in enforcing the municipal code.
5. The CACC Planning Committee shall be notified and be able to comment on new permits.
6. The San Diego Center for the Blind shall be notified and be able to comment on new permits.
7. Any additional lighting added as part of an encroachment permit shall be screened to prevent glare from blinding pedestrians and vehicles in compliance with existing city codes and regulations.
8. Encroachment Clear Path of Travel for dining shall be measured when chairs are in an occupied position.
9. No non-food items shall be sold on sidewalks as part of the PROW Enhancement Program.

The applicant has prepared a memo in response to the above recommended conditions. See Attachment 9.

Greater North Park Community Planning Committee Input:

The committee recommended approval with the condition the clear path of travel be increased from four feet to five feet.

The applicant acknowledges the committee's condition and has included this exception within the revised BID Public Right-of-Way (PROW) Enhancement Program dated March 2006.

San Ysidro Planning and Development Group Input:

The San Ysidro Planning and Development Group (SYPDG) suggests with approval of the site development permit there would be an automatic "sunset" period (expires in 24-months) unless a renewal recommendation is made following evaluation, review, and vote by the SYPDG.

The applicant acknowledged the SYPDG recommendation but has determined that there has already been a successful two-year demonstration period. The BID Council concurs with the City staff that the program can now be granted a permanent status. Further, there are safeguards added to the site development permit to insure the program's ongoing management and success by including a condition that the permit can be revoked.

Uptown Planners Input:

The Uptown Planners has recommended approval of the Hillcrest and Mission Hills BID's with the following conditions: 1) No storage will be allowed in encroachment areas; and 2) As offered by the BID, a representative of the Uptown Planners will be appointed to the BID PROW Enhancement Program committee.

The applicant acknowledges and accepts the Uptown Planners' two conditions. The two conditions will be incorporated within all BID PROW Enhancement Program permits issued in the Hillcrest and Mission Hills BID's.

Conclusion:

In order to ensure that the Program is properly implemented, the BID Council has committed to providing technical assistance to the BIDs on an as-needed basis. The BID Council will also provide mandatory training for all BID staff on how the Program works before the BIDs may commence the Program. In addition, individual business owners who wish to participate in the Program would first be required to attend a training session put on by the BID which would explain the requirements and obligations of the Program.

Concerns with liability, enforcement, disabled access, safety, aesthetics and maintenance are adequately addressed in the General Requirements and Standards for the Program. Therefore, staff recommends the Planning Commission approve the project as proposed.

ALTERNATIVES:

1. Approve the proposed permits with modifications.
2. Deny the proposed permits, if the findings required to approve the project cannot be affirmed.

Respectfully submitted,

Jeff Strohminger, Acting Deputy Director
Customer Support and Information Division
Development Services Department

Vena Lewis, Development Project Manager
Customer Support and Information Division
Development Services Department

Attachments:

1. List of BIDs and Permit numbers
2. Maps of BIDs
3. Draft Permits with Conditions (each BID identical)
4. Draft Resolutions with Findings (each BID identical)
5. Community Planning Groups Recommendations
6. Ownership Disclosure Statements
7. BID Public Right-of-Way Enhancement Program
8. LJCPA Request Letter dated March 14, 2006
9. BID Council Response Memo to CACC
10. PROW Enhancement Program Final Report
11. Hold Harmless Agreement (each BID identical)
12. Photos of Adams Ave, North Park and Ocean Beach BIDs
13. CEQA Exemptions