



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: November 27, 2019

REPORT NO. PC-19-107

HEARING DATE: December 12, 2019

SUBJECT: 12th Update (Phase Three) to the San Diego Municipal Code and Local Coastal Program; Process 5

SUMMARY

Issue: Should the Planning Commission recommend City Council approve the 12th Update (Phase Three) to the San Diego Municipal Code and the Local Coastal Program?

Staff Recommendation: Recommend City Council approve the proposed 12th Code Update (Phase Three).

City Strategic Plan Goal and Objectives: Goal #3: Create and sustain a resilient and economically prosperous City. Objective #1: Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

Environmental Review: The CEQA and Environmental Policy Section has reviewed the proposed amendments included within the 12th Update- Phase Three to the Land Development Code (LDC) and Local Coastal Program in the San Diego Municipal Code and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162. Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified EIR No. 96-0333/SCH No. 96081056. Alternatively, the changes would not be subject to CEQA as they would not result in any physical changes to the environment, as described in Attachment 2.

Housing Impact Statement: The proposed amendments would apply to retail and industrial uses and would not have an impact on housing.

BACKGROUND

The Land Development Code (LDC) provides the City's regulations for the development and use of property within the City of San Diego and provides information on zoning, subdivisions, grading and other related land use activities. In December 1997, the City Council adopted a comprehensive update to the LDC. During the adoption hearings, the Council directed the development of a code monitoring and update process to address new issues and unforeseen challenges not anticipated as part of the comprehensive update process. Through these regular updates, the LDC will be more responsive to address the City's changing land use issues.

DISCUSSION

The 12th Update (Phase Three) is in response to the Planning Commission direction on October 24, 2019, concerning the 12th Code Update (Phase 2) where the Planning Commission took the following action:

- Motion: To recommend the City Council approve all items with the following exceptions:
 1. Item 12, Marijuana: Continue to a date certain of December 12, 2019, proposed amendments to three specific sections under 113.0225, 141.0504, and 141.1004 which relate to the measuring of the distance between marijuana uses and sensitive receptors for further discussion/community input.
 2. Request staff to further look into Item 7, Development on a Premises with a Utilized Development Permit regarding the assembly parking revisions prior to the item going to City Council.
- The motion was approved by a vote of 5-0-0 with Commissioner Whalen and Commissioner Austin absent.

Written and public testimony was also provided regarding the expiration of the Conditional Use Permits for Medical Marijuana Consumer Cooperative (MMCC), Cannabis Outlets (CO) and Cannabis Production Facilities (CPF). Please note, CO's and CPF's are known as MO's and MPF's but are proposed to be amended to CO's and CPF's as part of the 12th Code Update (Phase 2).

In response to Planning Commission direction and public testimony, staff has returned with Phase Three, which includes proposed amendments (Attachment 1) to address three cannabis issues:

1. Path of travel measurement between uses:

Currently Section 113.0225, Measuring Distances Between Uses, allows the 1,000-foot minimum separation requirement between CO's and CPF's to take into account topographical and constructed barriers. The distance is measured as the most direct route around a barrier in a manner that establishes direct access.

To avoid ambiguity on what a barrier is, staff is proposing to clarify the distance measurement as a legal pedestrian path of travel between property lines and includes the crossing of a street at street corners or marked crosswalks where available.

2. Straight-line measurement to residential zones:

The 100-foot distance requirement from a residential zone between CO's and CPFs, references Section 113.0225 for measuring the distance. Zones are not uses, and therefore, that section should not apply.

Staff is proposing to add language that clarifies the distance between CO's and CPF's to residential zones is measured horizontally, in a straight line between the two closest points of the property lines without taking into account any barriers.

3. Medical Marijuana Consumer Cooperative (MMCC), Cannabis Outlets (CO) and Cannabis Production Facilities (CPF), Conditional Use Permit expiration.

The current regulations allow CO's and CPFs' that were granted a Conditional Use Permit (CUP) an extension of time via Process Two, up to five years, and not subject to the separation requirements for sensitive uses or zone changes.

The proposed amendments including changing the extension of time to a CUP amendment via Process Two; allowing MMCC's, to amend their CUP's to convert to a CO; allowing expansions within the same premises; and including requirements regarding verification of compliance with all permit conditions, including information on crime reports and code violations.

The CUP amendment would continue to allow the expiration date to be extended up to five years, and would not subject existing CO's and CPF's to the separation requirements for sensitive uses or zone changes.

RECOMMENDATIONS

Code Monitoring Team (CMT): On November 13, 2019, CMT took the following actions:

- Motion #1 to reconsider their vote from October 15, 2019 and recommend approval (approved by an 8-0-1 vote) on the same issue be upheld. The issue was the path of travel measurement between uses and the straight-line measurement to residential zones, as proposed by staff.
- Motion #2 to reconsider and recommend approval of the Medical Marijuana Consumer Cooperative (MMCC), Marijuana Outlets (MO), and Marijuana Production Facilities (MPF) Conditional Use Permit expiration language as proposed by staff. That passed by a vote of 10-0-2.

Technical Advisory Committee (TAC): On November 13, 2019, TAC took the following actions:

- Motion #1 to recommend approval of the path of travel measurement between uses and the straight-line measurement to residential zones, as proposed by staff. That passed by a vote of 8-0-0.
- Motion #2 to recommend approval Medical Marijuana Consumer Cooperative (MMCC), Marijuana Outlets (MO) and Marijuana Production Facilities (MPF), Conditional Use Permit expiration language as proposed by staff. That passed by a vote of 8-0-0.

Community Planners Committee (CPC): On November 26, 2019, CPC took the following action:

- Motion 1: Approve the path of travel as proposed with added language that in addition to the 1000-foot path of travel, the distance also requires a minimum of 600-foot straight line measurement. That passed by a vote of 28-3-0.
- Motion 2: Approve straight line measurement to residential zones and CUP permit expirations are proposed. That passed by a vote of 29-2-0.

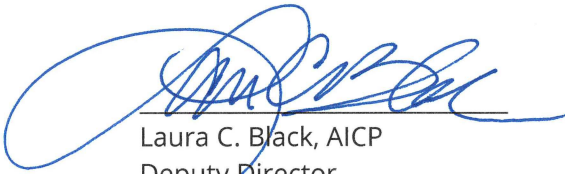
ALTERNATIVES

The Planning Commission may recommend to the City Council that it not adopt the Municipal Code amendments or that it adopts the Municipal Code changes with modifications.

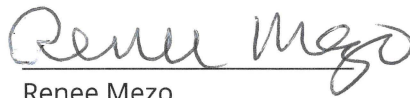
CONCLUSION

Staff recommends approval of the proposed ordinance changes. The code amendments are consistent with the adopted Land Development Code goals to simplify land development regulations, to make the code more adaptable, and to increase predictability in application of the regulations.

Respectfully submitted,



Laura C. Black, AICP
Deputy Director
Planning Department



Renee Mezo
Development Project Manager
Planning Department

BLACK/RM/EG

Attachments:

1. Draft amendment language
2. California Environmental Quality Act consistency evaluation

§113.0225 Measuring Distance Between Uses

When there is a separation requirement between uses, the distance of the separation shall be measured as follows, except as specified by state law. See Diagram 113-02E.

Diagram 113-02E
Distance Between Uses [No change in text.]

- (a) and (b) [No change in text.]
- (c) When measuring distance for separation requirements for *cannabis outlets* or *cannabis production facilities*, the measurement of distance between the uses shall ~~take into account natural topographical barriers and constructed barriers such as freeways or flood control channels that would impede direct physical access between the uses. In such cases, the separation distance~~ shall be measured as the most direct and legal pedestrian path of travel between property lines. For this purpose, the direct and legal pedestrian path of travel includes the crossing of streets only at street corners or via marked crosswalks where available. ~~route around the barrier in a manner that establishes direct access.~~

§126.0303**When a Conditional Use Permit Is Required**

An application for the following types of uses in certain zones may require a Conditional Use Permit. To determine whether a Conditional Use Permit is required in a particular zone, refer to the applicable Use Regulations Table in Chapter 13. The decision process is described in Section 126.0304.

(a) Conditional Use Permits by a Process Two

Cannabis outlet

Cannabis production facilities

Medical marijuana consumer cooperatives as defined in O-20356

(a) (b) Conditional Use Permits Decided by Process Three

Agricultural equipment repair shops through

Wireless communication facilities (under circumstances described in

Section 141.0420)

(a) (c) Conditional Use Permits Decided by Process Four

Botanical gardens and arboretums through

Wrecking and dismantling of motor vehicles

(b) (d) Conditional Use Permits Decided by Process Five

Airport through

Zoological parks

§141.0504 Cannabis Outlets

Cannabis outlets that are consistent with the requirements for retailer or dispensary license requirements in the California Business and Professions Code may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than four *cannabis outlets* are permitted in each City Council District. *Cannabis outlets* are subject to the following regulations.

- (a) *Cannabis outlets* shall maintain the following minimum separation between uses, as measured between *property lines*, ~~in accordance with Section 113.0225:~~
 - (1) 1,000 feet from resource and population-based city parks, other *cannabis outlets*, *churches*, child care centers, *playgrounds*, libraries owned and operated by the City of San Diego, *minor-oriented facilities*, residential care facilities, and schools. For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between *property lines*, in accordance with Section 113.0225 (c).
 - (2) 100 feet from a residential zone. The distance shall be measured horizontally in a straight line between the two closest points of the

property lines without regard to topography or structures that would interfere with a straight-line measurement.

- (b) Lighting shall be provided to illuminate the interior, facade, and the immediate surrounding area of the *cannabis outlet*, including any *accessory uses*, parking lots, and adjoining sidewalks. Lighting shall be hooded or oriented to deflect light away from adjacent properties.
- (c) Security shall be provided at the *cannabis outlet* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premises* during business hours. The security guard shall only be engaged in activities related to providing security for the facility, except on an incidental basis.
- (d) Primary *signs* shall be posted on the outside of the *cannabis outlet* and shall only contain the name of the business, which shall contain only alphabetic characters, and shall be limited to two colors. Secondary *signs advertising cannabis*, window *signs* and any display visible from the *public right-of-way* are not permitted.
- (e) The name and emergency contact phone number of an operator or manager shall be posted in a location visible from outside the *cannabis outlet* in character size at least two inches in height.

- (f) The *cannabis outlet* shall operate only between the hours of 7:00 a.m. and 9:00 p.m., seven days a week.
- (g) The use of vending machines which allow access to *cannabis* and *cannabis* products except by a responsible person, as defined in San Diego Municipal Code Section 42.1502, is prohibited. For purposes of this Section, a vending machine is any device which allows access to *cannabis* and *cannabis* products without a human intermediary.
- (h) through (m) [No change in text.]
- (n) ~~An extension of time for a~~ A Conditional Use Permit ~~for a granted to a~~ *cannabis outlet* or medical marijuana consumer cooperative as defined in O-20356 converting to a *cannabis outlet*, shall comply with the requirements of Section 126.0111, with the following exceptions: may be amended in accordance with a Process Two Decision as described in Section 112.0503, subject to this section.
- Amendments for *cannabis outlets* or medical marijuana consumer cooperatives as defined in O-20356 converting to a *cannabis outlet* that do not comply with the regulations in Section 141.0504 (n) may be permitted with a Conditional Use Permit decided in accordance with Process Three as described in Section 112.0505 subject to this section.
- (1) ~~The extension shall be for no more than five years.~~ The applicant shall provide documentation, satisfactory to the City Manager, verifying compliance with the Conditional Use Permit conditions

and requirements, including but not limited to Cannabis Business Tax in accordance with Chapter 4, Article 4, Division 1 and the State of California Licensing Authority, during the operational duration of the permit.

- (2) ~~A decision on an application for an extension amendment of time shall be made in accordance with Section 126.0304 Process Two. Appeals of a decision to approve an extension of time shall be made to the Planning Commission. The applicant shall provide available documentation from the City of San Diego Police Department specifying reported crimes and/or Development Services Department identifying confirmed violations on the premises, satisfactory to the City Manager for the operational duration of the permit.~~
- (3) The separation requirements in Section 141.0504(a) shall not be considered in making the findings required ~~in Section 126.0111(g)~~ for amendments processed in accordance with Section 141.0504 (n) when a specified use in Section 141.0504(a) has located within the required distance after the approval date of the ~~initial~~ current Conditional Use Permit.
- (4) A change in zoning after the approval date of the ~~initial~~ current Conditional Use Permit shall not be considered in making the findings required ~~in Section 126.0111(g)~~ for amendments processed in accordance with Section 141.0504 (n).

- (5) The *cannabis outlet* or medical marijuana consumer cooperative shall not be expanded beyond the current *premises*.
- (6) A Conditional Use Permit for a *cannabis outlet* or medical marijuana consumer cooperative may be amended one or more times. An application for an amendment may include a request to extend the expiration date for a period not to exceed five years. An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date and the Conditional Use Permit will automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.

§141.1004 Cannabis Production Facilities

A *Cannabis production facility* may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a “C” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), provided that no more than 40 *cannabis production facilities* are permitted in the City of San Diego. *Cannabis production facilities* are subject to the following regulations.

- (a) *Cannabis production facilities* shall maintain the following minimum separation between uses, as measured between *property lines*, ~~in accordance with Section 113.0225:~~

(1) 1,000 feet from resource and population-based city parks, other *cannabis outlets, churches, child care centers, playgrounds, libraries owned and operated by the City of San Diego, minor-oriented facilities, residential care facilities, and schools.* For purposes of this section, school means any public or private institution of learning providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance shall be measured between *property lines*, in accordance with Section 113.0225 (c).

(2) 100 feet from a residential zone. The distance shall be measured horizontally in a straight line between the two closest points of the *property lines* without regard to topography or *structures* that would interfere with a straight-line measurement.

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

(e) through (g) [No change in text]

(h) ~~An extension of time for a~~ A Conditional Use Permit Amendment granted to a ~~marijuana production facility~~ *cannabis production facility* shall comply with the requirements of Section 126.0111, with the following exceptions: may be processed in accordance with a Process Two Decision as described in Section 112.0503, subject to this section.

Amendments for cannabis production facilities that do not comply with the regulations in Section 141.1004 (h) may be permitted with a Conditional Use Permit decided in accordance with Process Three as described in Section 112.0505, subject to this section.

- (1) ~~The extension shall be for no more than five years. The applicant~~ shall provide documentation, satisfactory to the City Manager, verifying compliance with the Conditional Use Permit conditions and requirements, including but not limited to Cannabis Business Tax in accordance with Chapter 4, Article 4, Division 1 and the State of California Licensing Authority, during the operational duration of the permit.
- (2) ~~A decision on an application for an extension amendment of time shall be made in accordance with Section 126.0304 Process Two. Appeals of a decision to approve an extension of time shall be made to the Planning Commission. The applicant shall provide~~ available documentation from the City of San Diego Police Department specifying reported confirmed crimes and/or violations from Development Services Department, conducted on the premises, satisfactory to the City Manager for the operational duration of the permit.
- (3) ~~The separation requirements in Section 141.0504(a) 141.1004(a) shall not be considered in making the findings required in Section 126.0111(g) for amendments processed in accordance with Section~~

141.1004 (h) when a specified use in Section 141.0504(a) has located within the required distance after the approval date of the ~~initial~~ current Conditional Use Permit.

- (4) A change in zoning after the approval date of the ~~initial~~ current Conditional Use Permit shall not be considered in making the findings required ~~in Section 126.0111(g).~~ for amendments processed in accordance with Section 141.1004 (h).

- (5) The *cannabis production facility* shall not be expanded beyond the *current premises*.

- (6) A Conditional Use Permit for a *cannabis production facility* may be amended one or more times. An application for an amendment may include a request to extend the expiration date for a period not to exceed five years. An amendment application to extend the expiration date of a Conditional Use Permit must be submitted and *deemed complete* prior to the Conditional Use Permit expiration date and the Conditional Use Permit will automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.

(i) through (k) [No change in text]

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

DATE: November 18, 2019

TO: Renee Mezo, Development Project Manager III, Planning Department

FROM: Rebecca Malone, AICP, Senior Planner, Planning Department

SUBJECT: Amendments Pertaining to Marijuana Outlets and Projection Facilities Included within 12th Update to the Land Development Code (Phase Two) - 15162 Evaluation

The CEQA and Environmental Policy Section of the Planning Department has completed a California Environmental Quality Act (CEQA) Section 15162 consistency evaluation in compliance with Public Resources Code Section 21166 for the proposed amendments included within the 12th Update to the Land Development Code (LDC) and Local Coastal Program in the San Diego Municipal Code. The proposed amendments involve the regulation of cannabis outlets and production facilities and include proposed changes to the San Diego Municipal Code: Chapter 11, Article 3; Chapter 12, Article 6; and Chapter 14, Article 1.

BACKGROUND

The LDC consolidated development regulations into a sequence of chapters of the Municipal Code (Chapters 11-15) to simplify the City's land development regulations; make the land development regulations more objective; make the code more adaptable; eliminate redundancies and contradictions; standardize the code framework; and increase predictability in the application of land development regulations. The certified LDC EIR anticipated that regular updates of the LDC would occur to maintain the code in accordance with the goals described above.

The LDC EIR analyzed the environmental effects associated with adoption and implementation of the proposed LDC, related regulations, amendments, and appeals. The LDC EIR identified significant unmitigated impacts in the following issue areas: Land Use, Biological Resources, Landform Alteration, Historical Resources, Paleontological Resources, and Human Health and Public Safety. Cumulative impacts were also identified to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources. A Mitigation Monitoring and Reporting Program was adopted with the LDC EIR to reduce potentially significant impacts to Land Use, Biological Resources, Historical Resources, Landform Alteration/Neighborhood Character, Paleontological Resources, Natural Resources, and Human Health and Safety.

PROJECT SCOPE AND DESCRIPTION

The proposed amendments included within the 12th Update to the LDC involve the regulation of

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cannabis outlets and production facilities. Amendments to LDC §113.0225, §141.0504, and §141.1004 would change the distance requirement to public direct physical access between uses and clarify the distance from residentially zoned property for cannabis outlets and production facilities and add regulations for the expiration of Conditional Use Permits for medical marijuana consumer cooperatives and Marijuana Production Facilities. The amendment to §126.0303 would add cannabis outlets, cannabis production facilities, and medical marijuana consumer cooperatives as defined in O-20356 to the types of uses that would require a Conditional Use Permit Decided by Process Two.

CEQA GUIDELINES SECTION 15162 CONSISTENCY EVALUATION

CEQA Guidelines Section 15162:

When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The proposed amendments would not result in new significant environmental effects or substantially increase the severity of previously identified significant effects. The LDC EIR analyzed the environmental effects associated with adoption and implementation of the proposed LDC, related regulations, amendments, and appeals. The proposed amendments would change the distance requirement to public direct physical access between uses and clarify the distance requirements from residentially zoned property for cannabis outlets and

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production facilities; add regulations for the expiration of Conditional Use Permits for medical marijuana consumer cooperatives and Marijuana Production Facilities; and add cannabis outlets, cannabis production facilities, and medical marijuana consumer cooperatives as defined in O-20356 to the types of uses that would require a Conditional Use Permit Decided by Process Two.

The clarification of the separation distance requirement would continue to implement the intent of separation requirements analyzed in the LDC EIR, which is to ensure appropriate separation distances to protect certain sensitive land uses from other land uses. In this instance, the separation distance between sensitive land uses and cannabis facilities is to ensure that there is an appropriate separation between the uses. Clarifying that the distance is measured based on physical access, rather than as the crow flies, would continue to meet the intent for the originally established separation distances. As an example, where a separation distance as the crow flies involves a steep hillside or access across a large freeway, the intent of the separation distance is not applicable as the separation naturally occurs with such barriers. The limits on the amount of facilities permitted within a council district would continue to apply.

Additionally, under the proposed amendments, Conditional Use Permits for cannabis outlets, cannabis production facilities, and medical marijuana consumer cooperatives would continue to be subject to the same review process pursuant to the LDC, which includes CEQA review, as any other project. The Conditional Use Permit review would continue to depend on the specifics of the projects, such as size, location, and whether the project involves new construction or modifications to the exterior of an existing structure. Thus, the proposed amendments are within what was anticipated in and analyzed by the LDC EIR.

Extending the permit for medical marijuana consumer cooperatives based on the permits originally issued similarly would not result in any physical changes to the environment, as such facilities would continue to exist as each currently does.

The proposed project is consistent with and covered by the LDC EIR, or is otherwise not subject to CEQA because it would not result in any physical impacts to the environment. The Planning Department finds that none of the three criteria listed above has occurred in that the proposed amendments would not result in any new or more severe significant impacts than previously disclosed; no significant changes in circumstances have occurred; and no new information is now known that was not previously known that would result in new or more severe significant impacts than previously disclosed.

CONCLUSION

The CEQA and Environmental Policy Section has reviewed the proposed amendments included within the 12th Update to the Land Development Code (LDC) and Local Coastal Program in the San Diego Municipal Code and conducted a consistency evaluation pursuant to CEQA Guidelines Section 15162. Implementation of this project's actions would not result in new significant direct, indirect, or cumulative impacts over and above those disclosed in the previously certified EIR No. 96-0333/SCH No. 96081056. Alternatively, the changes would not be subject to CEQA as they would not result in any physical changes to the environment, as described in this memorandum.

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A handwritten signature in cursive script that reads "Rebecca Malone".

Rebecca Malone, AICP
Senior Planner
Planning Department

Cc: Alyssa Muto, Deputy Director, Planning Department
Laura Black, Deputy Director, Planning Department
Heidi Vonblum, Program Manager, Planning Department
Brian Schoenfisch, Program Manager, Planning Department
Anna McPherson, Program Manager, Development Services Department
Edith Gutierrez, Development Project Manager III, Development Services Department