

# Land Development Code Update Request Example

The following example is provided to assist with the completion of a Land Development Code Update Request Application (the remaining pages contain the PDF uploaded under "File Attachments")

## LDC Amendments

### Date of Request \*

02/27/2019

### Submitter Name \*

Jane Staffmember

### Affiliation \*

- City Staff  
 Council Office  
 Public  
 Other

### Email Address \*

JStaffmember@sandiego.gov

### Phone Number \*

619.555.5555

### Name of Item \*

Development on a Premises with a Utilized Development Permit

### Type of Amendment \*

- Regulatory Reform  
 Correction  
 New Regulation  
 Compliance with State Law  
 Other

### Is this implementing a state law? \*

- Assembly Bill  
 State Senate Bill  
 N/A

### Bill Number (if applicable)

### Is compliance with the state bill mandatory or optional?

- Mandatory  
 Optional  
 N/A

### Background \*

Briefly summarize the relevant existing regulations or review process.

When a property obtains a development permit it is recorded against the property and once it is utilized it runs with the land in perpetuity unless it is rescinded or (in the case of some use permits) expires. Subsequent projects are reviewed for conformance with the development permit, and projects that differ from the scope outlined in the permit are reviewed for substantial conformance with the development permit. Projects found to not be in substantial conformance require further discretionary review and action, often in the form of an amendment to the existing development permit. This is true even if the new development proposed is a permitted use in the base zone, complies with all applicable development regulations, and does not otherwise require a development permit.

### Issue \*

Briefly summarize the issue or problem that has triggered the need for the proposed amendment. Please include any real-world project examples.

When the allowable land uses and development intensity for an area are established through the adoption of a community plan and associated zoning actions, the environmental impacts of those land use decisions are fully analyzed and mitigated to the extent feasible or a Statement of Overriding Considerations is adopted. Requiring additional development that fully complies with those land use actions and does not require a development permit to go through a discretionary process simply because there is an existing utilized development permit creates unnecessary delays and costs for applicants. This is true for development of all types, and recently surfaced as an issue for church properties looking to construct affordable housing on site. Churches are often located in zones that allow residential uses by right, but the church use requires a Conditional Use Permit (CUP) which limits the use of their property without an amendment to the CUP.

### Objective \*

Provide a one or two sentence statement of what you want to achieve with the proposed amendment.

To encourage the build-out of communities as planned for and assist in meeting the City's Regional Housing Needs Assessment (RHNA) goals by providing regulatory relief for properties with existing utilized development permits.

### Solution \*

Briefly summarize how you propose to address the issue and achieve the objective with your proposed amendments.

The proposed Municipal Code amendments will facilitate the construction of new development on a property with a utilized development permit without the need to amend the existing permit, provided that proposed development meets the following requirements:

1. The proposed use is permitted by-right or as a limited use and complies with all limited use regulations.
2. The development complies with all applicable development regulations.
3. The proposed development does not require additional development permits.
4. The premises complies with all applicable conditions of the utilized development permit, except as permitted by the Code.

### File Attachments \*

Strike-out/underline of code amendment

DRAFT\_Code\_Amend\_Develop\_with\_Utilized\_Dev\_Permit\_TEXT\_ONLY\_20191029.pdf

Drag and drop files here or [browse files](#)

### List of code sections affected by your proposal \*

Please search the entire Land Development Code to identify all sections that relate to your proposal.

121.0302, 125.0150, 126.0112, 126.0113, 126.0114, 126.0115, 126.0206, 126.0306, 126.0405, 126.0506, 126.0606, 126.0716, 126.0723, 132.1515, 141.0602, 142.0530, 143.0303, 143.0375, 143.0403, 143.0473, 156.0315,

### Is it controversial? \*

- No  
 Yes  
 Unsure

### Is it complex? \*

- No  
 Yes  
 Unsure

Send me a copy of my responses

### Email address

jstaffmember@sandiego.gov

Submit

**Issue Item #7: Development on a Premises with a Utilized Development Permit**

**§121.0302 Required Compliance with the Land Development Code**

- (a) It is unlawful for any person to maintain or use any premises in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions except as provided in Sections 126.0112 and 126.0113, or without a required variance.
- (b) through (i) [No change in text.]

**§125.0150 Tolling of Tentative Maps and Associated Development Permits**

- (a) Pursuant to *Subdivision Map Act* Section 66452.6(c), an *applicant* may request a tolling of the expiration of an approved or conditionally approved *tentative map* for up to 5 years while a lawsuit involving the approval or conditional approval of the *tentative map* is or was pending in a court of competent jurisdiction. Associated *development permits* may also be tolled in accordance with Sections 125.0150 and 126.01156.
- (b) through (e) [No change in text.]

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

- (a) A proposed ~~minor~~ modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit.
- (b) [No change in text.]
- (c) Where a *development permit* requires compliance with a regulation in effect on the date of approval, but that regulation is subsequently amended, the *permit holder* may utilize the amended regulation without obtaining an amendment to its *development permit* if ~~it obtains a Process Two Neighborhood Development Permit~~, or the *permit holder* can demonstrate to the satisfaction of the City Manager that the resulting *development* is in *substantial conformance* with the approved *development permit*. Utilizing reduced parking requirements shall not preclude a determination of *substantial conformance*.
- (d) If a determination of *substantial conformance* cannot be made for a *development* seeking to utilize an amended regulation in accordance with Section 126.0112(c), the *permit holder* may utilize the amended regulation if a Process Two Neighborhood Development Permit is obtained.

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

**§126.0113 Development on a Premises with a Utilized Development Permit**

The purpose of this Section is to allow *development* to occur on a *premises* that has an existing utilized *development permit* in accordance with Section 126.0108, when the *development* proposed is not included within the scope of the utilized *development permit* but complies with the use and *development* regulations of the applicable base zone or overlay zone.

(a) *Development* that is not included within the scope of an existing utilized *development permit* may be approved without an amendment to the *development permit* in accordance with a Process One, subject to all of the following:

(1) The proposed use(s) are listed as a permitted use in the applicable base zone and overlay zone(s), or as a limited use and the *development* complies with all limited use regulations;

(2) The proposed *development* complies with all *development* regulations of the applicable base zone and overlay zone(s), any except as provided in Chapter 14, Article 3, Division 7, through the use of incentives or waivers;

(3) The proposed *development* does not require additional *development permits*; and

(4) Except as permitted by Section 126.0112, all *development* within the scope of the utilized *development permit* that has received a *construction permit* complies with the applicable conditions of the *development permit*.

(b) If the utilized *development permit* was approved concurrently with an individual, project-specific rezone action, a proposed *development* cannot apply the provisions of Section 126.0113(a) unless:

(1) A comprehensive Community Plan Update has occurred subsequent to the approval of the utilized *development permit*; or

(2) The utilized *development permit* allowed the maximum development allowed under the base zone and/or applicable

overlay zones, accounting for any building restricted easements required as part of the project.

**§126.01134 Amendments to a Development Permit**

(a) [No change in text.]

(b) A proposed change in use from one use category to another or the change, addition, or deletion of a use within the same use category may require an amendment to a Neighborhood Use Permit or a Conditional Use Permit, depending on the uses allowed by the permit; except as provided in Sections 126.0112 and 126.0113.

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

(e) Within the Coastal Overlay Zone, a proposed change in use which will result in ~~a change in intensity~~ an intensification of use requires an amendment or a new Coastal Development Permit.

(f) [No change in text.]

**§126.01145 Closing of a Development Permit Application**

[No change in text.]

**§126.01156 Tolling of a Development Permit**

[No change in text.]

**126.0206 Violations of a Neighborhood Use Permit**

It is unlawful for any person to maintain, use, or develop any premises without a Neighborhood Use Permit if such a permit is required for that use or development or to maintain, use, or develop any premises contrary to the requirements or conditions of the Neighborhood Use Permit, except as provided in Sections 126.0112 and 126.0113. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

**§126.0306 Violations of a Conditional Use Permit**

It is unlawful for any person to maintain, use, or develop any *premises* without a Conditional Use Permit if such a permit is required for that use or *development* or to maintain, use, or develop any *premises* contrary to the requirements or conditions of an existing Conditional Use Permit, except as provided in Sections 126.0112 and 126.0113. Violation of any provision of this division shall be

subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

**§126.0405      Violations of a Neighborhood Development Permit**

It is unlawful for any person to maintain, use, or develop any premises without a Neighborhood Development Permit if such a permit is required for that use or development or to maintain, use or develop any premises contrary to the requirements or conditions of an existing Neighborhood Development Permit, except as provided in Sections 126.0112 and 126.0113. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

**§126.0506      Violations of a Site Development Permit**

It is unlawful for any person to maintain, use, or develop any premises without a Site Development Permit if such a permit is required for the use or development, or to maintain, use, or develop any premises contrary to the requirements or conditions of an existing Site Development Permit, except as provided in Sections 126.0112 and 126.0113. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

**§126.0606      Violations of a Planned Development Permit**

It is unlawful for any person to maintain, use, or develop any premises without a Planned Development Permit if such a permit is required for the use or development, or to maintain, use, or develop any premises contrary to the requirements or conditions of an existing Planned Development Permit, except as provided in Sections 126.0112 and 126.0113. Violations of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violation of this division shall be treated as strict liability offenses regardless of intent.

**§126.0716      Modifications and Amendments to a Coastal Development Permit**

Minor modifications and amendments to a previously approved Coastal Development Permit issued by the City shall be decided in accordance with Sections 126.0112 and 126.0113~~4~~.

**§126.0723      Violations of a Coastal Development Permit**

It is unlawful for any person to maintain, use, or undertake coastal development on any lot or premises without a Coastal Development Permit if such a permit is required for the use or development or to maintain, use, or develop any premises contrary to the requirements or conditions of an existing Coastal Development Permit, except as provided in Sections 126.0112 and 126.0113. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this division shall be treated as strict liability offenses regardless of intent.

### **§132.1515 Safety Compatibility**

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

(d) An *applicant* may request approval of a Neighborhood Development Permit for a non-residential *development* where an alternative method of calculation is requested to demonstrate compliance with the maximum intensity (people per acre).

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

(3) The *development permit* shall specify the maximum intensity for the site, and shall require amendment of the *development permit* in accordance with Section 126.011~~3~~<sup>4</sup> for any future *development* that would exceed the maximum intensity specified in the permit.

(4) [No change in text.]

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

### **§141.0602 Assembly and Entertainment Uses, Including Places of Religious Assembly**

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

(a) General Regulations

(1) [No change in text.]

(2) Assembly and entertainment uses shall provide off-street parking according to Table 142-05G, the following: Within Transit Priority Areas parking may be reduced below the minimum required in order to construct residential development. The reduction in parking allowed shall be limited to the footprint of the residential structures and any required landscape or open space for the residential development.

(A) If the specific type of assembly and entertainment use is specified in Table 142-05G, the applicable off-street parking standard in Table 142-05G shall apply.

(B) If the specific type of assembly and entertainment use is not specified in Table 142-05G, off-street parking shall be provided as follows:

(i) If seating is fixed, one parking space shall be provided per three seats in the assembly area or one parking space per 60 inches of bench or pew seating space, whichever is greater.

(ii) If seating is not fixed, 30 parking spaces shall be provided per 1,000 square feet of assembly area.

(3) [No change in text.]

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

**§142.0530 Nonresidential Uses – Parking Ratios**

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

(c) Nonresidential Uses. Table 142-05G establishes the required ratio of parking spaces to building *floor* area for the nonresidential uses shown that are not covered by the parking requirements in Section 142.0530(a) and (b).

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

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

<b>Commercial Services</b>			
<b>Public assembly &amp; entertainment</b>			
All other assembly and entertainment	<del>1 per 3 seats or 1 per 60 inches of bench or pew seating, whichever is greater; or 3025</del> per 1,000 square feet of assembly area if seating is not fixed	85% of Minimum <sup>7</sup>	[No change in text]

**Footnotes For Table 142-05G**

<sup>1</sup> through <sup>6</sup> [No change in text]

<sup>7</sup> Except as provided in Section 141.0602(a)(2)(C)

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

**§143.0303 Permitted Uses with Neighborhood Development Permits and Site Development Permits**

The following regulations apply to all Neighborhood Development Permits or Site Development Permits.

(a) [No change in text.]

(b) Changes of use on a *premises* do not require an amendment of the approved Neighborhood Development Permit or Site Development Permit if the proposed use is permitted in the applicable zone and ~~no exterior modifications to the existing structures or associated exterior facilities are being made~~ required to accommodate the proposed use change complies with Sections 126.0112 or 126.0113. ~~Proposed changes of use that require exterior modifications to the existing structures require an amendment to the approved Neighborhood Development Permit or Site Development Permit when the modifications are not in substantial conformance with the approved permit.~~

(c) [No change in text.]

**§143.0375 Maintenance Requirements for Neighborhood Development Permits and Site Development Permits**

All development approved with a Neighborhood Development Permit or Site Development Permit is subject to the following regulations.

(a) All developments shall be constructed and maintained in accordance with the approved plans and conditions contained in the Neighborhood



Development Permit or Site Development Permit, except as provided in Sections 126.0112 and 126.0113.

(b) [No change in text.]

#### **§143.0403 Permitted Uses with a Planned Development Permit**

The following regulations apply to all Planned Development Permits

(a) [No change in text.]

(b) Changes of use on a *premises* ~~will do~~ not require an amendment of the approved Planned Development Permit, if the proposed use is permitted in the applicable zone and ~~no exterior modifications to the existing structures or associated exterior facilities will be required to accommodate the proposed use change~~ complies with Sections 126.0112 or 126.0113. ~~Proposed changes of use that require exterior modifications to the existing structures require an amendment to the approved Planned Development Permit when the modifications are not insubstantial conformance with the approved Planned Development Permit.~~

(c) [No change in text.]

#### **§143.0473 Maintenance Requirements for Planned Development Permits**

All approved Planned Development Permits must be maintained in compliance with the following regulations:

(a) All developments shall be constructed and maintained in accordance with the approved plans and conditions contained within the approved Planned Development Permit, except as provided in Sections 126.0112 and 126.0113.

(b) [No change in text.]

#### **§156.0315 Separately Regulated Uses**

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

(e) *Alternative Interim Uses* within Neighborhood Mixed Use Centers and along *Main Streets* and *Commercial Streets* are permitted upon approval of a Conditional Use Permit in accordance with Process Three, when the following *findings* are made:

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

The initial term for a Conditional Use Permit permitting *Alternative Interim Uses* shall not exceed a ten-year period. Extensions may be approved in accordance with Section 126.011~~34~~, but shall not exceed an additional ten-year period.

(f) through (j) [No change in text.]

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