DATE ISSUED:	February 4, 2011	REPORT NO.: PC-11-017
ATTENTION:	Planning Commission, Agenda of Febru	uary 10, 2011
SUBJECT:	CENTRE CITY SITE DEVELOPMENT 2010-54 TO ALLOW IMPLEMENTATIO RIGHT-OF-WAY ENHANCEMENT PR VILLAGE AND DOWNTOWN SAN DI BUSINESS IMPROVEMENT DISTRICT	ON OF THE CITY'S PUBLIC OGRAM IN THE EAST EGO PARTNERSHIP
APPLICANT:	San Diego Business Improvement District	Council

SUMMARY

Issue: Should the Planning Commission approve two Site Development Permits (SDPs) that would allow the implementation of the City's Public Right-of-Way Enhancement (PROW Program) within the East Village and Downtown San Diego Partnership ("Partnership") Business Improvement Districts (BIDs)? The PROW Program allows business owners to place specific types of temporary enhancements within designated right-of-way areas in front of their businesses, subject to the approval and oversight of the BID staff.

Staff Recommendation: Staff recommends that the Planning Commission approve Centre City SDPs 2010-40 and 2010-54.

<u>Community Planning Group Recommendation</u>: The SDPs for the East Village and the Partnership BIDs were reviewed by the Centre City Advisory Committee (CCAC) at the July 21, 2010 and September 22, 2010 meetings, respectively. The CCAC voted unanimously to recommend both permits for approval by the Planning Commission (East Village SDP: 19-0 and Partnership SDP: 18-0)

Environmental Review: This project is categorically exempt from the California Environmental Quality Act (CEQA) under State CEQA Guidelines Section 15301 ("Existing Facilities"). This exemption applies to the permitting, operation and/or minor alteration of existing public and private structures/facilities.

Fiscal Impact Statement: None.

<u>Code Enforcement Impact</u>: Program implementation and enforcement is the responsibility of the respective BID staff. Cases that are unresolved by BID staff are forwarded to Code Enforcement for further action. The SDPs are subject to two-year reviews to ensure BID staff are adequately implementing and enforcing program requirements, and that significant code enforcement complaints have not been received.

Housing Impact Statement: None.

401 B Street, Suite 400 | San Diego, CA 92101-4298 | Phone 619-235-2200 | Fax 619-236-9148 | www.ccdc.com

BACKGROUND

On June 12, 2003, the Planning Commission approved a two-year Business Improvement District Public Right-of-Way Enhancement Pilot Program, which became known as the PROW Program, for four BIDs (Adams Avenue, Little Italy, North Park and Ocean Beach). The pilot program was conceived to address the requests of several BIDs to create a process by which BID members could receive approval to place specific types of movable, non-permanent enhancements on sidewalk areas in front of their businesses. The pilot program allowed BID staff to issue permits for the placement of freestanding A-frame signs, outdoor display items (merchandise), and outdoor dining furniture (including chairs, tables, umbrellas, planter boxes and pots, and temporary railings) on sidewalk areas located adjacent to ground-level businesses. The program provided a means to allow these types of enhancements since they were either not permitted by City regulations (in the case of freestanding signs and outdoor merchandise), or required a more lengthy and expensive Neighborhood Use Permit (NUP) process for approval (for sidewalk cafés). The program was intended to provide a less expensive and expedited process to facilitate the activation and beautification of the streetscape.

Numerous businesses participated in the pilot program, and the City's Neighborhood Code Compliance Department (NCCD) received no formal complaints during the two-year pilot program. Based on the success of the pilot program, on March 30, 2006, the Planning Commission approved SDPs to implement the PROW Program in twelve BIDs (Adams Avenue, City Heights, College Area, Hillcrest, La Jolla, Little Italy, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach and San Ysidro). SDPs for the program must be renewed every two years. If the NCCD has received no significant complaints regarding program implementation or monitoring, the SDP renewal is automatic.

The PROW Program which started out as a two year demonstration program in 2003 has expanded from three participating BIDs to twelve as of April 2006. The BID Council is now seeking to expand the program to the East Village and Partnership BIDs.

DISCUSSION

The PROW Program allows the placement of signs or merchandise/goods in the public right-ofway. This is not permitted in areas of the City that do not participate in the PROW program. Placement of tables and chairs is permitted throughout the City, subject to the issuance of a Neighborhood Use Permit (Process 2) for a sidewalk café. Existing sidewalk café regulations require an eight-foot clear path between café railings and obstructions. The primary differences in the PROW Program regulations are that barriers around seating areas are not required, and a four-foot clear path of travel is allowed (consistent with the minimum required by the Americans with Disabilities Act Guidelines and Title 24). It should be noted that within the Little Italy Neighborhood, the PROW program requires a minimum <u>six-foot</u> clear path, and staff recommends this standard be implemented for the East Village and Partnership BIDs as well.

To avoid conflict with California Department of Alcoholic Beverage Control (ABC) regulations, alcohol cannot be sold or consumed in outdoor dining areas permitted under the PROW program. Businesses that wish to serve alcohol must obtain an NUP for a sidewalk café and a license from the ABC.

Approval of the proposed SDPs would allow BID staff to implement the PROW program within the boundaries of the respective BIDs. Participating members if the BIDs would apply to BID staff for approval to place freestanding A-frame signs, display merchandise/goods and/or establish outdoor dining areas on sidewalk areas fronting their businesses. All such enhancements would be required to comply with the "General Requirements, Standards and Conditions" of the PROW Program, and BID staff would be responsible for reviewing proposed plans and enforcing program requirements. The attached copy of the PROW Program lists the types and allowed locations of enhancements, establishes safety and maintenance requirements, outlines approval and enforcement processes, and describes the responsibilities and obligations of the participating business and BID staff. In order to participate in the program, businesses are required to execute a Hold Harmless agreement to indemnify and hold harmless the City against any claims, demands, losses, damages or expenses arising from implementation of the program. Participating businesses are also required to maintain liability insurance, naming the City as an insured, to protect against claims arising from the installation/presence of the public right-of-way enhancements. The program in no way impacts the City's rights with respect to the public rightof-way.

Since 2006, the PROW Program has been successfully implemented within the Little Italy BID by the Little Italy Association (LIA). The program has resulted in significant beautification and activation of the streetscape throughout the Little Italy neighborhood. The key to the success of the program in Little Italy, as in the other districts where it has been implemented, has been the stewardship and monitoring of the LIA. BID staff would need to exercise similar oversight in order to ensure the success of the program in the East Village and Partnership BIDs. If approved, the SDPs will be subject to review every two years to ensure that adequate oversight is being employed and that significant code enforcement complaints have not been received.

Site Development Permit

Approval of an SDP requires the Planning Commission to make certain findings. A discussion of the required findings and the project's compliance with them is as follows:

1. The proposed development will not adversely affect the applicable land use plan.

The public right-of-way enhancements permitted under the PROW Program would not adversely affect the applicable Land Use Plan (The Downtown Community Plan) as the intent of the program is to enliven and beautify streetscape areas and foster a neighborhood village atmosphere that will stimulate pedestrian and commercial activity.

2. The proposed development will not be detrimental to the public health, safety, and general welfare.

A minimum six-foot clear path of travel will be maintained for all public right-of-way areas subject to the PROW Program (exceeding the four-foot requirement of the American Disabilities Act guidelines). Furthermore, the SDPs require compliance with program regulations which ensure that all enhancements provided under the program are maintained in a safe, sanitary and attractive manner. Non-compliance with program regulations will require removal of the enhancements and potential disqualification of a business from participation in the program. Initial enforcement of program regulations is the responsibility of the BID; however, the City maintains all rights with respect to the public right-of-way, and has the authority to order the immediate removal of enhancements as necessary to protect life, health, safety or public welfare. The SDP is subject to two-year reviews by NCCD to ensure that significant complaints have not being received and that the BID is responsibly implementing and monitoring program implementation.

3. The proposed development will comply with the applicable regulations of the Land Development Code

The PROW Program will allow ground floor business owners to place a freestanding A-frame sign and specific outdoor display items and dining furniture in public right-of-way areas fronting their businesses. All proposed enhancements in the public right-of-way will comply with the applicable regulations of the Land Development Code through approval of an SDP and compliance with the regulations of the PROW Program.

CONCLUSION

In order to ensure that the PROW Program is properly implemented, the BID Council has committed to providing technical assistance to the East Village and Partnership BID staff on an as-needed basis. The BID Council will also provide mandatory training for all BID staff on program processes and requirements before the BID may commence the program. In addition, individual business owners who wish to participate in the program are required to attend a training session put on by the BID staff, which explains 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 SDPs for implementation of the PROW Program in the East Village and Partnership BIDs.

Respectfully submitted,

Brandon Nichols Associate Planner

Concurred by:

Frank J. Alessi Executive Vice President & Chief Financial Officer

Brad Richter Assistant Vice President, Planning

Attachments:

- 1. PROW Program
- 2. Map of East Village BID Boundary
- 3. Map of Downtown San Diego Partnership BID Boundary
- 4. Draft Resolutions (identical for each BID)
- 5. Site Development Permits (identical for each BID)

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Business Improvement District Council: Public Right-of-Way

Enhancement Program

This program will operate in the following Business Improvement Districts: Adams Avenue, City Heights, College Area, Hillcrest, La Jolla, Little Italy, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach, and San Ysidro

(June 2006)

Business Improvement District Management Corporation Staff

ADAMS AVENUE

Adams Ave. Business Assoc. Jim Schneider, Exec. Director 4649 Hawley Blvd. San Diego, CA 92116 (619) 282-7329 Fax (619) 282-8751 adamsavenue@sbcglobal.net www.gothere.com/adamsave

CITY HEIGHTS City Heights Business Assoc.

Enrique Gandarilla, Exec. Director 3910 University Ave. San Diego, CA 92105 (619) 516-2252 Fax (619) 280-4216 enrique@cityheightsba.org www.cityheightsba.org

COLLEGE AREA College Area Economic Development Corporation Christina Kish, Exec. Director <u>Mailing Address:</u> P.O. Box 151176 San Diego, CA 92175-1176 (619) 582-1093 Fax (619) 582-1293 collegebid@sbcglobal.net www.collegeareabid.com

DIAMOND

Dlamond CDC Cordell Thomas, Exec. Director 5106 Federal Blvd. Suite 105 San Diego, CA 92105 (619) 527-0710 Fax (619) 527-2878 diabid@sbcglobal.net www.diamondbid.org

DOWNTOWN

Downtown San Diego Partnershlp Kevin Casey, Dir. of Public Affairs 401 "B" Street, Suite 100 San Diego, CA 92101 (619) 234-0201 Fax (619) 234-3444 kcasey@downtownsandiego.org www.dtsd.org

EL CAJON BOULEVARD El Cajon Blvd. BIAs Veronica Kleinhen, Business Mgr. 3727 El Cajon Blvd. San Diego, CA 92105 (619) 283-3608 Fax (619) 283-0050 info@theboulevard.org www.theboulevard.org

GASLAMP QUARTER

Gaslamp Quarter Association Jimmy Parker, Exec. Director 614 Fifth Avenue, Suite E San Diego, CA 92101 (619) 233-5227 Fax (619) 233-4693 info@gaslamp.org www.gaslamp.org

HILLCREST

Hillcrest Association Warren Simon, Exec. Director P.O. Box 3714 San Diego, CA 92163 (619) 299-3330 Fax (619) 299-4230 hillcrestbid@aol.com

LA JOLLA

Promote La Jolla Tiffany Sherer, Exec. Director <u>Mailing Address:</u> P.O. Box 9047 La Jolla, CA 92038 <u>Office:</u> 1150 Silverado St., Suite 221 La Jolla, CA 92037 (858) 454-5718 Fax (858) 454-5038 tiffany@lajollabythesea.com www.lajollabythesea.com

LITTLE ITALY

Little Italy Association Marco Li Mandri, Exec. Director 1830 Columbia St. San Diego, CA 92101 (619) 233-3898 Fax (619) 233-4866 mail@littleitalysd.com www.littleitalysd.com

MIDWAY

North Bay Association Joe Mannino, Exec. Director 3045 Rosecrans Street, Ste 207 San Diego, CA 92110 (619) 226-9000 Fax (619) 226-9002 northbayjoe@sbcglobal.net

MISSION HILLS Mission Hills BID Christopher Stokes F

Christopher Stokes, Exec. Director 4019 Goldfinch St. #106 San Diego, CA 92103 (619) 296-8100 Fax (619) 297-9913 <u>MissionHillsChris@yahoo.com</u>

NORTH PARK

North Park Main Street Jennifer Crawford, Asst. Director 3076 University Ave. San Diego, CA 92104 (619) 294-2501 Fax (619) 294-2502 npbid@northparkmainstreet.com www.northparkmainstreet.com

OCEAN BEACH

Ocean Beach Main Street Assoc. Denise (Denny) Knox, Exec. Director 1868 Bacon St. Suite A San Diego, CA 92107 (619) 224-4906 Fax (619) 224-4976 obbid@nethere.com www.OceanBeachSanDiego.com

OLD TOWN

Old Town SD Chamber of Commerce Richard Stegner, Exec. Director <u>Mailing Address</u>: P.O. Box 82686 San Diego, CA 92138 <u>Office</u>: 2383 San Diego Ave. San Diego, CA 92110 (619) 291-4903 Fax (619) 291-9383 <u>otsd@aol.com</u> www.oldtownsandiego.org

PACIFIC BEACH

Discover Pacific Beach Ben Nicholls, Exec. Director 1503 Garnet Ave. San Diego, CA 92109 (858) 273-3303 Fax (858) 581-6748 benjamin@pacificbeach.org www.pacificbeach.org

SAN YSIDRO

San Ysldro Business Association Steve Otto, Exec. Director 318-B East San Ysidro Blvd. San Ysidro, CA 92173 (619) 428-5200 Fax (619) 428-5400 sysidba@pacbell.net

Business Improvement District Council:

Public Right-of-Way Enhancement Program

This program will operate in the following Business Improvement Districts: Adams Avenue, City Heights, College Area, Hillcrest, La Jolla, Little Italy, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach, and San Ysidro.

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Business Improvement District Council: Public Right-of-Way Enhancement Program

This program will operate in the following Business Improvement Districts: Adams Avenue, City Heights, College Area, Hillcrest, La Jolla, Little Italy, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach, and San Ysidro.

I. PURPOSE AND INTENT OF THE PROGRAM

The purpose of the Public Right of Way Enhancement Program (PROW) is to optimize the growth and income of retail businesses and restaurants by allowing and encouraging the use of portions of the public right-of-way between the curb and the adjacent property line. The Program will promote an environment that encourages pedestrian traffic. It will also encourage beautification of the streetscape with landscaping placed in planter boxes and pots.

The program's three areas of endeavor are freestanding signs, outdoor display areas, and outdoor dining areas. A business owner will be allowed to locate these items in the public right-of-way provided he or she obtains approval of the Non-Profit Management Corporation having jurisdiction and then conforms to the requirements of this program.

It is not the intent of the PROW Enhancement Program to set aside existing or future City, State, or Federal regulations regarding public health, safety and accessibility in the public right-of-way.

Note: Only those businesses fronting on the public right-of-way and located on the first floor may participate in the program.

II. ABBREVIATIONS AND DEFINITIONS

ABBREVIATIONS

BID- Business Improvement District NPM- Non-profit Management Corporation. NCCD- City of San Diego Neighborhood Code Compliance Department. PL- Property line PROW- Public Right-of-Way ROW- Right-of-way

DEFINITIONS:

<u>Clear Area:</u> the area adjacent to street furniture as required for a <u>clear path of travel</u> or for maintenance or access as defined in the General Regulations of this Project.

<u>Clear Path of Travel</u>: a route for use by pedestrian and wheelchair users that provides free and unobstructed access to and egress from a building, area, street furniture or location.

<u>Display Item:</u> a product being displayed for public view. See also "Outdoor Display Item".

<u>Display Type:</u> A category of items (such as clothing, artwork, craftwork, books, food, or furniture).

<u>Enhancements</u>: For the purposes of this regulation, "enhancements" shall mean freestanding signs, outdoor display items, and outdoor dining furniture (including chairs, tables, umbrelias, planter pots or boxes, sculptural works, and temporary railings) located in the PROW.

<u>Freestanding sign:</u> A temporary sign that rests on the ground, typically in the PROW, and that is neither temporarily nor permanently attached to the ground, an adjacent building, or any other structure. All other signs require a City permit.

<u>Obstruction:</u> Temporary or permanent objects that might restrict pedestrian travel and access within the PROW. Obstructions include but are not limited to fire hydrants, lamp posts, trees, tree wells, parking meters, street furniture, trash receptacles, kiosks, utility pedestals, newspaper racks, free-standing signs, articles of display, outdoor dining area furniture, bus benches, and bus shelters.

<u>Outdoor Dining Area</u>: Any temporary dining area in the PROW or on private property that is not considered to be an "enclosed" space as defined by the City Land Development Code nor permitted by the City as a sidewalk cafe.

<u>Outdoor Display Item:</u> the particular product being displayed for public view and located outside a building. For this Program, a product being displayed for public view and located in the public right of way.

<u>Path of Travel:</u> A passageway for pedestrians and/or wheelchair users that provides access to and egress from a building, area, or location.

<u>Public Right-of-Way:</u> That portion of a property deeded to the City for streets, curbs, sidewalks, and other public improvements. For the purposes of this Program, the public right-of-way where streetscape enhancements may be located shall include only that portion between the curb and the property line, or where there is no curb, between the outer edge of the roadway and the property line.

Streetscape enhancements: see "enhancements".

<u>Street furniture:</u> items such as utility boxes or poles, bus benches or shelters, newsracks, mailboxes, street trees, lamp poles, or parking meters.

III. GENERAL REQUIREMENTS

- The City's rights with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to place the listed enhancements in the public right-ofway.
- 2. The Business Owner shall agree at all times to indemnify and hold the City free and harmless from and pay in full, any and all claims, demands, losses, damages, or expenses that the City may sustain or incur in any manner resulting from the construction, maintenance, state of use, repair, or presence of the enhancements installed herein under, including any loss, damage or expenses arising out of loss of or damage to property, and injury or death of persons, excepting any loss, damage or expense and claims for a loss, damage or expenses resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents, or employees.
- 3. The Business Owner shall maintain a policy of <u>liability insurance</u> in the nature and amount satisfactory to the City Manager and the City Engineer in order to protect the City, the NPM, and the property owner from any potential claims, which may arise from the enhancements. The policy shall name the City, the NPM, the property owner, and their agents, officers, and employees as an additional insured. The City and the NPM shall be notified in writing by the insurer a minimum of ten (10) business days prior to any cancellation of policy. <u>Cancellation of a business' insurance policy immediately voids participation in the program.</u> A Business Owner needs to show, upon request by any City official or NPM employee, that he has insurance as required by the program. Each NPM shall establish and use a system of spot checking through the duration of the program.
- 4. The Business Owner shall remove or relocate, at Business Owner's own expense, any enhancement within three days after notice by the NPM, within three days after notice by the NPM under direction from the City, within two days after direct notice from the City by request of the NPM, or within two days after direct notice by the City (through a City official or by letter) when immediate response is not possible. If the Business Owner fails to remove or relocate the enhancement in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done and charge the Business Owner for the cost of the work, at the sole discretion of the City, without further notice to the Business Owner. The City also has the authority to order that any enhancement be immediately removed or relocated to protect the life/health/ safety of the public.
- 5. The Business Owner shall maintain the PROW in a safe and sanitary condition at the sole cost, risk, and responsibility of the Business Owner.
- Enhancements shall not be placed in the PROW during any repair or scheduled maintenance of a public utility within one hundred feet of the property lines of the participating business.
- During public events, such as street fairs and parades, enhancements shall not be placed in the PROW without written approval, either general or specific, from the NPM.

8. Enhancements shall be placed so as not to block or obstruct vehicular visibility areas, including but not limited to the 25'-0" visibility triangle required at the intersection of any two streets (Illustration III-A) and the 10'-0" visibility area required at a driveway or alley intersecting a street (Illustration III-A).



This illustration exhibits the specific requirements of the enhancement standards and is intended only as an aid.

9. Enhancements shall be placed so as to maintain a <u>clear path of travel</u> that has (a) a minimum width of 4'-0", (Exceptions only in <u>Little Italy</u> with a 6'-0" minimum width, <u>City Helghts</u> and <u>North Park</u> with a 5'-0" minimum width, <u>La Jolla</u> with an 8'-0" minimum width, and <u>Prospect St. from</u> <u>Herschel to Girard in La Jolla</u> with a 6'-0" minimum width); (b) no more than thirty-degree changes of direction for travel along the PROW itself (Exceptions only in <u>City Helghts</u> and <u>North Park</u> with a required straight path of travel); and (c) no travel onto private property except for access to and egress from a specific business, area, or location. (Illustration III-B).



enhancement standards and is intended only as an aid.

- 10. Enhancements shall be placed no closer than two feet (2'-0") to the curb.
- 11. Enhancements shall be placed so as to not block or obstruct access to building entrances and exits (such as those areas required adjacent to a door for disabled access) and street furniture, including but not limited to, bus benches or shelters and public utility boxes and poles. (Illustration III-C)



12. Enhancements shall be placed in such a way so as not to substantially obstruct a business or restaurant's transparency (i.e. the views into a store or restaurant's interior and window displays). The business' transparency shall meet or exceed that required by the City Land Development Code for the business' zoning and occupancy type. (Illustration III-D)



<u>Illustration III-D: Window Transparency</u> This illustration exhibits the specific requirements of the enhancement standards and is intended only as an aid.

- Enhancements shall be placed a minimum of five feet from any public water facilities including fire hydrants and meter boxes or assemblies. (Illustration III-E)
- 14. Enhancements shall be placed a minimum of two feet from any sewer lateral cleanout in the PROW. (Illustration III-E)



- 15. Enhancements (except flowerpots, flower planter boxes, and statuary) are permitted in the PROW only during business hours. Storage of these items shall be within the building during non-business hours.
- Enhancements shall not be attached to public utility boxes and poles or other street furniture.
- 17. Business services (including those of cashiers or salespersons) and demonstrations shall not be provided in the PROW. Security personnel, business personnel managing an outdoor display area, and waiters or waitresses for outdoor dining areas are permitted in the PROW.
- 18. The PROW shall not be painted, resurfaced, or raised.

NOTE:

- The scope of this Program does not include the installation of awnings, railings, and other permanent structures (except flower pots, flower boxes, and statuary) in the PROW.
- The scope of this Program does not include any work performed or enhancements, whether temporary or permanent in nature, on private property. City ordinances may restrict or prohibit the use of enhancements in

the private property immediately adjacent to the PROW that are permitted in

the PROW under the scope of this Program.
 It is the responsibility of the Business Owner to determine the location of the property line. (Note: Curb to property line dimensions may be obtained from the City Records Department, located on the second floor of the City Operations Building at 1222 Front Street, (619) 446-5200.)

IV. FREESTANDING SIGN STANDARDS

Any business which is not a Home Business and has a current business tax certificate issued by the City may have a freestanding sign complying with these standards.

Note: Only those businesses fronting on the PROW (*Public Right-of-Way*) and located on the first floor may participate in this Program. Enhancements may be placed only in the PROW directly in front of the Business's storefront. Enhancements that do not comply with the General Requirements, Standards, and Conditions of this Program are not allowed.

A. <u>Purpose</u> (Illustration IV-A)

Freestanding signs are allowed:

- 1. Subject to the restrictions in the General Requirements of this Program.
- 2. to identify the store, indicate that it is open, and its hours of business.
- 3. to show restaurant menus and daily specials
- 4. to advertise sales and special deals or services.



Illustration IV-A: Purpose

This illustration exhibits the specific requirements of the enhancement standards and is intended only as an aid.

- Identify the business, indicate it is open, and list its hours of operation
- Show restaurant menus and daily specials
 Advertise sales, specials deals, and special services



B. <u>Quantity</u>

- 1. Only one freestanding sign per business is allowed.
- 2. A maximum of two faces per sign is allowed.

C. <u>Placement</u>

A freestanding sign shall be:

- 1. located directly in front of the business it represents.
- 2. located in the PROW, but not within two feet of the curb, not in the <u>clear</u> <u>path of travel</u> and not in the <u>clear areas</u> adjacent to street furniture.
- 3. removed when weather conditions create potentially hazardous conditions.

D. Size, Appearance, and Design

1. The maximum footprint of a freestanding sign shall be 2'-0" x 3'-0". The sign height shall be between 3'-0" and 4'-0" (Exception only in <u>Little Italy</u> where the freestanding height sign shall be 2'-0" and 4'-0"). The sign shall be of A-frame style; pedestal signs or other types are not permitted. The sign boards shall continue to the ground for detection by those who are visually impaired. The bottom two inches of the sign shall have a strong contrast with the grade below for detection by those who are visually impaired. (Illustration IV-B)



Size, Appearance, and Design This illustration exhibits the specific requirements of the enhancement standards and is intended only as an aid.

- 2. The sign shall be designed to stand on its own.
- 3. The style of the sign's graphics shall be professional in quality and complement the business' permanent building sign(s), if any.
- 4. The sign shall be made of a durable material(s), such as medium density overlay plywood painted with enamel paint, stainless or other weatherable steel, laminate plastic, slate chalkboard, or marker board. A natural wood 1" x 2" frame is strongly encouraged. No glass, breakable materials, or attached illumination shall be allowed. Every sign and all parts, portions,

and materials shall be manufactured, assembled, and erected in compliance with all applicable federal, state, and local regulations.

- 5. Paper signs, wind-activated items (such as balloons, windsocks, and pinwheels), and non-rigid changeable areas shall not be used as or attached to a sign.
- 6. The sign shall have no sharp edges or comers. All surfaces shall be smooth and be free of protruding tacks, nails and wires. All parts, portions, and materials of a sign shall be kept in good repair. The display surface shall be kept clean, neatly painted, and free from rust, corrosion, and graffiti. Any cracked or broken surfaces, missing slgn copy, or other poorly maintained or damaged portion of a sign shall be repaired, replaced or removed.
- 7. No sign copy referring to off-premise locations shall be permitted. (Example: "Visit our main store in Clairemont.").
- 8. No live advertising (such as character actors or employees holding a sign) shall be permitted.
- 9. In <u>La Jolla</u>, A-frame signs are not permitted. However, Promote La Jolla-sponsored signs in the right-of-way (one or two per block) may be permitted.

V. OUTDOOR DISPLAY STANDARDS

Note: Only those businesses fronting on the PROW (Public Right-of-Way) and located on the first floor may participate in this Program. Enhancements may be placed only in the PROW directly in front of the Business's storefront. Enhancements that do not comply with the General Requirements, Standards, and Conditions of this Program are not allowed.

<u>A. Purpose:</u> The purpose of outdoor display areas is to attract customers into retail, repair, or service businesses, <u>not</u> to sell the item(s) on display. Price tags/advertisements are not permitted.

B. Allowable Display Areas (Illustration V-A.)

- The permitted display items shall be placed in the PROW for a distance no more than 4'- 0" from the property line. (Note: the <u>street wall</u> of the building may or may not be located at the property line. It is the responsibility of the Owner to determine the location of the property line.) The actual allowable depth of the exhibit area from property line towards the curb may be less due to other restrictions. (See Section III: General Requirements,)
- 2. The display areas shall be limited to the length of the business' storefront.



enhancement standards and is intended only as an aid.

C. Permissible Merchandise

The following items may be displayed in the PROW, provided the Business Owner abides with this section of the Program with regards to allowable display areas and items, display requirements, and maximum allowed quantities. The merchandise shall be free of graffiti and constitute no hazard to pedestrian traffic.

1. Furniture: patio furniture and wooden and metal furniture (excluding mattresses and sofas).

- 2. Books and magazines
- 3. Produce, baked goods, and food in glass containers
- 4. Cut or live flowers and plants
- 5. Clothing and accessories.
- 6. Hand crafted products and goods.
- 7. Art work, including paintings, photography, sculpture, frames, and pottery, displayed by retail, supply, or service businesses.
- 8. Sports equipment.
- 9. Bicycles.
- 10. Musical instruments.
- 11. Leather goods.
- 12. Luggage.
- 13. Rugs.
- 14. Pet accessories.
- Other merchandise similar in character, type, or nature to the merchandise listed above with written approval from the NPM having jurisdiction. (Exception only in <u>La Jolla</u> where #3, #4, #6, and #7 will be the only items permitted.)

D. Merchandise not permitted:

Any merchandise not falling within the approved categories shall not be displayed outdoors, including, but not limited to, the following:

- 1. Alcoholic beverages.
- 2. Tobacco, cigarettes, and smoking accessories.
- 3. Upholstered items with a cumulative height, width and depth of nine feet or more.
- 4. Shoes, except those displayed on mannequins or props.
- 5. Clothing hung on racks.
- 6. Vending and dispensing equipment.
- 7. Appliances.
- 8. Canned or prepackaged foods.
- 9. Adult-oriented material.
- 10. Auto-related merchandise.
- 11. Mattresses.
- 12. Major appliances
- 13. Compact discs, videotapes, cassette tapes, digital video discs, and similar items.
- 14. Computers, business machines, and home electronics.
- 15. Cameras and photographic equipment.
- 16. Live animals.
- 17. Pet food.
- 18. Pawned items.
- 19. Weapons, including, but not limited to, knives, fencing swords, and antique pistols.
- 20. Home cleaning products.
- 21. Personal care items
- 22. Other merchandise similar in character, type, or nature to that listed above.

E. Maximum Quantities

Businesses may display one or two of the following five types of merchandise:

- Furniture, limited to one item for every five linear feet of storefront. (Example: a store with a gross storefront length of 25 feet may display up to a maximum of five items.)
- 2. Book and magazine racks, limited to one rack per every storefront length of 25 feet or portion thereof.
- 3. Hand-crafted products and goods, artwork, and/or pottery, limited to two items for every five feet of storefront. (Example: a store with 25 feet of storefront may display up to a maximum of ten items.)
- 4. Food products, limited to one linear foot of display space for every five feet of storefront. (Example: a store with 25 feet of storefront may display food products along a maximum of five linear feet.)
- 5. Dress apparel [clothing, accessories, and shoes (as allowed)], limited to six pieces, (Note: if seven to twelve articles of apparel, whether clothing, accessories, or shoes, are displayed, then no other type or quantity of merchandise may be displayed.) (Example: a store with 25 feet of storefront may display six pieces of apparel and a rack of books or display twelve pieces of apparel.)

F. Display Regulrements

- 1. All items publicly displayed shall be in good condition, not require repair, and not be wrapped in plastic or other wrapping materials.
- 2. Items shall be displayed appropriately (preferably on three-dimensional props) that coordinate with the store facade. Cardboard boxes and folding tables are not permitted as display racks.
- 3. Clothing shall be hung only on mannequins or props, except that clothing may be displayed on hangers on the door(s) of the business.
- 4. Books and magazines shall be displayed on racks 3'-0" to 4'-0" in height. Books shall be displayed to allow the title and author of each book to be seen. Each rack shall be no more than 6'-0" in length. (Illustration V-B), Racks shall be in good condition and not require repair.



<u>Illustration V-B: Book and Magazine Racks</u> This illustration exhibits the specific requirements of the enhancement standards and is intended only as an aid.

- 5. All items and displays shall be safe and stable with no risk of overturning due to wind or contact. Props and items of display shall not project into the clear path of travel; corners shall be rounded. Businesses shall remove displays when weather conditions create a potentially hazardous condition.
- 6. All items (such as racks, mannequins, props, furniture and other display items) must extend to within 2 inches of the ground and have a two-inch wide stripe at all bottom edges or in some other manner be physically and visually detectable in an easy manner by the visually impaired.



VI. OUTDOOR DINING AREA STANDARDS

Illustration VI-A

Note: Only those businesses fronting on the PROW (Public Right-of-Way) and located on the first floor may participate in this Program. Enhancements may be placed only in the PROW directly in front of the *Business Owner's* storefront. Enhancements that do not comply with the General Requirements, Standards, and Conditions of this Program are not allowed.

- Businesses licensed to serve food and/or beverages are permitted to have an outdoor dining area that complies with the standards of this program. (Exception only in <u>La Jolla</u> where no outdoor dining is permitted in Zone 5 and Zone 6 of the La Jolla Planned District Ordinance.)
- The sale of <u>alcoholic beverages</u> in an outdoor dining area requires a City of San Diego sidewalk café permit and licensing by the Department of Alcoholic Beverage Control. <u>Alcohol cannot be sold or consumed in</u> <u>outdoor dining areas permitted under this program.</u>
- 3. <u>Coastal Zone</u>: A Coastal Development Permit must be obtained through the City where the total outdoor dining area will exceed 200 square feet, and the site is located within the Beach Impact Area of the Parking Impact Overlay Zone.
- 4. The hours of operation of the outdoor eating area shall not exceed those of the primary use.
- 5. An outdoor dining area may include the use of all the area in the PROW adjacent to the business <u>except</u> that area required for the <u>clear path of travel</u> or clear area adjacent to street furniture, such as bus benches or utility boxes

and that area of the PROW within two feet of the curb. Exception: the area within two feet of the curb may be used if the parking is head-on. (Illustration VI-B). (See also illustrations III-A through III-E.)



- Tables and chairs shall be metal, wood, durable plastic, or other approved material, and must be in good condition and not require repair. Umbrellas must be in good condition, be fire-treated, and not require repair.
- Permanent lighting complying with City and accessibility standards and installed with electrical permits may be provided for the PROW. The lighting shall be attached to the building.

VII. PERMIT CONDITIONS

The person(s), business company, or corporation applying for participation in the Program shall be hereby named as the "applicant".

- 1. This application Is subject to written approval by the NPM (Non-profit Management having jurisdiction).
- 2. Approval by the NPM allows for temporary use of the public right-of-way as set forth in the Public Right-of-Way Enhancement Program.
- 3. Displays without approval of an application are not permitted.
- 4. The applicant(s) shall provide evidence of having <u>one million dollars of liability</u> insurance naming the City of San Diego, the NPM, the property owner, and their agents, officers, and employees as additional insured. The applicant(s) shall maintain the policy continuously. The City of San Diego and the NPM shall be given ten day notice prior to the cancellation of the policy. Cancellation of a Business Owner's insurance policy immediately voids participation in the program. A Business Owner needs to show upon request by any City official or NPM employee that he has insurance as required by the program. Each NPM shall establish and use a system of spot checking through the duration of the Program.
- 5. The applicant shall provide two copies of a scale drawing of the proposed enhancement/ use. The drawing shall be no smaller than 8.5" x11" nor larger than 11" x 17". The drawing shall indicate the curb and property lines, all existing and proposed obstructions (traffic signs, traffic lights, street lights, bus benches, fire hydrants, etc.), and location of proposed freestanding sign, exhibit areas, outdoor dining area furniture, planter boxes, and statuary. Applicants for any business located at a corner property or on a property that has a depth that runs from street to street shall provide information for both street frontages. Note: applicant shall submit changes to plans for approval by the NPM.
- 6. The applicant shall provide two copies of a photograph or photographs of the area of the proposed enhancement. The photograph(s) shall include the entire area of the enhancement as well as the adjacent property to each side. Applicants for any business located at a comer property or a street-to-street property shall provide photographs for both street frontages.
- The applicant shall attend a free training demonstration provided by the NPM prior to displaying a free-standing sign or outdoor displays or opening an outdoor dining area.
- 8. The applicant shall provide the NPM with a curb-to-property line card obtained from the City Records Department (second floor of 1222 First Avenue, (619) 446-5200).
- 9. This application is not transferable.

VIII. ENFORCEMENT AND DUE PROCESS

- 1. Streetscape enhancements that do not comply with the provisions of this Program are not allowed.
- Initial enforcement shall be conducted by the NPM having jurisdiction. The NPM shall keep records of contact with applicants and disposition of issues shall be reported to the community's Planning Committee in a timely fashion. This information is also to be provided to the Neighborhood Code Compliance Department on a quarterly basis and as otherwise requested by the NCCD.
- 3. The Business Owner shall remove or relocate, at Business Owner's own expense, any enhancement within three days after notice by the NPM, within three days after notice by the NPM under direction from the City, within two days after direct notice from the City by request of the NPM, or within two days after direct notice by the City (through a City official or by letter) when immediate response is not possible. If the Business Owner fails to remove or relocate the enhancement in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done and charge the Business Owner for the cost of the work, at the sole discretion of the City, without further notice to the Business Owner. The City also has the authority to order that any enhancement be immediately removed or relocated to protect the life/health/safety of the public.
- 4. When a NPM's efforts to gain voluntary compliance fail and all deadlines have expired, a written notice will be given to the Business Owner that his participation in the Program has been canceled. Notice of this will be forwarded to the NCCD (Neighborhood Code Compliance Department) for investigation and action. At that time, copies of NPM records of all attempts at voluntary compliance will be forwarded to the NCCD. The violator may then be subject to civil penalties, abatement, and/or judicial remedies.

WINDOW STICKER

PUBLIC RIGHT-OF-WAY ENHANCEMENT PROGRAM

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	is a	participant	t in the	Public
Right-of-Way Enhancement Program	n provid	ed that th	eir freesta	Inding
sign, outdoor display items, and/or ou	utdoor ca	fé comply	with the G	eneral
Requirements, Standards, and C				
complaints or further information, o			U.	
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Corporation, an agency of the		•	-	siness
Improvement District, located at				
San Diego, (), fax ()		and e	-mail addre	ess of

Application Form PUBLIC RIGHT-OF-WAY ENHANCEMENT PROGRAM

The person(s), business company, or corporation applying for participation of this Program shall be hereby named as the "applicant".

PERMIT CONDITIONS

- 1. Only those businesses fronting on the Public Right-of-Way and located on the first floor may participate in this Program.
- 2. Enhancements may be placed only in the Public Right-of-Way directly in front of the Business' storefront.
- 3. Enhancements that do not comply with the General Requirements, Standards, and Conditions of this Program are not allowed.
- 4. This application is subject to written approval by the NPM (Non-profit Management) having jurisdiction).
- 5. Approval by the NPM allows for temporary use of the public right-of-way as set forth in the General Requirements, Standards, and Conditions of this Program.
- 6. Displays without approval of an application are not allowed.
- 7. The applicant(s) shall provide evidence of having <u>one million dollars of liability insurance</u> naming the City of San Diego, the NPM, the property owner, and their agents, officers, and employees as additional insured. The applicant(s) shall maintain the policy continuously. The City of San Diego and the NPM shall be given ten day notice prior to the cancellation of the policy. <u>Cancellation of a Business Owner's insurance policy immediately voids participation in the Program.</u> A Business Owner shall show upon request by any City official or NPM employee that he has insurance as required by the Program. Each NPM shall establish and use a system of spot checking through the duration of the Program.
- 8. The applicant shall provide two copies of a <u>scaled</u> drawing of the proposed enhancement/ use. The drawing shall be no smaller than 8.5" x11" nor larger than 11" x 17". The drawing shall indicate the curb and property lines, all existing and proposed obstructions (traffic signs, traffic tights, street lights, bus benches, fire hydrants, etc.), and location of proposed freestanding sign, exhibit areas, outdoor area furniture, planter boxes, and statuary. Applicants for any business located at a comer property or a street-to-street property shall provide information of both street frontages.
- 9. The applicant shall provide two copies of a photograph or photographs of the area of the proposed enhancement. The photograph(s) shall include the entire area of the enhancement as well as the adjacent property to each side. Applicants for any business located at a comer property or a street-to-street property shall provide photographs for both street frontages.
- 10. The applicant shall attend a free training demonstration provided by the NPM prior to displaying a free-standing sign or outdoor displays or opening an outdoor dining area.
- 11. The applicant shall provide the NPM with a curb-to-property line card obtained from the City Records Department (second floor of 1222 First Avenue, (619) 446-5200).

12. This application- is not transferable.

ENFORCEMENT AND DUE PROCESS

- 1. Streetscape enhancements that do not comply with the provisions of this Program are not permitted.
- Initial enforcement shall be conducted by the NPM having jurisdiction. The NPM shall keep records of contact and shall report their disposition to the community's Planning Committee in a timely fashion.
- 3. The Business Owner shall remove or relocate, at Business Owner's own expense, any enhancement within three days after notice by the NPM, within three days after notice by the NPM under direction from the City, within two days after direct notice from the City by request of the NPM, or within two days after direct notice by the City (through a City official or by letter) when immediate response is not possible. If the Business Owner fails to remove or relocate the enhancement in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done and charge the Business Owner for the cost of the work, at the sole discretion of the City, without further notice to the Business Owner. The City also has the

authority to order that any enhancement be Immediately removed or relocated to protect the life/health/safety of the public.

4. When a NPM's efforts to gain voluntary compliance fail and all deadlines have expired, a written notice will be given to the Business Owner that his participation in the Program has been canceled. Notice of this will be forwarded to the NCCD (Neighborhood Code Compliance Department) for investigation and action. At that time, copies of NPM records of all attempts at voluntary compliance will be forwarded to the NCCD. The violator may then be subject to civil penalties, abatement, and/or judicial remedies.

GENERAL INFORMATION

1. Business N	ame _			in	
2. Business A	ddress _				
Number	Street		ite No.	Zip Code	
3. Owner's Na	ime(s)	Printed Name		Title	
		Printed Name	,,,,,,,	Title	
4. Business Pl	hone No		Fax No.		
E-mail	address: _				
5. Property Ov	vner's Nam	e			
6. Property Ov	vner's Phor	e Number			
7. NPM (Non-	orofit Mana	gement)			
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10. NPM Phon SPECIFICAT	e Number				
Freestand	ling Sign	Outdoor Display	Outdoor Din	ing Area	
A notice of	of this app	cation and Its drawings : lication and plans shall I in a window for public vi	be kept on file at t		
 Signature and the 	(s) below General F	ns shall be submitted to the indicate that the applicate that the applicate that the applicate that the applicate the the standard the	nt has read the res, and Condition	everse side of this a s of this Program	and agrees to

Applicant's Printed Name	Applicant's Signature Date	Date attended seminar
Applicant's Printed Name	Applicant's Signature Date	Date attended seminar
NPM Director's Signature	Date	



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PLANNING COMMISSION RESOLUTION NO. XXXX-PC CENTRE CITY SITE DEVELOPMENT PERMIT NO 2010-40 EAST VILLAGE BID PROW PROGRAM IMPLEMENTATION

WHEREAS, THE EAST VILLAGE BUSINESS IMPROVEMENT DISTRICT, Owner/Permittee, filed an application with the Centre City Development Corporation for a Centre City Site Development Permit (CCSDP) to implement the Business Improvement District (BID) Public Right-of-Way Enhancement Program (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. CCSDP 2010-40), within the boundary of the East Village Business Improvement District;

WHEREAS, the project site encompasses the entire area of the East Village Business Improvement District within the Downtown Community Plan area;

WHEREAS, on February 10, 2010, the Planning Commission of the City of San Diego considered CCSDP 2010-40 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated February 10, 2011.

FINDINGS:

Site Development Permit Findings - Section 126.0504

1. The proposed development will not adversely affect the applicable land use plan.

The public right-of-way enhancements permitted under the PROW program would not adversely affect the applicable Land Use Plan (The Downtown Community Plan) as the intent of the program is to enliven and beautify streetscape areas and foster a neighborhood village atmosphere that will stimulate pedestrian and commercial activity.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

A minimum six-foot clear path of travel will be maintained for all public right-of-way areas subject to the PROW Program (exceeding the four-foot requirement of the American Disabilities Act guidelines). Furthermore, the SDPs require compliance with program regulations which ensure that all enhancements provided under the program are maintained in a safe, sanitary and attractive manner. Non-compliance with program regulations will require removal of the enhancements and potential disqualification of a business from participation in the program. Initial enforcement of program regulations is the responsibility of the BID; however, the City maintains all rights with respect to the public right-of-way, and has the authority to order the immediate removal of enhancements as necessary to protect life, health, safety or public welfare. The SDP is subject to two-year reviews by NCCD to ensure that significant complaints are not being received and that the BID is responsibly implementing and monitoring program implementation.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The PROW Program will allow ground floor business owners to place a freestanding Aframe sign and specific outdoor display items and dinging furniture in public right-of-way areas fronting their businesses. All proposed enhancements in the public right-of-way will comply with the applicable regulations of the Land Development Code through approval of an SDP and compliance with the regulations of the PROW program.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Centre City Site Development Permit No. 2010-40 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in the permit attached hereto and made a part hereof.

Brandon Nichols Associate Planner Centre City Development Corporation Adopted on: February 10, 2011

PLANNING COMMISSION RESOLUTION NO. XXXX-PC CENTRE CITY SITE DEVELOPMENT PERMIT NO 2010-54 DOWNTOWN SAN DIEGO PARTNERSHIP BID PROW PROGRAM IMPLEMENTATION

WHEREAS, THE DOWNTOWN SAN DIEGO PARTNERSHIP BUSINESS IMPROVEMENT DISTRICT, Owner/Permittee, filed an application with the Centre City Development Corporation for a Centre City Site Development Permit (CCSDP) to implement the Business Improvement District (BID) Public Right-of-Way Enhancement Program (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. CCSDP 2010-54), within the boundary of the Downtown San Diego Partnership Business Improvement District;

WHEREAS, the project site encompasses the entire area of the Downtown San Diego Partnership Business Improvement District within the Downtown Community Plan area;

WHEREAS, on February 10, 2010, the Planning Commission of the City of San Diego considered CCSDP 2010-40 pursuant to the Land Development Code of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated February 10, 2011.

FINDINGS:

Site Development Permit Findings - Section 126.0504

1. The proposed development will not adversely affect the applicable land use plan.

The public right-of-way enhancements permitted under the PROW program would not adversely affect the applicable Land Use Plan (The Downtown Community Plan) as the intent of the program is to enliven and beautify streetscape areas and foster a neighborhood village atmosphere that will stimulate pedestrian and commercial activity.

2. The proposed development will not be detrimental to the public health, safety, and welfare.

A minimum six-foot clear path of travel will be maintained for all public right-of-way areas subject to the PROW Program (exceeding the four-foot requirement of the American Disabilities Act guidelines). Furthermore, the SDPs require compliance with program regulations which ensure that all enhancements provided under the program are maintained in a safe, sanitary and attractive manner. Non-compliance with program regulations will require removal of the enhancements and potential disqualification of a business from participation in the program. Initial enforcement of program regulations is the responsibility of the BID; however, the City maintains all rights with respect to the public right-of-way, and has the authority to order the immediate removal of enhancements as necessary to protect life, health, safety or public welfare. The SDP is subject to two-year reviews by NCCD to ensure that significant complaints are not being received and that the BID is responsibly implementing and monitoring program implementation.

3. The proposed development will comply with the applicable regulations of the Land Development Code.

The PROW Program will allow ground floor business owners to place a freestanding Aframe sign and specific outdoor display items and dinging furniture in public right-of-way areas fronting their businesses. All proposed enhancements in the public right-of-way will comply with the applicable regulations of the Land Development Code through approval of an SDP and compliance with the regulations of the PROW program.

BE IT FURTHER RESOLVED that, based on the findings hereinbefore adopted by the Planning Commission, Centre City Site Development Permit No. 2010-54 is hereby GRANTED by the Planning Commission to the referenced Owner/Permittee, in the form, exhibits, terms and conditions as set forth in the permit attached hereto and made a part hereof.

Brandon Nichols Associate Planner Centre City Development Corporation Adopted on: February 10, 2011

RECORDING REQUESTED BY

Centre City Development Corporation Current Planning Division 401 B Street, CA 92101

WHEN RECORDED MAIL TO

Centre City Development Corporation 401 B Street, Suite 400 San Diego, CA 92101

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CENTRE CITY SITE DEVELOPMENT PERMIT NO. 2010-40 EAST VILLAGE BID PUBLIC RIGHT OF WAY ENHANCEMENT PROGRAM PLANNING COMMISSION

This Centre City Site Development Permit is granted by the City of San Diego Planning Commission to the East Village Business Improvement District, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The permit applies to the area within the East Village Business Improvement District, approved by the City of San Diego on July 7, 2009.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to implement the Business Improvement District (BID) Public Right-of-Way Enhancement Program. The purpose, requirements, standards and conditions of the program are described the approved BID Public Right-of-Way Enhancement Program document [Exhibit "A" to this permit] on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This Site Development Permit (SDP) must be renewed every two years, after a review has been made by the Neighborhood Code Compliance Department (NCCD). If the NCCD has had no complaints the SDP renewal will be automatic. 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. Implementation of the BID Public Right-of-Way Enhancement Program authorized by this permit may not be initiated until:

a. The 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 utilization and 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 ministerial permits for right-of-way improvements allowed pursuant to this Centre City Site Development permit.

8. All of the conditions contained in this Permit have been considered and were determinednecessary 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" conditions(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.

9. Prior to the recordation of the Permit and implementation of the BID Public Right-of-Way Enhancement Program, Permittee shall execute, in a form and content acceptable to the City Attorney, a Hold Harmless Agreement wherein the Permittee unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its contractors, officers, agents, advisors, or employees from and pay in full, any claims, demands, losses, damages, or expenses that the City may sustain or incur in any manner resulting from the herein under, including any loss, damage or expenses arising out of loss, damage or expense and claims for a loss, damage or expenses resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents, or employees.

10. Prior to the recordation of this Permit and implementation of the BID Public Right-of-Way Enhancement Program, Permittee shall provide a copy of a liability insurance policy in the amount of one million dollars (\$1,000,000) in a form and content satisfactory to the City Attorney and the City Engineer, naming the City of San Diego and its agents, officers, and employees as additional insures to protect the City from any claims, demands, losses, damages, or expenses arising out of any loss of or damage to property, and injury or death of persons resulting from the construction, maintenance, state of use, repair or presence of the enhancements or uses installed in the public right-of-way pursuant to this permit.

11. Permittee shall verify that participants in the program secure and maintain a liability insurance policy consistent with General Requirements No. 3 of the Program. To this end, Permittee shall establish and use a system of spot checking that the Program participants have maintained the required insurance policy.

12. Permittee shall require participants in the Program to provide evidence of possession of a current Business Tax Certificate.

13. Permittee shall collect, maintain, and update all information submitted by applicants participating in the Program, consistent with provisions of the Program. This information shall be available for the City and public review at the office of Permittee during the regular business hours of the Permittee.

14. The City's rights with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission, conveyed by this Permit, to place the listed enhancement(s)/use(s) of the Program in the public right-of-way.

15. The City has the authority to order that any enhancement(s)/use(s) be immediately removed or relocated when, in the opinion of any agent, officer, or employee of the City, it is necessary to protect the life, health, safety or welfare of the public.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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.

APPROVED by the Planning Commission of the City of San Diego on February 10, 2011 and Resolution No. XXXX-PC.

ALL-PURPOSE CERTIFICATE

Centre City Site Development Permit No. 2010-40 Date of Approval: February 10, 2011

STATE OF CALIFORNIA COUNTY OF SAN DIEGO

Brandon Nichols, Associate Planner

On _______ before me, Raquel Herrera, (Notary Public), personally appeared Vena Lewis, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature	
Name of Notary~	

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed	Signed	
Typed Name	Typed Name	

STATE OF	
COUNTY OF	

On	before me,	(Name of Notary Public)
personally appeared _		, personally known to me (or
proved to me on the b	asis of satisfactory evidence) to	be the person(s) whose name(s) is/are
subscribed to the with	in instrument and acknowledged	d to me that he/she/they executed the same
in his/her/their authori	zed capacity(ies), and that by his	s/her/their signature(s) on the instrument
the person(s), or the en	ntity upon behalf of which the p	erson(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

RECORDING REQUESTED BY

Centre City Development Corporation Current Planning Division 401 B Street, CA 92101

WHEN RECORDED MAIL TO

Centre City Development Corporation 401 B Street, Suite 400 San Diego, CA 92101

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CENTRE CITY SITE DEVELOPMENT PERMIT NO. 2010-54 DOWNTOWN SAN DIEGO PARTNERSHIP BID PUBLIC RIGHT OF WAY ENHANCEMENT PROGRAM PLANNING COMMISSION

This Centre City Site Development Permit is granted by the City of San Diego Planning Commission to the Downtown San Diego Partnership Business Improvement District, Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0504. The permit applies to the area within the Downtown San Diego Partnership Business Improvement District, approved by the City of San Diego on February 1, 1972.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to implement the Business Improvement District (BID) Public Right-of-Way Enhancement Program. The purpose, requirements, standards and conditions of the program are described the approved BID Public Right-of-Way Enhancement Program document [Exhibit "A" to this permit] on file in the Development Services Department.

STANDARD REQUIREMENTS:

1. This Site Development Permit (SDP) must be renewed every two years, after a review has been made by the Neighborhood Code Compliance Department (NCCD). If the NCCD has had no complaints the SDP renewal will be automatic. 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. Implementation of the BID Public Right-of-Way Enhancement Program authorized by this permit may not be initiated until:

- a. The 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 utilization and 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 ministerial permits for right-of-way improvements allowed pursuant to this Centre City Site Development permit.

8. All of the conditions contained in this Permit have been considered and were determinednecessary 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" conditions(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.

9. Prior to the recordation of the Permit and implementation of the BID Public Right-of-Way Enhancement Program, Permittee shall execute, in a form and content acceptable to the City Attorney, a Hold Harmless Agreement wherein the Permittee unconditionally waives any claim of liability against the City of San Diego and agrees to defend, indemnify and hold harmless the City of San Diego and its contractors, officers, agents, advisors, or employees from and pay in full, any claims, demands, losses, damages, or expenses that the City may sustain or incur in any manner resulting from the herein under, including any loss, damage or expenses arising out of

loss, damage or expense and claims for a loss, damage or expenses resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents, or employees.

10. Prior to the recordation of this Permit and implementation of the BID Public Right-of-Way Enhancement Program, Permittee shall provide a copy of a liability insurance policy in the amount of one million dollars (\$1,000,000) in a form and content satisfactory to the City Attorney and the City Engineer, naming the City of San Diego and its agents, officers, and employees as additional insures to protect the City from any claims, demands, losses, damages, or expenses arising out of any loss of or damage to property, and injury or death of persons resulting from the construction, maintenance, state of use, repair or presence of the enhancements or uses installed in the public right-of-way pursuant to this permit.

11. Permittee shall verify that participants in the program secure and maintain a liability insurance policy consistent with General Requirements No. 3 of the Program. To this end, Permittee shall establish and use a system of spot checking that the Program participants have maintained the required insurance policy.

12. Permittee shall require participants in the Program to provide evidence of possession of a current Business Tax Certificate.

13. Permittee shall collect, maintain, and update all information submitted by applicants participating in the Program, consistent with provisions of the Program. This information shall be available for the City and public review at the office of Permittee during the regular business hours of the Permittee.

14. The City's rights with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission, conveyed by this Permit, to place the listed enhancement(s)/use(s) of the Program in the public right-of-way.

15. The City has the authority to order that any enhancement(s)/use(s) be immediately removed or relocated when, in the opinion of any agent, officer, or employee of the City, it is necessary to protect the life, health, safety or welfare of the public.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development 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.

APPROVED by the Planning Commission of the City of San Diego on February 10, 2011 and Resolution No. XXXX-PC.

ALL-PURPOSE CERTIFICATE

Centre City Site Development Permit No. 2010-54 Date of Approval: February 10, 2011

STATE OF CALIFORNIA COUNTY OF SAN DIEGO

Brandon Nichols, Associate Planner

On ______ before me, Raquel Herrera, (Notary Public), personally appeared Vena Lewis, Development Project Manager of the Development Services Department of the City of San Diego, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Signature	
Name of Notary~	

ALL-PURPOSE CERTIFICATE

OWNER(S)/PERMITTEE(S) SIGNATURE/NOTARIZATION:

THE UNDERSIGNED OWNER(S)/PERMITTEE(S), BY EXECUTION THEREOF, AGREES TO EACH AND EVERY CONDITION OF THIS PERMIT AND PROMISES TO PERFORM EACH AND EVERY OBLIGATION OF OWNER(S)/PERMITTEE(S) THEREUNDER.

Signed	Signed	
Typed Name	Typed Name	

STATE OF	<u> </u>
COUNTY OF	

On ______ before me, ______ (Name of Notary Public) personally appeared _______, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____