

**DATE ISSUED:** June 15, 2006

**REPORT NO. PC-06-183**

**ATTENTION:** Planning Commission, Agenda of June 22, 2006

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

**OWNER/**

**APPLICANT:** Business Improvement District Council (Attachment C)

**SUMMARY**

**Issue(s):** Should the Planning Commission approve two Site Development Permits for the City Heights and La Jolla Business Improvement Districts to implement the Public Right-of-Way Enhancement Program?

**Staff Recommendation:**

1. APPROVE Site Development Permit No. 273521 and
2. APPROVE Site Development Permit No. 322629

**Community Planning Groups Recommendations:**

**City Heights BID:** On May 1, 2006 the City Heights Area Planning Committee voted 13-4-1 to recommend the project be approved with a modification from a four-foot to a five-foot unobstructed pedestrian right-of-way (Attachment G).

**La Jolla BID:** On June 1, 2006 the La Jolla Community Planning Association voted 10-1-1 to recommend the project be approved with conditions (Attachment G).

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

**Fiscal Impact Statement:** None with this action.

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

**Housing Impact Statement:** Not Applicable.

## **BACKGROUND**

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

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

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

At the January 12, 2006, Planning Commission hearing, the proposed project was docketed but not heard. Staff and the applicant requested a continuance for the Business Improvement District (BID) Public Right-of-Way (PROW) Enhancement Program Site Development Permits (SDPs) in order to give each of the affected Community Planning Groups enough time to discuss the proposal and offer their recommendations. The Planning Commission voted to continue the project to the March 30, 2006 Planning Commission docket.

On March 30, 2006, the BID PROW Enhancement Program project was heard requesting twelve SDPs for 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) (Attachment I). It was motioned by Commissioner Steele to approve staff's recommendation as

outlined in Report No. PC-06-027 (Attachment I), to the Planning Commission, with the exception that the City Heights BID and La Jolla BID be continued for one month; allowing time for the community planning groups to come back with their recommendations. The motion was second by Commissioner Chase and passed 5-0 (Attachment D, Item 7).

## **DISCUSSION**

The BID PROW Enhancement Program which started out as a two year demonstration program back in 2003 has now expanded from four participating BIDs to ten as of March 2006. However, the applicant(s) would further like to expand the program to twelve participating BIDs by including City Heights and La Jolla.

The City Heights BID and the La Jolla BID (Attachment A) have obtained a recommendation of approval from their respective community planning groups and now are requesting the Planning Commission approve their Site Development Permits (Attachment E).

### **Project Description:**

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

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

### **Project-Related Issues:**

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

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

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

participate in; in addition the Program would relieve the City from an ever increasing code compliance workload.

### **Neighborhood Code Compliance:**

During the two years the demonstration program was in existence, the Neighborhood Code Compliance Department (NCCD) received no formal complaints. All approved Site Development Permits (SDP) for the BID PROW Enhancement Program must be renewed every two years, after a review has been made by the NCCD. If the NCCD has had no complaints the SDP renewal will be automatic.

### **Community Plan Analysis:**

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

La Jolla BID: The proposed SDP allows the La Jolla BID to administer and regulate temporary encroachments into the Public Right of Way by commercial establishments within the La Jolla Village area. While the La Jolla BID PROW proposal does not propose new development, it is proposing to allow for free standing signs, outdoor furniture and outdoor displays to be located in the public right of way.

The La Jolla Community Plan contains policies in the Transportation Element and Commercial Element which promote pedestrian movement and activity within La Jolla commercial areas by providing promenade improvements such as street furniture, kiosks, planters, directional signs, sculptures and fountains that are consistent with the character of the commercial area. In addition, Appendix E, Streetscape Guidelines for the Village Commercial Area, provides particular streetscape policies and standards for pedestrian

travel within the La Jolla Village area. Appendix E requests that sidewalk benches be arranged parallel to the street, facing the shops. Benches should be located adjacent to the curb, leaving 8 feet for the pedestrian path. The La Jolla BID PROW proposal identifies a minimum of 8 feet path for pedestrian access with one test block location established to try a 6 foot clear path of travel. Staff finds that a 6 foot clear path of travel on one block would not adversely affect the LJCP. However, if the 6 foot clear path of travel were to be pursued on a long-term or permanent basis, an amendment to the La Jolla Community Plan would likely be required. The proposed minimum of an 8 foot clear path of travel as the standard identified in the general PROW guidelines is consistent with the plan recommendation for 8 feet for clear path of travel within the Village area.

The intent of the proposed BID PROW to create a unified streetscape program is consistent with the La Jolla Community Plan and supports an 8 foot clear path of travel set forth in the community plan to accommodate both safe travel for pedestrians along the sidewalk and enhanced activity along the street.

**City Heights Area Planning Committee Input:**

The committee recommended approval with the condition the clear path of travel be increased from four-feet to a five-foot unobstructed pedestrian right-of-way.

The applicant acknowledges the committee's condition and has included this exception within the revised BID PROW Enhancement Program dated June 2006

**La Jolla Community Planning Association (LJCPA) Input:**

The LJCPA recommended approval with the following conditions and applicant responses:

1. Option for PLJ Sponsored Signs in the ROW-Design to return to CPA for review.

The applicant proposes to return to the Community Planning Association when a design is identified for the Promote La Jolla Sponsored Signs in the Right of Way.

2. The encroachment shall maintain a minimum of eight feet clear path of travel. However, one test block location shall be established to try a six-foot clear path of travel.

The La Jolla BID will maintain an 8-foot clear path of travel and designate Prospect Street from Herschel Avenue to Girard Avenue as test block to observe the 6-foot clear path of travel.

3. No Outdoor Dining permitted in Zone 5 and 6 to remain consistent with the Planned District Ordinance.

The applicant agrees to the exception for only in La Jolla where no outdoor dining is permitted in Zone 5 and Zone 6 of the La Jolla Planned District Ordinance

4. Outdoor Dining furniture standards to be developed to ensure high quality furniture options.

The Promote La Jolla's Design Committee will review product catalogs and develop a general reference guide for BID PROW applicants.

5. Outdoor Displays be limited to the following merchandise as permitted by the PDO: Flowers and plants, food products, handcrafted products and goods, artwork and pottery.

These items are listed on page 14 of the BID PROW guidelines as #3, #4, #6 #7 and will only be applicable to the La Jolla PROW program. Applicant will revise program guidelines given to La Jolla Applicants to reflect limitations.

### **Conclusion:**

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

Concerns with liability, enforcement, disabled access, safety, aesthetics and maintenance are adequately addressed in the General Requirements and Standards for the Program. The BID's will comply with the conditions of their respective community groups. Note: City Heights BID clear path of travel will be increased from four-feet to a five-foot unobstructed pedestrian right-of-way. The La Jolla BID will maintain an eight-foot clear path of travel and designate Prospect Street between Herschel Avenue and Girard Avenue as a test block to observe a six-foot clear path of travel. The BID PROW Enhancement Program Guidelines has been revised to include the conditions for approval of the respective community groups. Therefore, staff recommends the Planning Commission approve the project as proposed.

### **ALTERNATIVES:**

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

Respectfully submitted,

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Attachments:

- A. Maps of BIDs
- B. June 2006 BID Public Right-of-Way Enhancement Program
- C. Ownership Disclosure Statements
- D. March 30, 2006 Planning Commission Minutes
- E. Draft Permits with Conditions
- F. Draft Resolutions with Findings
- G. Community Planning Groups Recommendation
- H. Hold Harmless Agreement
- I. Report No. PC-06-027