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ORDINANCE NO. _____ AUG. 17, 1971
(New Series)

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE, BY REPEALING DIVISION 1, DEFINITIONS, GENERAL REQUIREMENTS AND ADMINISTRATION; DIVISION 2, QUALIFICATIONS REQUIRED FOR PERSONS CONSTRUCTING PUBLIC IMPROVEMENTS OR ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY AND/OR DEVELOPING LAND; DIVISION 3, PERMITS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND FOR LAND DEVELOPMENT; AND DIVISION 4, FEES FOR MATTERS AFFECTING PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT; AND SECTIONS 62.0101 THROUGH 62.0405; AND AMENDING CHAPTER VI, ARTICLE 2, OF THE SAN DIEGO MUNICIPAL CODE, BY ADDING THERETO DIVISION 1, DEFINITIONS AND REGULATIONS; DIVISION 2, PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY; DIVISION 3, ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY OR PUBLIC PROPERTY; AND DIVISION 4, LAND DEVELOPMENT; AND SECTIONS 62.0101 THROUGH 62.0420, ALL RELATING TO PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 2, of the San Diego Municipal Code be amended by repealing Division 1, DEFINITIONS, GENERAL REQUIREMENTS AND ADMINISTRATION; Division 2, QUALIFICATIONS REQUIRED FOR PERSONS CONSTRUCTING PUBLIC IMPROVEMENTS OR ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY AND/OR DEVELOPING LAND; Division 3, PERMITS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND FOR LAND DEVELOPMENT WORK; and Division 4, FEES FOR MATTERS AFFECTING PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT; and Sections 62.0101 through 62.0405.

Section 2. That Chapter VI, Article 2, of the San Diego Municipal Code be amended by adding Division 1, DEFINITIONS AND REGULATIONS; Division 2, PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY; Division 3, ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY OR PUBLIC PROPERTY; and Division 4, LAND DEVELOPMENT; and Sections 62.0101 through 62.0420 to read as follows:

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DIVISION 1

DEFINITIONS AND REGULATIONS

SEC. 62.0101 PURPOSE AND INTENT

It is the purpose of this Article to provide for the orderly administration of private contract work in the public rights-of-way and to protect the public interest and safety in the development of private property by (1) regulating grading, (2) establishing minimum standards governing slope stability and drainage, and (3) effecting, within practical limits, the restoration of natural ground cover through appropriate erosion control planting and irrigation.

SEC. 62.0102 DEFINITIONS

Whenever the following words are used in this Article, they shall have the meaning ascribed to them in this section:

- (a) "Architect" shall mean an architect, registered by the State of California, who is engaged in the practice of architecture and associated site development.
- (b) "Land Development Advisory Board" shall mean the Advisory Board established pursuant to this Article.
- (c) "Certify" or "Certification" shall mean a signed written statement that the specific inspections and tests which were required have been performed and that the works comply with the applicable requirements of this Article.
- (d) "Civil Engineer" shall mean an engineer registered by the State of California to practice in the field of civil engineering.

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- (e) "Contractor" shall mean a contractor licensed by the State of California to do work covered by this Article. A contractor may be authorized to act for a property owner in doing such work.
- (f) "Embankment" or "Fill" shall be any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported, or moved to a new location and the conditions resulting therefrom.
- (g) "Encroachment" or "Encroachment Structure" shall mean privately owned facilities or structures in the public rights-of-way or in other public property, constructed and maintained by a property owner.
- (h) "Engineering Geologist" shall mean a geologist, registered by the State of California, who is engaged in the practice of applying geological principles and data to engineering problems dealing with naturally occurring rock and soils for the purpose of assuring that geological factors are recognized and adequately interpreted in engineering practice.
- (i) "Excavation" or "Cut" shall be any act by which earth, sand, gravel, rock, or any similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and the conditions resulting therefrom.
- (j) "Grading" shall mean any excavating or embankment or combination thereof.

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- (k) "Land Development" shall mean the making of excavations and embankments on private property and the construction of slopes, drainage structures, fences, and other facilities incidental thereto, where it is necessary to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction and quality of materials.
- (l) "Landscape Architect" shall mean a landscape architect, registered by the State of California, who performs professional work in physical land planning and integrated land development, including the design of landscape planting programs.
- (m) "Landscape Contractor" shall mean a contractor licensed by the State of California to do landscaping work and who has at least five years of responsible experience in erosion control planting.
- (n) "Permittee" shall mean any person to whom a permit is issued pursuant to this Article.
- (o) "Private Contract" shall mean an agreement between a property owner, or an agent therefor, and the City for construction in the public rights-of-way, or other public property, or for land development work.
- (p) "Property Owner" shall mean the owner of real property which will be benefited by public improvements, encroachments, or land development work and who makes application to do such work.

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- (q) "Public Improvement" shall mean publicly owned structures or facilities including the construction thereof, in the public rights-of-way designed for the public use, safety, or general welfare, and maintained by the City.
- (r) "Public Property" shall mean property owned in fee by the City or dedicated for public use.
- (s) "Public Rights-of-Way" shall mean public easements for streets, alleys and/or other use.
- (t) "Public Utility" shall mean a person, firm, corporation, or other legal entity furnishing gas, electric, or communication services to the citizens of San Diego under a franchise granted by the City or by the State of California.
- (u) "Reservation" shall mean an unaccepted offer of dedication of real property for public rights-of-way, such offer remaining open for future acceptance.
- (v) "Slope" shall mean the inclined exposed surface of an embankment, excavation, or natural terrain.
- (w) "Soils Engineer" shall mean a registered civil engineer who (1) is engaged in the practice of civil engineering and spends a majority of his time in the field of applied soil mechanics and foundation engineering, (2) has at least four years of responsible practical experience in the field of applied soil mechanics, and (3) maintains an adequately equipped soils testing laboratory.

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(x) "Uncontrolled Embankment" shall mean any embankment constructed as land development on which no soil testing was performed or no compaction reports or other soils reports were prepared or submitted.

SEC. 62.0103 GENERAL REQUIREMENTS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT

- (a) No person shall do or cause to be done any work covered under this Article without first having obtained a permit, City contract, or City franchise to do such work.
- (b) All work done under this Article shall be done in accordance with the conditions of the required permits, City contract or City franchise and shall conform to the approved plans, standard drawings, specifications and general conditions as may be determined by the City Engineer to be applicable to the work.
- (c) This Article shall not affect the requirements of any other section of the Municipal Code requiring permits, fees, or other charges, including those for water and sewer mains and services, or affect any provisions concerning the granting of franchises.

SEC. 62.0104 ADMINISTRATION BY THE CITY ENGINEER

- (a) The City Engineer shall enforce the provisions of this Article. He shall, upon application by qualified persons, issue permits for the work under this Article when all applicable conditions established by this Article for such permits have been met.

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- (b) He shall cause all work under this Article being done without a permit to be stopped until a permit is obtained. He may require that such work done without a permit be removed or corrected at the expense of the responsible persons.
- (c) The City Engineer shall determine the extent, type, and requirements of the work to be done under this Article, the type of application and permit required and the fees applicable under the provisions of this Article.
- (d) When the nature of the work requested is such that it is subject to other requirements of this Code or Administrative Regulations issued pursuant thereto or affects the operations of any other department of the City, the City Engineer shall adhere to the other requirements and shall be governed by the recommendations of such departments in determining the disposition of the application. Applications which are not in the interest of the public health, safety or general welfare or do not constitute a reasonable use of land as indicated by the existing zoning or an approved land use plan, shall be denied.
- (e) The City Engineer shall fix the time for completion of the work when a permit is issued. The City Engineer may, upon request of the permittee, and for good cause shown, extend the period of time for completion for a

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sufficient time which, in the opinion of the City Engineer, will enable the permittee to complete the work.

- (f) The City Engineer shall inspect all work done under this Article to insure compliance with the provisions of the permit and shall certify when such work is properly completed. He may, upon payment of the applicable fees, perform the field staking necessary to determine the location and grade of the work; provided that such field staking shall be limited to works upon which the construction estimate is less than \$3,000, unless authorized by the City Council in accordance with Section 62.0203 hereof.
- (g) The City Engineer may cancel a permit or may require the plans to be amended when it is in the interest of public health, safety or general welfare and under, but not limited to, any of the following situations:
- (1) Upon the request of the permittee.
 - (2) When the facts are not as presented by the permittee in application.
 - (3) When work as constructed or as proposed to be constructed creates a hazard to public health, safety, or general welfare.
- (h) Except as herein provided, all work shall be done in accordance with the standards of The City of San Diego. Such standards, as set forth and contained in drawings,

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specifications, and general conditions, shall be on file in the office of the City Clerk and shall be kept for public distribution in the office of the City Engineer.

SEC. 62.0105 APPLICATIONS FOR PERMITS

- (a) Applications for permits authorizing work under this Article shall be made in accordance with procedures established by the City Engineer. Applications shall be accompanied by such detailed plans, specifications, schedules, and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.
- (b) Certain applications for public improvement work under this Article may be made without submission of detailed plans and specifications and may request the City Engineer to, upon payment of the applicable fees, prepare such plans and specifications. Such applications shall be limited to those works upon which the construction estimate is less than \$3,000, unless authorized by the City Council in accordance with the provisions of Section 62.0203 hereof.
- (c) When proposed work or inquiries concerning the public rights-of-way necessitates investigation, the City Engineer may require a special investigation application and fee. Special investigation fees shall be in addition to other fees and are not refundable.

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(d) The permittee shall notify all public utilities of his request to construct improvements or encroachments within the rights-of-way and shall coordinate with the public utilities in order that any necessary relocations of existing facilities may be done in an orderly fashion without interrupting the continuity of service or endangering life or property.

SEC. 62.0106 ISSUANCE OF PERMITS

The City Engineer shall issue permits authorizing work under this Article upon approval of the application and plans, receipt of the prescribed fees, and posting of the required bond. The permits shall include, or refer, to the conditions, plans, and specifications which shall govern the work authorized. Permits for field staking shall be issued only when the work involves the construction of public improvements.

SEC. 62.0107 PAYMENT OF FEES

(a) Engineering fees required by this Article shall be collected by the City Engineer or other designated body in accordance with procedures established by the City Auditor and Comptroller. Such fees shall be based on the bonded amount covering work to be constructed, except for permanent encroachment structures to be built over public rights-of-way in which case the fees shall be for the bonded amount of the facility to be covered by the permanent encroachment structure, including the cost

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of any alteration of the facility for its protection. The bonded amount shall be made or verified by the City Engineer. No permit shall be issued and no work in the public rights-of-way or for land development shall be permitted until the fees applicable under this Article have been received by the City Engineer.

- (b) The State of California or any of its political subdivisions or any governmental agency shall file applications for permits and shall be issued permits as required by this Article. No fees shall be required when the work is done by persons working directly for the State or agency.
- (c) A contractor working for the State of California or any of its political subdivisions or any governmental agency, shall obtain a permit and pay the permit fee.

SEC. 62.0108 FEES UNDER THIS ARTICLE SHALL BE DETERMINED AND COLLECTED AS FOLLOWS:

- (a) A minimum fee of \$20 shall be collected on all permits issued.
- (b) A fee of ten percent of the bonded amount shall be collected on bonded amounts from \$0 to \$5,000. Twenty-five percent of this fee shall be collected at the time of submittal of plans to the City Engineer and shall not be refundable. If no plans are required, that portion of the fee is waived. The remainder of fees will be collected at the time the permit is issued.

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(c) On all permits with a bonded amount in excess of \$5,000, a deposit shall be paid to the City sufficient to cover the costs to the City of processing the permit application, such processing to include plan checks and field checks. If said deposit is insufficient to cover actual costs to said City, such additional deposits will be required as, in the opinion of the City Engineer, will be sufficient to cover such costs.

Any portion of said deposit not used to cover the actual costs of the City in processing a permit application will be refunded, but no funds will be released until all billings are in, and until final acceptance of the work by the City Engineer.

In determining the actual costs incurred by the City in connection with the processing of final maps and improvement plans, the costs as recorded by the City Auditor and Comptroller shall be prima facie evidence of actual costs of services performed by the City.

One quarter of the deposit shall be collected at the time of initial submission of the map to the Engineering Department. The remaining three quarters of the deposit, adjusted to cover all estimated remaining costs, shall be paid in full at the time of permit issuance.

SEC. 62.0109 REFUNDING OF PERMIT FEES

In the event a permit fee refund is requested by permittee and the City Engineer has determined that it is in the public interest to allow the permittee to abandon the work, the City Engineer shall cancel the permit and refund the refundable portion of the fee.

SEC. 62.0110 PRIVATE CONTRACT PERFORMANCE
AND MATERIALMAN'S BOND REQUIRED

Persons performing private contract work under a permit issued in accordance with this Article shall furnish a performance and materialman's bond or cash deposit in accordance with the following provisions:

- (a) The bond shall be issued by a surety company authorized to do business in the State of California and shall be approved as to form by the City Attorney. The bond shall be in favor of The City of San Diego and shall be conditioned upon the completion, free of liens, of the work authorized by the permit in accordance with the requirements of this Article and the conditions prescribed by the permit.
- (b) The bond shall be conditioned upon the payment to the City of any costs incurred by the City in completing the required work or in employing a contractor to complete such work. Whenever the City Engineer finds that a default has occurred in the performance of any term or

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condition of work authorized by a permit, he shall give written notice of such default to the principal and surety of the bond. Such notice shall state the work remaining to be done, the estimated cost of completion and the time estimated by the City Engineer to be necessary for the completion of the work. After receipt of such notice, the principal or the surety must, within the time specified, either complete the work satisfactorily or deposit with The City of San Diego an amount equal to the City Engineer's estimate of the completion cost plus an additional sum equal to 25% of such cost.

- (c) In the event the principal or surety fails to complete such work within the time specified in the notice, or fails to deposit the estimated cost plus 25% with the City, the City Engineer may cause the required work to be completed. The principal and the surety shall be liable for the cost of completing such work.
- (d) If the principal or surety deposits the estimated cost plus 25% as set forth in the notice, the City Engineer shall cause the required work to be completed. The unexpended money shall be returned to the depositor at the completion of such work, together with an itemized accounting of the cost. The principal and surety shall hold the City harmless from any liability in connection

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with the work so performed by the City or contractor employed by the City. The City shall not be liable in connection with such work other than for the expenditure of said money.

- (e) In lieu of a bond, the permittee may post a cash deposit with the City Treasurer in an amount equal to the required bond. In the event of a default, the notice of default as provided above shall be given to the principal and if the default is not corrected within the time specified, the City Engineer shall proceed without delay and without further notice of proceedings whatever to use the cash deposit or any portion of such deposit to complete the required work. The balance, if any, of such cash deposit shall, upon completion of the work, be returned to the depositor or to his successors or assigns after deducting the cost of the work.
- (f) No bond under the provisions of this Article shall be required from the State of California or any of its political subdivisions or any governmental agency.
- (g) Permits issued directly to a contractor pursuant to an approved application by the State of California or any of its political subdivisions or any governmental agency shall require a bond unless proof is submitted that the work is covered by a bond inuring to the benefit of the State or agency.

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SEC. 62.0111 TYPE AND AMOUNT OF PERFORMANCE
AND MATERIALMAN'S BOND ESTABLISHED

- (a) The bond may be for a specific private contract or an annual and continuing bond may be filed with the City covering the costs of several private contracts. The amount of the bond covering a specific job shall be based on the amount of the estimate submitted by the person doing the work and approved by the City Engineer and in accordance with the schedule in paragraph (b) of this section.

A contractor may utilize an annual and continuing bond for more than one permit providing the aggregate bonded amount of the permits outstanding do not exceed the total amount of the bond. Annual and continuing bonds shall contain a clause providing the City Engineer with 30 days' notice prior to cancellation.

- (b) The bond or cash deposit amount shall be based on an estimate of the cost of work approved by the City Engineer and in accordance with the following schedule:
- (1) Public Improvements: 110% of the estimated cost of the work.
 - (2) Encroachments: 110% of the estimated cost of repair and restoration of the right-of-way to its original condition.
 - (3) Land Development:

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- a. Appurtenances: 100% of the estimated cost of retaining walls, drainage structures, or other grading appurtenances.
- b. Slope planting and irrigation systems: 50% of the estimated cost of slope planting and irrigation systems.
- c. Grading: 100% of the cost estimate in an amount up to \$5,000.

\$5,000 plus 50% of the cost estimate above \$5,000 and up to \$50,000.

\$27,000 plus 25% of the cost estimate in an amount above \$50,000.

- (c) Any notice of cancellation shall be sent to the City Engineer.

SEC. 62.0112 QUALIFICATIONS TO DO WORK

- (a) Except as otherwise provided herein, all work under this Article shall be performed by a contractor who has been licensed by the State of California to do the work proposed under the permit.
- (b) Plans for public improvement and major work involving encroachment or land development authorized under this Article shall be prepared by a civil engineer. Where soils reports or soils investigations are required, the reports and investigations shall be prepared and conducted by a soils engineer.

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SEC. 62.0113 PROPERTY OWNER'S APPLICATION

- (a) Any person occupying property as his own home or constructing a house to be occupied as his own home may present an application to construct improvements or encroachments in public rights-of-way adjacent to his property or do land development work on his own property.
- (b) Any work authorized by permit as a result of a property owner's application shall be performed personally by the property owner.
- (c) Persons applying for a property owner's permit to do work in the public right-of-way or land development work shall furnish a cash deposit or a surety bond in an amount determined from the City Engineer's estimate of the cost of the work authorized, and in accordance with Sections 62.0110 and 62.0111 of the Municipal Code.

SEC. 62.0114 PUBLIC UTILITY WORK

Any work authorized by permit as a result of application by a public utility may be performed by either the public utility or by its licensed contractor.

DIVISION 2

PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY

SEC. 62.0201 APPLICATIONS FOR PUBLIC IMPROVEMENT PERMITS

Applications for permits authorizing work in public rights-of-way shall be made in accordance with this Article and shall be accompanied by such detailed plans, specifications,

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schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.

Detailed plans shall be prepared on material and to the size and in the manner designated by the City Engineer.

SEC. 62.0202 STANDARDS FOR PUBLIC IMPROVEMENT WORK

All public improvement work shall be done in accordance with the standards of The City of San Diego.

SEC. 62.0203 PUBLIC IMPROVEMENT WORK
REQUIRING CITY COUNCIL AUTHORIZATION

- (a) Permits for certain work, as hereinafter provided, shall require authorization by the Council. The City Engineer shall submit the applications, together with his recommendations thereon, to the City Manager for presentation to the Council. Issuance of a permit therefor shall be in accordance with the conditions established by the Council.
- (b) Permits shall require Council authorization where any one of the following apply:
 - (1) The permit includes work for which the provisions of this Article or schedule of fees do not apply.
 - (2) The work involves more than 3,000 feet of property frontage.
 - (3) Plan preparation or field staking permits for which the construction estimate is \$3,000 or greater.

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SEC. 62.0204 PUBLIC IMPROVEMENTS
SUBJECT TO DESUETUDE OR DAMAGE

- (a) Where, in the course of development of private property, public improvements are damaged, removed, disconnected or dislocated, the property owner shall, at no cost to the City, repair or replace such public improvements to the satisfaction of the City Engineer.
- (b) Where, in the course of development of private property, a driveway is abandoned and is no longer suited for vehicular use, the property owner shall remove the depressed curb section and apron and restore the right-of-way to the standards normally required.
- (c) The City Engineer shall notify the property owner in writing of such desuetude or damage and the property owner shall take corrective action within 30 days of receipt of such notice. There shall be no certification as to the completion of a building or other permitted work where a notice has been issued and corrective action has not been taken.

SEC. 62.0205 CITY STREETS - PAINTING, DISFIGURING PROHIBITED

Unauthorized persons shall not paint, daub sticky substance, deface, mar or place any sign or advertisement upon any public property, public street or part thereof.

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SEC. 62.0206 ACCEPTANCE OF RESERVATIONS

No reservation for public rights-of-way shall be offered for dedication unless such offer includes the necessary slope easements required for the ultimate development of the right-of-way and no such reservation shall be accepted for dedication by the City until improvements therein are constructed pursuant to the requirements of this Code.

DIVISION 3

ENCROACHMENTS ON PUBLIC
RIGHTS-OF-WAY OR PUBLIC PROPERTY

SEC. 62.0301 APPLICATIONS FOR ENCROACHMENT PERMITS

Applications for permits authorizing encroachment structures shall be made in accordance with this Article and shall be accompanied by such detailed plans, specifications, schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.

Detail plans shall be prepared on material and to the size and in the manner designated by the City Engineer.

No encroachment application shall be approved when it is determined by the City Engineer that the encroachment structures will adversely affect the public health, safety, or general welfare.

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SEC. 62.0302 ENCROACHMENT REMOVAL AGREEMENT

Applications for encroachment permits shall be accompanied by an encroachment maintenance and removal agreement signed by the property owner. This agreement shall be prepared by the City Engineer and shall contain the following provisions and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner, City, and public utilities.

- (a) The encroachment shall be abandoned, removed or relocated by the owner upon demand in writing by the City Engineer.
- (b) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successor in interest.
- (c) The property owner shall agree to at all times indemnify and save 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, use, state of repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.

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- (d) The property owner must remove or relocate an encroachment within 30 days after notice or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land.

Removal agreements for approved encroachment permits shall be recorded in the office of the County Recorder as an obligation upon the land involved.

SEC. 62.0303 ENCROACHMENT AGREEMENT FOR USE WITHIN
STRUCTURES BUILT OVER PUBLIC RIGHTS-OF-WAY

Applications for encroachment permits shall be accompanied by an encroachment agreement for use with structures built over public rights-of-way signed by the property owner. The agreement shall be prepared by the City Engineer and shall contain the following provisions, and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner, City and public utilities.

- (a) The encroachment structure shall be installed and maintained in a safe condition at the sole cost, risk and responsibility of owner and successor in interest.
- (b) The property owner shall agree to at all times indemnify and save 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, use, state

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of repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.

- (c) Whatever rights and obligations were acquired by the City with respect to the rights-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 construct and maintain the encroachment structure.
- (d) If, in the opinion of the City Engineer, it is determined that the City-owned facility can not be economically and reasonably placed, replaced or maintained in the rights-of-way over which the owner's structure is placed, the owner agrees to provide an alternate right-of-way and/or relocate said facility to a new alignment, all without cost or expense to the City. Provided, however, the City may participate in certain costs of the relocations where conditions warrant, subject to approval of the City Council.

Encroachment agreements for structures built over public rights-of-way shall be recorded in the office of the County Recorder as an obligation upon the land involved.

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SEC. 62.0304 ENCROACHMENTS REQUIRING
CITY COUNCIL AUTHORIZATION

- (a) Underground structures which extend into the public rights-of-way farther than a point three feet behind the existing or future curb line.
- (b) Structures built over the public rights-of-way.
- (c) Other encroachments which, in the opinion of the City Engineer, are of sufficient public interest to require Council approval.

SEC. 62.0305 PUBLIC IMPROVEMENT REPAIR OR RELOCATION

The following provisions of this section shall apply unless provision is otherwise made by an agreement pursuant to this Division.

- (a) In the event the City is required to place, replace or maintain a public improvement over which the property owner has constructed an encroachment structure, the property owner shall pay the City that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's permanent encroachment structure.
- (b) The property owner shall pay the City for all the cost of placing, replacing or maintaining a public improvement within a public right-of-way when the City's facility has failed as a result of the construction or existence of the owner's encroachment structure.

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- (c) The costs of placing, replacing or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.
- (d) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.

DIVISION 4

LAND DEVELOPMENT

SEC. 62.0401 ADMINISTRATION OF LAND
DEVELOPMENT BY CITY ENGINEER

The City Engineer shall, in conformance with the provisions of this Article, accept applications and issue permits for all land development work. He shall inspect such work and shall certify when the work is properly completed. He shall cause all land development work being done without a permit to be stopped until a permit has been obtained. He may require, as a condition of the permit, that the work done without a permit be removed or corrected at the expense of the responsible person.

Except as herein provided, all work involving land development shall be done in accordance with the latest revised standards of the City of San Diego. Such drawings, specifications, and general conditions are on file in the

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office of the City Engineer. In connection with land development work, deviations from the requirements of these standards will be permitted upon written reports and recommendations by qualified and recognized authorities subject to review by the City Engineer.

SEC. 62.0402 APPLICABILITY TO ALL LAND DEVELOPMENT

All land development performed within the City of San Diego shall comply with the standards set forth in Division 4 of this Article.

SEC. 62.0403 EXCEPTIONS FOR LAND DEVELOPMENT

The following types of land development shall not be subject to the permit requirements as set forth in Division 4 of this Article:

- (a) The making of an excavation on any site, or contiguous sites, held under one ownership which is less than four feet in vertical depth at its deepest point measured from the natural ground surface and does not result in the movement of more than 100 cubic yards of material per each 8,000 square feet of area or portion thereof, not extending below the angle of repose or natural slope of the soil as measured from a point one foot inside the exterior property line.
- (b) The making of an embankment on any site or contiguous sites held under one ownership in which all of the following are found to exist:

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- (1) None of the embankment exceeds three feet in vertical height;
 - (2) None of the embankment is placed on an existing slope steeper than five units horizontal to one vertical;
 - (3) The embankment does not change or adversely affect the existing drainage pattern;
 - (4) The toe of the embankment is no closer than three feet to an exterior property line; and
 - (5) Does not exceed 100 cubic yards of material per each 8,000 square feet of area or portion thereof.
- (c) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This paragraph shall not exempt from the permit requirements any embankment made with the material from such excavation or any excavation having an unsupported height greater than four feet after the completion of such structure.
- (d) The depositing of material in any disposal area operated or licensed by the City pursuant to the terms of the Municipal Code where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property.

- (e) Gravel pits, mines, quarries or the processing and stockpiling of soil, rock, sand, gravel, aggregate, or clay where such gravel pits, mines, quarries or the processing and stockpiling operations are conducted and operated in accordance with a conditional use permit issued pursuant to the terms of the Municipal Code where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property.
- (f) Excavation or embankment performed by a governmental agency, public utility, or their contractor incidental to the construction of roadways, pipelines, or utility lines within their rights-of-way.
- (g) A subdivider of land required to do land development work as a condition of the approval of the tentative map shall proceed in accordance with the procedures established by Chapter X, Article 2 of the Municipal Code.

Note: The above exceptions shall not exempt from land development any embankment or excavation or work done at another site where the above exceptions are not met.

SEC. 62.0404 LAND DEVELOPMENT WORK
INCIDENTAL TO A BUILDING OR STRUCTURE

Any person desiring to do land development work incidental to and in connection with the construction of a building or

structure shall present an application and obtain a land development permit prior to the obtaining of a building permit. The City may suspend any building permit where it is found that land development is being done or has been done without a land development permit until a land development permit is issued. The City may not certify to the completion of a building where land development work has been done until a land development permit is obtained and certified as complete.

SEC. 62.0405 APPLICATIONS FOR PERMITS

- (a) Applications for permits authorizing work involving land development work shall be made in accordance with this Article. Applications shall be accompanied by such detailed plans, specifications, schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and applicable fees. Detailed plans shall be prepared on material and to the size and in the manner designated by the City Engineer in a standard available for distribution in the office of the City Engineer.
- (b) Detailed plans and specifications for land development shall include but not be limited to:
 - (1) A contour map showing the present contours of the land and the proposed contours or grid elevations after completion of the proposed work.

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- (2) A plot plan showing the location of the land development boundaries, lot lines and public and private rights-of-way lines.
- (3) Engineering studies and soils engineering reports as may be required. Geological reports, prepared by a registered engineering geologist, on subsurface conditions may be required in hillside areas or in areas of potential geological problems.

SEC. 62.0406 PROTECTION OF ADJACENT
PROPERTY AND PUBLIC RIGHT-OF-WAY

- (a) During the construction of land development, the contractor and the owner shall take all necessary measures to protect adjacent property and public right-of-way from damage which may result from the work and to provide the necessary fences and barricades to eliminate any hazard to the public in their normal use of such property or right-of-way. Temporary fences or barricades shall be provided adjacent to the excavation where the slope is two feet horizontal to one foot vertical or steeper. Such fences or barricades shall be substantially constructed and shall be properly maintained so long as the hazard resulting from the excavation exists.
- (b) Where a permanent excavation is adjacent to an existing developed right-of-way or other publicly used property, and the top of the slope is within ten feet of the

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property line, the property owner shall construct an acceptable permanent four-foot high fence at the property line where the vertical height of the excavation exceeds six feet.

(c) The City Engineer may modify or delete the above requirements where it is evident that the land development work will present no hazard to the adjacent property or public right-of-way.

SEC. 62.0407 REPLACEMENT OF PUBLIC IMPROVEMENTS DAMAGED BY LAND DEVELOPMENT

In the event the City or public utility is required to place, replace, or maintain a facility within a public right-of-way over which the property owner has done land development work, the property owner shall pay that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's land development work.

The property owner shall pay the City or public utility for all the cost of placing, replacing or maintaining a facility within a public right-of-way when the facility has failed as a result of the construction or existence of the property owner's land development work.

The costs of placing, replacing or maintaining the facility shall include the cost of obtaining any necessary alternate right-of-way.

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SEC. 62.0408 SPECIAL BOND REQUIRED FOR EXCAVATION

- (a) Where land development work or any excavation exempted from land development permit procedures under Section 62.0403 hereof involves excavation adjacent to the right-of-way with a height in excess of six feet and a slope steeper than one and one-half horizontal to one unit vertical, the City Engineer may require a special bond to indemnify the City against damage to the improvements within the right-of-way which may result from such excavation or land development. The amount of the special bond shall be determined by the City Engineer and such bond shall remain in force and effect until the excavation or land development has been completed or the permanent lateral support for the slope, if required, has been constructed, and it has been determined by the City Engineer that the adjacent improvements are no longer in jeopardy.
- (b) The special bond shall be conditioned upon the payment to the City of any costs incurred by the City in repairing, restoring, or replacing improvements which may be damaged as a result of the adjacent excavation or land development. Procedures for notice, performance of work, and payment to the City where such work is performed by the City shall conform to Section 62.0110 of this Code; provided, however, where delay in repair to

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the improvement would constitute a hazard to the public or to other improvements within the immediate areas, the City Engineer may perform such emergency work as may be required and shall recover the cost thereof from the principal and surety of the bond.

SEC. 62.0409 MAINTENANCE AGREEMENT FOR LAND DEVELOPMENT INVOLVING UNCONTROLLED EMBANKMENT

- (a) Where, in the opinion of the City Engineer, the construction of an uncontrolled embankment would not be contrary to the public interest or general welfare, a permit for such land development may be issued provided that the plans clearly indicate the limits of the uncontrolled embankment to be constructed and an agreement as required in this Article is recorded in the office of the County Recorder.
- (b) Application for land development permits involving uncontrolled embankment shall be accompanied by a land development maintenance agreement signed by the property owner. The agreement shall be prepared by the City Engineer and shall contain the following provisions and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner and the City.
 - (1) The land development work shall be designated as uncontrolled embankment and shall be constructed in accordance with plans approved by the City Engineer.

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(2) The owner acknowledges that as an uncontrolled embankment the site is not eligible for a building permit unless special soils analysis and foundation design are submitted.

(3) The land development work shall be done and maintained in a safe and sanitary manner at the sole cost, risk and responsibility of the property owner and his successors in interest, who shall hold the City harmless with respect thereto.

Land development maintenance agreements for uncontrolled embankment shall be recorded in the office of the County Recorder as an obligation upon the land involved.

SEC. 62.0410 SLOPE GRADIENT REQUIREMENTS

All slopes constructed in connection with land development shall be designed for proper stability considering both geological and soil properties. Cut and fill slopes shall be constructed at a gradient no steeper than one and one-half horizontal to one vertical unless the Planning Commission or City Engineer grants special permission. Slopes shall not exceed 60 feet in vertical height unless special permission is granted by the Planning Commission or City Council.

Special permission shall be considered by the Planning Commission, City Council or City Engineer as set forth in this Division but shall be contingent upon:

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- (a) The submission of a report by a soils engineer certifying that he has investigated the property and that, in his opinion, the proposed slope will not endanger any public or private property; and
- (b) The installation of an approved special slope planting program and permanent irrigation system. This special slope planting program and irrigation system shall incorporate recommendations by a registered landscape architect for specific measures to be taken on the steeper slopes, which will assure satisfactory growth of the ground cover and plant material.

SEC. 62.0411 AUTHORITY OF CITY ENGINEER TO
PERMIT STEEPER SLOPE DEVELOPMENT

Subject to the provisions of Section 62.0410, requests for special permission for the development of slopes steeper than one and one-half horizontal to one vertical may be authorized by the City Engineer where the vertical slope height is less than 60 feet, and:

- (a) The total area of the proposed steeper slopes constitutes no more than ten percent of the total slope area to be constructed; or
- (b) In the case of street construction, the properties contiguous to the proposed alignment are subdivided and developed, precluding acquisition of the right-of-way to provide for the standard slope gradient; or
- (c) The material to be excavated is composed of solid rock.

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SEC. 62.0412 PLANNING COMMISSION CONSIDERATION
OF SPECIAL PERMISSION FOR HIGHER
OR STEEPER SLOPE DEVELOPMENT

Requests to the Planning Commission for special permission for higher or steeper slope developments shall be in writing and filed with the Planning Department. Such requests shall be filed with the Planning Department after the application for a land development permit has been filed with and reviewed by the City Engineer, or in the case of tentative maps, after the tentative map has been reviewed by the Subdivision Review Board. The Planning Director shall, upon receipt of the request, place the matter on the Planning Commission docket for a hearing.

At the hearing, the Planning Commission shall proceed to hear the testimony of the applicant or any witnesses in his behalf and the testimony of the City Engineer, Subdivision Review Board or any other witnesses. After the conclusion of the hearing, the Planning Commission shall declare its findings based on the testimony and documents placed before it. The Planning Commission may direct that the conditions for approval of the land development permit or the tentative map resolution contain allowances for heights in excess of 60 feet or for slopes steeper than one and one-half horizontal to one vertical, if the Commission finds from the evidence presented at the hearing that the following facts exist:

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- (a) That special permission will not under the circumstances of the particular case be detrimental to the public health, safety or general welfare; and
- (b) That extraordinary conditions exist to the extent that enforcement of the standards set forth in Section 62.0410 would result in unnecessary hardship.

SEC. 62.0413 CITY COUNCIL CONSIDERATION OF
APPEALS FROM DECISIONS OF THE
PLANNING COMMISSION OR CITY ENGINEER

In the event that the subdivider, applicant for special permission or Subdivision Review Board is dissatisfied with the Planning Commission's action on the request for special permission for higher or steeper slope development as set forth in Section 62.0412, an appeal, as provided for herein, may be directed to the City Council within 15 days following such action. In addition, appeals from decisions by the City Engineer under this Article may be submitted to the City Council as provided herein.

Appeals shall be filed in writing with and on forms provided by the City Clerk. Such appeals shall state the nature and basis of the appeal.

The City Clerk shall, upon receipt of the appeal from the Planning Commission's or City Engineer's decision, place the matter on the Council docket for a hearing within 15 days or at the next succeeding regular Council meeting unless the applicant consents to a continuance.

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At the hearing, the Council shall hear testimony of the appellant or any witnesses in his behalf and testimony of the representatives of the Subdivision Review Board or any other witnesses. Upon the conclusion of the hearing, unless the Council and the subdivider or applicant for special permission mutually agree that additional time is needed for further consideration, the Council shall, within seven days, declare its findings based on the testimony and documents placed before it. The Council may sustain, modify, reject or overrule the recommendations or the rulings of the Commission or City Engineer and may make such findings as are not inconsistent with State or local laws.

SEC. 62.0414 SLOPE PLANTING REQUIREMENTS

All slopes to be constructed at a gradient steeper than six horizontal to one vertical and in excess of five feet in vertical height shall be planted. Plant materials shall be selected from the approved standard planting schedules on file in the office of the City Engineer. Other plant materials as specified by a landscape architect may be approved by the City Engineer.

Constructed slopes shall be planted with ground cover and, in addition, slopes in excess of 15 feet in height shall be planted with shrubs or trees at the rate of one per 100 square feet of the total slope area. Combinations or groups of shrubs or trees may be utilized. Shrub or tree specimens shall be a minimum of one gallon size.

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The selection and placement of plant material, both ground cover and shrubs or trees, shall be made such that fire hazards to adjacent existing or proposed structures will be minimized.

SEC. 62.0415 GENERAL SLOPE IRRIGATION REQUIREMENTS

All slopes to be constructed at a gradient steeper than six horizontal to one vertical and in excess of five feet in vertical height shall be provided with an irrigation system which will meet or exceed the minimum requirements as specified herein.

Plans for the irrigation system shall be approved by the City Engineer. Such system shall provide uniform water coverage for the slope area at a rate of not less than one-eighth inch per hour, nor greater than one-fourth inch per hour. A functional test of the irrigation system shall be performed by the installer prior to approval.

In lieu of the irrigation system requirement, hose bibs within 50 feet of the slope may be accepted for slopes less than ten feet in vertical height.

SEC. 62.0416 MINIMUM SLOPE IRRIGATION
REQUIREMENTS FOR VARIOUS SLOPE GRADIENTS

- (a) Cut slopes to be constructed at a gradient of one and one-half horizontal to one vertical but steeper than two horizontal to one vertical shall be provided with separate irrigation systems installed for each lot. In lieu of separate systems, the City Engineer may approve

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manifold-type systems with a single-service meter for those slopes which are to be included for maintenance purposes within a special public or private maintenance district. These systems shall be a fixed pipe facility, designed as a permanent system, including backflow protection as required by Chapter IX of this Code, and fittings necessary to minimize erosion from sprinkler head drainage.

- (b) Cut slopes to be constructed at a gradient of two horizontal to one vertical but steeper than three horizontal to one vertical shall be provided with separate irrigation systems installed for each lot. In lieu of separate systems, the City Engineer may approve manifold-type systems with a single-service meter for those slopes which are to be included for maintenance purposes within a special public or private maintenance district. These systems shall be a fixed pipe facility designed to be operative for at least three years of service, including backflow protection as required by Chapter IX of this Code and such other fittings as necessary to minimize erosion from sprinkler head drainage.
- (c) All fill slopes and those cut slopes to be constructed at a gradient of three horizontal to one vertical but steeper than six horizontal to one vertical shall be provided with separate irrigation systems installed for each lot

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and designed as a temporary facility to be operative for one year. In lieu of separate systems, the City Engineer may approve manifold-type temporary systems with a single-service meter. In either event, the irrigation systems shall include backflow protection as required by Chapter IX of this Code.

SEC. 62.0417 MAINTENANCE OF PLANTING
AND IRRIGATION SYSTEMS

The permittee shall be responsible for installation and the maintenance of the planting and irrigation system until the City Engineer certifies that the work provided for under the permit has been properly completed, but in no case shall this maintenance period be less than 90 days. Thereafter, the responsibility for maintenance shall be vested in the property owner.

SEC. 62.0418 LAND DEVELOPMENT ADVISORY BOARD

There is hereby established a Land Development Advisory Board. The Advisory Board shall consist of nine members appointed by the Mayor, for a term of two years, with confirmation by the City Council, none of whom shall be City officers or employees. The Advisory Board shall be composed of the following:

- (a) A registered civil engineer in private practice in the City of San Diego;

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- (b) A registered civil engineer in private practice in the City of San Diego who specializes in the practice of soils engineering;
- (c) A licensed contractor in business in the City of San Diego actively engaged in land grading operations;
- (d) A landscape architect in private practice in the City of San Diego;
- (e) A builder-developer in business in the City of San Diego actively engaged in land development and building operations;
- (f) An engineering geologist;
- (g) An architect engaged in private practice in the City of San Diego; and
- (h) Two representatives of recognized citizen planning groups. The City Engineer and the Planning Director, or their designated representatives, shall be ex officio members of the Board. The City Engineer or his designated representative shall serve as secretary to the Advisory Board.

The Advisory Board shall appoint a chairman and vice-chairman from its members.

The Advisory Board shall meet at such time and place as shall be prescribed in the rules of the Board and as often as required to carry out its duties. Special meetings of the Board may be called by the chairman, vice-chairman or secretary. Five members shall constitute a quorum. Acts of the Advisory

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Board shall be by a majority vote of the members present at the meeting.

The Advisory Board may adopt rules for the conduct of its business and for the time, place and procedure for the conduct of its meetings.

The City Engineer shall refer to the Advisory Board all land development standards including standard drawings, specifications and general conditions for their review. In addition, the City Engineer may refer to the Board any matter which, in his judgment, is necessary or desirable for his guidance in the administration of the land development aspects of this Article. The Advisory Board shall consider all matters referred by the City Engineer and shall render an advisory technical opinion.

The Advisory Board shall review all amendments, deletions, or additions to the land development aspects of this Article. It shall submit its recommendations or comments in writing to the City Council prior to the Council's consideration of any such amendments, deletions or additions.

SEC. 62.0419 CONSTITUTIONALITY

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

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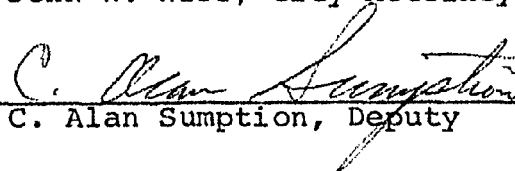
SEC. 62.0420 APPLICABILITY TO TENTATIVE MAPS

Tentative maps submitted to the Planning Department prior to the effective date of the Article shall be governed by the Municipal Code section in existence at that time.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By


C. Alan Sumption, Deputy

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Passed and adopted by the Council of The City of San Diego on _____
by the following vote:

AUG 17 1971

RECEIVED
CITY CLERK'S OFFICE
1971 JUL 28 AM 11:07
SAN DIEGO CALIF.

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Boyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curran	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

FRANK CURRAN

Mayor of The City of San Diego, California.

EDWARD NIELSEN

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edna J. Hamel, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

AUG 3 1971

AUG 17 1971

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

EDWARD NIELSEN

JOHN LOCKWOOD

City Clerk of The City of San Diego, California.

(Seal)

By Edna J. Hamel, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number 10660 Adopted AUG 17 1971

FORM CC-1255-A (1-70)

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MR

00150

ATTORNEY (S)

*City of San Diego
202 "C" Street
Community Concourse
San Diego, California 92101

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

GENERAL REQUIREMENTS

RECEIVED
CITY CLERK'S OFFICE
1971 SEP -3 PM 12: 29
SAN DIEGO, CALIF.

I, Patricia M. Applestill hereby certify that The Daily Transcript is a daily newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the City of San Diego, County of San Diego, State of California; that I am the principal clerk of said newspaper; that the

ORDINANCE NO. 10660 (NEW SERIES)

to a true and correct copy of which this certificate is annexed was published in said newspaper on

August 26, 1971

I certify under penalty of perjury that the foregoing is true and correct, at San Diego, California, on

August 26, 1971

Patricia M. Applestill
(Signature)

00151

165 "4" \$694.05

ORDINANCE NO. 10660
(NEW SERIES)

AN ORDINANCE AMENDING CHAPTER VI, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE, BY REPEALING DIVISION 1, DEFINITIONS, GENERAL REQUIREMENTS AND ADMINISTRATION; DIVISION 2, QUALIFICATIONS REQUIRED FOR PERSONS CONSTRUCTING PUBLIC IMPROVEMENTS OR ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY AND/OR DEVELOPING LAND; DIVISION 3, PERMITS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND FOR LAND DEVELOPMENT; AND DIVISION 4, FEES FOR MATTERS AFFECTING PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT; AND SECTIONS 62.0101 THROUGH 62.0405; AND AMENDING CHAPTER VI, ARTICLE 2 OF THE SAN DIEGO MUNICIPAL CODE, BY ADDING THERETO DIVISION 1, DEFINITIONS AND REGULATIONS; DIVISION 2, PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY; DIVISION 3, ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY OR PUBLIC PROPERTY; AND DIVISION 4, LAND DEVELOPMENT; AND SECTIONS 62.0101 THROUGH 62.0420, ALL RELATING TO PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT.

LET IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter VI, Article 2, of the San Diego Municipal Code be amended by repealing Division 1, DEFINITIONS, GENERAL REQUIREMENTS AND ADMINISTRATION; Division 2, QUALIFICATIONS REQUIRED FOR PERSONS CONSTRUCTING PUBLIC IMPROVEMENTS OR ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY AND/OR DEVELOPING LAND; Division 3, PERMITS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND FOR LAND DEVELOPMENT WORK; and Division 4, FEES FOR MATTERS AFFECTING PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT; and Sections 62.0101 through 62.0405.

Section 2. That Chapter VI, Article 2, of the San Diego Municipal Code be amended by adding Division 1, DEFINITIONS AND REGULATIONS; Division 2, PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY; Division 3, ENCROACHMENTS ON PUBLIC RIGHTS-OF-WAY OR PUBLIC PROPERTY; and Division 4, LAND DEVELOPMENT; and Sections 62.0101 through 62.0420 to read as follows:

DIVISION 1
DEFINITIONS AND REGULATIONS

SEC. 62.0101 PURPOSE AND INTENT

It is the purpose of this Article to provide for the orderly administration of private contract work in the public rights-of-way and to protect the public interest and safety in the development of private property by (1) regulating grading, (2) establishing minimum standards governing slope stability and drainage, and (3) effecting, within practical limits, the restoration of natural ground cover through appropriate erosion control planting and irrigation.

SEC. 62.0102 DEFINITIONS

Whenever the following words are used in this Article, they shall have the meaning ascribed to them in this section:

- (a) "Architect" shall mean an architect registered by the State of California, who is engaged in the practice of architecture and associated site development.
- (b) "Land Development Advisory Board" shall mean the Advisory Board established pursuant to this Article.
- (c) "Certify" or "Certification" shall mean a signed written statement that the specific inspections and tests which were required have been performed and that the works comply with the applicable requirements of this Article.
- (d) "Civil Engineer" shall mean an engineer registered by the State of California to practice in the field of civil engineering.
- (e) "Contractor" shall mean a contractor licensed by the State of California to do work covered by this Article. A contractor may be authorized to act for a property owner in doing such work.
- (f) "Embankment" or "Fill" shall be any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported, or moved to a new location and the conditions resulting therefrom.
- (g) "Encroachment" or "Encroachment Structure" shall mean privately owned facilities or structures in the public rights-of-way or in other public property, constructed and maintained by a property owner.
- (h) "Engineering Geologist" shall mean a geologist, registered by the State of California, who is engaged in the practice of applying geological principles and data to engineering problems dealing with naturally occurring rock and soils for the purpose of assuring that geological factors are recognized and adequately interpreted in engineering practice.
- (i) "Excavation" or "Cut" shall be any act by which earth, sand, gravel, rock, or any similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and the conditions resulting therefrom.
- (j) "Grading" shall mean any excavating or embankment or combination thereof.
- (k) "Land Development" shall mean the making of excavations and embankments on private property and the construction of slopes, drainage structures, fences, and other facilities incidental thereto, where it is necessary to safeguard life, limb, health, property and public welfare by regulating and controlling the design, construction and quality of materials.
- (l) "Landscape Architect" shall mean a landscape architect, registered by the State of California, who performs professional work in physical land planning and integrated land development, including the design of landscape planting programs.
- (m) "Landscape Contractor" shall mean a contractor licensed by the State of California to do landscaping work and who has at least five years of responsible experience in erosion control planting.
- (n) "Permittee" shall mean any person to whom a permit is issued pursuant to this Article.
- (o) "Private Contract" shall mean an agreement between a property owner, or an agent thereof, and the City for construction in the public rights-of-way, or other public property, or for land development work.
- (p) "Property Owner" shall mean the owner of real property which will be benefited by public improvements, encroachments, or land development work and who makes application to do such work.
- (q) "Public Improvement" shall mean publicly owned structures or facilities including the construction thereof, in the public rights-of-way designed for the public use, safety, or general welfare, and maintained by the City.
- (r) "Public Property" shall mean property owned in fee by the City or dedicated for public use.
- (s) "Public Rights-of-Way" shall mean public easements for streets, alley and/or other use.

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- (t) "Public Utility" shall mean a person, firm, corporation, or other legal entity furnishing gas, electric, or communication services to the citizens of San Diego under a franchise granted by the City or by the State of California.
- (u) "Reservation" shall mean an unaccepted offer of dedication of real property for public rights-of-way, such offer remaining open for future acceptance.
- (v) "Slope" shall mean the inclined exposed surface of an embankment, excavation, or natural terrain.
- (w) "Soils Engineer" shall mean a registered civil engineer who (1) is engaged in the practice of civil engineering and spends a majority of his time in the field of applied soil mechanics and foundation engineering, (2) has at least four years of responsible practical experience in the field of applied soil mechanics, and (3) maintains an adequately equipped soils testing laboratory.
- (x) "Uncontrolled Embankment" shall mean any embankment constructed as land development on which no soil testing was performed or no compaction reports or other soils reports were prepared or submitted.

SEC. 62.0103 GENERAL REQUIREMENTS FOR WORK IN PUBLIC RIGHTS-OF-WAY AND LAND DEVELOPMENT

- (a) No person shall do or cause to be done any work covered under this Article without first having obtained a permit, City contract, or City franchise to do such work.
- (b) All work done under this Article shall be done in accordance with the conditions of the required permits, City contract or City franchise and shall conform to the approved plans, standard drawings, specifications and general conditions as may be determined by the City Engineer to be applicable to the work.
- (c) This Article shall not affect the requirements of any other section of the Municipal Code requiring permits, fees, or other charges, including those for water and sewer mains and services, or affect any provisions concerning the granting of franchises.

SEC. 62.0104 ADMINISTRATION BY THE CITY ENGINEER

- (a) The City Engineer shall enforce the provisions of this Article. He shall, upon application by qualified persons, issue permits for the work under this Article when all applicable conditions established by this article for such permits have been met.
- (b) He shall cause all work under this Article being done without a permit to be stopped until a permit is obtained. He may require that such work done without a permit be removed or corrected at the expense of the responsible persons.
- (c) The City Engineer shall determine the extent, type, and requirements of the work to be done under this Article, the type of application and permit required and the fees applicable under the provisions of this Article.
- (d) When the nature of the work requested is such that it is subject to other requirements of this Code or Administrative Regulations issued pursuant thereto or affects the operations of any other department of the City, the City Engineer shall adhere to the other requirements and shall be governed by the recommendations of such departments in determining the disposition of the application. Applications which are not in the interest of the public health, safety or general welfare or do not constitute a reasonable use of land as indicated by the existing zoning or an approved land use plan, shall be denied.
- (e) The City Engineer shall fix the time for completion of the work when a permit is issued. The City Engineer may, upon request of the permittee, and for good cause shown, extend the period of time for completion for a sufficient time which, in the opinion of the City Engineer, will enable the permittee to complete the work.
- (f) The City Engineer shall inspect all work done under this Article to insure compliance with the provisions of the permit and shall certify when such work is properly completed. He may, upon payment of the applicable fees, perform the field staking necessary to determine the location and grade of the work, provided that such field staking shall be limited to works upon which the construction estimate is less than \$3,000, unless authorized by the City Council in accordance with Section 62.0203 hereof.
- (g) The City Engineer may cancel a permit or may require the plans to be amended, when it is in the interest of public health, safety or general welfare and under, but not limited to, any of the following situations:
 - (1) Upon the request of the permittee.
 - (2) When the facts are not as presented by the permittee in application.
 - (3) When work as constructed or as proposed to be constructed creates a hazard to public health, safety, or general welfare.
- (h) Except as herein provided, all work shall be done in accordance with the standards of The City of San Diego. Such standards, as set forth and contained in drawings, specifications, and general conditions, shall be on file in the office of the City Clerk and shall be kept for public distribution in the office of the City Engineer.

SEC. 62.0105 APPLICATIONS FOR PERMITS

- (a) Applications for permits authorizing work under this Article shall be made in accordance with procedures established by the City Engineer. Applications shall be accompanied by such detailed plans, specifications, schedules, and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.
- (b) Certain applications for public improvement work under this Article may be made without submission of detailed plans and specifications and may request the City Engineer to, upon payment of the applicable fees, prepare such plans and specifications. Such applications shall be limited to those works upon which the construction estimate is less than \$3,000, unless authorized by the City Council in accordance with the provisions of Section 62.0203 hereof.
- (c) When proposed work or inquiries concerning the public rights-of-way necessitates investigation, the City Engineer may require a special investigation application and fee. Special investigation fees shall be in addition to other fees and are not refundable.
- (d) The permittee shall notify all public utilities of his request to construct improvements or encroachments within the rights-of-way and shall coordinate with the public utilities in order that any necessary relocations of existing facilities may be done in an orderly fashion without interrupting the continuity of service or endangering life or property.

SEC. 62.0106 ISSUANCE OF PERMITS

The City Engineer shall issue permits authorizing work under this Article upon approval of the application and plans, receipt of the prescribed fees, and posting of the required bond. The permits shall include, or refer to, the conditions, plans, and specifications which shall govern the work authorized. Permits for field staking shall be issued only when the work involves the construction of public improvements.

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SEC. 62.0107 PAYMENT OF FEES

(a) Engineering fees required by this Article shall be collected by the City Engineer or other designated body in accordance with procedures established by the City Auditor and Comptroller. Such fees shall be based on the bonded amount covering work to be constructed, except for permanent encroachment structures to be built over public rights-of-way in which case the fees shall be for the bonded amount of the facility to be covered by the permanent encroachment structure, including the cost of any alteration of the facility for its protection. The bonded amount shall be made or verified by the City Engineer. No permit shall be issued and no work in the public

rights-of-way or for land development shall be permitted until the fees applicable under this Article have been received by the City Engineer.

- (b) The State of California or any of its political subdivisions or any governmental agency shall file applications for permits and shall be issued permits as required by this Article. No fees shall be required when the work is done by persons working directly for the State or agency.
- (c) A contractor working for the State of California or any of its political subdivisions or any governmental agency, shall obtain a permit and pay the permit fee.

SEC. 62.0108 FEES UNDER THIS ARTICLE SHALL BE DETERMINED AND COLLECTED AS FOLLOWS:

- (a) A minimum fee of \$20 shall be collected on all permits issued.
- (b) A fee of ten percent of the bonded amount shall be collected on bonded amounts from \$0 to \$5,000. Twenty-five percent of this fee shall be collected at the time of submittal of plans to the City Engineer and shall not be refundable. If no plans are required, that portion of the fee is waived. The remainder of fees will be collected at the time the permit is issued.
- (c) On all permits with a bonded amount in excess of \$5,000, a deposit shall be paid to the City sufficient to cover the costs to the City of processing the permit application, such processing to include plan checks and field checks. If said deposit is insufficient to cover actual costs to said City, such additional deposits will be required as, in the opinion of the City Engineer, will be sufficient to cover such costs. Any portion of said deposit not used to cover the actual costs of the City in processing a permit application will be refunded, but no funds will be released until all billings are in, and until final acceptance of the work by the City Engineer.

In determining the actual costs incurred by the City in connection with the processing of final maps and improvement plans, the costs as recorded by the City Auditor and Comptroller shall be prima facie evidence of actual costs of services performed by the City.

One quarter of the deposit shall be collected at the time of initial submission of the map to the Engineering Department. The remaining three quarters of the deposit, adjusted to cover all estimated remaining costs, shall be paid in full at the time of permit issuance.

SEC. 62.0109 REFUNDING OF PERMIT FEES

In the event a permit fee refund is requested by permittee and the City Engineer has determined that it is in the public interest to allow the permittee to abandon the work, the City Engineer shall cancel the permit and refund the refundable portion of the fee.

SEC. 62.0110 PRIVATE CONTRACT PERFORMANCE AND MATERIAL-MAN'S BOND REQUIRED

Persons performing private contract work under a permit issued in accordance with this Article shall furnish a performance and material-man's bond or cash deposit in accordance with the following provisions:

- (a) The bond shall be issued by a surety company authorized to do business in the State of California and shall be approved as to form by the City Attorney. The bond shall be in favor of The City of San Diego and shall be conditioned upon the completion, free of liens, of the work authorized by the permit in accordance with the requirements of this Article and the conditions prescribed by the permit.
- (b) The bond shall be conditioned upon the payment to the City of any costs incurred by the City in completing the required work or in employing a contractor to complete such work. Whenever the City Engineer finds that a default has occurred in the performance of any term or condition of work authorized by a permit, he shall give written notice of such default to the principal and surety of the bond. Such notice shall state the work remaining to be done, the estimated cost of completion and the time estimated by the City Engineer to be necessary for the completion of the work. After receipt of such notice, the principal or the surety must, within the time specified, either complete the work satisfactorily or deposit with The City of San Diego an amount equal to the City Engineer's estimate of the completion cost plus an additional sum equal to 25% of such cost.
- (c) In the event the principal or surety fails to complete such work within the time specified in the notice, or fails to deposit the estimated cost plus 25% with the City, the City Engineer may cause the required work to be completed. The principal and the surety shall be liable for the cost of completing such work.
- (d) If the principal or surety deposits the estimated cost plus 25% as set forth in the notice, the City Engineer shall cause the required work to be completed. The unexpended money shall be returned to the depositor at the completion of such work, together with an itemized accounting of the cost. The principal and surety shall hold the City harmless from any liability in connection with the work so performed by the City or contractor employed by the City. The City shall not be liable in connection with such work other than for the expenditure of said money.
- (e) In lieu of a bond, the permittee may post a cash deposit with the City Treasurer in an amount equal to the required bond. In the event of a default, the notice of default as provided above shall be given to the principal and if the default is not corrected within the time specified, the City Engineer shall proceed without delay and without further notice of proceedings whatever to use the cash deposit or any portion of such deposit to complete the required work. The balance, if any, of such cash deposit shall, upon completion of the work, be returned to the depositor or to his successors or assigns after deducting the cost of the work.
- (f) No bond under the provisions of this Article shall be required from the State of California or any of its political subdivisions or any governmental agency.
- (g) Permits issued directly to a contractor pursuant to an approved application by the State of California or any of its political subdivisions or any governmental agency shall require a bond unless proof is submitted that the work is covered by a bond insuring to the benefit of the State or agency.

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SEC. 62.0111 TYPE AND AMOUNT OF PERFORMANCE AND MATERIALMAN'S BOND ESTABLISHED

(a) The bond may be for a specific private contract or an annual and continuing bond may be filed with the City covering the costs of several private contracts. The amount of the bond covering a specific job shall be based on the amount of the estimate submitted by the person doing the work and approved by the City Engineer and in accordance with the schedule in paragraph (b) of this section.

A contractor may utilize an annual and continuing bond for more than one permit providing the aggregate bonded amount of the permits outstanding do not exceed the total amount of the bond. Annual and continuing bonds shall contain a clause providing the City Engineer with 30 days' notice prior to cancellation.

(b) The bond or cash deposit amount shall be based on an estimate of the cost of work approved by the City Engineer and in accordance with the following schedule:

(1) Public Improvements: 110% of the estimated cost of the work.
(2) Encroachments: 110% of the estimated cost of repair and restoration of the right-of-way to its original condition.

(3) Land Development:

a. Appurtenances: 100% of the estimated cost of retaining walls, drainage structures, or other grading appurtenances.

b. Slope planting and irrigation systems: 50% of the estimated cost of slope planting and irrigation systems.

c. Grading: 100% of the cost estimate in an amount up to \$5,000, \$5,000 plus 50% of the cost estimate above \$5,000 and up to \$50,000.

\$27,000 plus 25% of the cost estimate in an amount above \$50,000.

(c) Any notice of cancellation shall be sent to the City Engineer.

SEC. 62.0112 QUALIFICATIONS TO DO WORK

(a) Except as otherwise provided herein, all work under this Article shall be performed by a contractor who has been licensed by the State of California to do the work proposed under the permit.

(b) Plans for public improvement and major work involving encroachment or land development authorized under this Article shall be prepared by a civil engineer. Where soils reports or soils investigations are required, the reports and investigations shall be prepared and conducted by a soils engineer.

SEC. 62.0113 PROPERTY OWNER'S APPLICATION

(a) Any person occupying property as his own home or constructing a house to be occupied as his own home may present an application to construct improvements or encroachments in public rights-of-way adjacent to his property or do land development work on his own property.

(b) Any work authorized by permit as a result of a property owner's application shall be performed personally by the property owner.

(c) Persons applying for a property owner's permit to do work in the public right-of-way or land development work shall furnish a cash deposit or a surety bond in an amount determined from the City Engineer's estimate of the cost of the work authorized, and in accordance with Sections 62.0110 and 62.0111 of the Municipal Code.

SEC. 62.0114 PUBLIC UTILITY WORK

Any work authorized by permit as a result of application by a public utility may be performed by either the public utility or by its licensed contractor.

DIVISION 2

PUBLIC IMPROVEMENTS AND PUBLIC RIGHTS-OF-WAY

SEC. 62.0201 APPLICATIONS FOR PUBLIC IMPROVEMENT PERMITS

Applications for permits authorizing work in public rights-of-way shall be made in accordance with this Article and shall be accompanied by such detailed plans, specifications, schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.

Detailed plans shall be prepared on material and to the size and in the manner designated by the City Engineer.

SEC. 62.0202 STANDARDS FOR PUBLIC IMPROVEMENT WORK

All public improvement work shall be done in accordance with the standards of The City of San Diego.

SEC. 62.0203 PUBLIC IMPROVEMENT WORK REQUIRING CITY COUNCIL AUTHORIZATION

(a) Permits for certain work, as hereinafter provided, shall require authorization by the Council. The City Engineer shall submit the applications, together with his recommendations thereon, to the City Manager for presentation to the Council. Issuance of a permit therefor shall be in accordance with the conditions established by the Council.

(b) Permits shall require Council authorization where any one of the following apply:

(1) The permit includes work for which the provisions of this Article or schedule of fees do not apply.

(2) The work involves more than 3,000 feet of property frontage.

(3) Plan preparation or field staking permits for which the construction estimate is \$3,000 or greater.

SEC. 62.0204 PUBLIC IMPROVEMENTS

SUBJECT TO DESUETUDE OR DAMAGE

(a) Where, in the course of development of private property, public improvements are damaged, removed, disconnected or dislocated, the property owner shall, at no cost to the City, repair or replace such public improvements to the satisfaction of the City Engineer.

(b) Where, in the course of development of private property, a driveway is abandoned and is no longer suited for vehicular use, the property owner shall remove the depressed curb section and apron and restore the right-of-way to the standards normally required.

(c) The City Engineer shall notify the property owner in writing of such desuetude or damage and the property owner shall take corrective action within 30 days of receipt of such notice. There shall be no certification as to the completion of a building or other permitted work where a notice has been issued and corrective action has not been taken.

SEC. 62.0205 CITY STREETS—PAINTING, DISFIGURING

PROHIBITED

Unauthorized persons shall not paint, daub sticky substance, deface, mar or place any sign or advertisement upon any public property, public street or part thereof.

SEC. 62.0206 ACCEPTANCE OF RESERVATIONS

No reservation for public rights-of-way shall be offered for dedication unless such offer includes the necessary slope easements required for the ultimate development of the right-of-way and no such reservation shall be accepted for dedication by the City until improvements therein are constructed pursuant to the requirements of this Code.

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**DIVISION 3
ENCROACHMENTS ON PUBLIC
RIGHTS-OF-WAY OR PUBLIC PROPERTY**

SEC. 62.0301 APPLICATIONS FOR ENCROACHMENT PERMITS

Applications for permits authorizing encroachment structures shall be made in accordance with this Article and shall be accompanied by such detailed plans, specifications, schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and the applicable fees.

Detail plans shall be prepared on material and to the size and in the manner designated by the City Engineer.

No encroachment application shall be approved when it is determined by the City Engineer that the encroachment structures will adversely affect the public health, safety, or general welfare.

SEC. 62.0302 ENCROACHMENT REMOVAL AGREEMENT

Applications for encroachment permits shall be accompanied by an encroachment maintenance and removal agreement signed by the property owner. This agreement shall be prepared by the City Engineer and shall contain the following provisions and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner, City, and public utilities.

- (a) The encroachment shall be abandoned, removed or relocated by the owner upon demand in writing by the City Engineer.
- (b) The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successor in interest.
- (c) The property owner shall agree to at all times indemnify and save 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, use, state of repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.
- (d) The property owner must remove or relocate an encroachment within 30 days after notice or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land.

Removal agreements for approved encroachment permits shall be recorded in the office of the County Recorder as an obligation upon the land involved.

SEC. 62.0303 ENCROACHMENT AGREEMENT FOR USE WITHIN STRUCTURES BUILT OVER PUBLIC RIGHTS-OF-WAY

Applications for encroachment permits shall be accompanied by an encroachment agreement for use with structures built over public rights-of-way signed by the property owner. The agreement shall be prepared by the City Engineer and shall contain the following provisions, and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner, City and public utilities.

- (a) The encroachment structure shall be installed and maintained in a safe condition at the sole cost, risk and responsibility of owner and successor in interest.
- (b) The property owner shall agree to at all times indemnify and save 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, use, state of repair or presence of the structure installed hereunder, including any loss, damage or expense arising out of (1) loss of or damage to property, and (2) injury to or death of persons; excepting any loss, damage or expense and claims for loss, damage or expense resulting in any manner from the negligent act or acts of the City, its contractors, officers, agents or employees.
- (c) Whatever rights and obligations were acquired by the City with respect to the rights-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 construct and maintain the encroachment structure.
- (d) If, in the opinion of the City Engineer, it is determined that the City-owned facility can not be economically and reasonably placed, replaced or maintained in the rights-of-way over which the owner's structure is placed, the owner agrees to provide an alternate right-of-way and/or relocate said facility to a new alignment, all without cost or expense to the City. Provided, however, the City may participate in certain costs of the relocations where conditions warrant, subject to approval of the City Council.

Encroachment agreements for structures built over public rights-of-way shall be recorded in the office of the County Recorder as an obligation upon the land involved.

SEC. 62.0304 ENCROACHMENTS REQUIRING CITY COUNCIL AUTHORIZATION

- (a) Underground structures which extend into the public rights-of-way farther than a point three feet behind the existing or future curb line.
- (b) Structures built over the public rights-of-way.
- (c) Other encroachments which, in the opinion of the City Engineer, are of sufficient public interest to require Council approval.

SEC. 62.0305 PUBLIC IMPROVEMENT REPAIR OR RELOCATION

The following provisions of this section shall apply unless provision is otherwise made by an agreement pursuant to this Division.

- (a) In the event the City is required to place, replace or maintain a public improvement over which the property owner has constructed an encroachment structure, the property owner shall pay the City that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's permanent encroachment structure.
- (b) The property owner shall pay the City for all the cost of placing, replacing or maintaining a public improvement within a public right-of-way when the City's facility has failed as a result of the construction or existence of the owner's encroachment structure.
- (c) The costs of placing, replacing or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.
- (d) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.

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DIVISION 4
LAND DEVELOPMENT

SEC. 62.0401 ADMINISTRATION OF LAND DEVELOPMENT BY CITY ENGINEER

The City Engineer shall, in conformance with the provisions of this Article, accept applications and issue permits for all land development work. He shall inspect such work and shall certify when the work is properly completed. He shall cause all land development work being done without a permit to be stopped until a permit has been obtained. He may require, as a condition of the permit, that the work done without a permit be removed or corrected at the expense of the responsible person.

Except as herein provided, all work involving land development shall be done in accordance with the latest revised standards of the City of San Diego. Such drawings, specifications, and general conditions are on file in the office of the City Engineer. In connection with land development work, deviations from the requirements of these standards will be permitted upon written reports and recommendations by qualified and recognized authorities subject to review by the City Engineer.

SEC. 62.0402 APPLICABILITY TO ALL LAND DEVELOPMENT

All land development performed within the City of San Diego shall comply with the standards set forth in Division 4 of this Article.

SEC. 62.0403 EXCEPTIONS FOR LAND DEVELOPMENT

The following types of land development shall not be subject to the permit requirements as set forth in Division 4 of this Article:

- (a) The making of an excavation on any site, or contiguous sites, held under one ownership which is less than four feet in vertical depth at its deepest point measured from the natural ground surface and does not result in the movement of more than 100 cubic yards of material per each 8,000 square feet of area or portion thereof, not extending below the angle of repose or natural slope of the soil as measured from a point one foot inside the exterior property line.
- (b) The making of an embankment on any site or contiguous sites held under one ownership in which all of the following are found to exist:
 - (1) None of the embankment exceeds three feet in vertical height;
 - (2) None of the embankment is placed on an existing slope steeper than five units horizontal to one vertical;
 - (3) The embankment does not change or adversely affect the existing drainage pattern;
 - (4) The toe of the embankment is no closer than three feet to an exterior property line; and
 - (5) Does not exceed 100 cubic yards of material per each 8,000 square feet of area or portion thereof.
- (c) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This paragraph shall not exempt from the permit requirements any embankment made with the material from such excavation or any excavation having an unsupported height greater than four feet after the completion of such structure.
- (d) The depositing of material in any disposal area operated or licensed by the City pursuant to the terms of the Municipal Code where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property.
- (e) Gravel pits, mines, quarries or the processing and stockpiling of soil, rock, sand, gravel, aggregate, or clay where such gravel pits, mines, quarries or the processing and stockpiling operations are conducted pursuant to the terms of the Municipal Code where the operation and conduct thereof does not block or divert any natural drainage way or affect the lateral support or unduly increase the stresses in or pressures upon any adjacent or contiguous property.
- (f) Excavation or embankment performed by a governmental agency, public utility, or their contractor incidental to the construction of roadways, pipelines, or utility lines within their rights-of-way.
- (g) A subdivider of land required to do land development work as a condition of the approval of the tentative map shall proceed in accordance with the procedures established by Chapter X, Article 2 of the Municipal Code.

Note: The above exceptions shall not exempt from land development any embankment or excavation or work done at another site where the above exceptions are not met.

SEC. 62.0404 LAND DEVELOPMENT WORK INCIDENTAL TO A BUILDING OR STRUCTURE

Any person desiring to do land development work incidental to and in connection with the construction of a building or structure shall present an application and obtain a land development permit prior to the obtaining of a building permit. The City may suspend any building permit where it is found that land development is being done or has been done without a land development permit until a land development permit is issued. The City may not certify to the completion of a building where land development work has been done until a land development permit is obtained and certified as complete.

SEC. 62.0405 APPLICATIONS FOR PERMITS

- (a) Applications for permits authorizing work involving land development work shall be made in accordance with this Article. Applications shall be accompanied by such detailed plans, specifications, schedules and estimates as may be required by the City Engineer in determining the nature and extent of the work and applicable fees. Detailed plans shall be prepared on material and to the size and in the manner designated by the City Engineer in a standard available for distribution in the office of the City Engineer.
- (b) Detailed plans and specifications for land development shall include but not be limited to:
 - (1) A contour map showing the present contours of the land and the proposed contours or grid elevations after completion of the proposed work.
 - (2) A plot plan showing the location of the land development boundaries, lot lines and public and private rights-of-way lines.
 - (3) Engineering studies and soils engineering reports as may be required. Geological reports, prepared by a registered engineering geologist, on subsurface conditions may be required in hillside areas or in areas of potential geological problems.

SEC. 62.0406 PROTECTION OF ADJACENT PROPERTY AND PUBLIC RIGHT-OF-WAY

(a) During the construction of land development, the contractor and the owner shall take all necessary measures to protect adjacent property and public right-of-way from damage which may result from the work and to provide the necessary fences and barricades to eliminate any hazard to the public in their normal use of such property or right-of-way. Temporary fences or barricades shall be provided adjacent to the excavation where the slope is two feet horizontal to one foot vertical or steeper. Such fences or barricades shall be substantially constructed and shall be maintained in place until the hazard resulting from the excavation is removed.

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- (b) Where a permanent excavation is adjacent to an existing developed right-of-way or other publicly used property, and the top of the slope is within ten feet of the property line, the property owner shall construct an acceptable permanent four-foot high fence at the property line where the vertical height of the excavation exceeds six feet.
- (c) The City Engineer may modify or delete the above requirements where it is evident that the land development work will present no hazard to the adjacent property or public right-of-way.

SEC. 62.0407 REPLACEMENT OF PUBLIC IMPROVEMENTS DAMAGED BY LAND DEVELOPMENT

In the event the City or public utility is required to place, replace, or maintain a facility within a public right-of-way over which the property owner has done land development work, the property owner shall pay that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's land development work. The property owner shall pay the City or public utility for all the cost of placing, replacing or maintaining a facility within a public right-of-way when the facility has failed as a result of the construction or existence of the property owner's land development work.

The costs of placing, replacing or maintaining the facility shall include the cost of obtaining any necessary alternate right-of-way.

SEC. 62.0408 SPECIAL BOND REQUIRED FOR EXCAVATION

(a) Where land development work or any excavation exempted from land development permit procedures under Section 62.0403 hereof involves excavation adjacent to the right-of-way with a height in excess of six feet and a slope steeper than one and one-half horizontal to one vertical, the City Engineer may require a special bond to indemnify the City against damage to the improvements within the right-of-way which may result from such excavation or land development. The amount of the special bond shall be determined by the City Engineer and such bond shall remain in force and effect until the excavation or land development has been completed or the permanent lateral support for the slope, if required, has been constructed, and it has been determined by the City Engineer that the adjacent improvements are no longer in jeopardy.

(b) The special bond shall be conditioned upon the payment to the City of any costs incurred by the City in repairing, restoring, or replacing improvements which may be damaged as a result of the adjacent excavation or land development. Procedures for notice, performance of work and payment to the City where such work is performed by the City shall conform to Section 62.0110 of this Code; provided, however, where delay in repair to the improvement would constitute a hazard to the public or to other improvements within the immediate areas, the City Engineer may perform such emergency work as may be required and shall recover the cost thereof from the principal and surety of the bond.

SEC. 62.0409 MAINTENANCE AGREEMENT FOR LAND DEVELOPMENT INVOLVING UNCONTROLLED EMBANKMENT

(a) Where, in the opinion of the City Engineer, the construction of an embankment or other structure would not be contrary to the public interest

or general welfare, a permit for such land development may be issued provided that the plans clearly indicate the limits of the uncontrolled embankment to be constructed and an agreement as required in this Article is recorded in the office of the County Recorder.

(b) Application for land development permits involving uncontrolled embankment shall be accompanied by a land development maintenance agreement signed by the property owner. The agreement shall be prepared by the City Engineer and shall contain the following provisions and such other provisions as may, in the opinion of the City Engineer, afford protection to the property owner and the City.

- (1) The land development work shall be designated as uncontrolled embankment and shall be constructed in accordance with plans approved by the City Engineer.
- (2) The owner acknowledges that as an uncontrolled embankment the site is not eligible for a building permit unless special soils analysis and foundation design are submitted.
- (3) The land development work shall be done and maintained in a safe and sanitary manner at the sole cost, risk and responsibility of the property owner and his successors in interest, who shall hold the City harmless with respect thereto.

Land development maintenance agreements for uncontrolled embankment shall be recorded in the office of the County Recorder as an obligation upon the land involved.

SEC. 62.0410 SLOPE GRADIENT REQUIREMENTS

All slopes constructed in connection with land development shall be designed for proper stability considering both geological and soil properties. Cut and fill slopes shall be constructed at a gradient no steeper than one and one-half horizontal to one vertical unless the Planning Commission or City Engineer grants special permission. Slopes shall not exceed 60 feet in vertical height unless special permission is granted by the Planning Commission or City Council. Special permission shall be considered by the Planning Commission, City Council or City Engineer as set forth in this Division but shall be contingent upon:

- (a) The submission of a report by a soils engineer certifying that he has investigated the property and that, in his opinion, the proposed slope will not endanger any public or private property; and
- (b) The installation of an approved special slope planting program and permanent irrigation system. This special slope planting program and irrigation system shall incorporate recommendations by a registered landscape architect for specific measures to be taken on the steeper slopes, which will assure satisfactory growth of the ground cover and plant material.

SEC. 62.0411 AUTHORITY OF CITY ENGINEER TO PERMIT STEEPER SLOPE DEVELOPMENT

Subject to the provisions of Section 62.0410, requests for special permission for the development of slopes steeper than one and one-half horizontal to one vertical may be authorized by the City Engineer where the vertical slope height is less than 60 feet, and:

- (a) The total area of the proposed steeper slopes constitutes no more than ten percent of the total slope area to be constructed; or
- (b) In the case of street construction, the properties contiguous to the proposed alignment are subdivided and developed, precluding acquisition of the right-of-way to provide for the standard slope gradient; or
- (c) The material to be excavated is composed of solid rock;

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SEC. 62.0412 PLANNING COMMISSION CONSIDERATION OF SPECIAL PERMISSION FOR HIGHER OR STEEPER SLOPE DEVELOPMENT

Requests to the Planning Commission for special permission for higher or steeper slope developments shall be in writing and filed with the Planning Department. Such requests shall be filed with the Planning Department after the application for a land development permit has been filed with and reviewed by the City Engineer, or in the case of tentative maps, after the tentative map has been reviewed by the Subdivision Review Board. The Planning Director shall, upon receipt of the request, place the matter on the Planning Commission docket for a hearing.

At the hearing, the Planning Commission shall proceed to hear the testimony of the applicant or any witnesses in his behalf and the testimony of the City Engineer, Subdivision Review Board or any other witnesses. After the conclusion of the hearing, the Planning Commission shall declare its findings based on the testimony and documents placed before it. The Planning Commission may direct that the conditions for approval of the land development permit or the tentative map resolution contain allowances for heights in excess of 60 feet or for slopes steeper than one and one-half horizontal to one vertical, if the Commission finds from the evidence presented at the hearing that the following facts exist:

- (a) That special permission will not under the circumstances of the particular case be detrimental to the public health, safety or general welfare; and
- (b) That extraordinary conditions exist to the extent that enforcement of the standards set forth in Section 62.0410 would result in unnecessary hardship.

SEC. 62.0413 CITY COUNCIL CONSIDERATION OF APPEALS FROM DECISIONS OF THE PLANNING COMMISSION OR CITY ENGINEER

In the event that the subdivider, applicant for special permission or Subdivision Review Board is dissatisfied with the Planning Commission's action on the request for special permission for higher or steeper slope development as set forth in Section 62.0412, an appeal, as provided for herein, may be directed to the City Council within 15 days following such action. In addition, appeals from decisions by the City Engineer under this Article may be submitted to the City Council as provided herein.

Appeals shall be filed in writing with and on forms provided by the City Clerk. Such appeals shall state the nature and basis of the appeal. The City Clerk shall, upon receipt of the appeal from the Planning Commission's or City Engineer's decision, place the matter on the Council docket for a hearing within 15 days or at the next succeeding regular Council meeting unless the applicant consents to a continuance.

At the hearing, the Council shall hear testimony of the appellant or any witnesses in his behalf and testimony of the representatives of the Subdivision Review Board or any other witnesses. Upon the conclusion of the hearing, unless the Council and the subdivider or applicant for special permission mutually agree that additional time is needed for further consideration, the Council shall, within seven days, declare its findings based on the testimony and documents placed before it. The Council may sustain, modify, reject or overrule the recommendations or the rulings of the Commission or City Engineer and may make such findings as are not inconsistent with State or local laws.

SEC. 62.0414 SLOPE PLANTING REQUIREMENTS

All slopes to be constructed at a gradient steeper than six horizontal to one vertical and in excess of five feet in vertical height shall be planted. Plant materials shall be selected from the approved standard planting schedules on file in the office of the City Engineer. Other plant materials as specified by a landscape architect may be approved by the City Engineer.

Constructed slopes shall be planted with ground cover and, in addition, slopes in excess of 15 feet in height shall be planted with shrubs or trees at the rate of one per 100 square feet of the total slope area. Combinations or groups of shrubs or trees may be utilized. Shrub or tree specimens shall be a minimum of one gallon size.

The selection and placement of plant material, both ground cover and shrubs or trees, shall be made such that fire hazards to adjacent existing or proposed structures will be minimized.

SEC. 62.0415 GENERAL SLOPE IRRIGATION REQUIREMENTS

All slopes to be constructed at a gradient steeper than six horizontal to one vertical and in excess of five feet in vertical height shall be provided with an irrigation system which will meet or exceed the minimum requirements as specified herein.

Plans for the irrigation system shall be approved by the City Engineer. Such system shall provide uniform water coverage for the slope area at a rate of not less than one-eighth inch per hour, nor greater than one-fourth inch per hour. A functional test of the irrigation system shall be performed by the installer prior to approval.

In lieu of the irrigation system requirement, hose bibs within 50 feet of the slope may be accepted for slopes less than ten feet in vertical height.

SEC. 62.0416 MINIMUM SLOPE IRRIGATION REQUIREMENTS FOR VARIOUS SLOPE GRADIENTS

- (a) Cut slopes to be constructed at a gradient of one and one-half horizontal to one vertical but steeper than two horizontal to one vertical shall be provided with separate irrigation systems installed for each lot. In lieu of separate systems, the City Engineer may approve manifold-type systems with a single-service meter for those slopes which are to be included for maintenance purposes within a special, public or private maintenance district. These systems shall be a fixed pipe facility, designed as a permanent system, including backflow protection as required by Chapter IX of this Code, and fittings necessary to minimize erosion from sprinkler head drainage.
- (b) Cut slopes to be constructed at a gradient of two horizontal to one vertical but steeper than three horizontal to one vertical shall be provided with separate irrigation systems installed for each lot. In lieu of separate systems, the City Engineer may approve manifold-type systems with a single-service meter for those slopes which are to be included for maintenance purposes within a special public or private maintenance district. These systems shall be a fixed pipe facility, designed to be operative for at least three years of service, including backflow protection as required by Chapter IX of this Code and such other fittings as necessary to minimize erosion from sprinkler head drainage.

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(c) All fill slopes and those cut slopes to be constructed at a gradient of three horizontal to one vertical but steeper than six horizontal to one vertical shall be provided with separate irrigation systems installed for each lot and designed as a temporary facility to be operative for one year. In lieu of separate systems, the City Engineer may approve manifold-type temporary systems with a single-service meter. In either event, the irrigation systems shall include backflow protection as required by Chapter IX of this Code.

SEC. 62.0417 MAINTENANCE OF PLANTING AND IRRIGATION SYSTEMS

The permittee shall be responsible for installation and the maintenance of the planting and irrigation system until the City Engineer certifies that the work provided for under the permit has been properly completed, but in no case shall this maintenance period be less than 90 days. Thereafter, the responsibility for maintenance shall be vested in the property owner.

SEC. 62.0418 LAND DEVELOPMENT ADVISORY BOARD

There is hereby established a Land Development Advisory Board. The Advisory Board shall consist of nine members appointed by the Mayor for a term of two years, with confirmation by the City Council, none of whom shall be City officers or employees. The Advisory Board shall be composed of the following:

- (a) A registered civil engineer in private practice in the City of San Diego;
- (b) A registered civil engineer in private practice in the City of San Diego who specializes in the practice of soils engineering;
- (c) A licensed contractor in business in the City of San Diego actively engaged in land grading operations;
- (d) A landscape architect in private practice in the City of San Diego;
- (e) A builder-developer in business in the City of San Diego actively engaged in land development and building operations;
- (f) An engineering geologist;
- (g) An architect engaged in private practice in the City of San Diego; and
- (h) Two representatives of recognized citizen planning groups.

The City Engineer and the Planning Director, or their designated representatives, shall be ex officio members of the Board. The City Engineer or his designated representative shall serve as secretary to the Advisory Board.

The Advisory Board shall appoint a chairman and vice-chairman from its members.

The Advisory Board shall meet at such time and place as shall be prescribed in the rules of the Board and as often as required to carry out its duties. Special meetings of the Board may be called by the chairman, vice-chairman or secretary. Five members shall constitute a quorum. Acts of the Advisory Board shall be by a majority vote of the members present at the meeting.

The Advisory Board may adopt rules for the conduct of its business and for the time, place and procedure for the conduct of its meetings.

The City Engineer shall refer to the Advisory Board all land development standards including standard drawings, specifications and general conditions for their review. In addition, the City Engineer may refer to the Board any matter which, in his judgment, is necessary or desirable for his guidance in the administration of the land development aspects of this Article. The Advisory Board shall consider all matters referred by the City Engineer and shall render an advisory technical opinion.

The Advisory Board shall review all amendments, deletions, or additions to the land development aspects of this Article. It shall submit its recommendations or comments in writing to the City Council prior to the Council's consideration of any such amendments, deletions or additions.

SEC. 62.0419 CONSTITUTIONALITY

If any section, subsection, sentence, clause or phrase of this Article is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Article.

SEC. 62.0420 APPLICABILITY TO TENTATIVE MAPS

Tentative maps submitted to the Planning Department prior to the effective date of the Article shall be governed by the Municipal Code section in existence at that time.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

Introduced on August 3, 1971.

17 Passed and adopted by the Council of The City of San Diego on August 17, 1971.

AUTHENTICATED BY:

FRANK CURRAN,
Mayor of The City of San Diego, California;
EDWARD NIELSEN,
City Clerk of The City of San Diego, California;
By ELFA F. HANEL, Deputy.

(SEAL)

Published August 26, 1971

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