

RESOLUTION NUMBER R-301905

DATE OF FINAL PASSAGE SEPTEMBER 18, 2006

WHEREAS, Congregation Adat Yeshurun, Applicant/Permittee, filed an application with the City of San Diego for a public right-of-way permit and a site development permit to establish an eruv within the public right-of-way on portions of a linear 6.03-mile route known as the ERUV Line of Demarcation project, located at with the public right-of-way within the University and La Jolla Community Plan areas, and legally described as portions of the public right-of-way specifically along Torrey Pines Road, La Jolla Village Drive, Gilman Drive, La Jolla Scenic Drive, Nobel Drive, La Jolla Parkway and Glenbrook Way and Interstate 5 South; and

WHEREAS, on June 22, 2006, the Planning Commission of the City of San Diego considered Public Right of Way Use [PROW] Permit No. 138132/Site Development Permit [SDP] No. 295484, and pursuant to Resolution No. 4049-PC voted to grant the permit to Congregation Adat Yeshurun; and

WHEREAS, Sherri Lightner appealed the Planning Commission decision to the Council of the City of San Diego; and

WHEREAS, under Charter section 280(a)(2) this resolution/ordinance is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on September 18, 2006, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Public Right-of-Way Use Permit No. 138132/Site Development Permit No. 295484:

A. PUBLIC RIGHT OF WAY USE PERMIT SAN DIEGO MUNICIPAL CODE [SDMC] SECTION 126.0905

1. The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all abutting property owners have given the applicant permission to maintain the encroachment. The proposed encroachment is reasonably related to public travel for a significant percentage of the population within the neighborhood, as the Eruv will allow less restrictive access to a larger portion of the community. The basic principle for establishing the Eruv is to allow members of the Congregation Adat Yeshurun to "travel" more freely outside of their homes on the Sabbath. The Eruv establishes the area within its boundaries as a "private domain" and permits observant Orthodox Jews to travel and access the community surrounding the synagogue while maintaining the laws of their faith. There are approximately 285 families that are members of the Congregation Adat Yeshurun, and while the public benefit is limited to a defined population, most Orthodox Jews live in close proximity to their synagogue. Therefore, the Eruv provides a benefit to a significant portion of the public within the neighborhood and is reasonably related to the public travel of those same people residing in the area.

2. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel. The proposed encroachment will not interfere with the free and unobstructed use of the public right-of-way for public travel due to the design and location of the Eruv line. The Eruv will be attached to the top of existing 20-foot tall City owned utility poles so as to not restrict either pedestrian or vehicular traffic in or through the right-of-way and onto eleven new poles. The six new, 20 foot tall poles and five existing modified poles will be located at the following locations along the Eruv's route: Section 1 - Torrey Pines Road and La Jolla Village Drive, two poles; Section 2 - Gilman Drive at La Jolla Village Drive, one pole; Section 4 - along La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive, two poles; Section 6 - Nobel Drive at Interstate 5 South, one pole; Section 7 - Gilman Drive at Interstate 5 South, one pole; Section 8 - Gilman Drive at Interstate 5, two poles; Section 10 - La Jolla Parkway at Torrey Pines Road, one pole; and Section 11 - Glenbrook Way and Torrey Pines Road, one pole.

3. The proposed encroachment is not detrimental to the public health, safety and welfare. The proposed encroachment consists only of a 3/16 inch diameter, 200-pound test,

monofilament line, reflective markers and the hardware used to attach the line to the top of existing and new poles within the public right-of-way. The poles will be located at the following locations along the Eruv's route: Section 1 - Torrey Pines Road and La Jolla Village Drive, two poles; Section 2 - Gilman Drive at La Jolla Village Drive, one pole; Section 4 - along La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive, two poles; Section 6 - Nobel Drive at Interstate 5 South, one pole; Section 7 - Gilman Drive at Interstate 5 South, one pole; Section 8 - Gilman Drive at Interstate 5, two poles; Section 10 - La Jolla Parkway at Torrey Pines Road, one pole; and Section 11 - Glenbrook Way and Torrey Pines Road, one pole. The monofilament line itself is inert, meaning that it does not carry any form of energy nor does it bear any load other than its own weight. The line is affixed to the top of the poles approximately twenty feet above ground level. Therefore, the proposed encroachment will not pose any danger to pedestrians using the right-of-way or vehicular travel through the right-of-way. Public Right-of-Way Use Permit No. 138132 and Site Development Permit No. 295484 includes specific conditions will ensure the line is maintained in a safe and sanitary manner including weekly inspections to identify any breaks along the route.

4. The proposed encroachment does not interfere with the abutting property owners' use or enjoyment of their property. The proposed encroachment is limited to the public right-of-way and based on the design and location of the Eruv, will not interfere with the abutting property owner's use or enjoyment of their properties. The encroachment consists of a single clear monofilament line that is minimally visible from surrounding properties. There will be no visual impact associated with the Eruv. The line will be located approximately twenty feet above ground level and therefore will not impede or obstruct access to and from adjacent properties.

5. The proposed encroachment does not adversely affect the land use plan. The University and La Jolla Community Plans do not address projects dealing with the application of religious and/or symbolic boundaries within the public right-of-way. As proposed, the project will not adversely impact recommendations found in the community plan.

6. The proposed encroachment is not harmful to the aesthetic character of the community. The proposed encroachment consists of a clear, 3/16 inch diameter monofilament line attached to the top of 20-foot high utility poles. Also proposed is the installation of six new poles and replacement of five existing poles. They are proposed to be located at the following locations along the Eruv's route: Section 1 - Torrey Pines Road and La Jolla Village Drive, two poles; Section 2 - Gilman Drive at La Jolla Village Drive, one pole; Section 4 - along La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive, two poles; Section 6 - Nobel Drive at Interstate 5 South, one pole; Section 7 - Gilman Drive at Interstate 5 South, one pole; Section 8 - Gilman Drive at Interstate 5, two poles; Section 10 - La Jolla Parkway at Torrey Pines Road, one pole; and Section 11 - Glenbrook Way and Torrey Pines Road, one pole. Both the monofilament line and the hardware used to connect the line to the poles will not be harmful to the aesthetic character of the neighborhood. Certain portions of the line adjacent to open space may include intervals of white reflective tape to enhance the visibility of the line for avian species within the area.

7. The proposed encroachment does not violate any other Municipal Code provisions or other local, state or federal law. The proposed encroachment is permitted within

the public right-of-way with an approved Public Right-of-way Use Permit. The proposed encroachment will not violate any other Municipal Code provisions or any other local, state or federal laws.

B. SITE DEVELOPMENT PERMIT SDMC SECTION 126.0504

1. Findings for all Site Development Permits:

a. The proposed development will not adversely affect the applicable land use plan. The University Community Plan and the La Jolla Community Plan do not address projects dealing with the application of symbolic boundaries within the public right-of-way. As proposed, the project will not adversely impact recommendations found in the community plan.

b. The proposed development will not be detrimental to the public health, safety, and welfare. The proposed project consists of the a thin, 3/16 inch, 200-pound test, monofilament line, reflective markers and the hardware used to attach the line to the top of existing utility poles within the public right-of-way, and the installation of six new poles and replacement of five existing poles in the public right-of-way. The poles will be twenty feet tall and two inches in diameter. They will be located at the following locations along the Eruv's route: Section 1 - Torrey Pines Road and La Jolla Village Drive, two poles; Section 2 - Gilman Drive at La Jolla Village Drive, one pole; Section 4 - along La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive, two poles; Section 6 - Nobel Drive at Interstate 5 South, one pole; Section 7 - Gilman Drive at Interstate 5 South, one pole; Section 8 - Gilman Drive at Interstate 5, two poles; Section 10 - La Jolla Parkway at Torrey Pines Road, one pole; and Section 11 - Glenbrook Way and Torrey Pines Road, one pole. The line itself is does not carry any form of energy nor does it bear any load other than its own. The line is affixed to the top of the poles approximately twenty feet above ground level. Therefore, the proposed project will not pose any danger to pedestrians using the right-of-way or vehicular travel through the right-of-way. Site Development Permit No. 295484 includes specific conditions to ensure the line is maintained in a safe and sanitary manner including weekly inspections to identify any breaks along the route.

c. The proposed development will comply with the applicable regulations of the Land Development Code. Portions of the proposed Eruv project will be located in the La Jolla Shores Planned District Ordinance [PDO] area, SDMC § 103.0300. The Eruv consists of a thin, 3/16 inch diameter, 200-pound test monofilament line, reflective markers in certain locations, the hardware used to attach the line to the top of existing utility poles within the public right-of-way and the installation of six new poles and replacement of five existing poles in the public right-of-way. The Eruv line is not a public utility subject to undergrounding provisions of the La Jolla Shores PDO regulations. However, the new poles erected are required to comply with the La Jolla Shores PDO's 20-foot height restriction within the District's Facility Zones. The proposed Eruv line poles do not exceed the La Shores PDO height restriction.

The monofilament line and the small, strips of reflective tape that may be required will have no impact on neighborhood character or aesthetics, or otherwise negatively impact views. The proposed installation and maintenance of the Eruv will not create any impacts to traffic circulation and safety.

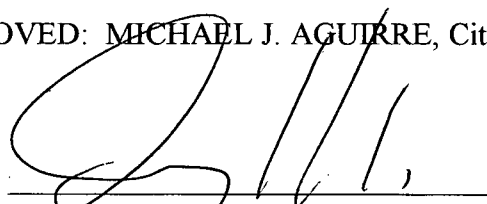
Specific conditions of approval require the continued compliance with all relevant regulations of the City of San Diego effective for the linear project and have been written as such into the Site Development Permit No. 295484 and Public Right-of-Way Use Permit No. 138132. The Eruv project will comply with all relevant regulation of the Land Development Code for the life of the project.

The above findings are supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference.

BE IT FURTHER RESOLVED, that the appeal of Sherri Lightner is denied; the decision of the Planning Commission is sustained; and Public Right-of-Way Use Permit No. 138132/Site Development Permit No. 295484 as modified by Council is granted to Congregation Adat Yeshurun, Applicant/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Douglas K. Humphreys
Deputy City Attorney

DKH:pev
09/26/06
Or.Dept:Clerk
R-2007-346
MMS #3819

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 42-3303

PUBLIC RIGHT-OF-WAY USE PERMIT NO. 138132
SITE DEVELOPMENT PERMIT NO. 295484
ERUV LINE OF DEMARCATION [MMRP]
CITY COUNCIL

This Public Right-of-Way Use Permit No. 138132/Site Development Permit No. 295484 is granted by the City Council of the City of San Diego to Congregation Adat Yeshurun, Applicant/Permittee, pursuant to San Diego Municipal Code [SDMC] section 126.0905. The project site is located within portions of the public right-of-way in the La Jolla and University communities. The project site is legally described as portions of the public right-of-way located between the curb and adjacent property lines specifically located at the following eleven locations: Section 1 - Torrey Pines Road/La Jolla Village Drive; Section 2 - Gilman Drive/La Jolla Drive; Section 3 and 4 - La Jolla Village Drive between Gilman Drive and Villa La Jolla Drive; Section 5 - La Jolla Village Drive between Villa La Jolla Drive and the south on-ramp to the Interstate 5; Section 6 - Nobel Drive/Interstate 5 South on-ramp; Section 7 - Gilman Drive/Interstate 5 South on-ramp; Section 8 - Across a frontage road just south of Section 7; Section 9 - North La Jolla Scenic Drive/La Jolla Parkway; Section 10 - La Jolla Parkway/Torrey Pines Road; and Section 11 - Glenbrook Way/Torrey Pines Road, as shown on Exhibit "A," dated September 18, 2006, on file in the Office of the Development Services Department.

Subject to the terms and conditions set forth in this Permit, permission is granted to Applicant/Permittee to install and establish an Eruv, a line of demarcation, within the University and La Jolla Communities, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 18, 2006, on file in the Development Services Department.

The project shall include:

- a. Approximately 4,788 linear feet of 200 pound test monofilament line, reflective markers and the related hardware to attach the line to existing City of San Diego utility poles within the public right-of-way;

- b. The construction of six new poles and replacement of five existing poles, and
- c. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. If at any time in the future, should the City of San Diego have a need to remove, replace, or modify utility poles or light standards that are used as part of the Eruv line and if any City changes would require new stand alone replacement poles or change in the alignment of the Eruv line in order to maintain the Eruv line, a substantial conformance review shall be required in accordance with the Municipal Code. If it is determined that the City changes result in the need for changes to the Eruv line that are not in substantial conformance with this permit, an amendment to this permit shall be required. The amendment shall be processed in accordance with the current San Diego Municipal Code in effect at the time of application. The applicant shall hold the City of San Diego harmless and shall not in any manner seek any claim for damages or redress against the City of San Diego for any action taken by the City of San Diego as it relates to the privileges, rights, and obligations granted by this permit.
2. Installation of the Eruv must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the permit within thirty-six months will automatically void the permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Permit be conducted on the premises until:
 - a. The Applicant/Permittee signs and returns the Permit to the Development Services Department; and
 - b. The Permit is recorded in the Office of the San Diego County Recorder.
4. Unless this Permit has been revoked by the City of San Diego the property included by reference within this Permit shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the City Manager.
5. The utilization and continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.

6. Issuance of this Permit by the City of San Diego does not authorize the Applicant/ Permittee for this permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

7. Before issuance of any right-of-way permit, complete working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Permit have been granted.

8. All of the conditions contained in this Permit have been considered and have been determined to be necessary in order to make the findings required for this Permit. It is the intent of the City that the holder of this Permit be required to comply with each and every condition in order to be afforded the special rights which the holder of the Permit is entitled as a result of obtaining this Permit.

In the event that any condition of this Permit, on a legal challenge by the Applicant/ Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Applicant/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

ENVIRONMENTAL/MITIGATION REQUIREMENTS:

9. Mitigation requirements are tied to the environmental document, specifically the Mitigation, Monitoring, and Reporting Program [MMRP]. These MMRP conditions are incorporated into the permit by reference or authorization for the project.

10. As conditions of Public Right-of-Way Permit No. 138132/Site Development Permit No. 295484, the mitigation measures specified in the MMRP, and outlined in Mitigated Negative Declaration No. 48467 shall be noted on the construction plans and specifications under the heading ENVIRONMENTAL/MITIGATION REQUIREMENTS, except the Council action shall modify the MMRP as follows: to defer the mitigation, which is to add reflective tape to the monofilament line at specified intervals, until such time that scientific proof is presented concluding that avian impacts are resulting or would result from the installation of the monofilament line. And that the spacing of the tape would be consistent with the Eruv in the San Diego State University area for Congregation Beth Jacob which is twenty feet on center.

11. The Applicant/Permittee shall comply with the MMRP as specified in Mitigated Negative Declaration No. 48467, satisfactory to the City Manager and City Engineer. Prior to issuance of any engineering or construction permit, all conditions of the MMRP

shall be adhered to the satisfaction of the City Engineer. All mitigation measures as specifically outlined in the MMRP shall be implemented for Biological Resources, except as modified above in Condition 9.

12. The Applicant/Permittee shall submit an annual report which lists all known incidents or evidence of bird strikes and/or avian fatalities arising from the installation of the Eruv monofilament line. Any instances of failure and subsequent repair of the line shall also be included in the report. This report shall be submitted to the Department of Development Services, Mitigation Monitoring Coordinator.

13. Prior to the issuance of any engineering or construction permit, the Applicant/Permittee shall pay the Long Term Monitoring Fee in accordance with the Development Services Department Fee Schedule to cover the City's costs associated with the implementation of permit compliance monitoring.

ENGINEERING REQUIREMENTS:

14. The Applicant/Permittee shall install and maintain the encroachment in a safe and sanitary condition at the sole cost, risk and responsibility of the Applicant/Permittee.

15. The Applicant/Permittee shall agree to at all times defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against any and all claims, liability, demands, losses, damages or expenses that the City or the record owner may sustain or incur in any manner resulting from the design, construction, maintenance, state of use, repair or presence of the encroachment. The Applicant/Permittee shall also agree to indemnify the City for liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the Applicant/Permittee, its employees, agents, or officers, or any third party. The Applicant/Permittee's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the established sole negligence or sole willful misconduct of the City, its agents, officers or employees.

16. The Applicant/Permittee shall remove or relocate, at its own expense, any encroachment within thirty days after notice by the City, or the City may cause such work to be done, and deduct or obtain costs from the Applicant/Permittee's permit bond, deposit or other security at the sole discretion of the City without further notice to the Applicant/Permittee. The Applicant/Permittee shall remove or relocate, at its own expense, any encroachment on shorter notice by the City in the case of an emergency or if determined necessary by the City. If the Applicant/Permittee fails to remove or relocate the encroachment in the required time and manner, or if deemed necessary by the City, the City may cause such work to be done, and deduct or obtain costs from the Applicant/Permittee's permit bond, deposit or other security, at the sole discretion of the City, without further notice to the Applicant/Permittee.

17. Whatever rights were acquired by the City with respect to the public right-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroachment.

18. The Applicant/Permittee shall maintain liability insurance in the amount of \$1,000,000.00 in order to protect the City from any potential claims which may arise from the encroachment. The policy shall name the City as an additional insured.
19. The Applicant/Permittee shall furnish a surety bond, cash deposit or other acceptable security in the amount of \$250,000.00 for potential risk of injury, damage or expense to City property, the public right-of-way or the adjacent property, and any City expenditures arising from the Applicant/Permittee's use of the public right-of-way pursuant to the requirements of the Municipal Code.
20. There shall be compliance with the regulations of the underlying zone(s) unless a deviation or variance to a specific regulation(s) is approved or granted as a condition of approval of this Permit. Where there is a conflict between a condition (including exhibits) of this Permit and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Permit establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.
21. Any future requested amendment to this Permit shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.
22. The Applicant/Permittee shall coordinate with the appropriate City staff in order to determine where any opportunities may exist for co-location of other nearby, existing City signage onto the proposed Eruv poles in order to reduce the net number of poles in the public right-of-way wherever possible.
23. No alterations to the design, location and materials, shall be permitted unless approved by the City Manager.

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this development permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the City Council of the City of San Diego on September 18, 2006 by Resolution No. R-301905.

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

CONGREGATION ADAT YESHURUN
Applicant/Permittee

By _____

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

PERMIT/OTHER – Permit Shell 11-01-04

SEP 18 2006

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

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

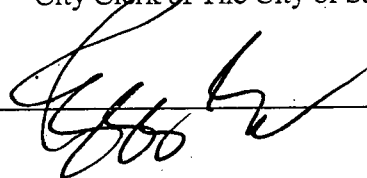
Date of final passage SEP 18 2006

AUTHENTICATED BY:

JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By , Deputy

Office of the City Clerk, San Diego, California

Resolution Number R-2006-005