

RESOLUTION NUMBER R- 307448

DATE OF FINAL PASSAGE MAY 15 2012

A RESOLUTION GRANTING SITE DEVELOPMENT PERMIT NO. 923086 FOR THE MONUMENT FLAG PROJECT - PROJECT NO. 262168.

WHEREAS, the Hillcrest Business Improvement Association, Permittee, filed an application for Site Development Permit (SDP) No. 923086, for the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping (Project), within the southern section of the median located at the intersection of Normal Street and University Avenue in the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan; and

WHEREAS, on April 26, 2012, the Planning Commission of the City of San Diego considered Site Development Permit No. 923086 and pursuant to Resolution No. 4787-PC voted 4:2:1 to recommend City Council denial of Site Development Permit, No. 923086; and

WHEREAS, under Charter section 280(a)(2) this resolution 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 May 15, 2012, 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 Site Development Permit No. 923086:

**A. SITE DEVELOPMENT PERMIT – SAN DIEGO MUNICIPAL CODE (SDMC)  
SECTION 126.0504**

**1. The proposed development will not adversely affect the applicable land use plan.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The site is in the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan.

Although the Uptown Community Plan does not provide specific recommendations for the installation of monument flags, the Urban Design Element of the community plan recommends that the excess right-of-way of Normal Street be developed as a linear mini park. The proposal for a flag type monument which would be located within an existing landscaped median would be consistent with this recommendation as the proposed flagpole monument could be seen as a contributing element to a potential linear park setting and would not preclude the development of a future linear park across the remainder of the Normal Street right-of-way.

The Uptown Community Plan goals include improving the pedestrian and vehicular quality of the streetscape through the design of new development, public improvements, landscaping, and coordinated street plantings. The proposed project would meet this objective through the incorporation of a 6-foot tall monument at the base of the flagpole that tapers in height; by providing seating bollards; and by incorporating an 18-foot by 12-foot flag consistent with U.S. Government recommendations for flag size. Initially during the proposed project's review, a flag measuring 30 feet by 20 feet was proposed. However, due to concerns over issues related to pedestrian scale and visual impacts, the flag was reduced to a size that is considered typical for its proposed pole height and acceptable in scale. As proposed, the project would not adversely impact the goals, objectives, or recommendations in the Uptown Community Plan.

**2. The proposed development will not be detrimental to the public health, safety, and welfare.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The site is in the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan.

The project was determined to be exempt pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15303 (new construction or conversion of smaller structures. All Uniform Building, Fire, Plumbing, Electrical, Mechanical Code and City regulations governing the construction and continued operation of the development apply to this project to prevent adverse affects to those persons or properties in the vicinity of the project. Therefore the proposed project will not be detrimental to the public health, safety and welfare.

**3. The proposed development will comply with the applicable regulations of the Land Development Code.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The site is in the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan.

The proposed project complies with all applicable development regulations of the CN-2A Zone and no deviations are proposed. The maximum height as established by the Interim Height Ordinance within this area of the Mid City Communities Plan District is 65 feet. The flag pole has been designed to not exceed the 65-foot height limit. Therefore the proposed project will comply with applicable regulations of the Land Development Code.

**B. SUPPLEMENTAL FINDINGS FOR PUBLIC RIGHT-OF-WAY ENCROACHMENTS – SAN DIEGO MUNICIPAL CODE (SDMC) SECTION 126.0504(O)**

**1. The proposed encroachment is reasonably related to public travel, or benefits a public purpose, or all record owners have given the applicant written permission to maintain the encroachment on their property.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The median has been designed to provide a landscape separation between northbound and southbound traffic on Normal Street. The flag pole relates to public travel by further improving the landscape median. The project will benefit the public by providing a location for the display of a flag. The Permittee has received written approval from the Southland Corporation owner of the 7-11 to the east and written approval from the managing partner of the Hillcrest Village Partnership owner of the lot to the west. Therefore the proposed project will reasonably relate to public travel, benefit a public purpose, and has written approval from the relevant property owners.

**2. The proposed encroachment does not interfere with the free and unobstructed use of the public right-of-way for public travel.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and

University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The median has been designed to provide a landscape separation between northbound and southbound traffic on Normal Street. The flag will be entirely located within the existing landscaped portion of the median. Existing walkways within the median will not be displaced. The traffic lanes of travel will not be altered by this project. Therefore the proposed project will not interfere with the free and unobstructed use of the public right-of-way for public travel.

**3. The proposed encroachment will not adversely affect the aesthetic character of the community.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The flag pole monument has been designed to include a fabricated base, seating elements, and additional landscape. The proposed size or dimensions of the flag is consistent with standards for flags flown on a 65-foot tall flag pole. Therefore the proposed project will not adversely affect the aesthetic character of the community.

**4. The proposed encroachment does not violate any other Municipal Code provisions or other local, state, or federal law.** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag. The site is in the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan.

The proposed project complies with all applicable development regulations of the CN-2A Zone and no deviations are proposed. The maximum height as established by the Interim Height Ordinance within this area of the Mid City Communities Plan District is 65 feet. The flag pole has been designed to not exceed the 65-foot height limit.

The project is subject to Part 77 review by the Federal Aviation Administration (FAA). The height of the structure has been approved by the FAA and is conditioned by this permit to notify the FAA after construction is complete.

The project has been conditioned to comply with all regulations of any other applicable governmental agency. Therefore the proposed encroachment does not violate any other Municipal Code provision or other local, state, or federal law.

**5. For coastal development in the coastal overlay zone, the encroachment is consistent with Section 132.0403 (Supplemental Use Regulations of the Coastal Overlay Zone).** The proposed project is the construction of a 65'-high flag pole to display an 18-foot by 12-foot Pride Rainbow flag and a flag pole monument that includes a fabricated base, seating elements, and additional landscaping within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride

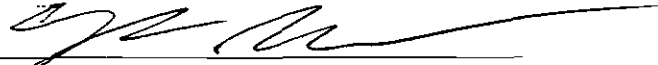
Rainbow flag. This location is not located within the Coastal Overlay Zone. Therefore this finding is not applicable to this project.

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

BE IT FURTHER RESOLVED, that Site Development Permit No. 923086 is granted to Hillcrest Business Improvement Association, Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof.

APPROVED: JAN GOLDSMITH, City Attorney

By

  
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Keith Bauerle  
Deputy City Attorney

KB:hm  
04/30/2012  
Or.Dept:DSD  
Document No. 359415

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

**WHEN RECORDED MAIL TO**  
**CITY CLERK**  
**MAIL STATION 2A**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24002306

**SITE DEVELOPMENT PERMIT NO. 923086**  
**MONUMENT FLAG, PROJECT NO. 262168**  
**CITY COUNCIL**

This Site Development Permit No. 923086 is granted by the City Council of the City of San Diego to the HILLCREST BUSINESS IMPROVEMENT ASSOCIATION, Permittee, pursuant to San Diego Municipal Code [SDMC] sections 126.0503 and 129.0710. The 421-square-foot project site is located within an existing median at the intersection of Normal Street and University Avenue. The site is within the CN-2A Zone of the Mid-City Communities Planned District, the Federal Aviation Administration Part 77 Noticing Area, and the Residential Tandem Parking Overlay Zone, within the Uptown Community Plan. The project site is legally described as: A portion of the public right-of-way located within a median and specifically within Normal Street north of the intersection of Normal Street and University Avenue and south of Blaine Avenue as shown on Exhibit "A" dated 5/15/12, on file in the Development Services Department.

Subject to the terms and conditions set forth in this Permit, permission is granted to Permittee to erect and maintain a flag pole and flag described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated 5/15/12, on file in the Development Services Department.

The project shall include:

- a. Construction of a 65'-high flag pole within the southern section of the median located at the intersection of Normal Street and University Avenue to display an 18-foot by 12-foot Pride Rainbow flag;
- b. Seating elements;
- c. An aluminum fabricated monument at the base of the flag pole;

- d. Landscaping (planting, irrigation and landscape related improvements);
- e. Public and private accessory improvements determined by the Development Services Department to be consistent with the land use and development standards for this site in accordance with the adopted community plan, the California Environmental Quality Act [CEQA] and the CEQA Guidelines, the City Engineer's requirements, zoning regulations, conditions of this Permit, and any other applicable regulations of the SDMC.

**STANDARD REQUIREMENTS:**

1. This permit must be utilized within thirty-six (36) months after the date on which all rights of appeal have expired. If this permit is not utilized in accordance with Chapter 12, Article 6, Division 1 of the San Diego Municipal Code (SDMC) within the 36 month period, this permit shall be void unless an Extension of Time has been granted. Any such Extension of Time must meet all SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker. This permit must be utilized by ~~MAY 15 2015~~.
2. While this Permit is in effect, the subject property shall be used only for the purposes and under the terms and conditions set forth in this Permit unless otherwise authorized by the appropriate City decision maker.
3. This Permit is a covenant running with the subject property and all of the requirements and conditions of this Permit and related documents shall be binding upon the Permittee and any successor(s) in interest.
4. The continued use of this Permit shall be subject to the regulations of this and any other applicable governmental agency.
5. Issuance of this Permit by the City of San Diego does not authorize the 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.).
6. The Permittee shall secure all necessary building permits. The Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.
7. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited 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 were determined-necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the 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 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.

9. The Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Permittee.

#### **AIRPORT REQUIREMENTS:**

10. Within 5 days after construction reaches its greatest height, Permittee shall complete and return FAA Form 7460-2, Notice of Actual Construction or Alteration, to the FAA Southwest Regional Office.

11. There will be no lighting of the flag.

#### **ENGINEERING REQUIREMENTS:**

12. A public right-of-way permit shall be obtained for the construction of the private improvements shown on the Exhibit "A," satisfactory to the City Engineer.



13. Prior to the issuance of any construction permits, the Permittee shall submit a Water Pollution Control Plan (WPCP). The WPCP shall be prepared in accordance with the guidelines in Appendix E of the City's Storm Water Standards, satisfactory to the City Engineer.

14. This project proposes to export material from the project site. All export material shall be discharged into a legal disposal site. The approval of this project does not allow the onsite processing and sale of the export material unless the underlying zone allows a construction and demolition debris recycling facility with an approved Neighborhood Use Permit or Conditional Use Permit per LDC Section 141.0620(i).

15. Flag(s) displayed on the flagpole shall be flown such that there is no less than eight (8) feet of vertical clearance above the pedestrian walkway nor less than 15 feet of vertical clearance above the abutting travel way of Normal Street, satisfactory to the City Engineer.

**PLANNING/DESIGN REQUIREMENTS:**

16. A topographical survey conforming to the provisions of the SDMC may be required if it is determined, during construction, that there may be a conflict between the building(s) under construction and a condition of this Permit or a regulation of the underlying zone. The cost of any such survey shall be borne by the Permittee.

17. The size of the flag shall not exceed 18 feet by 12 feet.

18. The flag and flag pole shall be maintained in a clean and safe condition.

19. The Permittee shall not allow the flag to fade, tear, or otherwise be in a condition of disrepair.

20. The height of the flag pole shall not exceed 65 feet above grade.

21. This permit shall allow for the Permittee to recognize donors by including their names on the base of the flag pole. The recognition of the donors shall be of uniform size and text. The use of business or corporate logos shall be prohibited.

22. The encroachment shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Permittee and successors in interest and shall not adversely affect the public's health, safety or general welfare.

23. The Permittee must agree to remove or relocate the encroachment within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done.

24. The Permittee agrees to provide an alternate right-of-way or to relocate any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching structure.

25. 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 encroaching structure.

26. The Permittee shall maintain a policy of \$1 million liability insurance, satisfactory to the City Engineer, to protect the City from any potential claims which may arise from the encroachment.

27. In the event the City is required to place, replace, or maintain a public improvement over which the Permittee has constructed an encroaching structure, the Permittee shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the Permittee's permanent encroaching structure.

28. The Permittee shall pay the City for all the cost of placing, replacing, or maintaining a public improvement within the public right-of-way when the City's facility has failed as a result of the construction or existence of the Permittee's encroaching structure.

29. The costs of placing, replacing, or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.

30. The Permittee 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.

31. No alterations to the design, location and materials, shall be permitted unless approved by the City Manager.

**PARK AND RECREATION REQUIREMENTS:**

32. Prior to building permit issuance, the Permittee shall insure that the Park and Recreation Department reviews and approves the construction plans.

33. The Hillcrest Business Association shall be responsible for all aspects of flagpole construction, which will include the redesign and retrofitting of existing hardscape and landscaping, including utilities, irrigation and plant materials.

34. The Hillcrest Business Association shall return the landscape or hardscape area impacted by the construction to an acceptable standard in consultation with Park and Recreation staff.

35. The Hillcrest Business Association shall keep, where feasible, irrigation systems in operation during construction, and provide a water truck if needed for plant health in consultation with Park and Recreation staff.

36. The Hillcrest Business Association shall maintain the area around the flagpole in perpetuity, including the monument, flagpole, flag, bollards, and paving relating to the project including raising and lowering the flag.

**INFORMATION ONLY:**

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.
- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this 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.
- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the City Council of the City of San Diego on 5/15/12 by Resolution No. R-307448