

ORDINANCE NUMBER O- 20672 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 19 2016

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 127.0104, 127.0105, 127.0106, AND 127.0111, ALL RELATING TO ACCEPTING THE CALIFORNIA COASTAL COMMISSION'S SUGGESTED MODIFICATIONS REQUIRED FOR CERTIFICATION OF THE PREVIOUSLY CONFORMING ORDINANCE ADOPTED AS PART OF THE 9TH UPDATE TO THE LAND DEVELOPMENT CODE.

WHEREAS, the Council of the City of San Diego (Council) desires to revise the formatting and organization of the previously conforming regulations of the San Diego Municipal Code to provide greater clarity and make the regulations easier to understand and apply; and

WHEREAS, the Council adopted such amendments to the previously conforming regulations in 2015, which were subsequently submitted to the California Coastal Commission as an amendment to the City of San Diego's certified local coastal program; and

WHEREAS, the California Coastal Commission approved the amendments to the City of San Diego's local coastal program with modifications relating to shoreline protection, development near coastal bluffs, and addressing the cumulative destruction, demolition, or removal of exterior walls; NOW, THEREFORE,

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

Section 1. That Chapter 12, Article 7, Division 1 of the San Diego Municipal Code is amended by amending sections 127.0104, 127.0105, 127.0106, and 127.0111, to read as follows:

§127.0104 Maintenance, Repair, Alteration, or Replacement of Previously Conforming Structures

(a) through (d) [No change in text.]

(e) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge* shall terminate upon:

- (1) destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after OCT 06 2016, which shall be measured in accordance with Section 127.0111, and for which the *applicant* shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit* to rebut a presumption that the *development* is not entitled to *previously conforming* status, or
- (2) destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the *previously conforming structure*, as determined by the Building Official.

Upon termination, the development standards applicable to new *structures* shall then apply to the entire *structure*.

§127.0105 Reconstruction Following Fire, Natural Disaster, or Act of the Public Enemy

(a) through (c) [No change in text.]

(d) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge* shall terminate upon:

- (1) destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after OCT 06 2016, which shall be measured in accordance with Section 127.0111, and for which the *applicant* shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit* to rebut a presumption that the *development* is not entitled to *previously conforming* status, or
- (2) destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the *previously conforming structure*, as determined by the Building Official.

Upon termination, the development standards applicable to new *structures* shall then apply to the entire *structure*.

(e) Any reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming *development*. Section 127.0105 does not provide an exemption from any requirement to obtain applicable *construction permits* or *development permits*.

§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

(a) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope* or of a *structure* on a *premises* with *previously conforming density* is permitted in accordance with Process One as follows, except that such *development* on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge*, shall be subject to Section 127.0106(c):

(1) through (2) [No change in text.]

(b) Proposed expansion or enlargement of a *previously conforming structural envelope* within a *setback*, or of a *structure* on a *premises* with *previously conforming density* that does not meet the criteria for expansion or enlargement in accordance with Section 127.0106(a), requires a Neighborhood Development Permit decided in accordance with Process Two, which shall only be granted if the proposed expansion or enlargement meets all of the following criteria:

(1) through (2) [No change in text.]

(3) Does not encroach into a *front yard* or extend outside of the developable area of the underlying base zone to within 10 feet of the *front yard setback* line, unless the proposed expansion or enlargement would reduce the non-conformity of existing *development*;

(4) through (8) [No change in text.]

- (9) Does not propose *development* on a *premises* that contains or abuts a *coastal beach* or *coastal bluff edge*.
- (c) For *structures* located on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge*, new additions or improvements to existing *structures* may be permitted subject to a Coastal Development Permit, in accordance with Section 126.0707, provided that all such new additions or improvements themselves do not increase the degree of non-conformity and comply with all of the following:
- (1) The proposed *coastal development* is in conformity with the certified *Local Coastal Program land use plan*;
 - (2) The proposed *coastal development* does not alter more than 50 percent of the exterior walls of the *structure* as measured in accordance with Section 127.0111;
 - (3) The proposed expansion does not exceed 500 square feet, except additional floor area may be permitted in exchange for the removal or relocation of an equivalent amount of existing floor area (from the *primary structure* or an *accessory structure*) from within a required *setback* from the *coastal bluff edge* or *side yard setback* to a location at least 40 feet from the *coastal bluff edge*;
 - (4) The proposed expansion does not include *development* of a *basement* with building area 5 feet or more below *grade* or the use of caisson foundations;
 - (5) The proposed expansion does not result in a cumulative increase greater than 50 percent of the *gross floor area* of the *structure*,

where the total expansion area is measured over time and includes the sum of all additions to the *structure* approved on or after OCT 06 2016. The *applicant* shall provide evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit*.

- (6) The proposed *coastal development* does not rely on existing shoreline protection; and
 - (7) The *applicant* agrees to execute and record a waiver of future shoreline protection, and the execution and recordation shall occur prior to the issuance of the first building permit.
- (d) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge* shall terminate upon:
- (1) destruction, demolition, or removal of 50 percent or more of the *structure's* exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after OCT 06 2016, which shall be measured in accordance with Section 127.0111, and for which the *applicant* shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit* to rebut a presumption that the *development* is not entitled to *previously conforming* status, or
 - (2) upon destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the

previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new *structures* shall then apply to the entire *structure*.

- (e) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* that is 100,000 or greater square feet of *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

§127.0111 Rules for Calculation and Measurement of Exterior Walls

- (a) through (c) [No change in text.]
- (d) When an exterior wall of a *previously conforming structure* is made an interior wall, the *development* shall comply with the regulations for expansion or enlargement in Section 127.0106.

Section 2. That the City Clerk is instructed to insert the effective date of this Local Coastal Plan amendment in Sections 127.0104(e)(1), 127.0106(c)(5), and 127.0106(d)(1), once known.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall not take effect until the date the California Coastal Commission unconditionally certifies these provisions as a Local Coastal Program amendment, or until the thirtieth day from and after its final passage, whichever occurs later.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
06/03/2016
Or.Dept:DSD
Doc. No.: 1212079_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 12 2016.

ELIZABETH S. MALAND
City Clerk

By Mary Fitzgerald
Deputy City Clerk

Approved: 7/19/16
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

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§127.0104 Maintenance, Repair, Alteration, or Replacement of Previously Conforming Structures

(a) through (d) [No change in text.]

(e) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located on a premises that contains or abuts a coastal beach or ~~within 50 feet of a coastal bluff edge~~ shall terminate upon:

- (1) destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after _____, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to

rebut a presumption that the *development* is not entitled to
previously conforming status, or

- (2) destruction, demolition, or removal of 50 percent or more of the
capacity of the lateral or vertical load resisting system of the
previously conforming structure, as determined by the Building
Official.

Upon termination, the development standards applicable to new *structures*
shall then apply to the entire *structure*.

§127.0105 Reconstruction Following Fire, Natural Disaster, or Act of the Public Enemy

(a) through (c) [No change in text.]

(d) In the Coastal Overlay Zone, the *previously conforming* status for a
structure located on a premises that contains or abuts a coastal beach or
within 50 feet of a coastal bluff edge shall terminate upon:

- (1) ~~Such reconstruction is subject to Coastal Development Permit
regulations and other regulations applicable to conforming
development.~~ destruction, demolition, or removal of 50 percent or
more of the *structure's* exterior walls, on a cumulative basis, which
is any destruction, demolition, or removal that has occurred on or
after _____, which shall be measured in accordance
with Section 127.0111, and for which the *applicant* shall provide
sufficient evidence of the nature and extent of the cumulative
changes at the time of application for any *construction permit* to
rebut a presumption that the *development* is not entitled to
previously conforming status, or

- (2) ~~The calculation of exterior walls shall be measured in accordance with Section 127.0111.~~ destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the *previously conforming structure*, as determined by the Building Official.

Upon termination, the development standards applicable to new *structures* shall then apply to the entire *structure*.

- (e) Any reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming *development*. Section 127.0105 does not provide an exemption from any requirement to obtain applicable *construction permits* or *development permits*.

§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

- (a) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope* or of a *structure* on a *premises* with *previously conforming density* is permitted in accordance with Process One as follows, except that such *development* on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge*, shall be subject to Section 127.0106(c):
- (1) through (2) [No change in text.]
- (b) Proposed expansion or enlargement of a *previously conforming structural envelope* within a *setback*, or of a *structure* on a *premises* with *previously conforming density* that does not meet the criteria for expansion or enlargement in accordance with Section 127.0106(a), requires a

Neighborhood Development Permit decided in accordance with Process Two, which shall only be granted if the proposed expansion or enlargement meets all of the following criteria:

(1) through (2) [No change in text.]

(3) Does not encroach into a front *yard* or extend outside of the developable area of the underlying base zone to within 10 feet of the front *yard setback* line, unless the proposed expansion or enlargement would reduce the non-conformity of existing *development on a coastal bluff*;

(4) through (8) [No change in text.]

(9) Does not propose *development within a required coastal bluff setback on a premises that contains or abuts a coastal beach or coastal bluff edge*.

(c) For structures located on a premises that contains or abuts a coastal beach or a coastal bluff edge, new additions or improvements to existing structures may be permitted subject to a Coastal Development Permit, in accordance with Section 126.0707, provided that all such new additions or improvements themselves do not increase the degree of non-conformity and comply with all of the following:

(1) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan;

- (2) The proposed *coastal development* does not alter more than 50 percent of the exterior walls of the *structure* as measured in accordance with Section 127.0111;
- (3) The proposed expansion does not exceed 500 square feet, except additional floor area may be permitted in exchange for the removal or relocation of an equivalent amount of existing floor area (from the *primary structure* or an *accessory structure*) from within a required *setback* from the *coastal bluff edge* or *side yard setback* to a location at least 40 feet from the *coastal bluff edge*;
- (4) The proposed expansion does not include *development* of a *basement* with building area 5 feet or more below *grade* or the use of caisson foundations;
- (5) The proposed expansion does not result in a cumulative increase greater than 50 percent of the *gross floor area* of the *structure*, where the total expansion area is measured over time and includes the sum of all additions to the *structure* approved on or after _____ . The *applicant* shall provide evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit*.
- (6) The proposed *coastal development* does not rely on existing shoreline protection; and

(7) The applicant agrees to execute and record a waiver of future shoreline protection, and the execution and recordation shall occur prior to the issuance of the first building permit.

(ed) In the Coastal Overlay Zone, the *previously conforming* status for a structure located on a premises that contains or abuts a coastal beach or a coastal bluff edge within 50 feet of a coastal bluff edge shall terminate upon:

(1) destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after _____, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, or

(2) upon destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire structure.

- (de) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* that is 100,000 or greater square feet of *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

§127.0111 Rules for Calculation and Measurement of Exterior Walls

(a) through (c) [No change in text.]

- (d) When an exterior wall of a *previously conforming structure* is made an interior wall, the *development* shall comply with the regulations for expansion or enlargement in Section 127.0106.

SMT:als
06/03/2016
Or.Dept: DSD
Doc. No.: 1212080_2

Passed by the Council of The City of San Diego on JUL 12 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 19 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

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

By Mary Fernandez, 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

JUN 20 2016, and on JUL 19 2016

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

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

By Mary Fernandez, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- 20672