

Article 6: Development Permits

Division 5: Site Development Permit Procedures (Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0501 Purpose of the Site Development Permit Procedures

The purpose of the Site Development Permit procedures is to establish a review process for proposed *development* that, because of its site, location, size, or some other characteristic, may have significant impacts on resources or on the surrounding area, even if developed in conformance with all regulations. The intent of these procedures is to apply site-specific conditions as necessary to assure that the *development* does not adversely affect the applicable *land use plan* and to help ensure that all regulations are met.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§126.0502 When a Site Development Permit is Required

- (a) A Site Development Permit decided in accordance with Process Three is required where *environmentally sensitive lands* are present for the following types of *development*.
- (1) City public works projects, except for *capital improvement program projects*, on a *premises* containing *environmentally sensitive lands*, as described in Section 143.0110.
 - (2) *Single dwelling unit development* that involves any of the following:
 - (A) *Development* on a *premises* containing *sensitive coastal bluffs* or *coastal beaches*, as described in Section 143.0110;
 - (B) *Development* on *lots* greater than 15,000 square feet containing *sensitive biological resources* or *steep hillsides*- as described in Section 143.0110; or
 - (C) *Development* on *lots* less than or equal to 15,000 square feet that are joined in ownership to a contiguous *lot* so that the total area of contiguous ownership exceeds 15,000 square feet where *sensitive biological resources* or *steep hillsides* are present, as described in Section 143.0110.
 - (3) Multiple unit residential *development* on a *premises* containing *environmentally sensitive lands*, as described in Section 143.0110.
 - (4) Commercial *development* on a *premises* containing *environmentally sensitive lands*, as described in Section 143.0110.

- (5) Industrial *development* on a *premises* containing *environmentally sensitive lands*, as described in Section 143.0110.
- (b) A Site Development Permit decided in accordance with Process Three is required for residential *development* that involves any of the following:
 - (1) *Development* with an affordable housing *density* bonus within the RE, RS, RX, RT, and AR zones.
 - (2) *Development of mobilehome parks* within the RS or RX zones, as described in Section 143.0302.
 - (3) Within the Mobilehome Park Overlay Zone, discontinuance of a *mobilehome park*, as described in Section 143.0630.
 - (4) Within any multiple unit residential zone, multiple unit residential *development* that exceeds the number of dwelling units indicated in Table 126-05A on *lots* which are consolidated or otherwise joined together for the purpose of accommodating the *development*.

**Table 126-05A
Multiple Dwelling Unit Developments
Requiring a Site Development Permit**

Multiple dwelling unit zones	Number of dwelling units on consolidated <i>lots</i>
RM-1-1	3 Dwelling Units
RM-1-2	4 Dwelling Units
RM-1-3	7 Dwelling Units
RM-2-4	9 Dwelling Units
RM-2-5	11 Dwelling Units
RM-2-6	16 Dwelling Units
RM-3-7	19 Dwelling Units
RM-3-8	20 Dwelling Units
RM-3-9	20 Dwelling Units
RM-4-10	20 Dwelling Units
RM-4-11	20 Dwelling Units

- (5) Multiple unit residential *development* that varies from minimum parking requirements, as described in Section 142.0525(a).
- (6) *Development of a small lot subdivision* in accordance with Section 143.0365.

- (c) A Site Development Permit decided in accordance with Process Three is required for the following types of *development*.
 - (1) In the Community Plan Implementation Overlay Zone, as described in Section 132.1402, *development* in the area designated “Type B” or *development* in the area designated “Type A” that does not comply with the *development* standards in the applicable community plan.
 - (2) *Development* in the Mission Trails Design District, as described in Section 132.1202.
 - (3) *Development* in the Urban Village Overlay Zone, as described in Section 132.1102.
 - (4) *Public improvements* required in association with private *development* that involve *development* of more than 3,000 feet of property frontage, as described in Section 142.0612.
 - (5) *Public improvements* required in association with private *development* for which adopted City standards do not apply, as described in Section 142.0612.
 - (6) *Development* of manufactured slopes at a gradient steeper than 25 percent (4 horizontal feet to 1 vertical foot) and a height of 25 feet or more as described in Section 142.0103.
 - (7) Nonresidential *development* that varies from the minimum parking requirements by proposing a Transportation Demand Management Plan, as described in Section 142.0540(c).
 - (8) *Development* within the Airport Land Use Compatibility Overlay Zone as required for safety compatibility in accordance with Section 132.1515.

- (d) A Site Development Permit decided in accordance with Process Four is required for the following types of *development*.
 - (1) Within *historical districts* or when *designated historical resources* are present, unless exempt under Section 143.0220:
 - (A) *Subdivisions*;
 - (B) Single or multiple unit residential *development*;
 - (C) Commercial or industrial *development*;

- (D) Public works projects; and
 - (E) *Development* that deviates from the *historical resources* regulations, as described in Section 143.0210.
- (2) Where *historical resources* other than *historical districts* or *designated historical resources* are present, unless exempt under Section 143.0220:
- (A) *Subdivisions*;
 - (B) *Multiple dwelling unit residential development*;
 - (C) Commercial or industrial *development*;
 - (D) Public works construction projects; and
 - (E) *Development* that deviates from the *historical resources* regulations, as described in Section 143.0210.
- (3) *Subdivision* of a *premises* that contains *environmentally sensitive lands*, as described in Section 143.0110.
- (4) *Development* that deviates from any portion of the *environmentally sensitive lands* regulations, as described in Section 143.0110.
- (5) *Development* for which the *applicant*, using the Affordable Housing Density Bonus Regulations, seeks a deviation from the applicable development regulations that exceeds the allowable incentives provided for in Section 143.0740.
- (6) *Development* for which the *applicant* seeks a deviation from the development regulations in Section 144.0507 for *condominium conversions*.
- (7) Any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located in accordance with Section 129.0710(b).
- (8) *Development* of a *large retail establishment* of 100,000 or more square feet *gross floor area* in all commercial and industrial zones, and in all planned districts.
- (9) A request for a deviation from the applicable development regulations for affordable/in-fill housing and sustainable building projects in accordance with Section 143.0920.
- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of *development*.
- (1) In the Airport Approach Overlay Zone, *development* proposals that receive an FAA determination of hazard and that are not exempt, as described in Section 132.0202.

- (2) In the Airport Environs Overlay Zone, *development* for which a City Council override is requested, as described in Section 132.0302.
 - (3) In the Clairemont Mesa Height Limit Overlay Zone, *development* for which an exception to the height limit is requested, as described in Section 132.1306.
 - (4) *Development* within the Airport Land Use Compatibility Overlay Zone proposing deviations from the overlay zone requirements, or *development* that includes a rezone or *land use plan* approval.
 - (5) Development in accordance with section 129.0710(c) that includes major underground or overhead *structures* which extend into the *public right-of-way* beyond the ultimate curb line or other *encroachments* which, in the opinion of the City Manager, are of sufficient public interest to warrant City Council approval.
- (f) A Site Development permit in accordance with Process CIP-Two is required for the following types of *development*.
- (1) *Capital improvement program projects* on a *premises* containing *environmentally sensitive lands* where the *development* is determined to be in compliance with the Environmentally Sensitive Lands Regulations without deviation.
 - (2) *Capital improvement program projects* on a *premises* containing *historical resources* where the *development* is determined to be in compliance with the Historical Resources Regulations without deviation, unless exempt under Section 143.0220.
- (g) A Site Development Permit in accordance with Process CIP-Five is required for the following types of *development*.
- (1) *Capital improvement program projects* on a *premises* containing *environmentally sensitive lands* that deviate from the Environmentally Sensitive Lands Regulations.
 - (2) *Capital improvement program projects* on a *premises* containing *historical resources* that deviate from the Historical Resources Regulations, unless exempt under Section 143.0220.

(Amended 4-22-2002 by O-19051 N.S.; effective 10-8-2002.)
(Amended 2-9-2006 by O-19461 N.S.; effective 3-9-2006.)
(Amended 6-15-2007 by O-19624 N.S.; effective 7-15-2007.)
(Amended 11-13-08 by O-19803 N.S; effective 12-13-2008.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)
(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)
(Amended 1-23-2013 by O-20235 N.S.; effective 2-22-2013.)
(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)
(Amended 5-5-2015 by O-20481 and O-20483 N.S.; effective 6-4-2015.)

§126.0503 Decision Processes for Site Development Permits

(a) Process Three

A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(a), (b) and (c) shall be made in accordance with Process Three. The decision may be appealed to the Planning Commission in accordance with Section 112.0506.

(b) Process Four

(1) A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(d) shall be made in accordance with Process Four.

(2) A recommendation of the Historical Resources Board is required prior to the Planning Commission decision on a Site Development Permit when a *historical district* or *designated historical resource* is present.

(c) Process Five

A decision on an application for a Site Development Permit for the types of *development* listed in 126.0502(e) shall be made in accordance with Process Five.

(d) Process CIP-Two

A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(f) shall be made in accordance with Process CIP-Two.

(e) Process CIP- Five

A decision on an application for a Site Development Permit for the types of *development* listed in Section 126.0502(g) shall be made in accordance with Process CIP-Five.

(Added 12-9-1997 by O-18451 N.S.; amended 10-18-1999 by O-18691 N.S.; effective 1-1-2000.)

(Amended 10-22-2013 by O-20309 N.S.; effective 12-12-2013.)

§126.0504 Findings for Site Development Permit Approval

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b) through (o) that are applicable to the proposed *development* as specified in this section.

(a) Findings for all Site Development Permits

- (1) The proposed *development* will not adversely affect the applicable *land use plan*;
- (2) The proposed *development* will not be detrimental to the public health, safety, and welfare; and
- (3) The proposed *development* will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

(b) Supplemental Findings--Environmentally Sensitive Lands

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) The site is physically suitable for the design and siting of the proposed *development* and the *development* will result in minimum disturbance to *environmentally sensitive lands*;
- (2) The proposed *development* will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, *flood* hazards, or fire hazards;
- (3) The proposed *development* will be sited and designed to prevent adverse impacts on any adjacent *environmentally sensitive lands*;

- (4) The proposed *development* will be consistent with the City of San Diego’s Multiple Species Conservation Program (MSCP) Subarea Plan;
 - (5) The proposed *development* will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply; and
 - (6) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed *development*.
- (c) Supplemental Findings--Environmentally Sensitive Lands Deviations
- A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b):
- (1) There are no feasible measures that can further minimize the potential adverse effects on *environmentally sensitive lands*; and
 - (2) The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land, not of the applicant’s making.
- (d) Supplemental *Findings*-Environmentally Sensitive Lands Deviation from Federal Emergency Management Agency Regulations
- A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested from the *Special Flood Hazard Area* regulations as specified in Section 143.0150(b) may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a) and the supplemental *findings* in Sections 126.0504(b) and 126.0504(c):
- (1) The City Engineer has determined that the proposed *development* within a designated *floodway* will not result in an increase in *flood* levels during the base *flood* discharge except as allowed under Code of Federal Regulations Title 44, Chapter 1, Part 60.3(c)(13);
 - (2) The City Engineer has determined that the deviation would not result in additional threats to public safety, extraordinary public expense, or create a *public nuisance*.

(e) Supplemental Findings--Steep Hillside Development Area Regulations
Alternative Compliance

A Site Development Permit required in accordance with Section 143.0110 because of potential impacts to *steep hillsides* where alternative compliance is requested in accordance with Section 143.0151 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the findings in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(b):

- (1) The proposed *development* is in conformance with the Steep Hillside Guidelines;
- (2) The proposed *development* conforms to the applicable *land use plan*; and
- (3) Strict application of the steep hillside development area regulations would result in conflicts with other City regulations, policies, or plans.

(f) Supplemental Findings--Important Archaeological Sites and Traditional Cultural Properties

A Site Development Permit required in accordance with Section 143.0210 because of potential impacts to an *important archaeological site* or *traditional cultural property* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a) :

- (1) The site is physically suitable for the design and siting of the proposed *development*, the *development* will result in minimum disturbance to *historical resources*, and measures to fully mitigate for any disturbance have been provided by the *applicant*; and
- (2) All feasible measures to protect and preserve the special character or the special historical, architectural, archaeological, or cultural value of the resource have been provided by the *applicant*.

(g) Supplemental Findings--Historical Resources Deviation for Important Archaeological Sites and Traditional Cultural Properties

A Site Development Permit required in accordance with Section 143.0210 because of potential impacts to an *important archaeological site* or *traditional cultural property* where a deviation is requested in accordance with Section 143.0260 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) There are no feasible measures, including a less environmentally damaging location or alternative, that can further minimize the potential adverse effects on *historical resources*;

- (2) The proposed deviation is the minimum necessary to afford relief and accommodate the *development* and all feasible measures to mitigate for the loss of any portion of the resource have been provided by the *applicant*; and
- (3) There are special circumstances or conditions apart from the existence of *historical resources*, applying to the land that are peculiar to the land and are not of the applicant's making, whereby the strict application of the provisions of the *historical resources* regulations would deprive the property owner of reasonable use of the land.

(h) Supplemental Findings--Historical Resources Deviation for Relocation of a Designated Historical Resource

A Site Development Permit required in accordance with Section 143.0210 because of potential impacts to *historical resources* where a deviation is requested in accordance with Section 143.0260 for relocation of a *designated historical resource* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) There are no feasible measures, including maintaining the resource on site, that can further minimize the potential adverse effects on *historical resources*;
- (2) The proposed relocation will not destroy the historical, cultural, or architectural values of the *historical resource*, and the relocation is part of a definitive series of actions that will assure the preservation of the *designated historical resource*.
- (3) There are special circumstances or conditions apart from the existence of *historical resources*, applying to the land that are peculiar to the land and are not of the applicant's making, whereby the strict application of the provisions of the *historical resources* regulations would deprive the property owner of reasonable use of the land.

(i) Supplemental Findings--Historical Resources Deviation for Substantial Alteration of a Designated Historical Resource or Within a Historical District

A Site Development *Permit* required in accordance with Section 143.0210 because of potential impacts to *designated historical resources* where a deviation is requested in accordance with Section 143.0260 for substantial alteration of a *designated historical resource* or within a *historical district* or new construction of a *structure* located within a *historical district* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):

- (1) There are no feasible measures, including a less environmentally damaging alternative, that can further minimize the potential adverse effects on the *designated historical resource* or *historical district*;
 - (2) The deviation is the minimum necessary to afford relief and accommodate the *development* and all feasible measures to mitigate for the loss of any portion of the *historical resource* have been provided by the *applicant*; and
 - (3) The denial of the proposed *development* would result in economic hardship to the owner. For purposes of this finding, “economic hardship” means there is no reasonable beneficial use of a property and it is not feasible to derive a reasonable economic return from the property.
- (j) Supplemental Findings--Clairemont Mesa Height Limit
- A Site Development Permit required in accordance with Section 132.1306 because an exception from the Clairemont Mesa height limit is requested may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):
- (1) The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean within the surrounding area; and
 - (2) The granting of an exception is appropriate because there are existing *structures* over 30 feet in height and the proposed *development* will be compatible with surrounding one, two, or three-story *structures*; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and facade variations, accents, tower elements, and other similar elements and the elements will not increase the *floor* area of the *structure*.
- (k) Supplemental Findings--Mobilehome Park Discontinuance
- A Site Development Permit required in accordance with Section 132.0702 because a discontinuance of a *mobilehome park* is proposed may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):
- (1) The discontinuance of use of the land for a *mobilehome park* or *mobilehome* spaces will not deprive the community of a needed facility;

- (2) The discontinuance of use of the land for a *mobilehome park* or *mobilehome* spaces, because of the associated relocation plan and conditions that have been applied to the discontinuance, will not be detrimental to the public health, safety, and welfare of persons living in the *mobilehome park*; and
 - (3) The use to which the *applicant* proposes to put the property will provide a greater public benefit than continued use of the property as a *mobilehome park* or *mobilehome* spaces.
- (l) Supplemental Findings--Deviation for Affordable Housing
- A *development* that requires a Site Development Permit in accordance with Section 143.0750 because the *applicant* has requested a deviation from the applicable development regulations as an additional incentive to a *density* bonus for providing affordable housing may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):
- (1) The proposed *development* will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City;
 - (2) The *development* will not be inconsistent with the purpose of the underlying zone.
 - (3) The deviation is necessary to make it economically feasible for the *applicant* to utilize a *density* bonus authorized for the *development* pursuant to Section 143.0725.
- (m) Supplemental Findings - Deviations for Affordable/In-Fill Housing Projects and Sustainable Buildings
- A development that requires a Site Development Permit in accordance with Section 143.0920 because the applicant has requested a deviation from the applicable development regulations for affordable/in-fill housing and Sustainable Building projects may be approved or conditionally approved only if the decision maker makes the following supplemental findings in addition to the findings in Section 126.0504(a):
- (1) The proposed development will materially assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City, and/or the proposed development will materially assist in reducing impacts associated with fossil fuel energy use by utilizing alternative energy resources, self-generation and other renewable technologies (e.g. photovoltaic, wind, and/or fuel cells) to generate electricity needed by the building and its occupants;

- (2) The development will not be inconsistent with the purpose of the underlying zone;
 - (3) Any proposed deviations are appropriate for this location and will result in a more desirable project than would be achieved if designed in strict conformance with the development regulations of the applicable zone.
- (n) Supplemental Findings - *Condominium Conversions*
- A Site Development Permit required in accordance with Section 144.0509, because of potential impacts to the surrounding neighborhood, may be approved or conditionally approved only if the decision maker makes either of the following supplemental *findings* in addition to the *findings* in Section 126.0404 (a):
- (1) The decision maker has considered the project-specific constraints and has determined that the *condominium conversion* as proposed would, to the maximum extent feasible, address the requirements of Section 144.0507, and has been developed to provide specific community benefits; or
 - (2) Strict adherence to the requirements of Section 144.0507 would result in the demolition of *structures* or loss of the architectural character of *structures* that contribute to the community character.
- (o) Supplemental Findings-*Public Right-of-Way Encroachments*. A Site Development Permit in accordance with Section 126.0502(d)(7) for any *encroachment* or object which is erected, placed, constructed, established or maintained in the *public right-of-way* when the *applicant* is not the *record owner* of the property on which the proposed *encroachment* will be located may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0504(a):
- (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;
 - (2) The proposed *encroachment* does 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; and
 - (4) The proposed *encroachment* does not violate any other Municipal Code provisions or other local, state, or federal law; and

- (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).

(Amended 6-3-2003 by O-19188 N.S.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-09-2006)

(Amended 2-9-2006 by O-19461 N.S.; effective 3-9-2006.)

(Amended 3-1-2006 by O-19466 N.S.; effective 4-1-2006)

(Amended 7-5-2006 by O-19505 N.S.; effective 8-5-2006.)

(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)

§126.0505 Violations of a Site Development Permit

It is unlawful for any person to maintain, use, or develop any *premises* without a Site Development Permit if such a permit is required for the use or *development*, or to maintain, use, or develop any *premises* contrary to the requirements or conditions of an existing Site Development Permit. Violation of any provision of this division shall be subject to the enforcement provisions contained in Chapter 12, Article 1.

Violations of this division shall be treated as strict liability offenses regardless of intent.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)