

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck-Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER - O-20235 (NEW SERIES)

DATE OF FINAL PASSAGE JANUARY 23, 2013

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 4, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 124.0102, 124.0103, 124.0104, AND 124.0107; AMENDING CHAPTER 12, ARTICLE 5, DIVISION 6 BY AMENDING SECTION 125.0640; AMENDING CHAPTER 12, ARTICLE 5 BY ADDING NEW DIVISION 11, ENTITLED "NAMING OF PUBLIC STREETS AND OTHER RIGHTS-OF-WAY," AND BY ADDING NEW SECTIONS 125.1101, 125.1105, 125.1110, 125.1115, 125.1120, AND 125.1125; AMENDING CHAPTER 12, ARTICLE 6, DIVISION 5 BY AMENDING SECTION 126.0502; AMENDING CHAPTER 12, ARTICLE 9, DIVISION 7 BY AMENDING SECTION 129.0710; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 6 BY AMENDING SECTION 142.0670; AMENDING CHAPTER 14, ARTICLE 2, DIVISION 12 BY AMENDING SECTION 142.1255; AND AMENDING CHAPTER 14, ARTICLE 4, DIVISION 2 BY AMENDING SECTIONS 144.0231, 144.0240, AND BY ADDING NEW SECTION 144.0242, ALL RELATING TO PLANNING AND ZONING

Chapter 12: Land Development Reviews

Article 4: Agreements

Division 1: Development Agreement Procedures

§124.0102 How to Apply for a Development Agreement

An application for a Development Agreement shall be filed ~~with the City Manager~~ in accordance with ~~Section~~section 112.0102 and the following provisions:

- (a) [No change in text].

- (b) ~~Accompanying Documents. The application shall be accompanied by the proposed adoption ordinance and Development Agreement.:~~
- (1) Documentation that identifies the property and *development* to be covered by the Development Agreement and the type of vesting rights that the applicant is seeking with the Development Agreement;
 - (2) An analysis of how the proposed Development Agreement complies with applicable *land use plans*, zoning regulations, and public facilities financing plans;
 - (3) A description of the public benefit that will result from the Development Agreement in excess of what can be obtained through a *tentative map*, *development permit*, facilities benefit assessment, public facilities financing plan, or other regulations; and
 - (4) Any technical studies necessary to support the proposed public benefit elements that would be in excess of what can be obtained through a *tentative map*, *development permit*, facilities benefit assessment, public facilities financing plan, or other regulations.
- (c) Notice of Application. A Notice of Application shall be provided in accordance with section 112.0301(a). The City Manager shall also mail the Notice of Application to the City Council no later than 10 *business days* after the date on which the application is *deemed complete*.
- (~~e~~) (d) Review of Documents. The City Manager shall review the submittal documents for compliance with technical requirements and consistency with the applicable

land use plan, Local Coastal Program, and City policies and may negotiate additions or modifications to the proposed agreement.

~~(d)~~ (e) Fees and Deposits. The *applicant* for a Development Agreement shall pay a filing fee in accordance with ~~Section~~ section 112.0202 at the time of filing the application. This fee shall be in addition to any other required fees or deposits for permits relative to *development* of the property and shall be for the purpose of defraying the costs associated with City review and action on the application.

§124.0103 Contents of Development Agreements

(a) A Development Agreement shall contain all of the provisions listed in California Government Code section 65865.2, including ~~a provision specifying the party responsible for the cost of the periodic review;~~

- (1) The duration of the Development Agreement;
- (2) The permitted uses of the property;
- (3) The density or intensity of uses;
- (4) The maximum height and size of proposed buildings;
- (5) Provisions for reservation or dedication of land for public purposes; and
- (6) Provisions requiring the *applicant* to submit annually an affidavit within 30 days of the anniversary date of the effective date of the Development Agreement demonstrating good faith compliance with the terms of the Development Agreement and specifying the party responsible for the cost of the periodic review in accordance with section 124.0107.

(b) Where applicable, a Development Agreement shall also:

- (1) Include conditions, terms, restrictions, and requirements for subsequent discretionary actions provided that such conditions, terms, restrictions, and requirements for subsequent discretionary actions shall not prevent development for the uses and to the density or intensity of development set forth in the Development Agreement.
 - (2) Establish a construction schedule, with thresholds based on public facilities and services available through a phasing and timing program, which may require that construction be commenced within a specified time and that the project or phase thereof be completed within a specified time. The construction schedule shall indicate the minimum development necessary to assure the applicant's reasonable cost recovery for expenditures.
 - (3) Include terms and conditions relating to the applicant's financing of necessary public facilities and subsequent reimbursement over time.
- (c) The terms of the Development Agreement shall not preclude the inclusion of, and changes to, fees and exactions assessed on the property that is the subject of the Development Agreement assessed pursuant to facilities benefit assessments and public facilities financing plans, or other development impact fees and related fees adopted on a community or citywide basis.
- (d) The applicant or the applicant's successor in interest shall be subject to additional City imposed fees, impositions, or monetary exactions that may be adopted following the effective date of the Development Agreement. Such fees, impositions or exactions shall be limited to the applicant's fair share contribution

to impacts caused by the *development* and shall not duplicate any exactions or other mitigations or fees contributed or paid by the *applicant*.

- (e) The Development Agreement shall include terms indemnifying and holding the City and its officers and agents free and harmless from any and all claims and liability which might arise from the agreement or any performance by any party under the agreement.

§124.0104 Decision Process for Development Agreements

A decision on an application for a Development Agreement shall be made in accordance with Process Five and in the following manner:

- (a) Planning Commission Recommendation. The Planning Commission shall hold a public hearing to consider whether to recommend approval or denial of the Development Agreement ~~and shall include written findings specifying the facts and information relied upon by the Planning Commission in making its recommendation in accordance with section 112.0509(b).~~
- (b) City Council Action. The City Council may approve or deny a Development Agreement by ordinance after receiving the Planning Commission's recommendation. If the Planning Commission does not make a recommendation within ~~45~~60 calendar days of the initial Planning Commission hearing, the City Council ~~shall~~may take action on the Development Agreement ~~by ordinance~~. The City Council's action is final.
- (c) City Council *Findings*. To approve a Development Agreement, the City Council must find that:

(1) ~~the~~The Development Agreement is consistent with the applicable *land use plans, Local Coastal Program, and City Policies the Land Development Code; and*

(2) The Development Agreement will provide significant public benefits in proportion to the rights granted under the Development Agreement; and

(3) The significant public benefits will be in excess of what can be obtained under existing policies and regulations, and otherwise could not reasonably be derived or provided except through the Development Agreement.

(d) ~~Notice of Denial. If a Development Agreement is denied, the City Clerk shall mail a notice of the denial to the applicant and to the Planning Commission no later than 10 business days after the denial.~~

§124.0107 Periodic Review of Development Agreements

(a) The City Manager shall review an adopted Development Agreement at least every 12 months, at which time the owner of the property subject to the agreement shall be required to demonstrate good faith compliance with the terms of the agreement.

(b) The City Manager shall submit a report summarizing the review to the City Council if it is determined that the applicant or the applicant's successor in interest is not in compliance with the terms of the Development Agreement. If after reviewing the report, and after a public hearing, the City Council finds on the basis of substantial evidence that the ~~owner~~ applicant or the applicant's successor in interest has not complied in good faith with the conditions of the agreement,

the City Council may take action to terminate or modify the agreement pursuant to the terms of the agreement.

Chapter 12: Land Development Reviews

Article 5: Subdivision Procedures

Division 6: Final Maps

§125.0640 Approval Requirements for a Final Map

- (a) [No change in text.]
- (b) The City Manager may enter into, amend, or extend all agreements related to the approval of the *final map* in accordance with the *Subdivision Map Act*. The City Manager's decision to approve or disapprove any documents or agreements may be appealed to the City Council in accordance with ~~Section~~section 125.0630 and the *Subdivision Map Act*.
- (c) [No change in text.]

Chapter 12: Land Development Reviews

Article 5: Subdivision Procedures

Division 11: Naming or Renaming of Public Streets and Other Rights-of-Way

§125.1101 Purpose of the Procedures to Name or Rename Public Streets and Other Rights-of-Way

The purpose of this Division is to establish procedures for the careful selection of names for public *streets* and other rights-of-way to protect the public health, safety and welfare in consideration of the multi-agency computer aided dispatch service for police, fire, and paramedic vehicles and the policies and procedures of the United States Postal Service. It is the intent that the City avoid duplication and confusing similarity between public

streets and other rights-of-way within the City, and with other cities and unincorporated areas in the County of San Diego.

§125.1105 Approval Required to Name or Rename Public Streets and Other Rights-of-Way

Approval from the City Engineer is required for any request to name or rename public streets and other rights-of-way, which for this section includes private streets, private driveways, non-dedicated roads on City property, and alleys. The City Engineer may designate a street name coordinator to reserve and approve street names.

§125.1110 How to Apply for Approval to Name or Rename Public Streets and Other Rights-of-Way

- (a) Applications to assign names to a public streets or other rights-of-way shall be submitted in accordance with section 112.0102 and the Land Development Manual.
- (b) Applicants requesting to change the name of an existing public street or other right-of-way shall:
 - (1) Submit an application in accordance with section 112.0102 and the Land Development Manual; and
 - (2) Submit documentation to the satisfaction of the City Engineer that a petition for the proposed name change was circulated to all property owners and tenants with either abutting property or property with an address on the affected segment of an existing public street or other right-of-way. The applicant shall demonstrate upon application that the petition contains signatures indicating at least 25 percent support from affected property owners and tenants.

§125.1115 General Regulations

To protect the public health, safety, and welfare, names for public streets and other rights-of-way must comply with the street naming standards in the Land Development Manual.

§125.1120 Decision Process for Applications to Name or Rename Public Streets and Other Rights-of-Way

(a) A decision on a request to name a new public street or other right-of-way shall be made by the City Engineer in accordance with Process One, except that a decision of the City Council shall be required for:

(1) Any request to name a public street or other right-of-way after an individual using the first and last name of that individual; and

(2) Any request by an applicant for a public street or other right-of-way name that, in the opinion of the City Engineer, does not comply with the street naming standards in the Land Development Manual.

(b) A request to change the name of an existing public street or other right-of-way shall be made in accordance with the following:

(1) The decision on a request for a proposed name change that is supported by a petition containing signatures indicating 100 percent support from all affected property owners and tenants described in section 125.1110(b)(2) shall be made by the City Engineer in accordance with Process One.

(2) Where the petition contains signatures indicating less than 100 percent support from all affected property owners and tenants described in section 125.1110(b)(2), the decision shall be made by the City Council. The request shall be processed in accordance with Process Five, except that a

Planning Commission recommendation hearing shall not be required prior to a City Council decision.

- (c) Where a decision is required by the City Council in accordance with section 125.1120(a) or (b), the Council shall deny any request for a name that would adversely affect the multi-agency computer aided dispatch service for police, fire, and paramedic vehicles or the policies and procedures of the United States Postal Service.

§125.1125 Effective Date of Decision to Name or Rename Public Streets and Other Rights-of-Way

- (a) Names for new public *streets* or other rights-of-way may be reserved through the approval of a *tentative map* and will be reserved for the life of the *tentative map*.
- (b) Names for public *streets* or other rights-of-way may also be reserved for up to three years by submitting an application to the City Engineer in accordance with section 125.1110.
- (c) Names reserved for public *streets* or other rights-of-way shall become effective upon recordation of the associated map, drawing or deed.

Chapter 12: Land Development Reviews

Article 6: Development Permits

Division 5: Site Development Permit Procedures

§126.0502 When a Site Development Permit is Required

- (a) through (d) [No change in text.]
- (e) A Site Development Permit decided in accordance with Process Five is required for the following types of *development*.
- (1) through (4) [No change in text.]

- (5) Development in accordance with section 129.0710(c) that includes 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.

Chapter 12: Land Development Reviews

Article 9: Construction Permits

Division 7: Public Right-of-Way Permits

§129.0710 How to Apply for a Public Right-of-Way Permit

An application for a Public Right-of-Way Permit shall be submitted in accordance with ~~Sections~~ sections 112.0102 and 129.0105. The submittal requirements for Public Right-of-Way Permits are listed in the Land Development Manual. A *development permit* or other discretionary approval is required prior to issuance of a Public Right-of-Way Permit for the following:

- (a) If the proposed *encroachment* involves construction of a privately owned *structure* or facility into the *public right-of-way* dedicated for a *street* or an *alley*, and where the *applicant* is the *record owner* of the underlying fee title, a Neighborhood Development Permit is required in accordance with ~~Section~~ section 126.0402 (j) except for the following:
- (1) through (7) [No change in text.]
- (8) Underground or overhead structures that extend into the public right-of-way beyond the ultimate curb line that require a Site Development Permit in accordance with section 129.0710(c).

(b) If the proposed *encroachment* 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 *encroachment* will be located, a Site Development Permit is required in accordance with section 126.0502(d)(7), except for the following:

(1) through (3) [No change in text.]

(4) Underground or overhead structures that extend into the public right-of-way beyond the ultimate curb line that require a Process Five Site Development Permit in accordance with section 129.0710(c).

(c) If the proposed *encroachment* includes underground or overhead ~~structures~~ structures which extend into the *public right-of-way* ~~farther than~~ 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, ~~the item shall be scheduled for early consideration by the City Council in accordance with Council Policy 600-16, a Process Five Site Development Permit shall be~~ obtained in accordance with section 126.0502(e) prior to the issuance of a Public Right-of-Way Permit.

Chapter 14: Land Development Reviews

Article 2: General Development Regulations

Division 6: Public Facility Regulations

§142.0670 Standards for Public Improvements

(a) Streetscape and *street* improvements shall be constructed in accordance with the applicable ~~adopted Council Policies,~~ the standards established in the Land Development Manual and the following regulations:

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

(3) All private improvements in the ~~public right-of-way~~ public right-of-way shall comply with the provisions for *encroachments* in Chapter 12, Article 9, Division 7, ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.

(4) Public *street* improvements shall comply with the applicable regulations in the Land Development Code, ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.

(5) Where, in the course of *development* of private property, a driveway is abandoned and is no longer suited for vehicular use, the property owner shall remove the depressed curb section and apron and restore the *public right-of-way* to the satisfaction of the City Engineer.

~~(5)~~ (6) Driveways shall comply with the regulations in Chapter 14, Article 2, Division 5 (Parking Regulations).

~~(6)~~ (7) Landscaping within the *public right-of-way* shall comply with the regulations in Chapter 14, Article 2, Division 4 (Landscape Regulations).

- (b) Sewer and wastewater facilities shall be constructed in accordance with the requirements in Municipal Code Chapter 6, Article 4 (Sewers), ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.
- (c) Water distribution and storage facilities shall be constructed in accordance with the requirements in Municipal Code Chapter 6, Article 7 (Water System), ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.
- (d) Drainage facilities shall be constructed in accordance with the requirements in Chapter 14, Article 2, Division 2 (Drainage Regulations), ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.
- (e) *Street* lights shall be constructed in accordance with ~~adopted Council Policies,~~ and the standards established in the Land Development Manual.
- (f) [No change in text.]

Chapter 14: General Regulations

Article 2: General Development Regulations

Division 12: Sign Regulations

§142.1255 Temporary Secondary Signs in Commercial and Industrial Zones

- (a) through (i) [No change in text.]
- (j) Off-premises Directional and Identification *Signs for Subdivisions* ~~Off-premises directional and identification signs for subdivisions shall comply with Temporary Off-premises Subdivision Directional Signs, Locational Criteria, Construction and Maintenance Standards of the Land Development Manual.~~

(1) Off-premises directional and identification signs for subdivisions must be for a subdivision within the City of San Diego with dwelling units or lots that are being offered for sale.

(2) Off-premises directional and identification signs for subdivisions shall comply with the following regulations.

(A) The signs shall not be placed in the public right-of-way or on public property.

(B) The signs may be placed on private property only with the consent of the property owner.

(C) Sign copy may contain the name of the subdivision, name of the developer or subdivider of record, a description of the development (i.e. single family, condos, etc.), and address or directional arrow. No information regarding other subdivision features, prices, or loans is permitted on the sign face.

(D) Signs shall be located within 3 miles of the subdivision with at least 300 feet between signs, except that signs may be located at each corner of an intersection of a major street.

(E) A maximum of 8 off-premises signs are permitted per subdivision.

(F) Signs shall be a maximum of 16 square feet in sign area.

(G) Signs shall comply with a maximum height of 8 feet.

(H) Signs shall not exceed a height of 3 feet within a visibility area.

For determination of the visibility area see Chapter 11, Article 3, Division 2 (Rules for Calculation and Measurement).

(I) _____ Flags, banners, streamers, and pennants may not be placed on or near the signs.

(k) [No change in text.]

Chapter 14: Land Development Reviews

Article 4: Subdivision Regulations

Division 2: Tentative Map Regulations

§144.0231 Right-of-Way Improvements and Land Development for Tentative Maps

The *subdivider* shall improve *public rights-of-way* and perform *land development* work as required in this article and in accordance with the conditions of the resolution approving the *tentative map* as follows:

- (a) *Streets* in and adjacent to all *lots* within the *subdivision* shall be improved in accordance with adopted *land use plan* policies ~~established by the City Council~~ and the Land Development Manual;
- (b) Pedestrian access shall be provided along all *streets* and to all *lots* within the *subdivision* in accordance with adopted *land use plan* policies ~~established by the City Council~~ and the Land Development Manual;
- (c) through (d) [No change in text.]
- (e) Public transportation improvements shall be constructed and financed in accordance with adopted *land use plan* ~~the policies established by the City Council~~ to adequately support the *development* of public transportation programs ~~in areas where traffic congestion is projected at build-out~~ and to fulfill any traffic mitigation requirements of the project's environmental review;
- (f) through (g) [No change in text.]

§144.0240 Utilities Requirements for Tentative Maps

Where utilities already exist, new *subdivisions* shall be designed so that the utilities are in proper locations or else provide for their reconstruction in locations approved by the utility agencies concerned.

- (a) [No change in text.]
- (b) Privately owned utilities shall be provided as follows.
 - (1) through (4) [No change in text.]
 - (5) The *subdivider* or *public utility* company may apply for waiver of the requirements of this section as part of an application for the *tentative map*.
The decision maker may waive the requirements of this section in accordance with ~~City Council policy~~ section 144.0242.
- (c) [No change in text.]

§ 144.0242 Waiver of the Requirements to Underground Privately Owned Utility Systems and Service Facilities

- (a) Purpose. The installation of utilities underground benefits the public through the minimization of the visual and functional impact of utility systems and equipment on streets, sidewalks, and the public realm, and the enhancement of quality of life. However, there are circumstances where a waiver of the undergrounding requirement in section 144.0240(b) would be appropriate, in accordance with section 144.0242(c).
- (b) Process. Requests to waive the undergrounding requirement in section 144.0240(b) shall be considered concurrently with the approval of a tentative map or amendment thereto. Supporting facts for a decision to grant a waiver shall be documented in the findings for tentative map approval.

- (c) Waiver. A request for waiver of the requirements in section 144.0240(b) will be considered based on documentation provided by the *applicant* demonstrating that one or more of the following factors are applicable to the *development*:
- (1) Adverse timing or planning considerations:
- (A) The conversion involves undergrounding of utilities that are already scheduled to occur in the near term as a utility company financed undergrounding project or as part of the City's utility underground program; or
- (B) The conversion involves a short span of overhead facility (less than a full block in length) and would not represent a logical extension to an underground facility.
- (2) Inordinate cost to the *development* taking into consideration:
- (A) Whether the conversion would involve substantial investment in temporary facilities such as cable poles or temporary recruiting;
- (B) Whether the conversion would require a significant amount of work to occur offsite of the *development* as a result;
- (C) Whether the cost of conversion would increase the cost per unit for proposed *residential development* by more than one percent; or
- (D) Whether regardless of the conversion, a large transmission line (60,000 volts or larger) would still remain overhead.
- (3) The requested waiver will not create a long term visual or functional impact to any *streets, sidewalks* or the public realm in conflict with adopted *land use plan* policies.

(d) Appeals. A decision to approve or deny a request for a waiver, excepting a decision of the City Council, may be appealed to a higher decision maker by filing an appeal of the *tentative map* action in accordance with section 112.0506 or 112.0508 as applicable.

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