

Article 1: General Information on Required Reviews

And Enforcement

Division 3: Violations of The Land Development Code And General Remedies

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

§121.0301 Purpose of General Remedies

The purpose of this division is to require compliance with the Land Development Code, to state what activities violate the Land Development Code, and to establish general remedies for these violations.

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

§121.0302 Required Compliance with the Land Development Code

- (a) It is unlawful for any person to maintain or use any *premises* in violation of any of the provisions of the Land Development Code, without a required permit, contrary to permit conditions, or without a required variance.
- (b) It is unlawful for any person to engage in any of the following activities, or cause any of the following activities to occur in a manner contrary to the provisions of the Land Development Code:
 - (1) To erect, place, construct, convert, establish, alter, use, enlarge, repair, move, remove, equip, maintain, improve, occupy, or demolish any *structures*;
 - (2) To *grade*, excavate, clear, *fill*, grub, build an embankment, construct slopes, or disturb sensitive natural or biological resources on any *lot* or *premises*; or
 - (3) To change *density* or intensity of the use of land; or
 - (4) To maintain or allow the existence of any condition that creates a *public nuisance*.
- (c) It is unlawful for any person, whether as owner, architect, contractor, or otherwise to engage in any of the following activities:
 - (1) To install any electrical wiring, device, appliance, or equipment in such a manner that it does not comply with the provisions of the Land Development Code;

- (2) To maintain an electrical system that was not installed in accordance with the Land Development Code, or that, notwithstanding compliance with the Land Development Code, is maintained in an unsafe condition as determined by the designated Code Enforcement Official;
 - (3) To sell, offer for sale, lend, rent, or dispose of by gift or premium any electrical material, device, or appliance designed or intended for attachment directly or indirectly to any electrical system, circuit, or electrical service for light, heat, or power in the City of San Diego, unless the electrical material, device, or appliance complies with the provisions of the Land Development Code; or
 - (4) To install or modify any device, *structure*, or addition that will cause a capacity demand greater than the existing electrical, plumbing, mechanical, or structural system was designed and approved to handle.
- (d) It is unlawful for any person, firm, or corporation to erect, install, alter, repair, relocate, add to, replace, use, or maintain plumbing, heating, ventilating, air conditioning, or refrigeration equipment, or cause the same to be done, contrary to or in violation of any provision of the Land Development Code.
- (e) Maintenance of plumbing, heating, ventilating, air conditioning, or refrigeration equipment that was unlawful at the time it was installed shall constitute a continuing violation of the Land Development Code. Existing plumbing, heating, ventilating, air conditioning, and refrigeration equipment, however, shall be deemed to have conformed with applicable law in effect at the time of installation if the Building Official or designated Code Enforcement Official determines that the existing equipment is currently in good and safe condition and is working properly. The existing equipment may be retained and used in connection with alterations or repairs if it has been determined to be properly maintained in good and safe condition.
- (f) The Building Official may disconnect or cease the operation of gas or electrical services when a *structure* is not occupied or is unfit or unsafe for occupancy.
- (g) When any *structure* or *premise* has been inspected by the Building Official or designated Code Enforcement Official and the new or existing plumbing, heating, ventilating, air conditioning, or refrigeration is found to be defective, hazardous, or in violation of the provisions of the Land Development Code, the Building Official may abate such conditions or *structures* in accordance with the provisions of Chapter 12, Article 1, Division 4 (Procedures for Abatement of Unsafe, Dangerous, or Substandard Structures).

- (h) Any *structure* that is proposed for relocation that has been damaged, has had portions removed, has been cut into sections, or has been otherwise structurally altered after the pre-relocation examination may be considered a substandard *structure* or nuisance and may be abated in accordance with the Land Development Code.
- (i) The City may take any appropriate enforcement action to abate a *public nuisance*, despite the issuance of any permits to maintain, alter, expand, demolish, or reconstruct a *structure*, or to operate or resume operation of a use.

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

(Amended 11-28-2005 by O-19444; effective 2-9-2006)

§121.0308 No Permission to Violate Codes

- (a) The issuance or granting of any *development permit* or *construction permit* or any plan, specifications, computations, or inspection approval does not constitute a permit for, or an approval of, any violation of any of the provisions of the Land Development Code, including the Building, Electrical, Plumbing, or Mechanical Regulations or any other ordinance of the City. *Development permits, construction permits, or inspections* presuming to give authority to violate or cancel the provisions of the Land Development Code, Building, Electrical, Plumbing, or Mechanical Regulations or other ordinances of the City are not valid.
- (b) The issuance of a *development permit* or *construction permit* based on plans, specifications, and other data does not prevent the City Manager from subsequently requiring the correction of errors in the plans, specifications, and other data or the Building Official from stopping building operations that are in violation of the Land Development Code or any other applicable law.

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

§121.0309 Procedure for Issuing a Stop Work Order

- (a) Issuing a Stop Work Order. Whenever any work is being performed that is contrary to the provisions of the Land Development Code, the City Manager may order the work stopped by issuing a Stop Work Order. The Stop Work

Order shall be in writing and shall be served on any person engaged in the work or causing the work to be performed. The person served with the Stop Work Order shall stop the work until authorized by the City Manager to proceed.

- (b) City Attorney Review. Where a permit has been issued, the City Attorney shall approve all Stop Work Orders before issuance except where irreparable harm is imminent so as to warrant an emergency Stop Work Order. Where emergency circumstances exist, the order shall be issued according to the discretion of the City Manager or designated Code Enforcement Official with immediate subsequent review by the City Attorney.
- (c) Appeal of Order. A Stop Work Order may be appealed to the City Manager. When the alleged violation involves the Building, Electrical, Plumbing, or Mechanical Regulations, the appeal shall be reviewed by the Building Official. All other appeals shall be reviewed by the Development Services Director. The decision maker will provide informal rapid access for appellants in these matters in order to minimize unnecessary disruption of construction activities.

(Amended 1-9-2001 by O-18910 N.S.; effective 8-8-2001.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§121.0310 Procedure for Issuing a Stop Use Order

Whenever any *structure* or equipment regulated by the Land Development Code is being used contrary to the provisions of the Land Development Code, the City Manager may order the use discontinued and the *structure*, or portion thereof, vacated by issuing a Stop Use Order. The Stop Use Order shall be in writing and shall be served on any person engaged in the use to be discontinued. The person served with the Stop Use Order shall discontinue the use within the time stated in the Stop Use Order until authorized by the City Manager to proceed.

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

§121.0311 Remedies

Violations of the Land Development Code shall be treated as strict liability offenses regardless of intent. Violations of the Land Development Code may be prosecuted as misdemeanors subject to the fines and custody as provided in Municipal Code Section 12.0201. The City Manager or designated Code Enforcement Official may also seek criminal or civil injunctive relief and civil penalties in the Superior Court pursuant to Municipal Code Section 12.0202 or pursue any administrative remedy provided in Municipal Code Chapter 1, including administrative abatement, revocation of permits, recordation of notice of violation, and withholding of issuance of City permits.

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

§121.0312 Restoration and Mitigation as a Remedy

- (a) In addition to other enforcement remedies provided for in Municipal Code Chapter 1, the City Manager may order the reasonable restoration of a *structure, premises*, and any adjacent and affected site to its lawful condition or may require reasonable mitigation. These requirements may be attached as conditions to applicable permits or enforcement actions and orders as appropriate.
- (b) The City Manager shall order the restoration of *grading* undertaken without a permit, unless technically infeasible. The restoration shall be conducted in accordance with Section 142.0150. No further permits for the *premises* shall be processed until the restoration has been completed and specified performance criteria have been met as required by the City.
- (c) Any restoration or mitigation imposed by the City Manager or Building Official shall be at the sole cost of the responsible person.
- (d) Mitigation may be appropriate where the City Manager determines that restoration of the *premises* or adjacent site to its pre-existing condition is not feasible or that irreparable damage has been done to the *premises*, or *historical resources*.
- (e) Mitigation may include the purchase or exchange of like-kind real property or *structures* of a similar or greater quality and value, or other appropriate measures.
- (f) The City Manager or Building Official may require a combination of restoration and mitigation of the *structure* or *premises* if warranted by the circumstances.
- (g) The City Manager or Building Official may promulgate additional administrative guidelines and regulations to implement and clarify the authority to require restoration and mitigation.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

§121.0313 Permit Revocation Authority and Procedures

Except as otherwise provided, if the City Manager determines that there has been a violation of the terms, conditions, lawful requirements, or provisions of any *development permit, construction permit, or approval* issued by the City, the City Manager may, in addition to any other remedies provided in Municipal Code Chapter 1 or in this division, issue a notice of intent to revoke the permit or approval to the *permit holder*. The notice of intent to revoke shall inform the *permit holder* of the violation and provide a reasonable time for compliance with the applicable conditions or regulations. If the *permit holder* fails to correct the violations outlined in the notice of intent to revoke within the specified period of time, the City Manager may schedule a hearing to revoke or modify the permit or approval.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§121.0314 Permit Revocation Hearing Procedures

The hearing provisions of Process Three, in addition to the requirements of this section, apply when determining whether to revoke or modify a *development permit, a construction permit, or any other approval*.

- (a) Notice. The City Manager shall mail a notice of the revocation hearing to the *permit holder* and to any persons who request the notice at least 10 *business days* before the date of the revocation hearing. A Notice of Application is not required.
- (b) Presentation of Evidence. The City Manager shall present evidence of any violations at the hearing, and the *permit holder* shall be provided a reasonable opportunity to rebut the evidence.
- (c) Findings. The permit or approval may be revoked or modified if the Hearing Officer finds any of the following:
 - (1) The permit or approval was obtained by misrepresentation or fraud;
 - (2) The permit or approval was approved in error;
 - (3) One or more of the conditions of the permit or approval have not been satisfied or have been violated;
 - (4) The use permitted by the permit or approval violates an applicable statute, ordinance, law, or regulation; or
 - (5) The use permitted by the permit or approval is detrimental to the public health, safety, or welfare or constitutes a *public nuisance*.

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

§121.0315 Revocation Appeal

The Hearing Officer’s decision to revoke or to not revoke a permit may be appealed to the Planning Commission in the following manner:

- (a) **Persons Who Can Appeal.** A revocation decision may be appealed by the following persons:
 - (1) The *applicant*;
 - (2) The *permit holder*; or
 - (3) Any person who participated in the revocation proceedings before the Hearing Officer either by being present at the hearing and submitting a speaker slip or by having expressed an interest in the revocation proceedings in writing to the Hearing Officer before the decision on the revocation.
- (b) **Filing an Appeal.** An appeal of a revocation decision may be initiated by filing an application with the City Manager no later than 10 *business days* after the date of the Hearing Officer’s decision.
- (c) **Scheduling Appeal Hearings.** Within 30 calendar days after the date on which an appeal application is filed, the City Manager shall set a hearing before the Planning Commission. The appeal hearing shall be noticed in accordance with Municipal Code Section 112.0308.
- (d) **Power to Act on Appeal.** After the conclusion of the public hearing, the Planning Commission may affirm, reverse, or modify the decision on the revocation. The decision of the Planning Commission is final.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§121.0316 Recordation of Permit Revocation or Modification

- (a) If a permit is revoked, the City shall forward a copy of the declaration of the decision maker revoking the permit to the County Recorder for recordation. Upon recording of the declaration, the permit shall be void.
- (b) If the permit is modified, the City shall forward a copy of the permit, as modified, to the County Recorder for recordation.
(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)