



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 22, 2006 REPORT NO: 06-032
ATTENTION: Committee of Land Use and Housing
Agenda of March 29, 2006
SUBJECT: Land Development Code Update Work Program
REFERENCE: CMR 04-048

REQUESTED ACTION:

This is an informational report of the items on the work program for the Land Development Code Update section for Fiscal Year 2006-2007. The LDC update work program is the vehicle for bringing code amendment issues forward related to land use regulations, policies, and procedures. No action is required by the Committee or the City Council at this time.

STAFF RECOMMENDATION:

That the LU&H Committee accept the report on the Land Development Code work program.

SUMMARY:

The Land Development Code Update work program for Fiscal Year 2006-2007 will include reformatting Planned District Ordinances, phase II amendments to the regulations for condominium conversion, the 6th Update to the Land Development Code, categorical exclusion request for single family residences within the Coastal Overlay Zone, and amendments to the regulations for environmentally sensitive lands.

BACKGROUND:

Following the adoption process of the Land Development Code in January 2000, the City Council directed the City Manager to develop a code monitoring and update process for resolution of code issues raised during implementation of the LDC. As a result, the LDC update program was created within the Development Services Department. The LDC update work program is currently staffed with two Senior Planners and is supported by funds from the enterprise Department's overhead.

The LDC update work program is the vehicle for bringing code amendment issues forward related to land use regulations, policies, and procedures. Previously, the Land Use and Housing Committee prioritized the LDC work program. However, under the current strong mayor form of government, the Mayor's office now prioritizes the sections work program. For each item on the work program, the LDC team will research, analyze, and prepare reports on the issues, and

coordinate public outreach for input and feedback before bringing the items forward to the City Council for approval. The code update process is a long process that generally entails multiple public meetings and hearings, as follows:

- Meetings/Workshops with industry groups or design professionals
- Technical Advisory Committee Meetings
- Code Monitoring Team Meetings
- Community Planners Committee Meetings
- Planning Commission Hearings
- Land Use and Housing Committee Meetings
- City Council Hearings
- Coastal Commission Hearings

Accomplishments:

Since the last work program report was presented to LU&H on March 10, 2004 (CMR 04-048), multiple code amendments have been approved that address changing development practices and improve implementation of City policy, with a specific focus in the areas of housing, environment, health and safety, and permit process as described below.

New housing amendments have specifically facilitated infill housing, provided consumer protections related to condo conversions, and addressed accommodations for persons with disabilities. Code amendments creating the sustainable buildings expedite program have provided incentives for developments with alternative energy resources, in addition to incentives for affordable infill housing developments to encourage affordable and sustainable housing. Amendments to development standards such as parking and measurement standards have addressed inconsistencies previously attributed to slowing or preventing the housing approval process, specifically with respect to infill housing. For example, some parking code amendments included in the Fifth Update addressed parking design on small lots, which should facilitate future infill housing development. In addition, new condominium conversion regulations were approved with consumer protections for prospective condominium buyers and reasonable accommodations amendments approved a new deviation process to provide persons with disabilities an equal opportunity to use and enjoy a dwelling unit. The resulting housing will be beneficial to meet the needs of the City's growing population.

Several amendments have benefited the environment such as the residential open space zone category amendments which implement the protection of community open space, and the emergency restoration amendments which regulate the timing for restoration plans. The brush management and building code amendments were approved to protect buildings exposed to fire hazards in response to lessons learned from the Cedar fire and improve overall public health and safety. New code amendments also addressed illegal grading and placed additional enforcement protections in the code.

A majority of the approved amendments have improved the efficiency of permit processing, some with associated cost savings to the public. An Official Zoning Map which identifies current zoning for all properties in the City of San Diego was adopted February 28, 2006, and is now accessible by staff and the public. The disbanding of the Board of Zoning Appeals and

transfer of their duties to the Planning Commission has consolidated and improved the decision process. In addition, public right-of-way permit processing has been standardized and simplified, site reconnaissance and testing processes have been streamlined, public linear trails and maintenance access projects have been exempted from some permit requirements, and building permit and application expiration requirements have been updated to reduce the City's administrative costs.

Other code amendments were processed where required to comply with Council policy, or federal or state law. This includes items such as the construction waste recycling amendments which brought the City into compliance with Council policy; the environmental appeals regulations which brought the City into compliance with State California Environmental Quality Act law; and the reasonable accommodations amendments which brought the City into compliance with Federal and State Housing law.

Items awaiting Coastal Commission Certification:

Staff is waiting on Coastal Commission action on the Brush Management Regulation application which was submitted in December 2005. The certification process is long process that typically takes anywhere from 6 months to 1 year to complete depending on the complexity of the issues. In some cases, the Coastal Commission conditions certification upon the City accepting their suggested modifications. This requires a subsequent action by City Council to approve revised ordinances prior to final certification. For example, the Fourth Update to the Land Development Code, which included 42 code amendments, was originally adopted by the City Council November 22, 2004, and was finally certified by the Coastal Commission (including their suggested modifications) on February 9, 2006. Since the City is limited to three Coastal Commission Local Coastal Program Amendment application submittals per calendar year, the Fifth Update to the Land Development Code which includes 49 amendments (adopted by the City Council on February 21, 2006), will be submitted to the Coastal Commission for certification with the City's first submittal package for 2006.

DISCUSSION:

To further the Mayor's goal for simplification of land development processes, staff has created a list of items based on anticipated benefits. Items that were perceived to have limited benefit, or that appeared to benefit an isolated group, were not prioritized as part of the work program at this time. Many of the items that are still under consideration, while well intended, are overly complex and would not meet the Mayor's goal for streamlining City operations. The following includes a discussion of items prioritized for the 2006-07 work program and items on the previous work program that have been put aside for future consideration.

Prioritized Items:

Planned District Ordinances- Phase I

As part of the LDC update program, the code update section is tasked with updating the 19 Planned District Ordinances (PDO). On February 15, 2000, the Land Use and Housing Committee approved a two-phase PDO Update Work Program. Phase I includes the reformatting of the City's PDO's into Chapter 15 to be consistent with the format and philosophy of the Land Development Code. Phase I does not include any substantive changes to the PDO's. To date, only the Central Urbanized Planned District and the Centre City Planned District have

been reformatted to Chapter 15. The reformatting work for Phase I is complete. Once the Phase I ordinances are drafted by the City Attorney, this item will be ready to be scheduled for City Council approval. The PDO's located in the Coastal Overlay Zone will require subsequent certification by the Coastal Commission in order to become effective. Potential stakeholders would include community groups, consultants, property owners, development industry, public interest groups, land use professional associations, utilities, and government agencies. Goal is to obtain City Council approval by July 2006.

Condominium Conversions- Phase II

Phase II amendments to the condominium conversion regulations including amendments to address relocation assistance, noticing, parking, and inclusionary housing are proposed. These issues were not addressed in the Phase I Condominium Conversion amendment adopted by the City Council on February 6, 2006. The benefits of the amendments vary depending upon the particular issue and the actions taken. Anticipated benefits are a reduction in processing time, improved tenant noticing, preservation of older "affordable" rental stock, development of on-site affordable housing units, and increased predictability in the development process. There are a variety of stakeholders involved including condominium converters, existing tenants, prospective buyers, the Affordable Housing Coalition of San Diego, Affordable Housing Advocates, and community planning groups. Goal is to obtain City Council approval by September 2006.

6th Update to the Land Development Code

This item will include a variety of issues collected to address inconsistencies in the code and to improve the permit process. To date, items collected include clarification of environmental appeals, landscape regulations, mixed use regulations, accessory structures, height, setbacks, parking, signs, and uses. The 6th Update would improve permit processing by clarifying and simplifying existing regulations. The code amendments would benefit City staff and land development customers including consultants, property owners, community groups, the environmental community, development industry, public interest groups, land use professional associations, by increasing consistency and predictability in application of the Land Development Code and by simplifying and clarifying existing code language. Goal is to obtain City Council approval by December 2006.

Categorical Exclusion Request to Coastal Commission

In an effort to simplify the development permit process, this item is a request to pursue a previous (1997) application submitted to the California Coastal Commission that would exempt single family residential from the Coastal Development Permit process under specified conditions. The City's existing CDP requirements seem to have associated unintended consequences in single dwelling unit zones. Due to the time and expense associated with processing a discretionary Coastal Development Permit, many applicants are remodeling existing structures in order to meet the exemptions offered under the current code and thereby avoid the discretionary review process, or where they apply for a CDP they are requesting to maximize the development on the site within the limits of the maximum height and floor area ratio standards. The result has been a drain of staff time to address proposed new development that is out of character in bulk and scale with existing neighborhoods, and to process and investigate controversial remodels based on complex valuation schedules.

The proposed code amendments would remove the existing disincentive for new development by

reducing the permit process level from discretionary to ministerial, and would instead provide incentives for development that does not maximize bulk and scale for better compatibility with the surrounding neighborhood in the Coastal Overlay Zone. The amendments are anticipated to save the City money on administrative costs as well as to save applicants money on permit costs. Permit costs are often transferred onto home buyers in the purchase price, so this may also contribute to a reduction in housing costs. This amendment would only be applicable to the Coastal Overlay Zone and would require an amendment to the City's Local Coastal Program. Potential stakeholders would primarily include property owners, consultants, community groups, and land use professional associations in the coastal overlay zone, as well as the City and the Coastal Commission. Goal is to obtain Coastal Commission approval by December 2006.

Environmentally Sensitive Lands: Public Projects,
Alterations to Existing Development Adjacent to ESL, Wetlands Deviations

This is a request for approval of amendments to address inconsistencies in the environmentally sensitive lands regulations and to incorporate wetland deviations language in accordance with previous LU&H direction (CMR 04-046), and as recommended by the Wetlands Advisory Board. The existing environmentally sensitive lands section of the code has been recommended for amendment by a variety of sources including professional staff and members of the public due to a variety of interpretations and unintended consequences that should be addressed and clarified. On July 21, 2004, LU&H directed staff to develop recommendations to address some of the ESL problems in order to clarify that revegetation on steep hillsides should not be penalized, allow improvements ministerially that do not bring the development closer to the steep hillside, consider reducing the steep hillside setback for discretionary review to 10 feet from 40 feet, and clarify that development restrictions should be applied to the part of the structure that is on the same side as the ESL resource. Since amendments to the sensitive biological resources section of ESL are already in process, staff recommends expanding the scope of the analysis to cover the entire ESL section in order to identify existing inconsistencies and improve the ESL section with a single comprehensive update.

The Planning Department is in the process of selecting a consultant to write the associated environmental document, subject to availability of funding by a federal grant. The scope of work for the grant was originally limited to analysis of proposed wetlands deviations where necessary for essential public projects, to maintain economically viable use, and to enable biologically superior alternatives. However, the scope of work has been expanded to address the environmentally sensitive lands issue comprehensively in a single environmental document. This comprehensive analysis is expected to simplify the permit process for public projects where ESL applies, address existing unintended consequences related to development on existing lots in urbanized areas adjacent to environmentally sensitive lands, and improve overall consistency and predictability for City staff and land development customers. There are a variety of potential stakeholders involved in amending the environmentally sensitive lands section of the code including consultants, property owners, community groups, the environmental community, development industry, public interest groups, land use professional associations, utilities, and government agencies (specifically the resource agencies). Goal is to obtain City Council approval by September 2007.

Items Under Consideration:

Amateur Radio Antennas

On November 30, 2005, staff presented an informational report to LU&H regarding Amateur Radio Antenna Regulations (CMR 05-218) that contemplated drafting regulations to restrict the size and placement of the physical equipment associated with Amateur Radio Antennas, in consideration of the protections afforded under the Federal Communications Commission PRB-1 decision, and the concerns of the communities related to this type of use. This item includes two very polarized groups as stakeholders including the amateur radio antenna operators and enthusiasts and public safety groups reliant on this type of communication for emergencies, versus community members and individuals concerned with associated visual impacts. Work on this item will require creating a focus group representative of the stakeholders to provide input on the draft amateur radio antenna amendments, as well as coordination with the City Attorney's office for legal input regarding consistency of the proposed regulations with federal law. The existing code is consistent with federal law that requires the City to reasonably accommodate amateur radio service communications by imposing only the minimum practicable regulations. At this time the drafting of additional amateur radio antenna regulations to restrict the height and placement of this type of development does not appear to be consistent with the Mayor's goal for streamlining land development processes and will be postponed for future consideration.

Manufactured Slopes

This item includes amendments to address protection of community open space including both natural and manufactured slopes. On July 21, 2004, LU&H directed staff to review and develop revisions to the ESL steep hillside regulations and return to LU&H with recommendations. Since that time staff has been working with the Sierra Club and Building Industry Association, as well as with the Code Monitoring Team and Technical Advisory Committee, to develop solutions to protect steep hillsides. The suggested revisions to the ESL section to address existing unintended consequences will be incorporated into the associated work program item as discussed above. With respect to modifying the definition of steep hillside in the code to include natural and manufactured slopes, CMT and TAC both took action and agreed that the existing definition of steep hillside should not be modified due to associated unintended consequences. Modifying the definition would also be inconsistent with the Mayor's goal for simplification since it would add discretionary permit requirements to most development citywide including lands that are not deemed to be sensitive such as manufactured slopes in between single family homes or manufactured slopes within existing business parks. Alternatively, there was agreement that the land mapped with community plan open space should be protected regardless of whether the slopes within those areas are classified as natural or manufactured. Since Community Plans are policy documents, this will require amending the code and/or rezoning land to Open Space Residential zones (OR-1-1 or OR-1-2) in order to implement the policy language of the City's community plans as was intended when these zones were created with the Land Development Code in January 2000. Because the General Plan update and Community Plan updates are still in process and the relevant policy has not been decided, action on this item will be postponed for future consideration. There are a variety of stakeholders including community groups, consultants, property owners, environmental community, development industry, public interest groups, land use professional associations, utilities, and government agencies.

Mini Dorms

This item would address community concerns (noise, parking, trash, etc) related to students crowding into single dwelling units. Staff in consultation with the City Attorney’s office has concerns about creating an ordinance that would apply only to single dwelling unit zones or that would treat rental properties differently than owner occupied housing. The City previously enacted an ordinance that regulated rental properties in single family zones, which the courts determined to be unconstitutional. There are also concerns that adding occupancy restrictions may be inadvertently discriminatory to certain ethnic groups residing within the City. A Nuisance Task Force was created in 2004 to address the College Area community’s concerns through Neighborhood Code Compliance Department and Police Department involvement to investigate public nuisance claims. Enforcement of existing codes appears to be the best solution at this point. There are several student housing projects approved for the College Area which may help to alleviate the problem of students overcrowding into single dwelling units in that community. A new ordinance regulating occupancy of rental units would generally be inconsistent with the Mayor’s goals for simplification of the land development process in that additional regulation would not likely result in a reduced need for enforcement. Work on this item would benefit a limited group and has not been prioritized. Stakeholders include property owners and community groups surrounding the local college campuses and universities.

Planned District Ordinances- Phase II

On February 15, 2000, the Land Use and Housing Committee approved a two-phase PDO Update Work Program. There are 19 PDO’s within the City, they are:

- Barrio Logan
- Carmel Valley
- Cass Street
- Central Urbanized
- Centre City
- Gaslamp
- Golden Hill
- La Jolla
- La Jolla Shores
- Marina
- Mid-City
- Mission Beach
- Mission Valley
- Mount Hope
- Old Town
- Otay Mesa
- San Ysidro
- Southeastern San Diego
- West Lewis

The previous strategy was to prioritize individual PDO updates based on a community’s desire and willingness to pursue a PDO update. The previous work program prioritized by LU&H singled out La Jolla, La Jolla Shores, Mid City, and San Ysidro as PDO’s prioritized for Phase II code amendments. Phase II will require a comprehensive, time intensive review for consistency with citywide policies such as the General Plan update, potential consolidation to citywide LDC regulations, potential economic and or redevelopment opportunities, and other potential streamlining improvements to meet the Mayor’s goals. Instead of prioritizing individual PDO’s at this time, staff expects to bring this item back as part of the work program at a future date. Potential stakeholders would include community groups, consultants, property owners, development industry, public interest groups, land use professional associations, utilities, and government agencies (including redevelopment agencies).

Items Managed Outside of Code Update Work Program:

Some items previously listed on the work program are now being processed by other disciplines in Development Services or by other City Departments; about half of which are required in order to comply with Council policy, or state or federal law. For these projects, the LDC update team

has provided assistance on the code amendment process and provided input on proposed code language and format for consistency with the Land Development Code. Inquiries regarding processing for these projects should be directed to the applicable project manager.

Amendments Required to Implement Council Policy

- Recycled Water (Shahin Moshref, Water Department)
- San Ysidro PDO pilot village-redevelopment plan (Robert Chavez, SEDC Redevelopment Agency).

Amendments Required to Implement State Housing Law

- Density Bonus (Lara Gates, Redevelopment Agency)
- Compact Living Unit (Mike Westlake, Development Services Department)

Amendment Required to Comply with Federal Law

- Airport Environs Overlay Zone (Tait Galloway, Planning Department)

Amendments Under Consideration

- Environmental Significance Thresholds (Eileen Lower, Development Services)
- Telecommunication Update (Karen Lynch-Ashcraft, Development Services)
- Substantial Conformance Review (Mike Westlake, Development Services)
- Downtown Mixed Use Area Group (Frank Hafner, Neighborhood Code Compliance)
- Large Retail Establishment, (Patsy Chow, Planning)
- SESDPDO redevelopment plan amendments (Sherry Brooks, SEDC)

FISCAL CONSIDERATIONS:

The LDC Implementation Work Program is funded as an overhead expense in the Development Services Department's (enterprise fund) budget and is currently staffed with two full-time Senior Planner positions (account: Dept 1316, Org 1633, Job 1193). On May 20, 2003, the City Council approved a fee proposal for Development Services to recover operation costs for services provided by the Department including the LDC Update program (CMR-03-100). If prioritized items go beyond the capacity of available staff, additional funding for staff would need to be identified.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On March 10, 2004, the Land Use and Housing Committee prioritized the LDC update work program. As previously mentioned, under the current strong mayor form of government, the Mayor's office now prioritizes the sections work program. LU&H has previously reviewed and provided input regarding specific items on the work program as described under the individual items above.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Staff has solicited input on the work program from professional staff as well as from the Code Monitoring Team and Technical Advisory Committee. The individual items listed in the work program will each be processed through the established code update process including Technical Advisory Committee, Code Monitoring Team, Community Planners Committee, Planning Commission, Land Use and Housing Committee, City Council, and Coastal Commission (where

LCP amendment required). This gives the public 6-7 public meetings/hearings to provide input for consideration by the decision makers.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Please see reference to the applicable stakeholders and projected benefits/impacts listed above under each code item.

Respectfully submitted,

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HALBERT/KGB/AJL

Attachment [1. 2006-07 Land Development Code Work Program](#)