

Consistency Corrections

Issue #6 Applying LDC Outdoor Storage Regulations to the Southeastern San Diego PDO

- §103.1703 Applicable Regulations
(a) General Provisions
(1) Where not otherwise specified in this division, the following chapters of the Land Development Code apply:

Chapter 14, Article 2, Division 11 (Outdoor Storage, Display, and Activity Regulations);

Issue #7 Review Municipal Code Chapters 6 to repeal the sections that are redundant to the LDC.

Revise Section 62.0101 Purpose and Intent to reflect amended Chapter 6 regulations.

Repeal Sections 62.0102 through 62.0116 - the regulatory language in these sections have been transferred into various chapters within the Land Development Code.

Revise Section 62.0201 to reflect remaining regulations.

Repeal Sections 62.0202 and 62.0204

Transfer intent of Section 62.0203 Public Improvement Subject to Desuetude or Damage to a new LDC Section 142.0607 under Public Facility Regulations to be titled Repair or Replacement of Public Facilities to read as follows:

§142.0607 Replacement of Public Facilities

- (a) Where, in the course of *development* of private property, public facilities are damaged or removed the property owner shall, at no cost to the City, repair or replace the public facility to the satisfaction of the City Engineer.
- (b) Where, in the course of development of private property, a driveway is abandoned and is not 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.

Transfer regulations in 62.0205 regarding Acceptance of Dedications into LDC

Repeal Sections 62.0206, 62.0207, 62.0209, 62.0210, reference to Centre City Advisory Committee in 62.0301, 62.0303, 62.0304 and 62.0306

Transfer regulations in 62.0301, 62.0302 and 62.0305 into LDC under a new section to be titled Encroachment Removal and Maintenance Agreements to read as follows:

§129.0715 Encroachment Removal and Maintenance Agreements

An Encroachment Removal and Maintenance Agreement is required for any *development* that encroaches into the *public right-of-way* subject to the following:

- (a) The *encroachment* shall not adversely affect the public health, safety, or general welfare and shall be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the owner and successors in interest.
- (b) The property owner shall agree to indemnify the City with an indemnification agreement satisfactory to the City Manager and City Attorney.
- (c) The property owner must remove or relocate an *encroachment* within 30 days after notice by the City Engineer or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land.
- (d) For structures encroaching over or under the *public right-of-way*, the property owner agrees to provide an alternate *right-of-way* or to relocate said City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that the City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching *structure*.

Attachment 3

- (e) Whatever rights and obligations were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroaching structure.
- (f) The property owner shall maintain a policy of liability insurance in an amount satisfactory to the City Engineer in order to protect the City from any potential claims which may arise from the encroachments.
- (g) In the event the City is required to place, replace or maintain a public improvement over which the property owner has constructed an encroaching structure, the property owner shall pay the City that portion of the cost of placement, replacement or maintenance caused by the construction, or existence of the owner's permanent encroaching structure.
- (h) The property owner shall pay the City for all the cost of placing, replacing or maintaining a public improvement within a public right-of-way when the City's facility has failed as a result of the construction or existence of the owner's encroaching structure.
- (i) The costs of placing, replacing or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.
- (j) The property owner shall pay the City or public utility for all cost of relocating, replacing, or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.
- (k) Encroachment Removal and Maintenance Agreements for approved encroachments shall be recorded in the office of the County Recorder as an obligation upon the land involved.

Issue #8 Replacing Park Fees in Chapter 6

§63.0401 Purpose and Intent

It is the purpose of this division to regulate the acquisition and development of population-based park and recreational facilities in association with new subdivisions in accordance with the provisions of Government Code section 66477 et seq. It is the intent of these sections that the cost of land and improvements for population-based parks to serve future inhabitants of a subdivision shall be borne by that subdivision.

§63.0402 When the Requirements for Park and Recreation Facilities Apply

- (a) The requirement to provide for park and recreational facilities in accordance with this division shall apply to all subdivisions of land that propose dwelling units and which are currently zoned for residential use or proposed for a rezone that will allow residential units as follows:
 - (1) If a request for a rezone is filed in accordance with Chapter 12, Article 3, Division 1 (Zoning) the applicant shall be subject to the provisions of this division.
 - (2) The City Council shall not consider an application for a rezone until the applicable park fees have been deposited with the City. The fee shall be calculated at the highest residential authorized density proposed by the requested zoning. A refund shall apply to the developer if the number of the building permits or occupancies are less than originally permitted.
- (b) As a condition of the approval of a tentative map or parcel map for the subdivision of land, every subdivider shall be required to dedicate land, pay a park fee, or dedicate land and pay a park fee for the purpose of developing new or rehabilitating existing park or recreation facilities to serve the proposed residents of the subdivision in accordance with sections 63.0403 and 63.0404 unless otherwise exempted by this division.
- (c) If the proposed subdivision contains fifty (50) parcels or less, the subdivider shall not be required to dedicate any land for park or recreational purposes but shall pay a fee in accordance with section 63.0403 except that when a condominium project, stock cooperative, or community apartment project, as these items are defined in section 1351 of

the Civil Code, exceeds 50 dwelling units dedication of land may be required notwithstanding that the number of parcels may be less than 50.

- (d) No final subdivision map shall be deemed approved unless and until the appropriate park and recreation dedications and fees have been paid to the City, or unless and until the required park and recreation dedications and fees for the subdivision have been addressed in a Development Agreement or exempted, adjusted or reduced as provided in this division.

§63.0403

Determination of Park Fees

- (a) The subdivision park fee per dwelling unit, by type, shall be established so that each dwelling unit contributes a fair share contribution toward developing new or rehabilitating existing neighborhood or community park or recreational facilities which are needed to serve the new residents of the proposed subdivision. The amount of the fee established shall bear a reasonable relationship to the use of the park and recreational facilities by the future inhabitants of the subdivision. The park and recreational facilities needed to serve the community shall be established and documented in a Community Plan, Public Facilities Financing Plan or similar Capital Improvement Plan approved by the City Council. The park and recreational facilities reflected in the Community Plan, Public Facilities Financing Plan or Capital Improvement Plan shall be established pursuant to population based projections for build out of the community in accordance with Government Code Section 66477. The Community Plan, Public Facilities Financing Plan or Capital Improvement Plan shall contain a schedule specifying how, when and where the City will use the fees to develop park and recreational facilities to serve the proposed residents of the subdivision.
- (b) The total subdivision park fee due shall be determined by the City Manager by establishing the costs for the park and recreation facilities to be provided for the subdivision as determined by the number of single or multiple family dwelling units and the required park land and recreation facilities needed for that population in accordance with the standards set forth in this division and the applicable Community Plan, Public Facilities Financing Plan or Capital Improvement Plan adopted by the City Council.
- (1) Density of dwelling units for the purpose of this division shall be determined on the basis of the approved or conditionally approved tentative map or parcel map and the average number of persons per

household. There shall be a rebuttable presumption that the average number of persons per household by units in a structure is the same as that disclosed by the most recent United States Census on population for the City, as follows:

- (A) Single and multiple family dwelling density shall be determined by the most current city wide census data information. Mobile home lots shall be considered as a multiple family dwelling unit under this section for calculations.
- (2) If the subdivider pays a fee in lieu of land dedication, the costs per person to provide the required 2.80 useable acres of land per 1,000 residents, as set forth in Section 63.0404, will be based on a yearly review of the average acquisition cost of the land in the applicable community plan area computed by the Real Estate Assets Department.

§63.0404 Determination of Land Dedication

- (a) For the purpose of this division, acreage required to be dedicated by a subdivider for park and recreation purposes shall be determined based on the density and the type of dwelling units, as established by Section 63.0403, expected to be generated by the proposed subdivision and shall be multiplied by 2.80 useable acres of park land per 1,000 population. This figure may be reduced to 1.52 useable acres if all of the proposed parks within the community planning area of the subdivision are located adjacent to school district property containing a joint-use agreement in effect at the time of filing the final map in accordance with Section 63.0404(a)(1). Useable acres, for purposes of this section, shall mean a graded pad not exceeding 2% rough grade.
 - (1) A ten (10) useable acre neighborhood park may be decreased by five (5) useable acres if located adjacent to a public school with a two (2) useable acre minimum joint-use area. A twenty (20) useable acre community park may be decreased by seven (7) useable acres if located adjacent to a public school, other than senior high, with a four (4) useable acre minimum joint-use area.
- (b) The amount and location of land to be dedicated shall bear a reasonable relationship to the use of the park and recreational facilities by the future

inhabitants of the subdivision as determined by the applicable Community Plan, Public Facilities Financing Plan or Capital Improvement Plan.

§63.0405 Choice and Method of Dedication of Land and/or Payment of Fee

- (a) A determination shall be made by the City Manager at the time of submittal of the tentative map or parcel map, whether land, land and fees or fees shall be required based on the following:
 - (1) If a Community Plan, Public Facilities Financing Plan, Capital Improvement Plan, Precise Plan or other land use plan, approved by the City Council, identifies a population based park within the boundaries of the subdivision, the subdivider shall dedicate land for park purposes in accordance with the approved document.
 - (2) If a subdivision is not required to dedicate park land within its boundaries, then fees only shall be required.

§63.0406 Credits

- (a) Any subdivider subject to a park fee pursuant to this division who dedicates acceptable land or recreational improvements to the City or who constructs, escrows money with the City for the construction of park and recreation facilities, agrees to participate in an assessment district for the construction of park and recreation facilities or who contributes funds to the City for the acquisition of park land or the construction of recreation improvements shall be eligible for a credit against the required subdivision park fees otherwise due, provided the City Manager determines that the land and any improvements are suitable for public park and recreation purposes. The credit given shall be the fair market value of the park lands and City Manager approved improvements which are dedicated and accepted by the City as set forth in section 63.0407. If the subdivision does not generate sufficient fees from the number of dwelling units proposed within the subdivision for the park land or recreational facilities the City may provide reimbursement credits or money from sources identified within a Public Facilities Financing Plan for land or recreational facilities provided by the subdivider.
- (b) Common interest developments as defined in Section 1351 of the Civil Code shall be eligible to receive a credit as determined by the City Manager, against the amount of land required to be dedicated, or the

amount of the fee imposed, for the value of the private open space within the development which is useable for active recreational purposes.

- (c) Credit applications shall be made on forms provided by the City and shall be submitted to the City Manager prior to the final map approval. The application shall contain a declaration of facts, along with all relevant documentary evidence, which qualifies the applicant for the credit.
- (d) The City Manager shall determine whether the proposed dedication, construction, payment, assessment district or contribution is for a park or recreation purpose and is consistent with project priorities, goals and timing and shall determine the value, if any, of any proposed contribution and the amount of any credit due.
- (e) No credit shall be granted in an amount exceeding the otherwise applicable subdivision park fee.

§63.0407 Determination of Fair Market Value for Dedicated Park and Recreation Facilities

- (a) Fair market value for land or facilities being provided in lieu of park fees shall be determined at the time of submittal of the final map or parcel map in accordance with the following:
 - (1) The fair market value as determined by the City based upon the assessed value, modified to equal market value in accordance with the current practice of the county assessor; or
 - (2) If the subdivider objects to such evaluation he may, at his expense, obtain an appraisal of the property by a qualified real estate appraiser, approved by the City, which appraisal may be accepted by the City if determined by the City to be reasonable.
- (b) The value of improvements constructed on any dedicated land shall be the documented actual costs to the subdivider for the improvements meeting the following criteria:
 - (1) The improvements meet all current City, State and Federal standards; and
 - (2) The City Manager determines that the improvements are useable for park and recreation purposes and it is in the public interest to

accept the improvements.

§63.0408 Valuation of Land to be Purchased for Park and Recreation Facilities

The fair market value of land that is not included within the proposed subdivision, and is to be purchased for park purposes pursuant to this division, shall be determined as of the date the owner of property that is to be acquired, first obtains the filing of a final or parcel map on any property which he owns in the community planning area. The fair market value of the land shall be adjusted annually until it is purchased, based on the annual land value index, beginning at the date of appraisal. To this value shall be added taxes and interest paid on any deed of trust applicable to the property until the time of purchase.

§63.0409 Exemptions from Requirements for Subdivision Park Dedication and Fees

- (a) The following shall be exempted from park and recreation facility dedications and the payment of fees otherwise required by this division:
- (1) Condominium projects or stock cooperatives which consist of the subdivision of airspace in an existing apartment building that is more than five years old when no new dwelling units are added.
 - (2) Subdivisions of fewer than 5 parcels that are not used for residential purposes unless a building permit for a residential structure is requested for one or more of the parcels within four years after final approval by the City.
 - (3) Commercial or industrial subdivisions.
 - (4) Properties located in community plan areas where the City Council has approved and adopted Facilities Benefit Assessments.
 - (5) All properties that are subject to a City Council adopted community-wide development agreement, which was approved prior to final map approval.

§63.0410 Collection of Subdivision Park Fees

All required subdivision park fees shall be paid to the City at the time of the recording of the final map or parcel map. Any lands to be dedicated, in lieu of fees, for purposes outlined in this division, shall be deeded to the City and shown

on the final map. Any lands to be acquired by fees or other financing means shall be reserved and identified on the final map.

§63.0411 Fee Account and Expenditures

- (a) Subdivision park fees collected in accordance with the provisions of this division, together with any interest earned thereon, shall be deposited in a special fund, identified by the community plan area generating the fees, with separate revenue and expense account established for park and recreation purposes.
- (b) Expenditures from the fund shall be made only for park and recreational facilities to serve the subdivision from which they were collected as described in the applicable Community Plan, Public Facilities Financing Plan or Capital Improvement Plan.
- (c) Expenditures of the funds shall only be used for the following:
 - (1) The City purchase of land.
 - (2) The design and construction of park and recreation facilities on lands already owned or the purchase of land and the construction of park or recreation facilities on the land to serve the subdivision from which the funds were collected.
 - (3) The rehabilitation of existing park or recreational facilities when such rehabilitation would serve expanded needs or demographic changes at existing parks based on the additional needs created by the subdivision from which the funds were collected or providing new equipment allowing expanded use of the park.
 - (4) To reimburse persons who have donated land or improvements to provide for public park land or facilities to serve the subdivision to the extent of the value of the land or improvements in excess of their proportionate responsibility.
 - (5) To reimburse the City for capital outlay funds already expended for the purchase of park land or improvements to serve the subdivision provided pursuant to section 63.0413.

- (c) All fees collected under this division shall be committed within five years of payment of the fees or the issuance of building permits on one-half the lots created by the subdivision, whichever occurs later. If the fees are not committed within the required time, they shall be distributed without any deductions, without interest, and paid to the current record owner(s) of the subdivision lot in the same proportion that the size of their lot bears to the total area of all lots in the subdivision. The fees shall be considered committed under this section when the City has developed a schedule specifying how, when and where it will use the land or fees, or both, to develop park and recreational facilities to serve the subdivision as set forth in Section 63.0403.

§63.0412 Park and Recreation Facility Standards

Park and recreational facilities shall be provided in accordance with the standards set forth in the applicable Progress Guide, General Plan Recreation Element or Community Plan.

§63.0413 Use of Capital Outlay Funds for Park and Recreational Facilities

- (a) Capital outlay funds may be advanced to finance acquisition of land or development of facilities of a population-based park before sufficient funds are made available through the provisions of this division. The City Manager may require any such advance to be repaid from the first monies available from collections of subdivision park fees from that population-based park area.

Issue #9 **Maintaining/Defacing Posted Notices**

§112.0304 Posted Notices

(a) through (c) [No change]

- (d) Maintaining Posted Notices. It is unlawful to deface, damage, move or remove a required posted notice.

Issue #10 **Definition of Kitchen**

§113.0103 Definition of Kitchen

Kitchen means “facilities used or designed to be used for the preparation of food

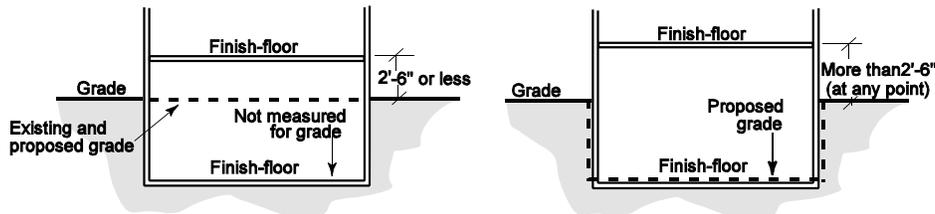
and usually containing a sink, a refrigerator and a stove, and a range top or oven.

Issue #11 Determining Proposed Grade & Measuring Structure Height - Pools and Spas

§113.0231 Determining Proposed Grade

Proposed grade is the ground elevation that will exist when all proposed *development* has been completed. *Proposed grade* does not include pools and does not include *basements* where, at any point adjacent to the *basement*, the vertical distance between *existing grade* or *proposed grade*, whichever is lower, and the *finish-floor* elevation immediately above is 2 feet, 6 inches or more less, as shown in Diagram 113-02H. If a *basement* contains multiple *floors*, the *finish-floor* elevation of the highest *basement floor* shall be used to determine *proposed grade*.

**Diagram 113-02H
Proposed Grade With Basement**



Change to Diagram 113-02H also includes text change from “2’-6” Max” to “2’-6” or less”

§113.0270 Measuring Structure Height

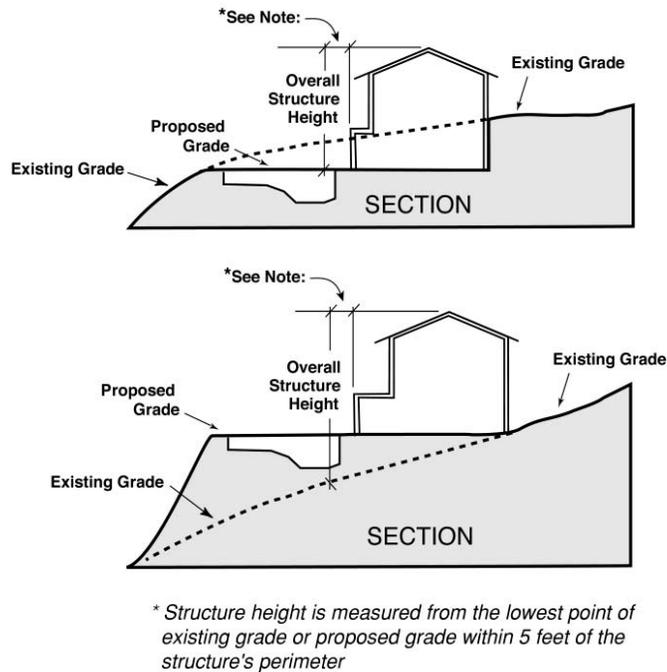
Structure height is measured in accordance with the following.

(a) *Structure Height* of Buildings and *Structures* Other Than *Fences*, *Retaining Walls*, or *Signs*

(1) through (7)-[No change]

(8) When a pool is located within 5 feet of the structure, the overall structure height is measured as noted in Section 113.0270(a)(5), except that proposed grade shall not include the pool. This is illustrated in Diagram 113-02OO.

Diagram 113-0200
Overall Structure Height With Pool



Issue #12 Right of Way Permit - Process Two for Wall and Fences

§126.0402 When a Neighborhood Development Permit Is Required

(a) through (g)-[No change]

(h) A Neighborhood Development Permit is required for any encroachment into the public-right-of-way or public property as described in Section ?.

~~(h)~~(i) A Neighborhood Development Permit is required for nonresidential development exceeding the maximum permitted parking as described in Section 142.0540(b).

~~(h)~~(j) A Neighborhood Development Permit is required for development providing shared parking for uses not specified in Section 142.0545(c) as

described in Section 142.0545(b)(7).

§142.0310 General Fence Regulations for All Zones

(a) Location and Height of *Fences*

(1) No portion of a *fence* shall extend beyond the *property line* of the *premises* into the *public right-of-way* unless an Public Right-of-Way Permit and a Neighborhood Development Permit has been obtained in accordance with Section 126.0402.

(2) through (3) [No change]

(b) through (e) [No change]

§142.0340 Retaining Wall Regulations in All Zones

(a) Location and Height of *Retaining Wall*

(1) No portion of a *retaining wall* shall extend beyond the *property line* of the *premises* into the *public right-of-way* unless ~~an~~ encroachment permit a Public Right-of-Way Permit and a Neighborhood Development Permit has been obtained in accordance with Section 126.0402.

(b) through (c) [No change]

Issue #13 Procedure for Issuing a Stop Work Order

§121.0309 Procedure for Issuing a Stop Work Order

(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.

Issue #14 Map Waivers For Condominium Conversions

§125.0120 When a Map Waiver May Be Requested

A *subdivider* may request a waiver of *tentative map, parcel map, or final map* requirements as provided by the *Subdivision Map Act*, Sections 66428 and 66428.1 for any of the following:

- (a) [No change]
- (b) Condominium and Condominium Conversion Projects. For the construction of a new condominium project, or the conversion of an existing structure to condominiums, on a single parcel that was previously mapped and monumented in a manner satisfactory to the City Engineer; or
- (c) [No change]

Issue #15 Demolition/Removal Permit Issuance Prior to Development Permit Approval

§129.0506 Issuance of a Demolition/Removal Permit

- (a) A Demolition/Removal Permit may be issued after all required approvals and documentation have been obtained and the required fees have been paid. In addition to plan check approvals, other documentation may be required before permit issuance, in conformance with the requirements of the Land Development Code, or the laws or requirements of other local, state, or federal jurisdictions. A Demolition/Removal Permit shall not be issued for a *development* that requires a *development permit* or for development that is in the process of obtaining a development permit until the required *development permit* has been issued. Documentation of required insurance and surety shall be presented in accordance with Sections 129.0508 and 129.0509.

Issue #16 Variable Setbacks in Residential Zones

§131.0443 Setback Requirements in Residential Zones

- (a) *Setbacks* in RE and RS Zones
 - (1) through (2) [No change]
 - (3) Side and *Street Side Setbacks* in all RE Zones and the RS-1-1, RS-1-2, RS-1-3, RS-1-4, RS-1-5, RS-1-6, RS-1-7 Zones

(A) For *lots* exceeding 50 feet in width, each side *setback* shall be at least the dimension shown in Tables 131-04C and 131-04D or 10 percent of the width of the *lot*, whichever is greater, except one side *setback* may observe the minimum dimension shown in Tables 131-04C and 131-04D as long as the combined dimensions of both side *setbacks* equals at least 20 percent of the lot width. Once a side *setback* is established all additions to the primary *structure* thereafter shall maintain the established side *setback*.

(B) through (F)[No change]

§113.0249 Determining Setback Line

(a) [No change]

(b) [No change]

(c) When a side *setback* is allowed to observe the minimum dimension as described in Section 131.0443(a)(3)(A)(Setback Requirements in Residential Zones) all additions to the primary *structure* thereafter shall maintain that established side *setback*.

Issue #17 Consistency Between Bay Windows and Dormers

§131.0461 Architectural Projections and Encroachments in Residential Zones

(a) The following are permitted *architectural projections* and *encroachments* into required *yards* for RS and RX zones and the RM-1-1, RM-1-2, and RM-1-3 zones. These projections and *encroachments* are not permitted in the required yards within view corridors that are designated by *land use plans* in the Coastal Overlay Zone and may not be located in a required *visibility area* or a required turning radius or vehicle back-up area except where development regulations may allow.

(3) Bay windows may project into required *yards*, as shown in Diagram 131-04V, subject to the following requirements:

(A) [No change]

(B) The bay window shall not project into the required *yard*

more than 4 feet or 50 percent of the width of the required yard, whichever is less. The bay window shall not be closer than ~~4~~ 3 feet to the *property line*;

(C) through (E)-[No change]

Issue #18 Mission Trails Design District

§132.1202 Where the Mission Trails Design District Applies

**Table 132-12A
Mission Trails Design District Applicability**

Type of Development Proposal	Supplemental Development Regulations	Required Permit Type/ Decision Process
(1) Interior or exterior repairs or modifications. that do not require a construction permit	Exempt from this division	No permit required by this division
(2) Any <i>development</i> of new structures, alteration <u>expansion</u> of existing structures, or grading in the Mission Trails Design District.	Refer to the design criteria and standards in the Mission Trails Design Guidelines of the Land Development Manual	Site Development Permit/ Process Three

Issue #19 Consistency Between Refuse Storage and Vehicular Access

§142.0810 General Regulations for Refuse and Recyclable Material Storage

All new multiple unit residential, commercial, and industrial *development* shall provide on-site areas for the storage of refuse and *recyclable material* that meet the following standards.

(a) [No change]

(b) Location of Material Storage Areas

(1) through (5) [No change]

(6) For commercial development on premises not served by an alley, material storage areas in a commercial development shall be located at least 25 feet from any pedestrian and vehicular access points.

(c) [No change]

Issue #20 Retaining Wall Regulations

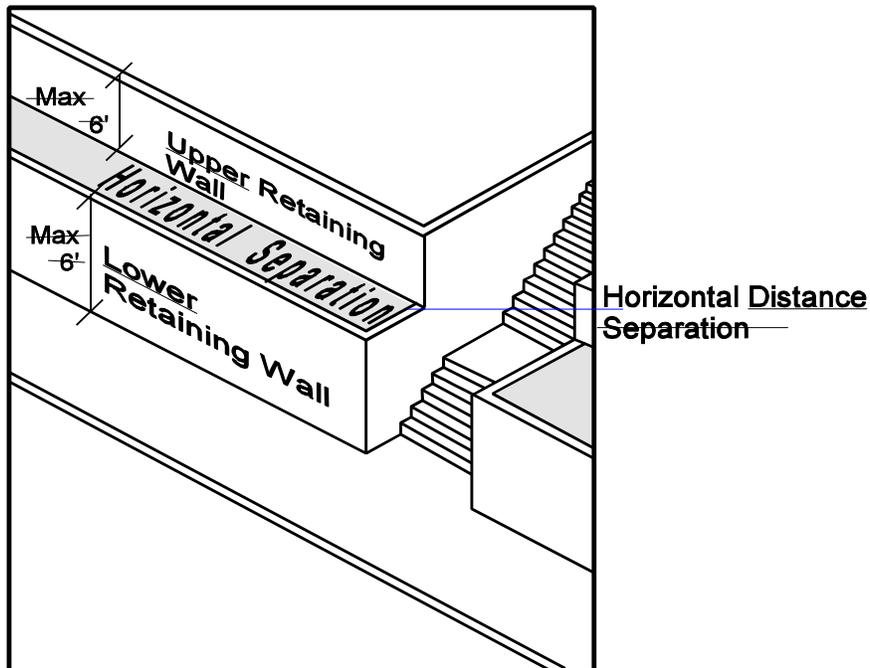
§142.0340 Retaining Wall Regulations in All Zones

(a) through (c) [No change]

(d) *Retaining Wall* Height in Required Side Yards and Required Rear Yards

(1) through (2) [No change]

**Diagram 142-03G
Retaining Wall Requirements**



Horizontal separation equal to or less than height of upper wall

Minimum horizontal distance equal to the height of the upper wall

(e)-(f) [No change]