

Article 6: Development Permits

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

Division 1: General Development Permit Procedures

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

§126.0101 Purpose of Development Review Procedures

The purpose of these procedures is to provide a review for the types of *developments* where the applicable regulations may need to be supplemented by project-specific conditions. Development review is not required for all projects. When development review is required, the intent is to provide review at the conceptual or schematic design stage preceding issuance of *construction permits*. A variety of *development permits* are provided with varying levels of review to address the variety in size, location, and complexity of *developments* throughout the City.

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

§126.0102 When Development Permit Procedures Apply

The following permits require development review and the *development permit* procedures apply to these permits: Neighborhood Use Permits, Conditional Use Permits, Neighborhood Development Permits, Site Development Permits, Planned Development Permits, Coastal Development Permits, and Variances.

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

§126.0103 How to Apply for a Development Permit

An *applicant* for a *development permit* shall file an application for one or more permits, as required, in accordance with Section 112.0102.

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

§126.0104 Decision Processes for a Development Permit

A decision on an application for a *development permit* shall be made in accordance with Process Two, Process Three, Process Four, Process Five, Process CIP-Two or Process CIP- Five as indicated in Chapter 12, Article 6, Divisions 1 through 8, for each type of *development permit*.

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

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

§126.0105 Findings for Development Permit Approval

An application for a *development permit* may be approved only if the decision maker determines that the *development*, as proposed or as conditioned, meets all *findings* for all required permits as provided in Chapter 12, Article 6, Divisions 2 through 8. If the decision maker determines that any of the *findings* are not met, the application shall be denied. The decision maker shall record the decision in writing and shall specify the evidence or statements presented that support the *findings*.

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

§126.0106 Recordation of a Development Permit

- (a) *Development permits* affect title to, use of, or possession of real property and shall be recorded in the Office of the County Recorder of San Diego County.
- (b) After the date on which all rights of appeal have expired, the *applicant* shall sign and return a copy of the approved permit to the City.
- (c) The City will forward the permit and the resolution approving the permit to the County Recorder for recordation provided that the *applicant* has paid all required fees and costs in accordance with Section 112.0202.
- (d) Before the City forwards the permit for recordation, the *applicant* may submit a request in writing to the City Manager that the City obtain a certified copy of the permit from the County Recorder. The *applicant* shall pay the fees to obtain the certified copy.

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

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

§126.0107 Issuance of a Development Permit

- (a) A *development permit* will be issued to the *applicant* within 5 *business days* of the date on which the original recorded permit or a certified copy of the permit is returned to the City from the County Recorder.
- (b) It is unlawful for any *applicant* to begin work or use of the property that is authorized by a *development permit* until the *development permit* has been issued. If a *construction permit* is also required, construction may not begin until the *construction permit* has been issued.

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

§126.0108 Utilization of a Development Permit

- (a) A *development permit* grants the *permit holder* 36 months to initiate utilization of the *development permit*. If utilization does not occur in accordance with this Section within 36 months after the date on which all rights of appeal have expired, and an application for an extension of time was not timely filed, the *development permit* shall be void.
- (b) To demonstrate utilization, the *permit holder* shall establish, with evidence identified in Section 126.0108(c), that at least one of the following circumstances occurred before expiration of the *development permit*:
 - (1) Significant investment was incurred to meet permit conditions;
 - (2) Substantial work was performed in reliance on the *development permit* granted; or
 - (3) Use of the property has occurred in the manner granted by the *development permit*.
- (c) Upon request, the *permit holder* shall provide evidence of the following, to the satisfaction of the City Manager:
 - (1) Issuance of a *construction permit* for the entire project or for a substantial portion of the activity regulated by the *development permit*, according to standards developed by the City Manager;
 - (2) Compliance with the terms contained in the individual permit, such as a phasing program, or the terms contained in an approved Development Agreement;
 - (3) Evidence of substantial use as granted by the *development permit*, according to standards developed by the City Manager;
 - (4) Approval of a *final map* or a *parcel map*, or acceptance of an easement, if the map or easement was a condition of, or was processed concurrently with, the *development permit*; or
 - (5) Other facts demonstrating the occurrence of any of the circumstances described in Section 126.0108(b).

- (d) *Development permits for capital improvement program projects or public projects* are exempt from the permit utilization requirement of Section 126.0108(a), except that:
- (1) Outside the Coastal Overlay Zone, if 10 years have passed from the date on which all rights of appeal have expired and the City is unable to establish, with evidence in accordance with Section 126.0108(c), that at least one of the circumstances identified in Section 126.0108(b) occurred, then the *development permit* shall be void.
 - (2) In the Coastal Overlay Zone, if 6 years has passed from the date on which all rights of appeal have expired and the City is unable to establish, with evidence in accordance with Section 126.0108(c), that at least one of the circumstances identified in Section 126.0108(b) occurred, then, notwithstanding Section 126.0111(a), an extension not to exceed 36 months shall be obtained by the City pursuant to Section 126.0111, or the *development permit* shall be void. If upon the expiration of the extension, the City is unable to establish, with evidence in accordance with Section 126.0108(c), that at least one of the circumstances identified in Section 126.0108(b) occurred, then the *development permit* shall be void.

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

(Retitled to “Utilization of a Development Permit” and amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)

(Amended 3-20-2017 by O-20797 N.S.; effective 6-7-2017.)

(Amended 1-8-2020 by O-21164 N.S.; effective 2-9-2020.)

[Editors Note: Amendments as adopted by O-21164 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§126.0110 Cancellation or Rescission of a Development Permit

- (a) A *permit holder* may request cancellation of a *development permit* at any time before utilization of the permit. The *permit holder* shall submit the request for cancellation in writing to the City Manager. The *development permit* shall be void as of the date it is cancelled by the City Manager.
- (b) If a *development permit* has already been utilized in accordance with Section 126.0108, the *permit holder* may submit an application to rescind the *development permit* in accordance with the following:

- (1) Where the *development* complies with all use and *development* regulations the application to rescind a *development permit* shall be processed in accordance with Process One.
- (2) For *development* not in compliance with Section 126.0110(b)(1), an application to rescind a *development permit* shall be processed in accordance with the same process as would a new application for the same permit.

The *development permit* shall be void as of the date it is rescinded by the City Manager.

- (c) The cancellation or rescission shall thereafter be recorded by the *applicant*, or the City may record it by forwarding a written declaration of the cancellation or rescission to the County Recorder for recordation in accordance with Section 126.0106.

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

(Amended 3-1-2006 by O-19467 N.S.; effective 8-10-2006.)

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

(Retitled to "Cancellation or Rescission of a Development Permit" and amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§126.0111 Extension of Time of a Development Permit

- (a) Expiration Date. The expiration date of an approved *development permit* may be extended one or more times. The *development permit* approval and subsequent *development permit* extensions shall not exceed a total of 72 months beyond the initial *development permit* approval date, with the following exceptions:
 - (1) The 72 month maximum may be exceeded if permitted by any extension granted pursuant to state law or by any *development permit* extension granted by the City Council by ordinance.
 - (2) When a *development permit* is associated with a *tentative map*, any map extensions granted pursuant to state law shall automatically extend the expiration of associated *development permits* to coincide with the expiration of the *tentative map*.

- (b) Request for Extension. Before the expiration of an approved *development permit*, but not more than 12 months before the expiration date, an application may be filed for an extension of time for a *development permit* in accordance with Section 112.0102. If an application for extension of time is timely filed, the *development permit* shall be automatically extended for a period of 60 calendar days from the expiration date or until a decision on the extension of time has been made, whichever occurs first.
- (c) Review of Application. An application for an extension of time of a *development permit* shall be reviewed by the City Manager to determine whether the proposed *development* has significantly changed or is in *substantial conformance* with the approved *development permit*. If the proposed *development* is not in *substantial conformance* with the approved *development permit*, an application for an amendment to the *development permit* will be required. An *applicant* for an extension of time may also submit an application for, and concurrently process, an amendment to the approved *development permit* in order to extend the existing permit in case the extension of time request is denied.
- (d) Decision Process. A decision on an application for an extension of time of a *development permit* shall be made in accordance with Process Two, except that it shall be appealable in accordance with Section 126.0111(i).
- (e) *Findings* for Approval. An extension of time, except for a Coastal Development Permit, may be approved without new conditions if the decision maker makes both of the following *findings*:
 - (1) The project as originally approved and without any new conditions would not place the occupants of the proposed *development* or the immediate community in a condition dangerous to their health or safety; and
 - (2) No new condition is required to comply with state or federal law.
- (f) *Findings* for Conditional Approval. An extension of time, except for a Coastal Development Permit, may be approved with new conditions if the decision maker makes one of the following *findings*:
 - (1) New conditions are necessary to protect the health or safety of the residents of the *development* or the immediate community; or
 - (2) New conditions are necessary to comply with applicable state or federal law.

- (g) *Findings for Approval for Extension of Time for a Coastal Development Permit.* An extension of time for a Coastal Development Permit may be approved only if the decision maker makes all of the following findings:
 - (1) The project as originally approved would not place the occupants of the proposed *development* or the immediate community in a condition dangerous to their health and safety;
 - (2) There are no changed circumstances which would affect the project's consistency with the *Local Coastal Program*; and
 - (3) No new condition is required to comply with state or federal law.
- (h) *Denial of the Extension of Time.* The decision maker shall deny the extension of time if the project, even as conditioned, would place the residents of the proposed *development* or the immediate community in a condition dangerous to their health or safety, or would not comply with state or federal law.
- (i) *Appeals.* The City Council shall hear appeals of decisions on Extensions of Time for *development permits*.
- (j) *Commencement of Extension.* If the extension of time is granted, the extension shall begin from the date of expiration of the previously-approved *development permit*.

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

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

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

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

§126.0112 Modifications to a Development Permit

- (a) A proposed modification to an approved *development permit* may be submitted to the City Manager to determine if the revision is in *substantial conformance* with the approved permit.
- (b) If the revision is determined to be in *substantial conformance* with the approved permit, the revision shall not require an amendment to the *development permit*.
- (c) Where a *development permit* requires compliance with a regulation in effect on the date of approval, but that regulation is subsequently amended, the *permit holder* may utilize the amended regulation without obtaining an amendment to its *development permit* if the *permit holder* can demonstrate to the satisfaction of the City Manager that the resulting *development* is in *substantial conformance* with the approved *development permit*.

- (d) If a determination of *substantial conformance* cannot be made for a *development* seeking to utilize an amended regulation in accordance with Section 126.0112(c), the *permit holder* may utilize the amended regulation if the *permit holder* obtains a Process Two Neighborhood Development Permit.
- (e) Within the Coastal Overlay Zone, any *substantial conformance* determination shall be decided in accordance with Process Two, except that a *substantial conformance* determination for a *capital improvement program project* shall be reached through a Process CIP-Two review.

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

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

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

(Retitled from “Minor Modifications to a Development Permit” to “Modifications to a Development Permit” and amended 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)

[Editors Note: Amendments as adopted by O-21161 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as a Local Coastal Program Amendment.

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§126.0113 Development on a Premises with a Utilized Development Permit

The purpose of this Section is to allow a change in *development* to occur on a *premises* that has a utilized *development permit* in accordance with Section 126.0108, when the proposed *development* is not included within the scope of the utilized *development permit* but complies with the use and *development* regulations of the applicable base zone or overlay zone.

- (a) *Development* that is not included within the scope of a utilized *development permit* may be approved without an amendment to the *development permit* in accordance with Process One, subject to all of the following:
 - (1) The proposed use is listed as a permitted use in the applicable base zone and overlay zones, or listed as a limited use and the proposed *development* complies with all limited use regulations;
 - (2) The proposed *development* complies with all *development* regulations of the applicable base zone and overlay zones, except through the use of incentives or waivers as provided in Chapter 14, Article 3, Division 7;

- (3) The proposed *development* does not require additional *development permits*; and
 - (4) Except as permitted by Section 126.0112, all *development* within the scope of the utilized *development permit* that has received a *construction permit* complies with the applicable conditions of the *development permit*.
- (b) If the utilized *development permit* was approved concurrently with an individual, project-specific rezone action, a *permit holder* cannot rely on the provisions of Section 126.0113(a) for a proposed *development* unless:
- (1) A comprehensive community land use plan was adopted or updated after the utilized *development permit* was approved; or
 - (2) The utilized *development permit* allowed the maximum development allowed under the base zone and applicable overlay zones, accounting for any building restricted easements required as part of the *development*.

(“Development on a Premises with a Utilized Development Permit” added 1-8-2020 by O-21161 N.S.; effective 2-9-2020. Former Section 126.0113 “Amendments to a Development Permit” renumbered to Section 126.0114.)

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§126.0114 Amendments to a Development Permit

- (a) A proposed revision to an approved *development permit* that would significantly reduce the scope of the *development* or is not in *substantial conformance* with the approved *development permit* requires an amendment to the approved *development permit* or an application for a new *development permit*, except that a *development permit* for industrial *development* in an industrial zone that is not located within 1,000 feet of a residential zone may be amended by obtaining a Process Two Neighborhood Development Permit.
- (b) A proposed change in use from one use category to another or the change, addition, or deletion of a use within the same use category may require an amendment to a Neighborhood Use Permit or a Conditional Use Permit, depending on the uses allowed by the permit, except as provided in Sections 126.0112 or 126.0113.

- (c) An application for an amendment to a *development permit* shall be acted upon in accordance with the same process as would a new application for the same permit. When a *development permit* includes existing land uses that would not be permitted as new uses by the underlying base zone, the amendment application shall nevertheless be acted upon in accordance with the same process as the original *development permit*. The application is subject to environmental review and will be evaluated in accordance with the State California Environmental Quality Act (CEQA) Guidelines, Sections 15162-15164. The decision maker may revise existing conditions or impose new conditions.
- (d) An amendment to an existing *development permit* will not affect the original expiration date of the permit, unless a change is specifically requested. In such cases, the application must be *deemed complete* prior to the *development permit* expiration date and the *development permit* will automatically be extended until a decision on the amendment request is final and all available administrative appeals of the project decision have been exhausted.
- (e) Within the Coastal Overlay Zone, a proposed change in use which will result in an intensification of use requires an amendment or a new Coastal Development Permit.
- (f) An amendment to a *development permit* shall not be required for approval of a *sign* application in accordance with Section 142.1208.

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

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

(Amended 5-5-2015 by O-20481 N.S.; effective 6-4-2015.)

(Renumbered from Section 126.0113 to Section 126.0114 and amended 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)

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§126.0115 Closing of Development Permit Application

The *development permit* application file shall be closed if the *applicant* fails to submit or resubmit requested materials, information, fees, or deposits 90 calendar days from the date the application was deemed complete or the last written request by the City, whichever is later. Once closed, the application, plans and other data submitted for review may be returned to the *applicant* or destroyed by the City Manager. To reapply, the *applicant* shall submit a new *development permit* application with required submittal materials and shall be subject to all applicable fees and regulations in effect on the date the new application is deemed complete.

*(“Closing of Development Permit Application” added 6-3-2003 by O-19187 N.S.)
(Renumbered from Section 126.0114 to Section 126.0115 on 1-8-2020 by
O-21161 N.S.; effective 2-9-2020.)*

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§126.0116 Tolling of a Development Permit

- (a) An *applicant* may request a tolling of the expiration of an approved or conditionally approved *development permit* for up to 5 years while a lawsuit involving the approval or conditional approval of the *development permit* is or was pending in a court of competent jurisdiction.
- (b) A request to toll the process must be submitted prior to expiration of the *development permit*.
- (c) A decision regarding a request to toll the expiration date for a *development permit* shall be made in accordance with Process One and, additionally, for *development* within the Coastal Overlay Zone, in accordance with the procedures in Section 126.0111(g).
- (d) A request to toll the expiration date for a *development permit* shall be granted within 40 days of the date of application if it can be demonstrated to the satisfaction of the City Manager that:
 - (1) A lawsuit was filed that is related to the processing of an approved or conditionally approved *development permit*; and

- (2) Tolling of the expiration date for up to 5 years during the lawsuit would allow time for the *applicant* to address associated court orders or procedures related to processing of the *development permit*.
- (e) Upon resolution of the lawsuit, the *applicant* shall contact the City Manager to request the adjusted expiration date for the approved or conditionally approved *development permit*. The adjusted expiration date shall allow tolling as follows:
 - (1) The credited time for the tolling period shall be limited to the time period between the date the petition or complaint in the lawsuit was filed and the date the lawsuit was officially resolved.
 - (2) The credited time for the tolling period shall not exceed 5 years.
 - (3) Within the Coastal Overlay Zone, the adjusted expiration date for a Coastal Development Permit may be granted only if the decision maker makes all of the findings required by Section 126.0111(g), Findings for Approval for Extension of Time for a Coastal Development Permit.

(“Tolling of a Development Permit” added 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)

(Amended 8-30-2013 by O-20293 N.S.; effective 10-10-2013.)

(Renumbered from Section 126.0115 to Section 126.0116 on 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)

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