

## Article 6: Development Permits

### Division 4: Neighborhood Development Permit Procedures

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

#### §126.0401 Purpose of The Neighborhood Development Permit Procedures

The purpose of these procedures is to establish a review process for proposed *development* that may be desirable but may have some limited physical impacts on the surrounding properties. The intent of these procedures is to determine if the proposed *development* complies with the development regulations of the applicable zone, as well as supplemental regulations for the type of *development* proposed, and to apply limited conditions if necessary to achieve conformance with these regulations.

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

#### §126.0402 When a Neighborhood Development Permit Is Required

- (a) A Neighborhood Development Permit is required for the following types of *development* on sites with *previously conforming premises* or uses:
- (1) Maintenance, repair, or alteration of a *previously conforming structure* that incorporates *previously conforming* uses or *density* if costs would exceed 50 percent of *market value* as described in Section 127.0104;
  - (2) Reconstruction of a *structure* with *previously conforming* nonresidential uses if costs would exceed 50 percent of *market value* as described in Section 127.0105;
  - (3) Expansion or enlargement of a *previously conforming structural envelope* where the existing *previously conforming structure* does not conform with current zoning regulations for *density* or use as described in Section 127.0106;
  - (4) Expansion or enlargement of a *previously conforming structure* where the new construction proposes up to 20 percent reduction in the required *setback* as described in Section 127.0106; and

- (5) Maintenance, repair, rebuilding, or alteration of a *previously conforming advertising display sign* where the costs of new construction would exceed 50 percent of the assessed value of the existing *advertising display sign*, but would not expand beyond the existing *structural envelope* as provided in Section 127.0303.
- (b) A Neighborhood Development Permit is required for *single dwelling unit development* on an individual *lot* that is less than or equal to 15,000 square feet and contains *steep hillsides, Special Flood Hazard Areas, or sensitive biological resources* as described in Section 143.0110.
- (c) A Neighborhood Development Permit is required for *single dwelling unit development* on a *lot* containing *historical resources* other than *designated historical resources* and *historical districts* as described in Section 143.0210 unless exempted in accordance with Section 143.0220.
- (d) A Neighborhood Development Permit is required for commercial *development* proposing tandem parking as described in Section 142.0555(b).
- (e) A Neighborhood Development Permit is required for *mobilehome parks* in any RM zone, as described in Section 143.0302, regardless of the unit number requirements in Table 126-05A.
- (f) A Neighborhood Development Permit is required for relocating a building to a *premises* where an existing building is to remain as described in Section 143.0302.
- (g) A Neighborhood Development Permit is required for *development* proposing *fences, walls, or retaining walls* that exceed the height permitted in Chapter 14, Article 2, Division 3, by 20 percent or less as described in Section 142.0350.
- (h) A Neighborhood Development Permit is required for nonresidential *development* exceeding the maximum permitted parking as described in Section 142.0540(b).
- (i) A Neighborhood Development is required for *development* providing shared parking for uses not specified in Section 142.0545(c) as described in Section 142.0545(b)(7).
- (j) A Neighborhood Development Permit is required for construction of a privately owned *structure* proposed in the *public right-of-way* dedicated for a *street* or an *alley*, where the *applicant* is the *record owner* of the underlying fee title as described in Section 129.0710(a).

- (k) A Neighborhood Development Permit is required for *development* of a *large retail establishment* of 50,000 or more square feet *gross floor area* in all commercial, industrial, and mixed-use zones, and in all planned districts, except the Centre City Planned District.
- (l) A Neighborhood Development Permit is required for the following types of *development* within the Airport Land Use Compatibility Overlay Zone:
- (1) Non-residential *development* where alternative compliance is requested to demonstrate safety compatibility in accordance with Section 132.1515(d) using an equivalent calculation of intensity (people per acre).
  - (2) Non-residential *development* within the Brown Field or Montgomery Field airport influence areas where additional intensity (people per acre) is requested for a building designed to minimize risk and increase the safety of building occupants beyond the minimum requirements of the California Building Code in accordance with Section 132.1515(g)(2).
- (m) A Neighborhood Development Permit is required for *development* of a *wireless communication facility* with an equipment enclosure that exceeds 250 square feet as described in Section 141.0420(e)(3), or that includes equipment enclosures not placed underground as described in Section 141.0420(g)(2).
- (n) A Neighborhood Development Permit is required for *development* of a college, university, vocational, or trade school on a *premises* identified as Prime Industrial Land in a *land use plan* as described in Section 141.0407(e)(2).
- (o) A Neighborhood Development Permit is required for *development* on a site that contains a *designated historical resource, traditional cultural property, important archaeological site*, or a designated contributing resource to a *historical district* and includes a specific historic preservation *development* incentive as described in Section 143.0240.
- (p) A Neighborhood Development Permit is required for *development* that proposes deviations to the development regulations within the mixed-use zones. A Neighborhood Development Permit may not be used to request deviations listed in Section 131.0710(c).

- (q) A Neighborhood Development Permit is required for *development* that provides affordable housing, in-fill projects, and/or sustainable buildings identified in Section 143.0915, where a Site Development Permit or Planned Development Permit would otherwise be required.
- (r) A Neighborhood Development Permit is required for a Lot Line Adjustment on a *premises* containing *environmentally sensitive lands* as described in Section 143.0110.
- (s) A Neighborhood Development Permit is required for *development* that deviates from the Climate Action Plan Consistency Regulations as described in Section 143.1403(c).

(Amended 4-22-2002 by O-19051 N.S.; effective 10-8-2002.)  
(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)  
(Amended 6-15-2007 by O-19624 N.S.; effective 7-15-2007.)  
(Amended 11-13-08 by O-19803 N.S.; effective 12-13-2008.)  
(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)  
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)  
(Amended 4-5-2016 by O-20634 N.S.; effective 5-5-2016.)  
(Amended 9-15-2017 by O-20856 N.S.; effective 10-20-2017.)  
(Amended 3-22-2018 by O-20920 N.S.; effective 4-21-2018.)  
(Amended 8-9-2019 by O-21117 N.S.; effective 9-8-2019.)  
(Amended 9-12-2019 by O21118 N.S.; effective 10-12-2019.)  
(Amended 1-8-2020 by O-21164 N.S.; effective 2-9-2020.)  
(Amended 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)  
(Amended 1-27-2022 by O-21416 N.S.; effective 2-26-2022.)  
(Amended 9-21-2022 by O-21528 N.S.; effective 10-23-2022.)

**§126.0403 Decision Process for a Neighborhood Development Permit**

A decision on a Neighborhood Development Permit shall be made in accordance with Process Two.

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

**§126.0404 Findings for a Neighborhood Development Permit Approval**

A Neighborhood Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0404(a) and the supplemental *findings* in Section 126.0404(b) through (h) that are applicable to the proposed *development* as specified in this section.

These *findings* are not required for affordable housing that is provided pursuant to Chapter 14, Article 3, Division 7, unless the *development* will exceed the allowed incentives or the *development* deviates from the Climate Action Plan Consistency Regulations as described in Section 143.1403(c).

## (a) Findings for all Neighborhood Development Permits

- (1) The proposed *development* will not adversely affect the applicable *land use plan*;
- (2) The proposed *development* will not be detrimental to the public health, safety, and welfare; and
- (3) The proposed *development* will comply with the applicable regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

## (b) Supplemental Findings--Environmentally Sensitive Lands

A Neighborhood Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0404(a):

- (1) The site is physically suitable for the design and siting of the proposed *development* and the *development* will result in minimum disturbance to *environmentally sensitive lands*;

- (2) The proposed *development* will minimize the alteration of natural land forms and will not result in undue risk from geologic and erosional forces, *flood* hazards, or fire hazards;
- (3) The proposed *development* will be sited and designed to prevent adverse impacts on any adjacent *environmentally sensitive lands*; and
- (4) The proposed *development* will be consistent with the City of San Diego’s *MSCP Subarea Plan* and *VPHCP*.
- (5) The nature and extent of mitigation required as a condition of the permit is reasonably calculated to alleviate negative impacts created by the proposed *development*.

(c) Supplemental Findings--Environmentally Sensitive Lands Deviation

A Neighborhood Development Permit required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Sections 143.0150, 143.0151, and 143.0920 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0404(a) and the supplemental *findings* in Section 126.0404(b):

- (1) There are no feasible measures that can further minimize the potential adverse effects on *environmentally sensitive lands*; and
- (2) The deviation requested is the minimum necessary to afford relief from special circumstances or conditions applicable to the land and not of the *applicant’s* making.

(d) Supplemental Findings-- Important Archaeological Sites and Traditional Cultural Properties

A Neighborhood Development Permit required in accordance with Section 143.0210 because of potential impacts to an *important archaeological site* or a *traditional cultural property* may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0404(a):

- (1) The site is physically suitable for the design and siting of the proposed *development*, the *development* will result in minimum disturbance to *historical resources*, and measures to fully mitigate for any disturbance have been provided by the *applicant*; and
  - (2) All feasible measures to protect and preserve the special character or the special historical, archaeological, or cultural value of the resource have been provided by the *applicant*.
- (e) Supplemental Findings – Additional Intensity for Non-residential Development in the Brown Field or Montgomery Field Airport Influence Areas. The *applicant* shall demonstrate that the building has been designed to minimize risk and increase the safety of the occupants beyond the minimum requirements of the California Building Code through evaluation of the following:
- (1) The proposed building provides increased fire resistant rated construction to prevent or delay fire-induced structural damage;
  - (2) The proposed building provides increased fire protection systems to allow occupants more time to exit the building and to delay the spread of fire to adjacent buildings;
  - (3) The building provides enhanced means for building egress; and
  - (4) The design of the building's structural systems addresses light aircraft impact loads to reduce the potential for structural damage.
- (f) Supplemental Findings -- Affordable Housing, In-Fill Projects, or Sustainable Buildings Deviation

A Neighborhood Development Permit required in accordance with Section 143.0915 because a deviation is requested in accordance with Section 143.0920 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0404(a):

- (1) The *development* will materially assist in accomplishing the goal of providing affordable housing, in-fill projects, or sustainable buildings opportunities; and
- (2) Any proposed deviations are appropriate for the proposed location.

- (g) Supplemental Findings -- *Development* Incentives for Preservation of Designated Historical Resources, Historical Districts, Traditional Cultural Properties and Important Archaeological Sites

A Neighborhood Development Permit required because a historic preservation *development* incentive is included in accordance with Section 143.0240 may be approved or conditionally approved only if the decision maker makes the *findings* in Section 126.0404(a) and at least one of the following supplemental *findings*:

- (1) The proposed *development* contains a *traditional cultural property* or *important archaeological site*, and the historic preservation *development* incentive is necessary to avoid impacts to the resource; or
- (2) The proposed *development* contains a *designated historical resource* or a contributing resource to a designated *historical district* and the historic preservation *development* incentive is required to comply with the U.S. Secretary of the Interior’s Standards and Guidelines for the Treatment of Historic Properties.

- (h) Supplemental Findings – Deviation from the Climate Action Plan Consistency Regulations

A Neighborhood Development Permit required in accordance with Section 143.1403(c) because a deviation from the Climate Action Plan Consistency Regulations may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0404(a):

- (1) The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the *applicant’s* making; and
- (2) The *development* includes project features or other mitigating measures, to the extent feasible, that reduce greenhouse gas emissions and support and enhance alternative forms of transit in a manner comparable to compliance with the Climate Action Plan Consistency Regulations in Chapter 14, Article 3, Division 14.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000; amended 6-19-2000 by O-18814 N.S.)

(Amended 11-13-08 by O-19805 N.S; effective 12-13-2008.)

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



*(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)*  
*(Amended 9-15-2017 by O-20856 N.S.; effective 10-20-2017.)*  
*(Amended 3-22-2018 by O-20920 N.S.; effective 4-21-2018.)*  
*(Amended 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)*  
*(Amended 9-21-2022 by O-21528 N.S.; effective 10-23-2022.)*

#### **§126.0405 Violations of a Neighborhood Development Permit**

It is unlawful for any person to maintain, use, or develop any *premises* without a Neighborhood Development Permit if such a permit is required for that use or *development* or to maintain, use or develop any *premises* contrary to the requirements or conditions of an existing Neighborhood Development Permit, except as provided in Sections 126.0112 or 126.0113. Violation of any provision of this Division shall be subject to the enforcement provisions contained in Chapter 12, Article 1. Violations of this Division shall be treated as strict liability offenses regardless of intent.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*  
*(Amended 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)*

#### **§126.0406 Judicial Review**

For a Neighborhood Development Permit required by Chapter 12, Article 7, Division 3 an *applicant* may seek judicial review of a final decision on the permit application, pursuant to California Code of Civil Procedure section 1094.8. This provision does not limit an *applicant's* ability to seek judicial review by other means.

*(“Judicial Review” added 1-13-2004 by O-19253 N.S.)*