ITEM NO. 18

STAFF REPORT

CITY OF OCEANSIDE

DATE: November 19, 2008

TO: Honorable Mayor and City Councilmembers
Chairman and Members Community Development Commission

FROM: Economic and Community Development Department

SUBJECT: **INTRODUCTION OF AN ORDINANCE AMENDING ARTICLES 4, 12, AND 41 OF THE ZONING ORDINANCE (ZA-200-07) AND ADOPTION OF A RESOLUTION TO INCLUDE THE MODIFICATIONS AS RECOMMENDED BY THE CALIFORNIA COASTAL COMMISSION TO LOCAL COASTAL PLAN AMENDMENT (LCPA-200-07) AND SUBMIT TO THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION**

SYNOPSIS

Staff recommends that the City Council and Community Development Commission introduce an ordinance amending the text and zoning map of Articles 4, 12, and 41, adopt a resolution to amend the City's previously submitted Local Coastal Program Amendment (LCPA-200-07) and to submit the amended submittal to the California Coastal Commission for certification.

BACKGROUND

On April 11, 2007, the City Council approved the introduction of an ordinance and adopted a resolution approving several amendments to Articles 4, 12 and 41 of the Oceanside Zoning Ordinance and Local Coastal Plan Amendment. The California Coastal Commission held a hearing on December 12, 2007, where the Commission reviewed the City of Oceanside Local Coastal Plan Amendment and several "Suggested Modifications" that were submitted by Coastal Commission staff. The Coastal Commission made revisions to the Suggested Modifications; therefore, the findings had to be revised to reflect the changes made by the Coastal Commission and resubmitted for approval by the Coastal Commission. These revised findings were to be reviewed and approved by the Coastal Commission at their April 10, 2008, meeting; however, the Coastal Commission continued this item to a future meeting. On May 21, 2008, the City Council approved a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-200-07).

Staff was advised in June 2008 that because the Coastal Commission denied the Local Coastal Plan Amendment in December 2007, and the action taken by the City Council

in May 2008 did not include Articles 12, 41 and portions of 4(a), which were sections not challenged by the Coastal Commission, that these Articles needed to be resubmitted to the Coastal Commission. On July 2, 2008, the City Council and Community Development Commission adopted a resolution to adopt and transmit these sections of Articles 12, 41 and portions of Article 4 of the Zoning Ordinance to the California Coastal Commission (CCC) as part of its application for a Local Coastal Program Amendment (LCPA-200-07).

ANALYSIS

On July 9, 2008, the CCC held a public hearing regarding the City of Oceanside Local Coastal Program Amendment (LCPA-200-07). The City staff and Coastal staff had resolved most of the issues related to these amendments with the exception of two items, an In Lieu fee for the redevelopment of existing visitor-serving accommodations, and operational issues for Condo hotels and fractional timeshares.

It was generally acknowledged that the City of Oceanside has an overabundance of lower-cost units in the Coastal Zone compared to most Cities; therefore, there was support to remove the In Lieu fee. The CCC recommended that the City increase the Local Coastal Program policy that requires the City to maintain a minimum of 375 lower-cost hotel/motel units, to 400. In addition, at such time as the number of lower-cost units dropped to 405 units, the City would institute a façade enhancement program, specifically aimed to outreach to the existing low-cost hotel property owners to assure their short-term and long-term survival. The CCC also wanted some type of assurance that the City of Oceanside would maintain the minimum 400 lower-cost units; therefore, if a proposed project resulted in some number of units that reduced the number of lower-cost units below 400 units, those units would need to be deed restricted to be lower-cost, so the City does not drop below the 400. The CCC policy requires that the City report annually the number of low-cost units in the coastal zone. In order to keep the CCC abreast of the status of the number of lower-cost units, the City shall report the number of lower-cost units within all future Coastal staff reports.

The CCC also agreed with the City on the proposed language for "joint liability" between a hotel owner/operator and individual unit/interval owners. It was agreed that the "joint" part of the liability could be removed and that each party would be liable for their own actions.

The City of Oceanside received a Certification letter from CCC staff summarizing the actions at the July 2008, CCC meeting (see attached); however, there is still a level of disagreement regarding the "joint liability" issue. The attorney for the Oceanside Beach Resort project has submitted alternative language that is still being reviewed by the Coastal Commission staff attorneys. The Coastal Commission staff is bringing this single item before the Coastal Commission at the November 13, 2008 meeting to get final clarification on their direction. If the Coastal Commission approves different language at their November 13, 2008 meeting, it will be presented during the City Council meeting of November 19, 2008. After that the item will need to go back to the

Coastal Commission for final certification in December 2008. The Exclusive Negotiation Agreement with S D Malkin expires January 31, 2009.

Assuming the City Council and Community Development Commission approve the introduction of the ordinance amending the text and zoning map of Articles 4, 12, and 41 and adopt the resolution, this information will be forwarded to the California Coastal Commission for final certification.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that the City Council and Community Development Commission introduce the ordinance amending the text and zoning map of Articles 4, 12, and 41 and adopt a resolution to amend the City's previously submitted Local Coastal Program Amendment (LCPA-200-07) and to submit the amended submittal to the California Coastal Commission for certification.

PREPARED BY:

Kathy Baker
Redevelopment Manager

SUBMITTED BY:

Peter A. Weiss
City Manager/Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic & Community Development Director

ATTACHMENTS/EXHIBITS:
Exhibit 1 – Certification Letter
Exhibit 2 – Ordinance
Exhibit 3 – Resolution

STATE OF CALIFORNIA – THE RESOURCES AGENCY

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA COASTAL COMMISSION
SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

July 23, 2008

Jane McVey
Economic & Community Development Director
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054-2885

Re: Certification of City of Oceanside LCP Amendment No. 2-08 ("D" Downtown District)

Dear Ms. McVey,

On July 9, 2008, the California Coastal Commission approved the above referenced amendment to the City of Oceanside's Local Coastal Program (LCP). The amendment involves proposed changes to Articles 4, 12 and 41 of the certified LCP zoning ordinance. Specifically, the revisions would allow for both Condominium Hotels and Fractional Ownership developments within Subdistricts 1 and 12 of the Redevelopment Area. In addition, Article 4a would identify those uses within the Downtown District that could be classified as "visitor-serving", eliminate certain uses in the Redevelopment Area that are no longer sought and define and promote new uses that the City hopes to encourage. Article 41 would be amended to allow for the Economic and Community Development Director to approve administrative permits as well.

The Commission approved the LCP amendment with suggested modifications that address provisions to encourage the rehabilitation of existing lower cost overnight accommodations; provide formalized reporting on the City's inventory of affordable accommodations in conjunction with any applicable development review and to protect identified lower cost units with deed restrictions consistent with the City's certified land use plan policy. The attached modifications contain the specific changes adopted by the Commission.

Before the amendment request can become effectively certified, the Executive Director must determine that implementation of the approved amendment will be consistent with the Commission's certification order. This is necessary because the amendment was certified with suggested modifications.

In order for the Executive Director to make this determination, the local government must formally acknowledge receipt of the Commission's resolution of certification, including any terms or suggested modifications; and take any formal action which is required to satisfy them, such as rezonings or other ordinance revisions. This certification must also include production of the updated ordinance language demonstrating that the amendment, as approved

by the Commission and accepted by the City, will be incorporated into the City's certified Local Coastal Program immediately upon concurrence by the Commission of the Executive Director's determination.

As soon as the necessary documentation is received in this office and accepted, the Executive Director will report his/her determination to the Commission at its next regularly scheduled public hearing. If you have any questions about the Commission's action or this final certification procedure, please contact our office. Thank you and the other staff members who worked on this planning effort. We remain available to assist you and your staff in any way possible to continue the successful implementation of the local coastal program.

Sincerely,

Deborah N. Lee
District Manager

Cc: Kathy Baker
Sherilyn Sarb
Toni Ross

(San Diego/LCPs/Reports/OCN LCPA 2.08 certletter.doc)

CITY OF OCEANSIDE LCP AMENDMENT #2-08

Coastal Commission Suggested Modifications (adopted 7/9/08)

The underlined sections represent language that are added by staff recommendation, and the ~~struck-out~~ sections represent language that staff recommendations be deleted. **Bolded strike-out and underline indicate changes made to reflect the Commission action of July 9, 2008.**

1. SUGGESTED MODIFICATION #1

Revise Article 4a Section 450 of the Zoning Ordinance as Follows:

T. Visitor Accommodations.

[....]

7. Limited Use Overnight Visitor Accommodation: A ~~resort~~ facility providing overnight visitor accommodations that includes both traditional hotel lodging and some combination of fractional interests, time shares, or condo-hotel units. Limited Use Overnight Visitor Accommodations shall only be allowed in the Downtown "D" District, if no more than 25% of the total rooms in such facility consist of some combination of fractional timeshare or condo-hotel units; however, no more than 15% of the total rooms in a Limited Use Overnight Visitor Accommodation may be Fractional Interest units. A Limited Use Overnight Visitor Accommodation is exempt from any requirement that a substantial portion of its units be permanently reserved for transient overnight accommodations in the summer season, which is Memorial weekend through Labor Day.

2. Suggested Modification #2

Revise Article 4a section 450 - Special Requirements - as follows:

Visitor Accommodations-Special requirements

1. Hotel Owner/Operator – For a Limited Use Overnight Visitor Accommodation, as defined below, a Hotel Owner/Operater is defined as the entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner, both shall be ~~**jointly and**~~ severally responsible for ensuring compliance with the requirements described in the Local Coastal Plan and/or recorded against the property, as well as ~~**jointly and**~~ severally liable for violations of said requirement and restrictions. The owner/operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guest and owners. The owner/operator shall retain control of all

land, structures, recreational amenities, meeting spaces, restaurants, "back of house" and other guestroom facilities.

3. Suggested Modification #3

Revise Article 4a section 450 - Special Requirements - as follows:

2. Hotel Conversion - Any hotel rooms for which a Certificate of Occupancy has been issued at the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation ~~Integrated Resort~~.

4. Suggested Modification #4

Revise Article 4a section 450 - Special Requirements, Condominiums Hotels - as follows:

5. Condominium Hotels. Such development is subject to the following conditions/restrictions:

a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved amendment to the coastal development permit for the project.

b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.

c) The hotel owner/operator ~~of a Condominium Hotel~~ shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units.

d) The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units (both traditional and condo

hotel guestrooms/units). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for use by the general public, either through the operator or a rental agent other than the operator, on the same basis as a traditional hotel room.

~~d~~e) As used in this Section 5, the term " to book" or "booking" shall mean the confirmation of a reservation request for use of a Condominium-Hotel unit by either the owner of the unit, the owner's permitted user or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice ~~(other than the operator)~~ to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator ~~of the Condominium-Hotel~~ shall have the right and obligation to offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

i. ~~Except for their personal use, or use by their permitted users,~~ Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;

ii. As more fully described in Section 5(s~~p~~), below, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;

iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to Section 5(s~~p~~) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient

Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.

e) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.

f) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by guests/owners, a service for which the operator may charge the unit owner a reasonable fee.

g) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand~~, at a rate similar to comparable accommodations in the hotel~~. The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in Section 5(k~~i~~), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

h) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.

i) All individually owned hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity lever in the California coastal zone.

j) The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units.

k~~l~~) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

l~~j~~) The occupancy limitations identified in Section 5(k~~i~~) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.

m~~k~~) No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.

n~~l~~) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for a Condominium Hotel within the Downtown "D" District, the landowner(s) of the property upon which the traditional guestrooms/units (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership (e.g. timeshares or condo-hotel units, except as provided in Section 5(a) above) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to, through recordation of a lease restriction, by any existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and any lessee(s), and on all successors and assigns of the landowner(s) and any lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 5(a) through (m~~n~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic Development Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

o~~m~~) The hotel owner shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director for review and approval and to the Executive Director of the Coastal Commission for review and comment, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 5(a) through (m~~n~~) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 5(a) through (m~~n~~) above, cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections 5(a) through (m~~n~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director that an amendment is not legally required. If there is a section of the CC&Rs

(Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&Rs (Declaration of Restrictions) on amendments.

p~~n~~) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Condominium Hotel.

q~~o~~) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 5(a) through (m~~n~~), above, may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy of the proposed amendments have been submitted to the Executive Director of the Coastal Commission for comment, that an amendment is not legally required.

r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is ~~jointly and~~ severally liable with the hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

s~~p~~) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of any individual Condominium Hotel unit is ~~jointly and~~ severally liable with the hotel owner/operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and
2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and
3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by

the governing documents of the Condominium Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

t~~q~~) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

u~~r~~) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(v~~s~~) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

v~~s~~) Within 120 days of the end of the first calendar year of hotel operations, the hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator ~~of the use of the hotel units.~~ The hotel operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium Hotel to the Economic and Community Development Director and the Executive Director of the Coastal Commission. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual Condominium Hotel guestrooms/units during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Condominium Hotel shall require the operator and each owner of a condominium to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Condominium Hotel project.

w~~x~~) If the hotel owner and the hotel operator are or at any point become separate entities, the hotel owner and the hotel operator shall be ~~jointly and~~ severally responsible for ensuring ~~monitoring~~ compliance with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, they shall be ~~jointly and~~ severally liable for violations of ~~the operator shall be liable for its failure to monitor and to report non-compliance with~~ the terms and conditions (restrictions) identified above.

x~~y~~) A coastal development permit application for a Condominium Hotel shall include a plan specifying how the requirements outlined in Article 4 Section 450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and

conditions required by Section Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy has been delivered to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

5. Suggested Modification #5

Revise Article 4a section 450 - Special Requirements, Fractional Ownership Hotel - as follows:

6. The Fractional Ownership Hotel and the Traditional Hotel which together comprise a Limited Use Overnight Visitor Accommodation are subject to the following conditions/restrictions:

a) As used in Section 6, the following terms are defined as:

(i) "booking" or "to book" shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

(ii) "Exchange Program" means the use of a unit in a Fractional Ownership Hotel by a member who is the owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange, pursuant to a program:

(a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or

(b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.

(iii) "Exchange Use" means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.

(iv) "Exchange User" means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.

(v) "Fractional Interest" means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a 1/26 x (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.

(vi) "Fractional Ownership Hotel" means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.

(vii) "Traditional Hotel" means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).

b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Visitor Overnight Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project.

c) A maximum of 15% of the total number of guestrooms/units in the project as a whole may be subdivided into Fractional Interests.

d) Either the owner/operator of the Traditional Hotel or the owner or operator of the Fractional Ownership Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities for both the Traditional Hotel and the Fractional Ownership Hotel.

e) The Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units in the Fractional Ownership Hotel. The on-site hotel operator for the Fractional-Ownership Hotel may be a different entity from the on-site hotel operator for the Traditional Hotel in the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part.

Each Fractional Interest owner shall have the right, in its sole discretion, to engage a rental agent of his or her choice, other than the operator, to serve as the rental agent for their Fractional Interest, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis commencing sixty (60) days in advance of a time period the owner has a right to reserve and use under the governing documents for the Fractional Ownership Hotel. The operator of the Fractional Ownership Hotel shall have the right and obligation to offer for public rental all time periods not reserved by a Fractional Interest owner for his or her personal use, for "Exchange Use" or for use by an owner's permitted user sixty (60) days in advance of any such occupancy period.

On and within this sixty (60) day window, members of the public shall have reservation rights equal to those for owners, their permitted users and Exchange Users. The Fractional Ownership Hotel operator shall manage the booking of the reservation of all guestrooms/units in the Fractional Ownership Hotel. All Fractional Interest owners, and their rental agents, must comply with the following restrictions:

(A) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional Interest owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

(B) Fractional Interest owners shall certify the rental rate and terms of any rental of the owner's occupancy periods made independently of the operator, and the hotel operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Fractional Interest owner a reasonable fee;

(C) The Fractional Ownership Hotel operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Fractional Interest owner a reasonable fee.

f) The operator shall market the rental of available units in the Fractional Ownership Hotel to the general public and shall have a right to charge each Fractional Interest owner a reasonable fee for such marketing.

g) Subject to the requirements of the California Business and Professions Code pertaining to management agreements for Timeshare plans, including, without limitation, restrictions on the term of such management agreements, the operator shall manage all units in a Fractional Ownership Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.

h) The operator, as the non-exclusive rental agent for the owner of a Fractional Interest entitled to an occupancy period, shall offer for rent to the public any guestroom/unit which has not been reserved by its owner, his or her permitted user or an Exchange User commencing sixty (60) days in advance of such occupancy period.~~, at a fair rental rate established by that for comparable accommodations in the , as further described in Section 6(j) below~~. No Fractional Interest owner nor such owner's rental agent may withhold units which have not been reserved by the owner or such owner's permitted users or an Exchange User sixty (60) days or less prior to the commencement of an occupancy period from rental to the public. Nothing in the preceding sentence shall mean that an owner of a Fractional Interest, or such owner's permitted users or an Exchange User, may not elect to reserve a unit in a Fractional Ownership Hotel at any time after the commencement of such sixty (60) day period, provided that the operator or the owner's rental agent has not then rented the unit to a member of the general public. In all circumstances, the Fractional Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

i) All guestrooms/unit keys shall be electronic and created by the operator upon each new occupancy to control the use of the individually owned Fractional Ownership Hotel units.

j) All individually owned Fractional Ownership Hotel units shall be rented at a rate similar to that charged ~~by the hotel operator~~ for ~~the~~ traditional hotel-rooms of a similar class or amenity level <u>in the California coastal zone.</u>

k) Each individually owned Fractional Interest shall be used by its owner(s) or their guests to occupy a unit in a Fractional Ownership Hotel for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

l) The use period limitations identified in Section 6(k) above, shall be unaffected by multiple owners of a Fractional Interest or the sale of a Fractional Interest to a new owner during the calendar year, meaning that all such owners of any given Fractional Interest shall be collectively subject to the use restriction in this Section 6 as if they were a single, continuous owner. No portion of a Fractional Ownership Hotel may be converted to a full-time occupancy condominium or to any other type of a Limited Use Overnight Visitor Accommodation other than as provided for in Section 6(b) above

m) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part, the landowner(s) of the property(ies) within the Downtown "D" District upon

which the associated Traditional Hotel is developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership, except as permitted in Section 6(b) above. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by any existing lessee(s) of the affected property(ies), through recordation of a lease restriction, and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

n) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director and review and comment by the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC&Rs (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 6(b) through (l) above;
2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
3. A statement that provisions of the CC&Rs (Declaration of Restrictions) that reflect the requirements of Sections 6(b) through (l~~m~~) above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections (b) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required. If there is a section of the CC&Rs (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly

indicate that it controls over any contradictory statements in the section of the CC&Rs on amendments.

o) The CC&Rs (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Fractional Ownership Hotel.

p) The provisions of the CC&Rs (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 6(b) through (l~~m~~) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

q) The Fractional Ownership Hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guestroom/unit is ~~jointly and~~ severally liable with the Fractional Ownership Hotel owner/operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

r~~q~~) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&Rs and similar documents, shall notify buyers of the following:

1. Each owner of a Fractional Interest is ~~jointly and~~ severally liable with the Fractional Ownership Hotel owner/operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;
2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

~~s)~~

s~~r~~) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&Rs (Declaration of Restrictions).

t~~s~~) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and ~~from the certified reports submitted to the operator by the Fractional Interest owners,~~ by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 6(u~~t~~) below. Within 30 days of commencing hotel operations, the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

u~~t~~) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare

a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations.

Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report to the Economic and Community Development Director and the Executive Director of the Coastal Commission, regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Fractional Ownership Hotel. The audit required after one year of operations and all subsequent reports shall evaluate compliance by the Fractional Ownership Hotel operator and owners of individual Fractional Interests during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or ~~and~~ the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Fractional Ownership Hotel shall require the operator and each owner of a Fractional Interest to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Fractional Ownership Hotel.

v~~u~~) If the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator shall be ~~jointly and~~ severally responsible for ensuring compliance with the requirements identified above.

If the Fractional Ownership Hotel owner and Fractional Ownership Hotel operator become separate entities, they shall be ~~jointly and~~ severally liable for violations of the terms and conditions (restrictions) identified above.

w~~v~~) Prior to the issuance of a coastal development permit for a Fractional Ownership Hotel, an applicant shall submit a plan for approval specifying how the requirements outlined in Article 4 Section 450 of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the

sale, deed and CC&Rs (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement that will be offered to the Fractional Interest owners by the Fractional Ownership Hotel operator. The plan must demonstrate that the applicant will establish mechanisms that provide the Fractional Ownership Hotel operator and any successor-in-interest Fractional Ownership Hotel operator adequate legal authority to implement the requirements of Article 4 Section 450 of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Ownership Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Article 4 Section 450 of the Zoning Ordinance and this section including deed restrictions and CC&Rs (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

6. **Suggested Modification # 6**

Add Article 4a (Redevelopment) section 450 Visitor Accommodations-Special Requirements, as follows:

Protection of Existing Overnight Visitor Accommodations - Any overnight visitor accommodations for which a Certificate of Occupancy has been issued prior to or on the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation. Demolition of existing lower cost overnight visitor accommodations shall be discouraged. If demolition of existing lower cost units is authorized, mitigation shall be provided ~~at the rate specified for in-lieu fees~~ as **specified below:**

a. **Monitoring of Lower Cost Units in the Coastal Zone**

The City shall monitor a LUP requirement to insure that a minimum of 400 lower cost units shall be maintained in the Coastal Zone by reporting the status of the current number of lower cost units within the Coastal Zone within all staff reports containing a Regular Coastal Permit, which shall be forwarded to the Coastal Commission prior to issuance of the Permit.

b. **Assistance to Existing Lower Cost units in the Coastal Zone**

At such time as the inventory of lower cost units would be at 405, the City would pursue outreach to the existing property owners in an attempt to assure their short and long term survival. Resources that can be brought to bear to assist them could include the

City's Façade Enhancement Program, in which matching funds can be made available for painting, awnings, signage and landscaping.

c. Restrictions to Protect Lower Cost Units in the Coastal Zone

Any project that is required to provide lower cost units shall be required to record a deed restriction against the property that requires the protection of the lower cost units, such that the demolition and re-build of lower cost units would not result in the total number of lower cost units to be less than a total of 400 units in the Coastal Zone.

~~**follows:**~~

~~**a) In-lieu Fee Required**~~

~~**Development of replacement overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations within North San Diego County. The fee shall be $30,000 per room multiplied by the number equal to 50% of the demolished, unreplaced lower cost units if the replacement units are high-cost overnight visitor accommodations. The fee (i.e. $30,000 in 2007) shall be adjusted annually to account for inflation according to increases in the Consumer Price Index – U.S. City Average.**~~

~~**The required in-lieu fees shall be deposited into an interest-bearing account, to be established and managed by one of the following entities approved by the Executive Director of the Coastal Commission: City of Oceanside, Hostelling International, California Coastal Conservancy, California Department of Parks and Recreation or a similar entity. The purpose of the account shall be to establish lower cost overnight visitor accommodations, such as new hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of North San Diego County. The entire fee and accrued interest shall be used for the above-stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. Any portion of the fee that remains after ten years shall be donated to one or more of the State Park units or non-profit entities providing lower cost visitor amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. Required mitigation shall be in the form of in-lieu fees as specified herein or may include completion of a specific project that is roughly equivalent in cost to the amount of the in-lieu fee and makes a substantial contribution to the availability of lower cost overnight visitor accommodations in Oceanside and/or the North San Diego County coastal area.**~~

7. Suggested Modification #7

When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the Statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com). A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within 5 miles of the coast that charge less than the Statewide average or 82%. High cost would be room rates that are 20% higher than the Statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of visitor overnight accommodations.

ORDINANCE NO. 2007-

AN ORDINANCE OF THE CITY OF OCEANSIDE AMENDING THE TEXT OF ARTICLES 4, 12, AND 41 OCEANSIDE REDEVELOPMENT ZONING ORDINANCE, (ZA-200-07 & LCPA-200-07)

(City of Oceanside –Applicant)
(ZA-200-07 & LCPA-200-07)

WHEREAS, Articles 4, 12 and 41 of the Redevelopment Zoning Ordinance regulates uses within the Redevelopment Area; and

WHEREAS, it is in the public interest to amend the zoning regulations pertaining to these uses; and

WHEREAS, the proposed amended sections of Articles 4, 12 and 41 of the Zoning Ordinance are more particularly described in Exhibit "A", attached hereto and incorporated herein by reference; and

WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of Oceanside for this project pursuant to the California Environmental Quality Act of 1970 and the State Guidelines thereto as amended to date; and

WHEREAS, on April 11, 2007, a duly noticed public hearing was held before the Oceanside City Council to consider the proposed amendments to the Local Coastal Plan (LCPA-200-07) and Articles 4, 12, and 41 of the Zoning Ordinance (ZA-200-07); and

WHEREAS, following the April 11, 2007, public hearing, the Oceanside City Council voted to adopt the proposed LCPA and zoning amendments, subject to certification by the California Coastal Commission; and

WHEREAS, the California Coastal Commission conducted a public hearing on December 12, 2007, where the Commission reviewed the City's Local Coastal Plan Amendment (LCPA-200-07), and several suggested modifications proposed by the Coastal Commission staff; and

WHEREAS, the City of Oceanside has proposed revisions to the previously adopted LCPA amendment to respond to the Coastal Commission's suggested modifications; and

WHEREAS, after duly noticing a public hearing for May 7, 2008, the Oceanside City Council and Community Development Commission continued the public hearing to May 21, 2008; and

WHEREAS, on May 21, 2008, the Oceanside City Council and Community Development Commission approved and adopted the LCPA after: (1) finding that the revisions to the Local Coastal Program (LCPA 200-07) as amended by the Community Development Commission, conformed with and was adequate to carry out the land use plan of the Local Coastal Program; and (2) certifying that the Local Coastal Program Amendment (LCPA- 200-07) was intended to be carried out in a manner fully in conformity with the Coastal Act; and

WHEREAS, the California Coastal Commission conducted a public hearing on July 9, 2008, where the Commission reviewed the City's Local Coastal Plan Amendment (LCPA-200-07), and approved the LCPA with some suggested modifications; and

WHEREAS, a duly noticed public hearing before the City Council and CDC has been conducted on all portions of the pending Local Coastal Plan Amendment and Zone Amendment on November 19, 2008.

NOW THEREFORE, the Oceanside City Council does ordain as follows:

1. Zone Amendment application ZA-200-07 and LCPA-200-07 attached as Exhibit A is hereby adopted and the Economic & Community Development Director is directed to amend the Zoning Ordinance text as specified in Exhibit A.
2. Notice is hereby given that the time within which judicial review must be sought on this decision is governed by Government Code section 65009(c)(1)(B) and commences to run from the date of adoption of this Ordinance.
3. The Ordinance shall not be codified.
4. This amendment to the Zoning Ordinance adopted in this Ordinance shall

become effective upon the effective date of Local Coastal Plan Amendment-200-07.

5. The City Clerk of the City of Oceanside is hereby directed to publish the title of this Ordinance and a summary of Exhibit "A" once within fifteen (15) days after its passage in the North County Times, a newspaper of general circulation published in the City of Oceanside. This Ordinance shall take effect and be in force on the thirtieth (30) day from and after its final passage.

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the 19th day of November 2008, and, thereafter,

PASSED AND ADOPTED by the Oceanside City Council on this _____ day of December 2008, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
Mayor of the City of Oceanside

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

RESOLUTION NO. 2008-

RESOLUTION OF THE CITY COUNCIL AND COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE TO INCLUDE THE MODIFICATIONS AS RECOMMENDED BY THE CALIFORNIA COASTAL COMMISSION TO LOCAL COASTAL PLAN AMENDMENT (LCPA-200-07) AND TO SUBMIT TO THE CALIFORNIA COASTAL COMMISSION FOR CERTIFICATION

(City of Oceanside –Applicant)
(ZA-200-07 & LCPA-200-07)

WHEREAS, the provisions of the California Coastal Act (Public Resources Code 30000, et seq.) (the "Coastal Act") require the City to adopt a Local Coastal Program (LCP) which meets the requirements of the Coastal Act at the local level and implements its provisions and policies; and

WHEREAS, on January 25, 1985, the California Coastal Commission ("Commission") approved with suggested modifications the City's Land Use Plan and implementing ordinances; and

WHEREAS, on July 10, 1985, the Commission certified the City of Oceanside's Land Use Plan ("LUP") and found, pursuant to Public Resources Code 30512.2, the City's LUP to be consistent with the policies and requirements of Chapter 3 of the Coastal Act and meet the basic state goals specified in Public Resources Code 30001.5; and

WHEREAS, on April 11, 2007, the Oceanside City Council and Community Development Commission, after giving the required public notice, conducted a joint public hearing as prescribed by law to amend the Local Coastal Program (LCPA-200-07); and

WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of Oceanside for this project pursuant to the California Environmental Quality Act of 1970 and the State Guidelines thereto as amended to date; and

WHEREAS, the California Coastal Commission conducted a public hearing on December 12, 2007, where the Commission reviewed the City's Local Coastal Plan Amendment (LCPA-200-07), and several suggested modifications proposed by Coastal Commission staff; and

WHEREAS, the Oceanside City Council and Community Development Commission proposed revisions to the previously adopted LCPA amendment to respond to the Coastal

Commission's suggested modifications which were considered and approved after a duly noticed public hearing on May 21, 2008; and

WHEREAS, the California Coastal Commission conducted a public hearing on July 9, and November 13, 2008, and made further suggested modifications to LCPA-200-07; and

WHEREAS, a duly noticed public hearing has been conducted on November 19, 2008 to consider revisions to LCPA-200-07 to respond to Coastal Commission suggested modifications; and

WHEREAS, the Oceanside City Council and Community Development Commission find that the revisions to the Local Coastal Program Amendment (LCPA-200-07) as amended by the City Council and Community Development Commission, conforms with and is adequate to carry out the land use plan of the Local Coastal Program.

NOW, THEREFORE, the Oceanside City Council and Community Development Commission DOES RESOLVE as follows:

1. Pursuant to Public Resources Code 30510 (a), the Oceanside City Council and Community Development Commission hereby certifies that Local Coastal Program Amendment (LCPA-200-07) is intended to be carried out in a manner fully in conformity with the Coastal Act and is hereby approved and adopted.

2. Pursuant to the California Environmental Quality Act of 1970 (Public Resources Code 21000, et seq.) and state guidelines thereto as amended to date, a Categorical Exemption has been issued by the City of Oceanside for this project.

3. Pursuant to Coastal Commission Local Coastal Program Regulation 13551 (b), this amendment shall take effect automatically upon unconditional approval by the Coastal Commission.

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4. Copies of the originals of these revised documents shall be maintained and available for public review in the offices of the Economic and Community Development Department.

PASSED AND ADOPTED by the Oceanside City Council and Community Development Commission on this _____ day of November 2008, by the following vote:

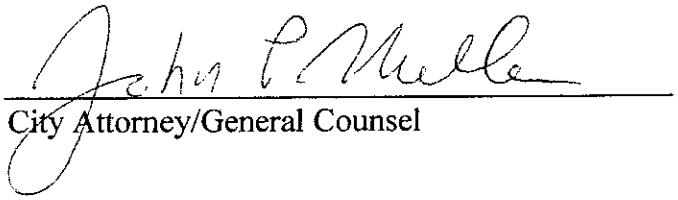
AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
Mayor of the City of Oceanside/
Chairman, Community Development Commission

ATTEST:

_____
City Clerk/Secretary

APPROVED AS TO FORM:



_____
City Attorney/General Counsel

Article 4(a) Redevelopment Project Area Use Classifications

Sections:

410 Purpose and Applicability
420 Uses Not Classified
430 Residential Use Classifications
440 Public and Semipublic Use Classifications
450 Commercial Use Classifications
460 Accessory Use Classifications
470 Temporary Use Classifications

410 Purpose and Applicability

The uses classifications describe herein are only applicable within the Redevelopment Project Area. The uses describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The Economic Development & Redevelopment Director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The Economic Development & Redevelopment Director may determine that a specific use shall not be deemed to be within a classification, whether or not named within the classification, if its characteristics are substantially incompatible with those typical of uses named within the classification. The Economic Development & Redevelopment Director's decision may be appealed to the Community Development Commission.

420 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning regulations by a Zoning Ordinance text amendment, as provided in Article 45.

430 Residential Use Classifications

A. Day Care, Limited. Non-medical care and supervision of up to and including fourteen persons on a less than 24-hour basis within a licensee's home for children and adults.

B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boardinghouses, dormitories, fraternities, sororities, and private residential clubs, but excludes residential hotels (see Single-Room Occupancy (SRO) Residential Hotels).

C. Live/Work Quarters. An area comprising one or more rooms in a building originally designed for industrial or commercial occupancy that includes cooking space, sanitary facilities, and working space for artists, artisans and similarly activities and Custom Industry uses as defined herein.

D. Multifamily Residential. Two or more dwelling units on a site. This classification includes mobile home and factory-built housing.

E. Residential Care, Limited. Twenty-four-hour non-medical care for six or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.

F. Single-Family Residential. Buildings containing one dwelling unit located on a single lot. This classification includes mobile home and factory-built housing.

440 Public and Semipublic Use Classifications

A. Child Care. Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity and not within a licensee's home for persons under the age of 18.

B. Clubs and Lodges. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs, youth, and senior centers.

C. Convalescent Facilities. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services.

D. Cultural Institutions. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries.

E. Day Care, General. Non-medical care and supervision on a less than 24-hour basis in any care facility of any capacity and not within a licensee's home for persons over the age of 18.

F. Emergency Health Care. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis.

G. Government Offices. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles.

H. Hospitals. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis.

This classification includes incidental facilities for outpatient treatment, as well as training, research, and administrative services for patients and employees.

I. Park and Recreation Facilities. Noncommercial parks, playgrounds, recreation facilities, and open spaces.

J. Public Safety Facilities. Facilities for public safety and emergency services, including police and fire protection.

K. Religious Assembly. Facilities for religious worship and incidental religious education and other religious facility related supportive and social services. This use classification specifically excludes private schools as defined in this section. Only Small-scale establishments occupying no more than 5,000 square feet.

L. Residential Care, General. Twenty-four hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living.

M. Resource Centers. Neighborhood facilities that are City-sponsored or under the control of the City and are used for neighborhood safety, enhancement, education, health care, and other similar neighborhood programs.

N. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California.

O. Transitional Housing. Transitional housing encompasses both housing and appropriate supportive services for homeless persons designed to enable them to move to independent living within a 24-month period.

P. Utilities, Major. Generating plants, electrical substations, aboveground electrical transmission lines, lone switching buildings, refuse collection, transfer, recycling or disposal facilities, water reservoirs, flood control or drainage facilities, water or waste water treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. A structure that may have a significant effect on surrounding uses shall be regulated under this classification.

Q. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling centers within convenience zones, as defined by the California Beverage Container Recycling and Litter Reduction Act.

450 Commercial Use Classifications

A. Ambulance Services. Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles.

B. Animal Sales and Services.

1. Animal Grooming. Provision of bathing and trimming services for animals on a commercial basis. This classification includes boarding of domestic animals for a maximum period of 48 hours.

2. Animal Product Sales. Retail products associated with domestic animals (dogs, cats, birds, snakes, and small rodents).

C. Artists Studios. Work and display space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft. Only small-scale establishments occupying no more than 5,000 square feet.

D. Banks and Savings and Loans. Financial institutions that provide retail banking services to individuals and businesses. This classification is limited to institutions engaged in the on-site circulation of cash money including businesses offering check-cashing facilities. This excludes check cashing businesses and loan companies not associated with a bank, credit unions or savings and loan.

1. Drive-through/Drive-up Service. Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located on the same site.

2. Self-service Facilities (ATM's). Institutions providing self-service banking facilities that are not associated with a primary banking or savings and loan building located on the same site.

E. Catering Services. Preparation and delivery of food and beverages for off-site consumption with provision for on-site pickup or consumption not to exceed 1,000 square feet. (See also Eating and Drinking Establishments.)

F. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors, pool rooms, dance halls, ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, arcades and games centers having five or more coin-operated game machines and card rooms.

G. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; and telegraph offices.

H. Eating and Drinking Establishments.

A place which a "bona fide public eating place" is used and kept open for the serving of meals to guests for compensation and which has an adequate seating area for the consumption of meals and suitable kitchen facilities for cooking an assortment of foods which may be required for ordinary meals. As used in this definition, the word "meals" means the usual assortment of foods commonly ordered at various hours of the day; the services of only such foods as sandwiches or salads shall not be deemed in compliance with this requirement.

As used in this definition, the words "suitable kitchen facilities" shall include cooking equipment (such as deep fryers, stoves or ovens) requiring hood fans, an operable dishwashing machine, and a central freezing and refrigeration area.

1. Restaurant. A restaurant is an establishment that serves prepared food and beverages to be consumed on the premises. The term covers a multiplicity of venues and a diversity of styles of cuisine. A restaurant may serve beer and wine with a valid ABC and where a substantial amount of sales include meals during normal meal hours and that they are open at least five days a week.

2. Espresso Stand (drive-through). A walk-up, sit down or auto-oriented business, that dispenses hot and/or cold beverages and pre-prepared food products.

3. Small-scale Entertainment - Small scale live entertainment is permitted and is limited to five or fewer performers, with not dance floor and limited to typical lunch and dinner hours (11:00 a.m. to 11:00 p.m.)

4. Live Entertainment. Establishments providing live entertainment for patrons with six or more performers.

5. Fast Food/Take Out. Restaurants where food and/or beverages are sold ready to go, to be consumed on or off the premises. This does not include drive through.

6. Full Service Liquor. A restaurant that is authorized to sell beer, wine and distilled spirits for consumption on the premises. Restaurant must operate and maintain an ABC license and premises must operate as a "bona fide public eating place", where

a substantial amount of sales include meals during normal meal hours and that they are open at least five days a week.

I. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as Catering Services or Eating and Drinking Establishments.

1. Convenience Markets. Retail sales of food, beverage and small convenience items typically found in establishments with long or late hours of operation.

2. Grocery/ Neighborhood Market. Retail sales of food and beverages for off-site preparation and consumption. Principally engaging in the retail sale of staple foodstuffs, household supplies and a sizeable assortment of fresh produce, meats, fish and dairy products. A minimum of 60% of net floor area (excluding storage, aisle ways, check out and customer service areas) shall be dedicated to the sale of staple foodstuffs and fresh items such as produce, meats, fish, and dairy products.

(Net Floor Area - The total floor area within the walls of all buildings on a lot or building site, except for the spaces therein devoted to vents, shafts, and lighting courts, and except for the area devoted exclusively to loading and unloading facilities or parking of motor vehicles).

3. Specialty Market. Retail sales of food and beverages for off-site preparation and consumption. Principally engaging and specializing in the retail sales of one specific product line such as produce, meat, fish, etc. Such markets may include the incidental sales of other merchandise directly related to the principal product line.

J. Home Occupation. A limited-scale service or fabrication activity, which occurs in a dwelling unit or accessory building and is subordinate to the primary use of the premises for residential purposes, with limitations as set forth within the City of Oceanside business license department.

K. Live work lofts. May include "professional services that do not require client visits, electronics research and development, computer software development, internet based business and the like are permitted. In addition to paper based and/or home based occupations such as engineers, architects, consultants, computer specialists, interior designers, lawyers, and

real estate professionals

L. Marine Sales, Rentals, and Services. Establishments providing supplies and equipment for shipping or related services, or pleasure boating and recreation. Typical uses include chandleries, yacht brokerage, sales, boat yards, boat docks, and sail-making lofts.

M. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services.

1. Administrative/Business. Establishments providing direct services to clients, including insurance agencies, real estate offices, post offices (not including bulk mailing distribution centers).

2. Production. Office-type facilities occupied by businesses engaged in the production of intellectual property. These uses include: advertising agencies, architectural, engineering, planning and surveying services, computer software production and programming services, educational, scientific and research organizations, media postproduction services, photography and commercial art studios, writers and artist's offices.

3. Professional. Professional or government offices including: Accounting, auditing and bookkeeping services, attorneys, counseling services, court reporting services, data processing services, detective agencies and similar services, employment, stenographic, secretarial and word processing services, government offices, literary and talent agencies, management and public relations services

4. Temporary. A mobile home, recreational vehicle or modular unit used as temporary office facility. Temporary Offices may include: construction supervision offices on a construction site or off-site construction yard; a temporary on-site, which is converted to residential use at the conclusion of its office use.

5. Temporary Real Estate. The temporary use of a dwelling unit within a residential development project as a sales office for the units on the same site, which is converted to residential or commercial use at the conclusion of its office use.

N. Pawn Shops. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 22 of the Municipal Code. This definition does not include Junk as defined as old or scrap copper, brass, rope, rags, batteries,

paper, trash, rubber debris, wastes, machinery, scrap wood, or junked, dismantled or wrecked automobiles, or parts thereof; iron, steel, and other old or scrap ferrous or nonferrous material. Includes any other definitions of junk established in City ordinances.

O. Personal Improvement Services. Provision of instructional services or facilities, including: photography, fine arts, crafts, dance or music studios; driving, business or trade schools; diet centers, or reducing salons; and health/fitness studios, spas or clubs.

1. Health/Club/Studio/Spa. Establishments with equipment for exercise and physical conditioning. Facilities offering the use of exercise equipment for public use, and services such as, expertise and instruction for fitness training, weight loss, yoga and aerobics classes. Does not include massage or other medically related services.

2. Day Spa. A day or full service spa must provide at least four different types of services and all services must be provided on the premises during regular business hours and include some type of instructional service. These services may include any of the following: facial therapies, body treatments, hair removal, nail care, salon care, makeup application, permanent cosmetic makeup, skin care treatments, therapeutic massage, aromatherapy, hydrotherapy, and instructional services such as; nutritional counseling, weight management, stress management, medical evaluations, and fitness activities such as; private or personal fitness training, yoga, meditation, and retail products such as; skin and body care products, work out or spa clothing, juice bar, spa or health food cuisine, health food products.

   All services shall be administer by licensed cosmetologists, estheticians or similar professionals and should offer a vast array of the highest quality skin, body, health care, and fitness services. At a minimum spas establishment must be: clean, and safe environment; have private treatment rooms for clients receiving a personal service; business licenses; professional, licensed estheticians and therapists; professional spa products for which estheticians and therapists have received training in their use; and have showering and changing facilities for women and men (when necessary).

3. Accessory Massage. Massage only permitted as an incidental use to a primary use listed above, with a use permit and must abide by all other City Ordinances and Codes.

P. Personal Services. This classification includes: photo-copying, word processing, packaging, postal and office supply support facilities.

1. Laundromat/Cafe. A commercial establishment offering self-serve and assisted laundry facilities for public use in conjunction with some type of food or beverage service.

2. General Repair. The repair of small appliances, stereo equipment, electronic pieces and computers. This term does not include the repair of motor vehicles, motorcycles, lawnmowers or garden equipment.

Q. Retail (General) Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes artist supplies, bakeries, bicycles, books, cameras and photographic supplies, clothing and accessories, department stores, drug stores, dry goods, fabrics and sewing supplies, florist and houseplants, hobby material, jewelry, luggage and leather goods, home improvement stores, furniture stores, handcrafted items, jewelry, cameras, photographic supplies (including limited processing), electronic equipment, records, sporting goods, kitchen utensils, hardware, appliances, art supplies and services, paint and wallpaper, carpeting floor covering, office supplies, bicycles, and musical instruments, parts and accessories, specialty shops, religious goods, sporting goods and equipment, stationery, toys and games and variety stores.

1. Antiques, Antique Shop. Any article which, because of age, rarity or historical significance, has a monetary value greater than the original value, or which has an age recognized by the United States Government as entitling the article to an import duty less than that prescribed for contemporary merchandise. A store or shop selling only such articles or offering them for sale shall be considered as an antique shop or store, and not considered as a dealership handling used or secondhand merchandise.

2. Custom Retail. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale mechanical equipment not exceeding two (2) horsepower or a single kiln not exceeding eight (8) kilowatts; and the direct sale to consumers of those goods produced on-site. Products made incident to a permitted use may be sold at retail on the premises, and not more than three (3) people shall be employed in the production process. Typical uses include but are not limited to ceramic studios, candle-making shops, and custom jewelry production.

3. Secondhand Furniture, Appliance, "Collectible" and Clothing Sales.

The retail sale of used furniture, appliances, "collectibles" and clothing, and secondhand dealers who are subject to Chapter 22 of the Municipal Code. This classification excludes antique shops primarily engaged in the sale of antique furniture and accessories. Only small establishments occupying no more than 5,000 square feet.

4. Wine Tasting. Retail establishments for the sale of bottled wine and which offer wine tasting and the sale of wine for on-site consumption in connection with the marketing of wines offered for sale on the premises. With the exception of wine and featured micro-brews, no beverages or items containing alcohol shall be offered for sale or consumed on the premises. Non-alcoholic retail items associated with wine drinking such as wine glasses, decanters, ice buckets, toppers, serving implements, snack foods and non alcoholic beverages may also be offered for sale. Wine tasting shall only occur in an enclosed area not accessible for persons under the age of 21.

R. Travel Services. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies.

S. Automotive Rental (small scale). Rental of vehicles; limited to five rental cars.

T. Visitor Accommodations

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling, with incidental eating and drinking service for lodgers only provided from a single kitchen.

2. Hotels and Motels. Establishments offering commercial lodging on a less than monthly basis. This classification includes incidental eating, drinking, and banquet services intended for the convenience of guests.

3. Timeshare. A facility or arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

4. Fractional Ownership Hotel. A facility providing overnight visitor accommodations where at least some of the guestrooms are owned separately by multiple owners on a fractional time basis. A

fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners. When a fractional ownership unit is not occupied by one of its owners, that unit shall be made available to the general public through the hotel operator. If a Fractional Ownership Hotel includes traditional hotel units, the facility may use those rooms alone or in combination with its fractional units to satisfy any requirement that a substantial portion of its units be permanently reserved for transient overnight accommodations in the summer season, which is Memorial weekend through Labor Day.

5. Condominium Hotel. Condominium Hotel – Any Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

6. Resort. A resort is defined as a full service hotel of greater than 200 rooms with pool, spa, or similar amenities and full service restaurant.

7. Limited Use Overnight Visitor Accommodation: A facility providing overnight visitor accommodations that includes both traditional hotel lodging and some combination of fractional interests, time shares, or condo-hotel units. Limited Use Overnight Visitor accommodations shall only be allowed in the Downtown "D" District, if no more than 25% of the total rooms in such facility consist of some combination of fractional timeshare or condo-hotel units; however, no more than 15% of the total rooms in a Limited Use Overnight Visitor Accommodation may be Fractional Interest units. A Limited Use Overnight Visitor Accommodation is exempt from any requirement that a substantial portion of its units be permanently reserved for transient overnight accommodations in the summer season, which is Memorial weekend through Labor Day.

Visitor Accommodations-Special requirements

1. Hotel Owner/Operator – For a Limited Use Overnight Visitor

Accommodation, as defined below, a Hotel Owner/Operator is defined as the entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner, each shall be severally responsible for complying with the requirements described in the Local Coastal Plan and/or recorded against the property, as well as severally liable for violations of said requirement and restrictions. The owner/operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guest and owners. The owner/operator shall retain control of all land, structures, recreational amenities, meeting spaces, restaurants, "back of house" and other guestroom facilities.

2. Hotel Conversion - Any hotel rooms for which a Certificate of Occupancy has been issued at the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation.

3. New Limited Use Overnight Visitor Accommodation projects will be required to prepare Covenants, Conditions, and Restrictions (CC&R's) that shall be recorded concurrently with the recordation of all tract maps against all individual property titles reflecting the use restrictions and will conform to the restrictions outlined below.

4. Limited Occupancy. An owner of a timeshare interest, fractional interest or a condo hotel unit (or, if there are multiple owners of a condo hotel unit, all owners of that unit combined), and their guests, may occupy their unit no more than 90 days per calendar year with a maximum of 29 days of use during any 60 day period.

5. Condominium Hotels. Such development is subject to the following conditions/restrictions:

   a) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation. Nothing in the preceding sentence shall prohibit, on and after the effective date of adoption of this Section, the conversion of hotel rooms in an approved Limited Use Overnight Visitor Accommodation to timeshare, fractional or condominium-hotel units; provided that after any such conversion, the ratio of timeshare, fractional and condominium-hotel units does not exceed that required under the definition of "Limited Use Visitor Overnight Accommodations" in effect as of the date of approval of the project, with an approved

amendment to the coastal development permit for the project.

b) A maximum of 25% of the total number of guestrooms/units in the total project as a whole may be subdivided into condominium hotel units and sold for individual ownership.

c) The hotel owner/operator shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. The hotel operator must be the same entity for both the traditional hotel guestroom/units and the condo hotel units.

d) The Condominium Hotel facility shall have an on-site hotel operator to manage booking of all guestrooms/units (both traditional and condo hotel guestrooms/units). Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for use by the general public, either through the operator or a rental agent other than the operator, on the same basis as a traditional hotel room.

e) As used in this Section 5, the term " to book" or "booking" shall mean the confirmation of a reservation request for use of a Condominium-Hotel unit by either the owner of the unit, the owner's permitted user or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

Each owner of a Condominium-Hotel unit shall have the right, in its sole discretion, to engage either the operator or a rental agent of his or her choice to serve as the rental agent for their unit, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis. The operator shall have the right and obligation to offer for public rental all time periods not reserved by a Condominium-Hotel unit owner for his or her personal use, or for the use of an owner's permitted user, or reserved for use by a public renter procured by an owner's rental agent who is not the operator. Whether or not the hotel operator is selected as an owner's exclusive rental agent, the operator shall manage the booking and the reservation of all units in the Condominium-Hotel. All Condominium-Hotel unit owners, and their rental agents, must comply with the following restrictions:

i. Condominium-Hotel unit owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units;

ii. As more fully described in Section 5(t), below, Condominium-Hotel unit owners shall report and certify the rental rate and terms of any rental of the owner's unit made independently of the operator, and the operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Condominium-Hotel unit owner a reasonable fee;

iii. Based on its own rentals and also those certified by those owners who have reported rentals made by them directly or by another rental agent they have selected, pursuant to Section 5(t) below, the operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.

f) The hotel operator shall market all rooms to the general public. Owners of individually owned hotel units may also independently market their units, but all booking of reservations shall be made by and through the hotel operator.

g) The hotel operator shall manage all guestrooms/units as part of the hotel inventory of the Condominium Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing guestrooms/units for use by guests/owners, a service for which the operator may charge the unit owner a reasonable fee.

h) If the hotel operator is not serving as the exclusive rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill public demand. The owner or an owner's rental agent may not withhold units from use unless they have already been reserved for use by the owner, consistent with the owner's maximum use right, as set forth in Section 5(l), below. In all circumstances, the hotel operator shall have full access to the unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

i) All guestrooms/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the

individually owned units.

j) All individually owned hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity lever in the California coastal zone.

k) The hotel operator shall maintain records of usage by owners and guests and rates charged for all guestrooms/units and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Condominium-Hotel unit owner a reasonable fee.

l) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) or their guests for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

m) The occupancy limitations identified in Section 5(k) above, shall be unaffected by multiple owners of an individually owned hotel unit or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the occupancy restriction as if they were a single, continuous owner.

n) No portion of the Condominium Hotel may be converted to full-time occupancy of a condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel, other than as provided for in Section 5(a), above.

o) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for a Condominium Hotel within the Downtown "D" District, the landowner(s) of the property upon which the traditional guestrooms/units (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership (e.g. timeshares or condo-hotel units, except as provided in Section 5(a) above) without an approved Coastal Development Permit. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director and the Executive Director of the Coastal Commission prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to, through recordation of a

lease restriction, by any existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and any lessee(s), and on all successors and assigns of the landowner(s) and any lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 5(a) through (n) above may be processed as an amendment to the Coastal Development permit, unless it is determined by the Economic Development Director and the Executive Director of the Coastal Commission that such an amendment is not legally required.

p) The hotel owner shall be required to submit, prior to issuance of a Coastal Development permit, for the review and approval of the Economic and Community Development Director for review and approval and to the Executive Director of the Coastal Commission for review and comment, a Declaration of Restrictions or CC&R's (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 5(a) through (n) above;

2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;

3. A statement that provisions of the CC&R's (Declaration of Restrictions) that reflect the requirements of Sections 5(a) through (n) above, cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections 5(a) through (n) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director that an amendment is not legally required. If there is a section of the CC&R's (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&R's (Declaration of Restrictions) on amendments.

q) The CC&R's (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with

the recordation of the subdivision map for the Condominium Hotel.

r) The provisions of the CC&R's (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 5(a) through (n), above, may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy of the proposed amendments have been submitted to the Executive Director of the Coastal Commission for comment, that an amendment is not legally required.

s) The hotel operator and its successor-in-interest shall be responsible for ensuring that through no act or omission will it assist, enable or in any other manner facilitate any other party subject to these restrictions in violating any of these terms and conditions. Each other of an individual guestroom/unit is severally liable for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

t) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify buyers of the following:

1. Each owner of any individual Condominium Hotel unit is severally liable for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and

2. The occupancy of a Condominium Hotel unit by its owner(s) and their guests is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Condominium Hotel unit who does not retain the operator of the hotel as his or her rental agent shall be obligated by the governing documents of the Condominium

Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

u) The hotel owner/operator and any successor-in-interest hotel owner or operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&R's (Declaration of Restrictions).

v) The hotel owner/operator and any successor-in-interest hotel owner or operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel guestrooms/units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual Condominium Hotel guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 5(a) through (n) above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 5(w) below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

w) Within 120 days of the end of the first calendar year of hotel operations, the hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring by the hotel owner/operator. The hotel operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic

and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations. Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium Hotel to the Economic and Community Development Director and the Executive Director of the Coastal Commission. The audit required after the first year of operations and all subsequent reports shall evaluate compliance by the hotel operator and owners of individual Condominium Hotel guestrooms/units during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Condominium Hotel shall require the operator and each owner of a condominium to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Condominium Hotel project.

x) The hotel owner/operator, or any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions. If the hotel owner and the hotel operator are or at any point become separate entities, the hotel owner and the hotel operator shall be each be severally responsible for with the requirements identified above, and for reporting material non-compliance to the Economic and Community Development Director. If the hotel owner and hotel operator are or become separate entities, they shall be severally liable for violations of terms and conditions (restrictions) identified above.

y) A coastal development permit application for a Condominium Hotel shall include a plan specifying how the requirements outlined

in Article 4(a) Section 450 "T" of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&R's (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Article 4(a) Section 450 "T" of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section Article 4(a) Section 450 "T" of the Zoning Ordinance and this section including deed restrictions and CC&R's (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after a copy has been delivered to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

6. The Fractional Ownership Hotel and the Traditional Hotel which together comprise a Limited Use Overnight Visitor Accommodation are subject to the following conditions/restrictions:

a) As used in Section 6, the following terms are defined as:

(i) "booking" or "to book" shall mean the confirmation of a reservation request for use of a Fractional Ownership Hotel unit by either the owner of a Fractional Interest, his permitted user, an Exchange User or by a member of the public, and the entry of such confirmation in the operator's reservation data base.

(ii) "Exchange Program" means the use of a unit in a Fractional Ownership Hotel by a member who is the owner of occupancy rights in a unit of a fractional project other than the Fractional Ownership Hotel, or in the Fractional Ownership Hotel during time periods other than the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange, pursuant to a program:

(a) in which the owners of fractional interests in fractional interest projects other than the Fractional Ownership Hotel is operated and/or managed by the operator of the Fractional Interest Hotel or by another entity, or

(b) which is operated by an entity that specializes in interval exchanges, where such member has exchanged their occupancy rights for the use of a Fractional Ownership Hotel unit during the particular time period for which a unit in the Fractional Ownership Hotel has been reserved for exchange.

(iii) "Exchange Use" means the use of a unit in the Fractional Ownership Hotel pursuant to an Exchange Program.

(iv) "Exchange User" means a person who is occupying a Fractional Ownership Hotel unit for Exchange Use.

(v) "Fractional Interest" means a Timeshare in a Fractional Ownership Hotel where the undivided interest in a condominium conveyed to an owner is greater than a 1/26th undivided interest, or, if the Fractional Ownership Hotel is not subdivided into condominiums, in which the undivided interest conveyed to an owner is greater than a 1/26 x (the number of units in the Fractional Ownership Hotel) undivided interest in the legal parcel comprising the Fractional Ownership Hotel.

(vi) "Fractional Ownership Hotel" means the portion of a Limited Use Overnight Visitor Accommodation in which ownership of individual units is comprised of Fractional Interests.

(vii) "Traditional Hotel" means the portion of a Limited Use Overnight Visitor Accommodation that is operated as a traditional hotel (i.e. the guestrooms are not owned or operated as timeshares or fractional units).

b) Any overnight visitor accommodations for which a certificate of occupancy has been issued prior to or on the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use shall prohibit, on and after the effective date of adoption of this Section, the conversion of units in a Fractional Interest project or Condominium Hotel to Fractional Interest or Condominium Hotel units; provided that after any such conversion, the ratio of Fractional Interest and Condominium Hotel units does not exceed that required under the definition of "Limited Use Visitor

Overnight Accommodations" in effect as of the date of approval of the project.

c) A maximum of 15% of the total number of guestrooms/units in the project as a whole may be subdivided into Fractional Interests.

d) Either the owner/operator of the Traditional Hotel or the owner or operator of the Fractional Ownership Hotel shall retain control through ownership, lease, easements, or other legal means, of all structural elements, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities for both the Traditional Hotel and the Fractional Ownership Hotel.

e) The Fractional Ownership Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms/units in the Fractional Ownership Hotel. The on-site hotel operator for the Fractional-Ownership Hotel may be a different entity from the on-site hotel operator for the Traditional Hotel in the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part. Each Fractional Interest owner shall have the right, in its sole discretion, to engage a rental agent of his or her choice, other than the operator, to serve as the rental agent for their Fractional Interest, but any engagement of a rental agent other than the operator shall be on a non-exclusive basis commencing sixty (60) days in advance of a time period the owner has a right to reserve and use under the governing documents for the Fractional Ownership Hotel. The operator of the Fractional Ownership Hotel shall have the right and obligation to offer for public rental all time periods not reserved by a Fractional Interest owner for his or her personal use, for "Exchange Use" or for use by an owner's permitted user sixty (60) days in advance of any such occupancy period. On and within this sixty (60) day window, members of the public shall have reservation rights equal to those for owners, their permitted users and Exchange Users. The Fractional Ownership Hotel operator shall manage the booking of the reservation of all guestrooms/units in the Fractional Ownership Hotel. All Fractional Interest owners, and their rental agents, must comply with the following restrictions:

(i) except for their personal use, or use by an owner's permitted users or an Exchange User, Fractional Interest owners shall not discourage rental of their units or create disincentives meant to discourage rental of their units during their fractional time periods;

(ii) Fractional Interest owners shall certify the rental rate

and terms of any rental of the owner's occupancy periods made independently of the operator, and the hotel operator shall book all unit reservations in the operator's reservation database, a service for which the operator may charge the Fractional Interest owner a reasonable fee;

(iii) The Fractional Ownership Hotel operator shall maintain records of usage for all units and the rental terms of such usage, and shall be responsible for reporting Transient Occupancy Taxes for all units, services for which the operator may charge the Fractional Interest owner a reasonable fee.

f) The operator shall market the rental of available units in the Fractional Ownership Hotel to the general public and shall have a right to charge each Fractional Interest owner a reasonable fee for such marketing.

g) Subject to the requirements of the California Business and Professions Code pertaining to management agreements for Timeshare plans, including, without limitation, restrictions on the term of such management agreements, the operator shall manage all units in a Fractional Ownership Hotel, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.

h) The operator, as the non-exclusive rental agent for the owner of a Fractional Interest entitled to an occupancy period, shall offer for rent to the public any guestroom/unit which has not been reserved by its owner, his or her permitted user or an Exchange User commencing sixty (60) days in advance of such occupancy period. No Fractional Interest owner nor such owner's rental agent may withhold units which have not been reserved by the owner or such owner's permitted users or an Exchange User sixty (60) days or less prior to the commencement of an occupancy period from rental to the public. Nothing in the preceding sentence shall mean that an owner of a Fractional Interest, or such owner's permitted users or an Exchange User, may not elect to reserve a unit in a Fractional Ownership Hotel at any time after the commencement of such sixty (60) day period, provided that the operator or the owner's rental agent has not then rented the unit to a member of the general public. In all circumstances, the Fractional Ownership Hotel operator shall have full access to the guestroom/unit's reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.

i) All guestrooms/unit keys shall be electronic and created by the operator upon each new occupancy to control the use of the individually owned Fractional Ownership Hotel units.

j) All individually owned Fractional Ownership Hotel units shall be rented at a rate similar to that charged for the traditional hotel rooms of a similar class or amenity level in the California coastal zone.

k) Each individually owned Fractional Interest shall be used by its owner(s) or their guests to occupy a unit in a Fractional Ownership Hotel for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

l) The use period limitations identified in Section 6(k) above, shall be unaffected by multiple owners of a Fractional Interest or the sale of a Fractional Interest to a new owner during the calendar year, meaning that all such owners of any given Fractional Interest shall be collectively subject to the use restriction in this Section 6 as if they were a single, continuous owner. No portion of a Fractional Ownership Hotel may be converted to a full-time occupancy condominium or to any other type of a Limited Use Overnight Visitor Accommodation other than as provided for in Section 6(b) above.

m) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Limited Use Overnight Visitor Accommodation of which the Fractional Ownership Hotel is a part, the landowner(s) of the property(ies) within the Downtown "D" District upon which the associated Traditional Hotel is developed shall execute and record a deed restriction(s), subject to the review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, which prohibits the conversion of those traditional hotel guestrooms/units to any other type of ownership, except as permitted in Section 6(b) above. The deed restriction shall be submitted for review and approval of the Economic and Community Development Director after delivery to the Executive Director of the Coastal Commission for review and comment, prior to issuance of the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by any existing lessee(s) of the affected property(ies), through recordation of a lease restriction, and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s)

and lessee(s), including without limitation any future lien holders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with Sections 6(a) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that such an amendment is not legally required.

n) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Economic and Community Development Director and review and comment by the Executive Director of the Coastal Commission, a Declaration of Restrictions or CC&R's (Covenants, Conditions & Restrictions) which shall include:

1. All the specific restrictions listed in Sections 6(b) through (l) above;

2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;

3. A statement that provisions of the CC&R's (Declaration of Restrictions) that reflect the requirements of Sections 6(b) through (m) above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with Sections (b) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required. If there is a section of the CC&R's (Declaration of Restrictions) related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the CC&R's on amendments.

o) The CC&R's (Declaration of Restrictions) described above shall be recorded against all individual property titles simultaneously with the recordation of the subdivision map for the Fractional Ownership

Hotel.

p) The provisions of the CC&R's (Declaration of Restrictions) described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However, minor changes that do not conflict with Sections 6(b) through (l) above may be processed as an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

q) The Fractional Ownership hotel operator and its successors-in-interest shall be responsible for ensuring that through no act or omission will it assist, enable, or in any other manner facilitate any other party subject to these restrictions in violating any of these terms and conditions. Each owner of an individual guestroom/unit is severally liable for any and all violations of terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's Fractional Interest. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.

r) All documents related to the marketing and sale of the Fractional Interests, including marketing materials, sales contracts, deeds, CC&R's and similar documents, shall notify buyers of the following:

1. Each owner of a Fractional Interest is severally liable for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's Fractional Interest;

2. The occupancy of a Fractional Ownership Hotel unit by the owner of a Fractional Interest is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not reserved or in use by the owner, the owner's permitted user or an Exchange User, the owner's time shall be made available for rental by the operator and by the owner's own rental agent to the general public sixty (60) days in advance of an occupancy period pursuant to the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy; and

3. Each owner of a Fractional Interest who does not retain the operator as his or her exclusive rental agent is

obligated by the governing documents of the Fractional Ownership Hotel to truthfully report to the operator (and to certify each such report) each effort, if any, he or she has made to rent his or her unit to a member of the public, and the terms and conditions of any such offer, and the terms and conditions of each rental offer which has been accepted by a member of the public.

s) The initial owner of a Fractional Interest and any successor-in-interest owner of a Fractional Interest, and each future individual unit owner shall obtain, prior to sale of a Fractional Interest, a written acknowledgement from the buyer of that Fractional Interest that occupancy of a unit by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the operator and/or the buyer's rental agent to the general public at least sixty (60) days in advance of an occupancy period, and that there are further restrictions on use and occupancy in the coastal development permit and the CC&R's (Declaration of Restrictions).

t) The operator and any successor-in-interest to the operator shall monitor and record the occupancy and use of the Fractional Ownership Hotel by the general public and the owners of individual Fractional Interests throughout each year. The monitoring and record keeping shall include specific accounting of all owner usage of each individual guestroom/unit in the Fractional Ownership Hotel. The records shall be sufficient to demonstrate compliance with the restrictions set forth in Sections 6(a) through (l) above. The owner/operator shall also maintain documentation of rates paid for hotel occupancy and of marketing efforts by the operator, and by the rental agents of owners other than the operator. All such records shall be maintained for ten years and shall be made available to the Economic and Community Development Director and the Executive Director of the Coastal Commission upon request and to any auditor required by Section 6(u) below. Within 30 days of commencing hotel operations, the operator of the Fractional Ownership Hotel shall submit notice to the Economic and Community Development Director and to the Executive Director of the Coastal Commission of commencement of hotel operations.

u) Within 120 days of the end of the first calendar year of hotel operations, the Fractional Ownership Hotel operator shall retain an independent auditing company, approved by the Economic and Community Development Director, to perform an audit to evaluate compliance with the special conditions of the coastal development

permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the hotel owner/operator. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Economic and Community Development Director, for review and approval, and shall be available to the Executive Director of the Coastal Commission upon request, within six months after the conclusion of the first year of hotel operations. Within 120 days of the end of each succeeding calendar year, the hotel operator shall submit a report to the Economic and Community Development Director and the Executive Director of the Coastal Commission, regarding compliance with the special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Fractional Ownership Hotel. The audit required after one year of operations and all subsequent reports shall evaluate compliance by the Fractional Ownership Hotel operator and owners of individual Fractional Interests during the prior one-year period. After the initial five calendar years, the one-year reporting period may be extended to two years upon written approval of the Economic and Community Development Director. The Economic and Community Development Director may grant such approval if each of the previous reports revealed compliance with all restrictions imposed above. The Economic and Community Development Director or the Executive Director of the Coastal Commission may, by written notice to the operator, require a third party audit regarding the subject matter of the reports required in this section for the prior three (3) or fewer calendar years if he or she reasonably believes that the foregoing submitted reports are materially inaccurate. The governing documents for the Fractional Ownership Hotel shall require the operator and each owner of a Fractional Interest to fully cooperate with and to promptly produce any existing documents and records which the auditor may reasonably request. The expense of any such audit shall be payable by the owner's association for the Fractional Ownership Hotel.

v) If the Fractional Ownership Hotel owner/operator and any successor-in-interest, shall be responsible for complying with the terms and conditions stated above at all times in perpetuity and shall be liable for violating these terms and conditions. If the fractional Ownership hotel owner and the Fractional Ownership operator at any point become separate entities, the Fractional Ownership Hotel owner and the Fractional Ownership Hotel operator shall each be severally responsible for complying with the requirements identified above. If the Fractional Ownership Hotel

owner and hotel operator are or become separate entities, the operator shall be liable for its failure to monitor and to report non-compliance with the terms and conditions (restrictions) identified above.

w) Prior to the issuance of a coastal development permit for a Fractional Ownership Hotel, an applicant shall submit a plan for approval specifying how the requirements outlined in Article 4(a) Section 450 "T" of the Zoning Ordinance will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC&R's (Declaration of Restrictions) that will be used to satisfy the requirements and the form of the rental program agreement that will be offered to the Fractional Interest owners by the Fractional Ownership Hotel operator. The plan must demonstrate that the applicant will establish mechanisms that provide the Fractional Ownership Hotel operator and any successor-in-interest Fractional Ownership Hotel operator adequate legal authority to implement the requirements of Article 4(a) Section 450 "T" of the Zoning Ordinance above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Ownership Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Article 4(a) Section 450 "T" of the Zoning Ordinance and this section including deed restrictions and CC&R's (Declaration of Restrictions) shall not occur without an amendment to the coastal development permit, unless it is determined by the Economic and Community Development Director, after delivery to the Executive Director of the Coastal Commission for review and comment, that an amendment is not legally required.

7. Protection of Existing Overnight Visitor Accommodations - Any overnight visitor accommodations for which a Certificate of Occupancy has been issued prior to or on the effective date of adoption of this section shall not be converted to a Limited Use Overnight Visitor Accommodation. Demolition of existing lower cost overnight visitor accommodations shall be discouraged. If demolition of existing lower cost units is authorized, mitigation shall be provided as specified below:

a) Monitoring of Lower Cost Units in the Coastal Zone

The City shall monitor a LUP requirement to insure that a minimum of 400 lower cost units shall be maintained in the Coastal Zone by reporting the status of the current number of lower cost units within the Coastal Zone within all staff reports containing visitor serving accommodations. This

information shall be forwarded to the Coastal Commission prior to the issuance of the Coastal Permit.

b) Assistance to Existing Lower Cost units in the Coastal Zone

At such time as the inventory of lower cost units would be at 405, the City would pursue outreach to the existing property owners in an attempt to assure their short and long term survival. Resources that can be brought to bear to assist them could include the City's Façade Enhancement Program, in which matching funds can be made available for painting, awnings, signage and landscaping.

c) Restrictions to Protect Lower Cost Units in the Coastal Zone

Any project that is required to provide lower cost units shall be required to record a deed restriction against the property that requires the protection of the lower cost units, such that the demolition and re-build of lower cost units would not result in the total number of lower cost units to be less than a total of 400 units in the Coastal Zone.

d) When referring to overnight accommodations, lower cost shall be defined by a certain percentage of the statewide average room rate as calculated by the Smith Travel Research website (www.visitcalifornia.com). A suitable methodology would base the percentage on market conditions in San Diego County for the months of July and August and include the average cost of motels/hotels within 5 miles of the coast that charge less than the Statewide average or 82%. High cost would be room rates that are 20% higher than the Statewide average, and moderate cost room rates would be between high and low cost. The range of affordability of new and/or replacement hotel/motel development shall be determined as part of the coastal development permit process and monitored as part of the City's inventory of visitor overnight accommodations.

460 Accessory Use Classifications

A. Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes accessory dwelling units ("second units") and home occupations.

470 Temporary Use Classifications

A. Agricultural Specialty Sales, Seasonal. Retail sale of seasonal specialty items

for a period not to exceed 45 days (e.g. Christmas Tree Sales, Pumpkin Sales).

B. Yard/Garage Sales. A sales event advertised by any means at a residential location where members of the public may purchase identifiable or tangible items of personal property; provided however, it shall not mean any event which constitutes a sales activity, wholesale or retail, by any business which has a current business license issued by the City. Items sold shall be limited to personal property owned by the occupant of the property and/or surrounding neighbors.

Article 12 D Downtown District

Sections:

1210	Specific Purposes
1220	Land Use Regulations by Subdistrict
1230	Development Regulations
1240	Review of Plans
1250	Amendments

1210 Specific Purposes

In addition to the general purposes listed in Article 1, the specific purposes of the D Downtown District are to:

A. To promote the long-term viability of and rejuvenation of the Redevelopment Project Area and to protect and enhance primarily boating and water-dependent activities; and secondarily other public-oriented recreation uses in the Oceanside Small Craft Harbor

B. Maintain and enhance an appropriate mix of uses; and

C. Provide land-use controls and development criteria consistent with the General Plan, the Redevelopment Plan, and the Local Coastal Program.

Consistent with these purposes, it is the intent of the D District to establish special land-use subdistricts with individual objectives as described below.

Subdistrict 1: To provide a commercial/retail and office complex offering a wide variety of goods and services to both the community at large and to tourists and visitors. Residential uses are encouraged when and where appropriate.

Subdistrict 1(A) : To provide a commercial/retail and office complex promoting the conservation, preservation, protection, and enhancement of the historic district and to stimulate the economic health and visual quality of the community to tourists and visitors. Residential uses are encouraged when and where appropriate.

Subdistrict 2: To provide sites for a financial center supported by professional offices. *Residential Uses are permitted when and where appropriate as part of a Mixed-Use Development.*

Subdistrict 3: To provide for a mix of office development, interspersed with residential development, in response to market demands.

Subdistrict 4(A): To provide a mix of transient and permanent residential uses along the South Strand between Tyson and Wisconsin streets.

Subdistrict 4(B): To provide transient and permanent residential uses (hotels and motels) in close proximity to the beach and recreational facilities.

Subdistrict 5: To provide a high-density residential neighborhood in an urban setting in close proximity to shopping, employment, transportation and recreational facilities.

Subdistrict 5(A): To provide a medium-density residential neighborhood at South Pacific Street with an urban setting in close proximity to shopping, employment, transportation and recreational facilities.

Subdistrict 6(A): To provide sites for highway business and tourist/visitor uses related to the harbor and the Interstate 5 freeway, primarily oriented to visitor-serving commercial establishments.

Subdistrict 6(B): To provide sites for highway business and tourist/visitor uses related to the harbor and the Interstate 5 freeway, primarily oriented to recreational commercial facilities. Residential uses are allowed as part of a mixed use project.

Subdistrict 6(C): To provide sites for uses supporting the Oceanside Small Craft Harbor, consistent with the Harbor Precise Plan.

Subdistrict 6(D): To provide a recreational facility for the purpose of boating-oriented and park-oriented passive and active recreation, and appropriate ancillary commercial and residential uses consistent with the Harbor Precise Plan.

Subdistrict 7(A): To provide sites for a high-density residential environment in an urban setting in close proximity to shopping, employment, transportation and recreational facilities.

Subdistrict 7(B): To provide for a mix of recreational and commercial uses conveniently located near recreational and residential areas. Residential uses are allowed as part of a mixed use project.

Subdistrict 8(A): To provide a mix of hospital and medical uses.

Subdistrict 8(B): To provide a mix of hospital and medical uses, office development, interspersed with residential development in response to market demand.

Subdistrict 9: To provide opportunities for commercial uses supporting other land uses within the downtown and serving the entire community. Residential uses are encouraged where appropriate.

Subdistrict 10: To provide a joint open space and recreational area within the floodplain of the San Luis Rey riverbed.

Subdistrict 11: To provide sites for commercial uses serving the adjacent residential neighborhood.

Subdistrict 12: To provide a special tourist/visitor oriented subdistrict that relates to the pier, ocean, beach, marina and freeway.

Subdistrict 13: To provide for a mix of visitor/commercial and office uses. Residential uses are allowed as part of a mixed use project.

Subdistrict 14: To provide for public transportation and railway uses.

Subdistrict 15: To provide for public facilities, public parks, open spaces, and other public oriented uses.

1220 Land Use Regulations by Subdistrict

In Schedule D-1, the letter "P" designates use classifications permitted in the D Downtown District. The letter "U" designates use classifications permitted on approval of a Conditional Use Permit upon approval by the Community Development Commission. The letter "C" designates use classifications permitted upon approval of an administrative Use Permit upon recommendation of the Redevelopment Advisory Committee. The letter "V" designates uses that are considered to be visitor severing uses. The "*" designates use classifications that are not permitted.

Schedule D-1

Proposed Land Use Regulations

"D" Downtown District

P - Permitted
U - Use Permit
C - Administrative Use Permit
* - Not Permitted
V - Visitor Serving Uses

SubdistriCt	1	A	2	3	4A	4B	5	5A	6A	6B	6C	7A	7B	8A	8B	9	10	11	12	13	14	15	V
Residential																							
Day Care - Ltd	C	C	C	C	*	*	*	*	*	*	*	*	C	C	C	C	*	*	*	*	*	*	
Group Residential	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	*	*	*	*	*	
Live/work	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	C	*	C	*	*	*	*	
Multi - Family	U	U	*	U	P	U	P	P	*	U	*	P	U	U	U	U	*	U	*	U	*	*	
Residential Care	*	*	*	U	*	*	*	*	*	*	*	U	*	U	U	U	*	*	*	*	*	*	
Single - Family	*	*	*	U	P	*	P	P	*	*	*	P	U	U	U	U	*	*	*	*	*	*	
Public/ Semi - Public																							
Club / Lodge	U	U	U	U	*	*	*	*	U	*	U	*	U	*	*	U	*	*	*	*	*	*	V
Cultural Institution	C	C	C	C	*	*	*	*	C	*	*	*	U	U	U	U	*	*	C	U	*	*	V
Day Care - General	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	*	C	C	C	C	C	
Emergency Health Care	*	*	*	*	*	*	*	*	*	*	*	*	*	P	P	U	*	*	*	*	*	*	
Government Offices	P	P	P	P	*	*	*	*	P	*	U	*	*	*	*	P	*	*	U	U	U	P	
Hospital	*	*	*	*	*	*	*	*	*	*	*	*	*	P	P	*	*	*	*	*	*	*	
Parks & Recreation Facility	U	U	*	U	U	*	U	U	P	P	P	U	U	U	U	U	U	*	U	U	C	P	V
Public Safety Facility	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	P	
Religious Assembly	*	*	U	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	
Residential Care - General	*	*	*	*	*	*	*	*	*	*	*	*	*	U	U	*	*	*	*	*	*	*	
Utilities - Major	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	
Utilities - Minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Commercial																							
Ambulance Service	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	*	*	*	*	*	
Animal product sales	C	C	*	C	*	*	C	*	*	*	C	*	C	*	*	C	*	*	*	*	*	*	
Artist Studio	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	C	*	C	*	*	*	*	V
Bank / Savings & Loan	P	P	P	P	*	*	*	*	*	*	*	*	U	*	*	P	*	*	*	*	*	*	
Drive-through/drive up	U	U	U	U	*	*	*	*	*	*	*	*	U	*	*	U	*	*	*	*	*	*	V
Self-service ATM	C	C	C	C	*	*	*	*	*	*	*	*	C	*	*	C	*	*	*	*	*	*	V
Catering Service	C	C	C	*	*	*	*	*	*	*	*	*	*	*	*	C	*	*	*	*	*	*	
Commercial Recreation & Entertainment	U	*	U	*	*	*	*	*	U	U	U	*	U	*	*	U	U	*	U	*	*	*	V
Communication Facility	U	U	U	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	U	*	*	
Eating and drinking establishment	P	P	P	*	P	*	*	*	P	P	P	*	P	P	*	P	P	P	P	P	P	P	V
Restaurant	P	P	P	*	P	*	*	*	P	P	P	*	P	P	*	P	P	P	P	P	P	P	V
Espresso Stand	U	U	U	*	U	*	*	*	U	U	U	*	U	*	*	U	U	U	U	U	U	U	V
Small scale entertainment	P	P	C	*	*	*	*	*	P	P	P	*	P	*	*	C	*	*	P	P	*	*	V
Live entertainment	U	U	*	*	*	*	*	*	U	U	U		U	*	*	*	*	*	U	U	*	*	V
Fast food/takeout	P	P	P	*	P	*	*	*	P	P	P	*	P	P	*	P	P	P	P	P	P	P	V
Full liquor service	U	U	U	*	U	*	*	*	U	U	U	*	U	*	*	U	*	U	U	U	*	U	V

Subdistrict	1	1	2	3	4A	4B	5	5A	6A	6B	6C	7A	7B	8A	8B	9	10	11	12	13	14	15	V
Food & Beverage Sales	C	C	C	*	C	*	C	*	C	C	C	*	C	*	*	*	*	C	C	C	C	C	
Convenience Market	U	U	U	*	U	*	U	*	U	U	U	*	U	*	*	*	*	U	U	U	U		
Grocery/Neighborhood Market store greater than 8,000 sq. ft.	U	U	U	*	U	*	U	*	U	U	U	*	U	*	*	*	*	U	U	U	U	*	V
Grocery/Neighborhood Market store less than 8,000 sq. ft.	C	C	C	*	C	*	C	*	C	C	C	*	C	*	*	*	*	C	C	C	C	*	V
Specialty Market	P	P	P	*	P	*	P	*	P	P	P	*	P	*	*	*	*	P	P	P	P	*	V
Home Occupation	P	P	*	P	P	P	P	P	*	P	*	P	P	*	P	P	*	P	*	P	*	*	
Marine Sales, Rentals, and Services	*	*	*	*	*	*	*	*	P	P	P	*	U	*	*	*	*	*	*	*	*	*	
Offices	P	P	P	P	*	*	*	*	U	U	*	*	P	U	U	P	*	P	C	P	P	*	
Administrative/Business	P	P	P	P	*	*	*	*	U	U	*	*	P	U	U	P	*	P	C	P	P	*	
Production	P	P	P	P	*	*	*	*	U	U	*	*	P	U	U	P	*	P	C	P	P	*	
Professional	P	P	P	P	*	*	*	*	U	U	*	*	P	U	U	P	*	P	C	P	P	*	
Temporary	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	*	
Temporary Real Estate	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	*	
Pawns shops	C	C	C	*	C	*	*	*	*	C	*	*	*	*	*	*	*	*	*	C	C	*	
Personal Improvement Services	C	C	C	*	*	*	*	*	C	C	C	*	C	*	*	*	*	C	C	C	*	*	
Health/Club/Studio/Spa	C	C	C	C	*	*	*	*	C	C	C	*	C	*	*	*	*	C	C	C	*	*	
Day Spa	P	P	P	P	*	*	*	*	P	P	P	*	P	*	*	*	*	P	P	P	*	*	V
Accessory Massage	U	U	U	U	*	*	*	*	U	U	U	*	U	*	*	*	*	U	U	U	*	*	V
Personal Services	C	C	C	C	*	*	*	*	C	C	C	*	C	*	*	*	*	C	C	C	*	*	
Laundromat/Café	U	U	U	U	*	*	*	*	*	*	*	*	*	*	*	U	*	U	*	*	*	*	V
General Repair	P	P	P	P	*	*	*	*	*	*	*	*	*	*	*	P	*	P	*	*	*	*	
Retail Sales	P	P	P	*	P	*	*	*	C	C	P	*	P	C	C	P	*	P	C	C	P	C	V
Antiques, Antique Shop	P	P	P	*	P	*	*	*	C	C	P	*	P	C	C	P	*	P	C	C	P	*	V
Custom Retail	C	C	C	*	C	*	*	*	*	C	*	*	*	*	*	*	*	*	*	C	C	*	V
Secondhand Collectibles and Clothing Sales	P	P	P	*	P	*	*	*	C	C	P	*	P	C	C	P	*	P	C	C	P	*	V
Wine Tasting	U	U	U	*	U	*	*	*	U	U	U	*	U	*	*	U	U	U	U	U	U	*	V
Travel Services	P	P	P	P	*	*	*	*	P	P	*	*	P	*	U	P	*	U	P	C	C	*	V
Automotive Rental (small scale)	*	*	*	*	*	*	*	*	C	C	*	*	C	*	*	C	*	*	C	C	*	*	V
Visitor Accommodations																							
Bed & Breakfast	*	*	*	*	U	U	U	U	U	U	U	*	*	*	*	*	*	*	U	U	*	*	V
Hotel / Motel / Timeshare	U	U	U	*	U	U	U	*	U	U	U	*	U	*	*	U	*	*	U	U	*	*	V
Resort	U	U	U	*	U	U	U	*	U	U	U	*	U	*	*	U	*	*	U	U	*	*	V
Fractional Ownership Hotel	U	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	V
Condominium Hotel	U	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	V
Limited Use Overnight Visitor Accommodation	U	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	V

1230 Development Regulations

The following schedule prescribes development regulations and standards for the D District. Where literal interpretation and enforcement of the development regulations and standards result in undue hardship, practical difficulties or consequences inconsistent with the purposes of these regulations and the Redevelopment Plan, the Community Development Commission may grant a variation. A variation shall not be granted which will change the land uses of the Redevelopment Plan for allow any increase in the maximum height set forth in Additional Development Regulations sub-section (N). Any variation granted with respect to density or intensity of land use, or any variation granted which permits a greater than a 10% reduction in parking requirements above the base development regulations of Article 12 "D" Downtown District shall require a Local Coastal Program Amendment. The Community Development Commission may approve an application for a variation as it was applied for or in modified form as required by the Community Development Commission if, on the basis of the application, plans, materials, and testimony submitted, the Community Development Commission finds:

1) The application of certain regulations and/or standards would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Redevelopment Plan.

2) There are exceptional circumstances or conditions applicable to the property or to the intended development of the property that do not apply generally to other properties having the same requirements, limits, restrictions, and controls.

3) Permitting a variation will not be materially detrimental to the public welfare or injurious to property or improvements in the area.

4) Permitting a variation will not be contrary to the objectives of the Redevelopment Plan.

In permitting any such variation the Community Development Commission shall impose such conditions as are necessary to protect the public health, safety, or welfare, and to assure compliance with the purposes of the Redevelopment Plan.

1231 Transit Oriented Development

The downtown core commercial area is designated a Transit Overlay District (TOD) . The location, design, configuration, and mix of uses in the TOD provides an alternative to traditional development by emphasizing a pedestrian-oriented environment and reinforcing the use of public transportation. The TOD's mixed-use clustering of land uses within a pedestrian-friendly area connected to transit, provides for growth with minimum environmental costs.

The core Downtown's underlying commercial use designation and proximity to the Oceanside Transit Center provide a unique opportunity to create a pedestrian-oriented environment. The establishment of such an area is to encourage a mix of commercial retail, professional office and residential uses which will encourage an efficient pattern of development that supports alternative modes of travel.

Mixed-use projects within the TOD require a Mixed-Use Development Plan. TODs represent a land use strategy, which seeks to strike a balance between resolving today's

critical transportation issues and allowing freedom of movement and choice of travel mode. Although focused on reinforcing transit, the mixed-use and walkable neighborhoods developed should equally support carpools, bus, biking, walking, and more efficient auto use.

Quality of design will be evaluated upon the basis of the projects ability to incorporate specific amenities that encourage alternate travel modes (i.e. bike lockers/racks. employee locker rooms/showers, preferred car/van pool parking). Parking reductions will be considered for those mixed-use projects which can demonstrate a varied peak parking demand for each use by time of day and/or day of the week (see Section (W) 4 and 5.

DOWNTOWN DISTRICT
PROPERTY DEVELOPMENT REGULATIONS

	Basic Requirements	**Additional Regulations**
Residential Development		(II)(JJ)(KK)
Base Density:		(C)(D)
Site Area Per Unit (sq. ft.)	1,500	
Maximum Potential Density:		(C)(D)
Site Area Per Unit (sq. ft.)	1,000	
Minimum Lot Area (sq. ft.)	5,000	(A)(B)(E)
Minimum Lot Width (ft.)	50	(E)
Minimum Setbacks:		(E)(G)(L)
Front (ft.)	10	(H)(K)
Side (ft.)	3' for lots 75' wide or less except where courts are required; 10' from one side-lot line for lots greater than 75' wide or as required for courts.	
Corner Side (ft.)	10	(H)(J)(K)
Rear (ft.)	5; and as required for courts	(I)(K)
Maximum Height of Structures (ft.)	35	(M)(N)(O)
Signs	See Article 33	(GG)
Public Access to the Beach		(HH)
Minimum Site		

Landscaping	25%	(P)(Q) (R)(S)
Vehicular Access:		
Maximum Driveway Width (ft.)	24	(X)(Y)
Private Outdoor Living Space	Minimum 48 sq. ft. required with minimum dimension 6 feet	(FF)
Courts Required		(EE)
Required Facade Modulation	25% of front and side street elevation horizontal and/or vertical must be set back at least 5 feet from setback line	(T)(U)
Parking	See Article 31	(W)
Fences and Walls (ft.)	Maximum height of 6'	(Z)(AA)(BB)
Refuse Storage Areas	See Section 3022	
Underground Utilities	See Section 3023	
Nonconforming Structures	See Article 35	

D District Property Development Regulations (continued)

	Basic Requirements	Additional Regulations
Nonresidential Development		(II)(KK)
Minimum Lot Area (sq. ft.)	5,000	(A)(B)
Minimum Lot Width (ft.)	50	
Minimum Setbacks:		(E) (G) (L)
Front (ft.)	10	(H)
Side (ft.)	0	(H)(I)
Corner Side (ft.)	10	(H)(J)
Rear (ft.)	0	(H)(I)

Maximum Height (ft.) of Structures	45	(M)(N)(O)
Maximum Floor Area Ratio	2	(F)
Minimum Site Landscaping	15%	(P)(Q)(S)
Fences and Walls (ft.)	8'	(Z)(AA)(BB)
Public Access to the Beach		(HH)
Off-Street Parking and Loading		(V)
Signs	See Article 33	(GG)
Outdoor Facilities	See Section 3020	(CC)
Employee Eating Areas		(DD)
Screening of Mechanical Equipment	See Section 3021	
Refuse Storage Areas	See Section 3022	
Underground Utilities	See Section 3023	
Performance Standards	See Section 3024	
Nonconforming Structures	See Article 35	

D DOWNTOWN DISTRICT:
Additional Development Regulations

(A) The provisions of Section 3013: Development on Substandard Lots shall apply except that in the D District mergers of lots under common ownership shall not be required for purposes of compliance with this ordinance.

(B) See Section 3014: Uncertainty of Boundaries.

(C) The maximum density for Subdistrict 5A is one dwelling unit per 1,500 square feet of site area.

(D) 1. The Land Use Plan would allow for a maximum of 29 to 43 units per acre. The base of 29 units per acre shall be considered the appropriate density for development within each residential land use designation. The base density may be increased from 29 units per acre to 33 units per acre if an underground parking structure that is 50% or more below grade is used in a residential project to provide all of the required parking. All residential projects that do not have an underground parking structure shall have a maximum density of 29 units per acre.

2. Residential projects located within Subdistrict 8B may request a waiver, through the conditional use permit process, to the requirement that all required parking be contained in an underground parking structure. Such projects within Subdistrict 8B may achieve density up to 43 dwelling units

per acre provided the project possesses the excellence of design criteria and characteristics described in Section B below. Residential projects with density below the base densities shall be considered to be consistent with the land use designation.

3. Residential projects using an underground parking structure which is 50% or more below finish grade to provide 75% of the required parking, and which possess an excellence of design features, shall be granted the ability to achieve densities above the base density of 29 or 33 units per acre if underground garage is provided, up to the maximum density of 43 units per acre upon approval of a Conditional Use Permit.

   (a) Residential projects on lots 5,000 square feet or smaller may achieve densities above 29 units per acre without providing an underground parking structure, upon approval of a Conditional Use Permit.

   (b) Projects located on The Strand may achieve densities above 29 units per acre without providing an underground parking structure upon approval of a Conditional Use Permit.

4. Project characteristics that exceed standards established by City policy and those established by existing or approved developments in the surrounding area will be favorably considered in the review of acceptable density within the range. Such characteristics include, but are not limited to the following:

   a) Infrastructure improvements beyond what is necessary to serve the project and its population.

   b) Lot standards (i.e. lot area, width depth, etc.) which exceed the minimum standards established by City policy.

   c) Development standards (i.e. parking, setbacks, lot coverage, etc.) which exceed the standards established by City policy.

   d) Superior architectural design and materials.

   e) Superior landscape/hardscape design and materials.

   f) Superior recreation facilities or other amenities.

   g) Superior private and/or semi-private open space areas.

   h) Floor areas that exceed the norm established by existing or approved development in the surrounding area.

   i) Consolidation of existing legal lots to provide unified site design.

   j) Initiation of residential development in areas where nonconforming commercial or industrial uses are still predominant.

   k) Participation in the City's Redevelopment, Housing or Historical Preservation programs.

l) Innovative design and/or construction methods, which further the goals of the General Plan.

The effectiveness of such design features and characteristics in contributing to the overall quality of a project shall be used to establish the density above base density. No one factor shall be considered sufficient to permit a project to achieve the maximum potential density of a residential land use designation.

(E) Lots within Subdistricts 5 may be subdivided upon the approval of the Community Development Commission (pursuant to the Subdivision Map Act and the Subdivision Ordinance), provided that each lot thus created is 2,500 square feet or more in area and 25 feet or more in width, and has vehicular access to a public or private alley. Lots within Subdistrict 9 which front on Tremont or Freeman Streets and total 30,000 square feet or more of contiguous area, in a single or multiple ownership, may also be subdivided upon the approval of the Commission with the same provisions as within Subdistrict 5.

One dwelling unit may be located on each subdivided lot provided that each lot meets the yard, density and occupancy requirements of a standard lot with the following exceptions:

(1) Vehicular access to enclosed garages shall be provided from the public or private alley.

(2) Courts shall be provided opposite one interior property line which shall be a minimum depth of 8 feet from a window of a habitable room and a minimum width of 16 feet and shall be open to the sky, except for balconies 3 ft. in width and less, provided that eaves may project 2 feet into a court.

(F) The floor area ratio for sites 30,000 square feet up to 175,000 of gross site area shall not exceed 3.0 The floor area ratio for sites greater than 175,000 square feet of gross site area shall not exceed 4.0. The floor area ratio may be distributed over the gross area of the entire site. Any residential portion shall not exceed 43 dwelling units per acre (du.ac).

(G) The provisions of Section 3015: Building Projections into Required Yards and Courts apply except that in the D District, covered porches and stairs may project only 3 feet into the front or rear yard and 2 feet into the side yard.

(H) Along Mission Avenue and North Coast Highway, setbacks shall be as follows:

(1) Lots fronting Mission Avenue: 50 feet from street centerline;

(2) Lots fronting North Coast Highway Street: 45 feet from street centerline.

(3) Front yard setbacks on commercial projects within Subdistrict 1, 1A and 2 alternate setbacks are allowed upon Community Development Commission approval.

(I) A 5-foot side or rear yard setback shall be provided along all alleys. A 10-foot side or rear yard shall adjoin any residential area, and structures shall not intercept a 1:1 or 45-degree daylight plane inclined inward from a height of 12 feet above existing grade at the R district boundary line.

(1) Projects located on The Strand shall be allowed to encroach into the side yard setback, as long as a minimum 3-foot setback is maintained, with Community Development Commission approval.

(J) The corner side yard setback may be reduced to 5 feet provided that the landscaping or structures within the setback do not exceed a height of 30 inches and conforms to sight distance requirements on a case by case basis upon approval by the Community Development Commission.

(K) Parking structures shall not encroach upon setback areas unless it is entirely underground.

(L) Proposals for front yard, side yard or rear yard setbacks will be judged on the merits of each individual proposal and the architectural compatibility of all proposed structures with existing or proposed structures on adjoining parcels. Functional site layout with special attention to design of recreational, parking and landscaped areas may produce an acceptable proposal with minimum or no setbacks. However, all projects seaward of or fronting on Pacific Street shall retain a minimum 5-foot front yard setback. Owners of abutting property shall be provided written notice of proposals for no setback on side and rear yards at least 10 days prior to Community Development Commission approval.

Buildings along The Strand shall be designed so that when viewed from the beach, the visual impact of the bulk of the structure is minimized to the maximum extent possible.

The Community Development Commission shall approve or conditionally approve such proposals upon finding that:

1. Allowing reduced or no setbacks is compatible with surrounding development;

2. Granting reduced setbacks or eliminating setbacks entirely will enhance the potential for superior urban design in comparison with development , which complies with the setback requirements;

3. The granting of reduced or no setbacks is justified by compensating benefits of the project plan; and

4. The plan containing reduced or no setbacks includes adequate provisions for utilities, services, and emergency-vehicle access; and public service demands will not exceed the capacity of existing and planned systems.

Permitted uses within the 100 year floodplain shall be limited to open space, passive recreational uses, public parks, limited horticulture, floriculture, uses permitted within sensitive habitat areas pursuant to the City's certified "Standards for the Identification and Protection of Sensitive Habitats" and private commercial recreational uses. Provided soil placement does not exceed a maximum level of 3

Feet existing grade and that such placement does not adversely impact the flood-plain hydrology of the San Luis Rey River as defined and evaluated by the Army Corps of Engineers, the following development may be permitted in the 100 year flood-plain:

Bicycle and pedestrian paths, landscape, fencing, hardscape, waterscape, pools, tennis courts, putting greens, volleyball courts, basketball courts, driving range, shuffle board courts, horse shoes, lawn bowling, gazebos and arbors.

Within the first 50 feet of the required 100 foot wetland buffer zone only transitional upland non-invasive vegetation shall be permitted. Within the second 50 feet of said buffer zone only landscape, hardscape, fencing and pathways for bicycles/pedestrians may be permitted.

All floodplain development shall be capable of withstanding periodic flooding without the construction of flood-protective work. Existing environmentally sensitive habitat area will not be adversely affected. There will be no increase in the peak runoff rate from the developed site as compared to the discharge that would be expected once every ten (10) years during a six (6) hour period. There will be no significant adverse water quality impacts and no downstream bank erosion or sedimentation may result from site improvements. All development shall be reviewed for conformance with the policies and standards of the certified San Luis Rey River Specific Plan.

(M) Height is to be measured from the existing grade, unless otherwise specified.

a) Existing Grade: The surface of the ground or pavement at a stated location as it exists prior to disturbance in preparation for a project as regulated by Section 1240.

b) Street Grade: The top of the curb, or the top of the edge of the pavement or traveled way where no curb exists.

(N) (1) Additional limitations on heights shall apply as follows:

(a) The Strand: No building shall exceed the present elevation of Pacific Street as defined at the time of passage of Proposition A, passed on April 13, 1982, and set forth in the Proposition A Strand Survey dated May 9, 1986.

(b) Subdistrict 4B: Nonresidential structures along Pacific Street shall be the lesser of three stories or 35 feet.

(c) Within Subdistrict 5A residential structures above 27 feet, but below 35 feet in height, are allowed upon approval of a Conditional Use Permit.

(d) Within Subdistrict 2 mixed use structures above 65-feet, up to 90-feet in height, are allowed upon approval of a Conditional Use Permit.

(e) "Within Subdistrict 5 the area located on the west side of North Pacific Street between Surfrider Way and Breakwater Way the maximum height shall be limited to two-stories or 27-feet whichever is less. The exceptions to height limitations provided by Section 3018 shall not apply to any development within this area.

(2) Additional height may be approved with a Conditional Use Permit on a case-by-case basis for:

(a) All nonresidential uses except as otherwise noted in this section.

(b) Master plan mixed use projects located within Subdistricts 1 and 12, if the Commission finds superior design results incorporating the following design standards and regulations:

i Site coverage requirement - Maximum coverage of 60% based on entire gross acreage of Master Site Plan.

ii Additional setbacks at the corners of the center block (bounded by Pacific, Mission, Myers and Third Streets) shall be required to create plazas. A minimum dimension of 15 feet shall be required. Minimum encroachments may include landscaping, outdoor seating, street furniture, and art displays.

iii A pedestrian promenade shall be required adjacent to development on Pacific Street.

iv Public Space Amenity - A minimum of 30% of the entire Master Site Plan area shall be for public or semi-public uses for recreational purposes. Such space shall have minimum dimensions of 15 feet. Paved areas devoted to streets, driveways and parking areas may not be counted toward this requirement. A maximum of 15 % may be enclosed recreation space such as gyms, health clubs, handball/racquetball courts, cultural institutions, meeting/conference facilities or similar facilities. A fee may be imposed for the use of such facilities.

v View Corridor Preservation - View corridors shall be preserved through staggered building envelopes or breezeway requirements. Cross block consolidations shall be required to preserve view corridors by permitting only minimal encroachments into existing right-of-ways. Permitted encroachments may include but not be limited to landscaping, food/ sundries kiosks and street furniture.

vi Maximum Density/Intensity - The maximum intensity of development shall be regulated by Floor Area Ratio (FAR) for Subdistrict 12. The FAR shall apply to the entire Master Site Plan area. FAR shall be calculated on gross acreage of the entire Master Site Plan area. The maximum FAR for Subdistrict 12 shall be 4.0.

vii Maximum Height - 140 feet. Mid-rise towers shall be oriented with their long axis parallel to the ocean sight line and the east-west streets may only permit minimal encroachments so as to open up and maximize the view corridors. Upper floors of towers shall be of varying heights and stepped back or architecturally fenestrated creating plane breaks in the roof or parapet treatment to add interest to the skyline profile.

viii Mid-rise tower facades shall feature multifaceted plane breaks and horizontal cornice and frieze elements, which will diminish the perception of mass and create interesting daytime shadow play and nocturnal lighting effects. Towers shall rise from a horizontally articulated building base to bring human scale to the street level pedestrian activity. Additional human scale elements shall include but not be limited to protruding balconies, colorful awnings, fenestration, iron railings, etc..

ix Only those uses which are transient residential/visitor serving accommodations in nature shall be permitted to achieve the maximum height of 140 feet and only 30% of the Master Site Plan may achieve this maximum height.

x All other uses permitted within these subdistricts may not exceed a maximum height of 90 feet, and only 30% of the Master Site Plan may achieve the mid-height of 90 feet.

xi All other structures in these subdistricts (the remaining 40% of the Master Site Plan) may not exceed a height of 45 feet.

(c) In Sub Districts 7A and 7B, the maximum height limit shall be 45', except that a height limit of up to 65' may be permitted within an approved master plan where the total building floor coverage (footprint) of the development does not exceed more that 35% of the total developable area of the master plan, and the following criteria are met:

i The architectural elevations shall vary in height along any road or street, especially along Hill Street.

ii Roof lines shall be pitched with flat roof lines allowed only for intermittent visual relief in character.

iii The maximum achievable elevation shall not extend for the entire roof line of the given building. (The use of jogs, offsets, height differentiations and other architectural features shall be used to reduce the appearance of a constant roof height.)

iv The use of a full roof, not flat, with appropriate pitch, shall be used whenever possible. (A full roof aids in the reducing any environmental noise pollution by providing proper sound attenuation.)

v In no case shall a building elevation exceed 45 feet in height unless developed under the auspices of a Disposition and Development Agreement, Owner Participation Agreement, Development Agreement or Conditional Use Permit (CUP). In such case, each such Agreement or CUP shall require a site plan and design criteria approval by the CDC.

vi No structure within 50' of the 100 Year Flood-plain boundary shall exceed 45' in height.

(d) Residential projects east of the AT&SF railroad right-of-way.

(e) In addition to the FAR standard required for commercial and mixed use development, the following shall be the maximum height limit per district:

Subdistrict	Maximum Height
1	140 feet
1A	45 feet
2	65 feet
3	65 feet
4A	Restricted by bluff height
4B	35 feet
5	35 feet west of AT&SF 45 feet east of AT&SF
5A	27 feet
6A	65 feet
6B	65 feet
6C & 6D	Pursuant to Harbor Precise Plan
7A	65 feet
7B	65 feet
8A	65 feet
8B	65 feet
9	45 feet
10	San Luis Rey River/Not Applicable
11	35 feet

12	140 feet
13	90 feet
14	45 feet
15	Beach/Strand Park/Restricted by bluff height"

(f) In Subdistrict 6A and 6B provisions i - vi of herein above Section 6(2)(c) shall apply.

(O) See Section 3018: Exceptions to Height Limits. All height exceptions, omitting those allowed under Section 3018, require approval by the Community Development Commission.

(P) Planting Areas. All visible portions of a required setback area adjoining a street shall be planting area or hardscape that includes driveways, walks, parking areas, as well as areas covered by ornamental gravel, crushed rock, or similar materials. However, the front yard setback may not be entirely paved out or composed of hardscape material.

(Q) See Section 3019: Landscaping, Irrigation and Hydroseeding.

(R) The minimum site landscaping shall be provided on the lot surface; plantings on roofs, porches or in planting boxes which are above the lot surface shall not qualify as landscaping, except for landscaping located directly above underground parking which is 50% or more below grade. Hardscape does not qualify as landscaping except that, areas devoted to common patios, pools and other recreational facilities may be included in determining compliance with the landscaping requirement. In addition, for projects of four or fewer units, private outdoor living space can be used to satisfy up to 10 percent of the minimum site landscaping requirement. Residential projects located on The Strand may count 30% of the required landscaping on roof tops toward their landscaping requirement, providing such landscaping or appurtenances or other architectural features (such as guard rails) do not exceed the present elevation of Pacific Street as defined at the time of passage of Proposition A, passed April 13, 1982, and set forth in the Proposition A Strand Survey dated May 9, 1986.

(S) Landscaping Requirements:

(1) For residential projects only located on The Strand is 20%.

(2) Within Subdistricts 1, 2, 9, and 12 landscaping may be reduced (for commercial development only) provided that the developer contributes a fee to provide art work for the proposed project upon approval by the Community Development Commission. The percentage of landscaping to be reduced as well as the amount of the fee will be determined by the Community Development Commission.

(T) The parking structures that are 50% or more below grade, the required facade modulation shall only be applicable to the facade area above the parking structure.

(U) Buildings 50' wide or smaller in width may reduce the amount of facade modulation per Community Development Commission approval. For buildings located on The Strand, alternative facade modulations, either reduced amounts or horizontal modulation may be provided with Community Development Commission approval.

(V) See Article 31: Off-Street Parking and Loading Regulations.

(W) The following parking standards and regulations apply specifically to the D District. If there is a conflict with Article 31, the following parking standards shall apply:

1. All parking shall be in an enclosed garage. Up to 25 percent may be in a semi-enclosure with Community Development Commission approval.

2. Tandem Parking:

   (a) Tandem Parking may be allowed with-a Conditional Use Permit for property located on The Strand.

   (b) For projects located outside of The Strand area but within the Redevelopment Project Area, tandem parking shall be allowed for parcels 33 feet wide or less with a Conditional Use Permit.

   (c) When tandem parking is permitted, parking spaces are assigned to a single unit. Each parking space shall be numbered/lettered. Each unit shall be assigned a specific space or spaces. Each unit whose unit number/letter appears on the corresponding space(s) shall have an exclusive easement for parking purposes over that designated parking space.

3. Visitor parking spaces are required in projects with 25 or more units at a ratio of one additional space per five units above 25 units.

4. Within the Transit Overlay District the number of on-street parking spaces available on the contiguous street frontage of the site may be counted toward the total number of parking spaces required for a non-residential Mixed Use Development Plan.

5. Non-residential Mixed Use Development Plans within the Transit Overlay District may receive a mixed-use parking requirement reduction of up to 25% based upon all of the following criteria: a) proximity to the Oceanside Transit Center, b) demonstrated varied peak demand for parking, and c) project amenities which encourage alternate travel modes.

(X) Any vehicular access over 24 feet in width requires Community Development Commission approval.

(Y) On corner lots or lots with double frontages, vehicular access shall be provided from the secondary street or alley.

(Z) Fences within front yard setback areas are limited to 42 inches in height. Residential fences over 6 feet in height require a variation or a variance.

Nonresidential fences over 8 feet in height require a variation or a variance (See Section 3040).

(AA) A 6-foot solid masonry or concrete wall shall adjoin the property line of the site of a new ground-floor residential use abutting an existing nonresidential use or the property line of a new nonresidential use abutting the site of an existing ground-floor residential use. However, no wall shall be required where the portion of the site within 10 feet of the property line is occupied by planting area or by a building having no openings except openings opposite a street property line.

(BB) All fences, walls and fencing attachments (such as, but not limited to, barbed wire or razor wire) within the Redevelopment Project Area requires Redevelopment Department approval prior to installation. The Redevelopment Department's decision may be appealed to the Community Development Commission.

(CC) See Section 3025: Antennas and Microwave Equipment and Section 3027: Recycling facilities.

(DD) Outdoor eating facilities for employees shall be provided for all office buildings that contain more than 20,000 square feet if no public park is within 1,000 feet. See Section 3028: Employee Eating Areas.

(EE) Courts Opposite Windows, Multifamily Units.

Courts shall be provided for all multifamily development as follows:

(1) Courts Opposite Walls on the Same Site: The minimum depth shall be one-half the height of the opposite wall but not less than 16 feet opposite a living room and 10 feet opposite a required window of any habitable room.

(2) Courts Opposite Interior Property Line: The minimum depth of a court for a required window of a habitable room shall be 6 feet, measured from the property line.

(3) Court Dimensions: Courts shall be a minimum of 16 feet wide and shall be open to sky except for balconies 3 ft. in width and less, provided that eaves may project 2 feet into a court.

(FF) Open Space.

(1) Basic Requirement. Total open space on a site having three or more dwelling units shall be at least 200 square feet per dwelling unit.

(2) Private Outdoor Living Space. Private outdoor living space shall be on patios or balconies within which a horizontal rectangle has no dimension less than 6 feet.

(3) Shared Open Space. Shared open space, provided by non-street side yards, patios and terraces, shall be designed so that a horizontal rectangle inscribed within it has no dimension less than 10 feet, shall be open to the sky, and shall not include driveways or parking areas, or area required for front or street side yards.

(4) Parkland Dedication. All multifamily housing projects shall be subject to the parkland dedication requirements of Chapter 32, Subdivisions, of the City Code because apartments contribute to increased demand for community and neighborhood parks in the same manner as condominiums, cooperatives, and single-family housing. The applicant shall dedicate land or pay a fee, or a combination of dedication and fee as provided by Chapter 32, Article IV of the City Code, and the credit for improvement and private open space under Section 32.50 of the City Code shall apply, if warranted. The fees shall be calculated according to a schedule adopted by the City Council by resolution and shall be payable at the time a building permit is issued.

(GG) The Sign Standards for the Downtown Oceanside Redevelopment Project Area adopted by the Oceanside Community Development Commission and the Harbor Design Standards adopted by the Oceanside Harbor Board of Directors pertaining to signs shall apply where they are more restrictive than Article 33 of the Oceanside Zoning Ordinance.

(HH) In Subdistricts 4A and 15, permanent facilities shall be provided for pedestrian access from the nearest public streets on the bluff top to the public beach. Between Ninth Street and Wisconsin Avenue, such access shall be provided on the average of every 800 feet, but in no event will there be fewer than seven such pedestrian routes. Between Ninth Street and Wisconsin Avenue, no fewer than four permanent facilities shall be provided for vehicular access from the nearest public street on the bluff top to the beach.

(II) Development within Subdistricts 6(C) and 6(D) shall be subject to the Harbor Design Standards.

(JJ) The Property Development Regulations (Section 1230) for residential uses shall apply to all exclusively residential projects within commercially oriented subdistricts.

(KK) Any mixed-use development with commercial and residential land uses combined requires a Mixed-Use Development Plan approved in accordance to the following requirements, to establish the property development regulations for the project. Base District Regulations and Property Development Regulations for Residential and Nonresidential land uses shall serve as the guideline for a mixed-use project. Height shall be regulated by the maximum height allowed in the Subdistrict as set forth in Additional Development Regulations sub-section (N). In no case shall these maximum heights be exceeded. Any deviations from the development regulations shall be evaluated based upon the merits of the development plan. Any deviation granted which permits a greater than 10% reduction in parking requirements above the base development regulations of Article 12 "D" Downtown District shall also require a Local Coastal Program Amendment.

Purpose:

The Mixed-Use Development Plan is intended to provide flexibility in land use regulations and site development standards under control of the Planning Commission and the Community Development Commission where flexibility will enhance the potential for superior urban design.

Initiation:

A mixed-use development may be initiated by filing an application for a Mixed Use Development Plan that complies with the requirements of this subsection (KK).

Required plans and materials:

1. A Mixed-Use Development Plan consisting of a map and textual materials as may be necessary to delineate land uses and locations, existing and projected building types and schematic designs, height and FAR including any proposals for transfer of FAR, site development requirements, existing and proposed open space, circulation, on-site and off-site parking, and any other pertinent information.

2. A comparison between underlying district regulations and standards and any proposed modifications to these regulations and standards, together with resulting impacts on traffic-carrying capacity of affected streets.

3. A statement of the reasons for any requested modifications to regulations or standards and a description of proposed means of mitigating any adverse effects.

Adoption of Mixed-Use Development Plans:

The Community Development Commission shall hold a duly noticed public hearing on the application in accord with the provisions of Article 45. Following the hearing, the Commission may recommend approval of the Development Plan with conditions if it implements the purpose of the Mixed-Use Development Plan. The following findings shall be made by the Community Development Commission:

1. For the residential portion of the project, the total number of dwelling units in the Mixed-Use Development Plan does not exceed the maximum number permitted by the General Plan density of 43 dwelling units per acre. Any plan that would exceed the base density of 29 dwelling units per acre may be approved only if the Community Development Commission finds that the plan conforms to the provisions of Section 1230 of this Ordinance (in particular, Additional Regulation "CC").

2. That the Mixed-Use Development Plan will enhance the potential for superior urban design in comparison with development under the regulations that exist if the Development Plan were not approved;

3. That the Mixed-Use Development Plan is consistent with the adopted Land Use Element of the Redevelopment Plan and other applicable

policies, and that it is compatible with development in the area it will directly affect;

4. That the Mixed-Use Development Plan includes adequate provisions for utilities, services, and emergency access, and public service demands will not exceed the capacity of existing systems;

5. That the traffic expected to be generated by development in accord with the Mixed-Use Development Plan will not exceed the capacity of affected streets; and

6. That the Mixed-Use Development Plan will not significantly increase shading of adjacent land in comparison with shading from development under regulations that would exist if the Mixed-Use Development Plan were not approved.

1235 Nonconforming Commercial Structures

Notwithstanding the provisions of Article 35, a nonconforming commercial building located in a commercial zoning district within the Redevelopment Project Area, which is destroyed to an extent of more than fifty percent (50%) of its replacement value at the time of its destruction by fire, explosion, or other casualty or Act of God, or the public enemy, may be restored to its original density, height, or configuration subject to all other provisions of this Article, provided that such nonconformities are not increased in intensity, and that there is no reduction in the amount of off-street parking which had existed on site prior to such destruction. The use of the rebuilt structure shall be subject to all current zoning use regulations in existence at the time of destruction. Existing uses operating under a conditional use permit, which is in compliance with the existing zoning regulations at the time of destruction, shall not be required to obtain a new use permit. Exterior appearance and facade plans for the rebuilding of nonconforming commercial structures shall be subject to review by the Redevelopment Design Review Committee and approval by the Community Development Commission. (For Residential Nonconforming Buildings See Article 35 Section 3510)

1240 Review of Plans

Certain projects shall require concept plan review in accordance with Article 42 of this Ordinance. All new development projects with the exception of single family residences shall require development plan review in accordance with Article 43. All development plans shall be reviewed by the Redevelopment Staff and by any other City department or division or governmental agency designated by the Redevelopment Director.

Alterations of existing structures, not within Subdistrict 1A or in an Historic Overlay District, are exempt from development plan review unless the alteration adds the following:

a) 10% or more of additional square footage to an existing structure or;

b) adds more than 500 square feet to an existing structure.

Such alterations shall be considered to be major alterations and require development plan review. The Community Development Commission shall approve, conditionally approve, or disapprove development plans for all projects within the designated Redevelopment Project Area.

Development plans for projects in Subdistrict 1A or in an HD Historic Overlay District shall be reviewed by the Historical Preservation Advisory Commission (OHPAC). The proposed demolition of a designated historical site shall also be reviewed by OHPAC and approved, conditionally approved, or denied by the Community Development Commission.

In regards to the Development Plans within the Oceanside Small-Craft Harbor, Planning Commission recommendations shall be made to the Harbor Chief Executive Officer for processing and action in accordance with Article 43.

All discretionary actions within the Downtown District shall require Community Development Commission review, unless otherwise specified in this Ordinance. The Planning Director or Planning Commission shall recommend to the Harbor Chief Executive Officer, approval, conditional approval, or denial of discretionary requests.

The Community Development Commission's, or the Harbor Board of Director's, consideration of discretionary actions shall be through a noticed public hearing if the action requested requires such a public hearing. Where a noticed public hearing is required, the Community Development Commission's review of the discretionary action shall also be through a public hearing. All decisions made by the Community Development Commission and Harbor Board of Directors shall be final.

1250 Amendments

Any amendments to Article 12 of this Ordinance that affect properties within the established California Coastal Zone shall be approved by the California Coastal Commission.

Article 41 Use Permits and Variances

Sections:

4101 Purposes
4102 Authority of the Planning Director, Economic Development and Community Development, Planning Commission, Harbor Board, Community Development, Commission and City Council
4103 Application for Use Permit or Variance
4104 Notice, Administrative Decision, and Public Hearing
4105 Required Findings
4106 Conditions of Approval
4107 Effective Date
4108 Lapse of Approval; Time Extension; Transferability; Discontinuance; Revocation
4109 Changed Plans
4110 Appeals

4101 Purposes

This article provides the flexibility in application of land use and development regulations necessary to achieve the purposes of this ordinance by establishing procedures for approval, conditional approval, or disapproval of use-permit and variance applications. Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area.

Variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon; from geographic, topographic, or other physical conditions on the site or in the immediate vicinity; or from street locations or traffic conditions in the immediate vicinity of the site. Cost to the applicant of strict compliance with a regulation shall not be the sole reason for granting a variance.

Variances may be granted with respect to fences, walls, landscaping, screening, site area, site dimensions, yards, height of structures, courts, distances between structures, open space, signs, off-street parking and off-street loading, frontage, locational requirements and performance standards.

Authorization to grant variances does not extend to use regulations because the flexibility necessary to avoid results inconsistent with the land use objectives of this ordinance is provided by the use permit process for specified uses and by the authority of the Planning Commission to determine whether a specific use belongs within one or more of the use

classifications listed in Article 4.

4102 Authority of the Planning Director, Planning Commission, Economic Development and Community Development Director, Harbor Board, Community Development Commission and City Council

The Planning Commission and Economic Development and Community Development Director shall approve, conditionally approve, or disapprove applications for use permits or variances which are consistent with the General Plan subject to the general purposes of this ordinance, the specific purposes of the base or overlay zoning district in which a development site is located, and the provisions of this article, unless authority for a decision on a use permit is specifically assigned to the Planning Director or Economic Development and Community Development Director, in the individual articles of this ordinance.

Within designated redevelopment areas, the Economic Development and Community Development Director shall recommend approval, conditional approval, or denial of applications for use permits or variances to the Community Development Commission (acting as the Planning Commission for the designated redevelopment area), which shall have final decision-making authority over such applications under this article.

Within the Oceanside Small Craft Harbor, recommendations shall be made by the Harbor Chief Executive Officer for processing and action by the Harbor Board of Directors, which shall have final decision-making authority, except for projects that are also within a redevelopment area, in which case the Community Development Commission shall have final authority.

For use permits involving condominium conversions of five units or more, mobile home park conversions, and regulated uses not within a redevelopment area or the Harbor, the City Council shall have final decision-making authority (see Articles 32, 34, and 36, respectively).

4103 Application for Use Permit or Variance

Applications for use permits and variances shall be initiated by submitting the following materials to either the Planning Department or the Economic Development & Community Development Department:

A. A completed application form, signed by the property owner or authorized agent, accompanied by the required fee, plans and mapping documentation in the form prescribed by the Planning Director or the Economic Development & Community Development Director;

B. A map showing the location and street address of the development site and all lots within 300 feet of the boundaries of the site; and

C. A list, drawn from the last equalized property tax assessment roll, showing the names and addresses of the owners of record of each lot within 300 feet of the boundaries of the site. This list shall be keyed to the map required in subsection (B) above.

4104 Notice, Administrative Decision, and Public Hearing

A. Administrative Decision. For use permit applications that only require the consideration of the Planning Director or Economic Development and Community Development Director, the Planning Director or Economic Development and Community Development Director, shall administratively approve, conditionally approve, or disapprove the use permit application.

B. Public Hearing Required. For use permit and variance applications that require the consideration of the Planning Commission or the Community Development Commission, a public hearing of the Planning Commission or the Community Development Commission shall be held to approve, conditionally approve, or disapprove the use permit or variance application.

C. Time of Administrative Decision or Public Hearing. Within 10 working days after acceptance of a complete application, the Planning Director or Economic Development and Community Development Director shall set a time and place for an administrative decision or a public hearing to be held within 60 days.

D. Notice. Notice of the administrative decision or public hearing shall be given in the following manner:

1. Published Notice. Notice shall be published in at least one newspaper of general circulation within the City at least 10 days prior to the administrative decision or public hearing on the project.

2. Mailed or Delivered Notice. At least 10 days prior to the administrative decision or public hearing, notice shall be mailed to the applicant and all owners of property within 300 feet of the boundaries of the site, as shown on the last equalized property tax assessment role.

E. Contents of Notice. The notice of the administrative decision or public hearing shall contain:

1. A description of the location of the development site and the purpose of the application;

2. A statement of the time, place, and purpose of the administrative decision or public hearing;

3. A reference to application materials on file for detailed information; and

4. A statement that any interested person or an authorized agent may comment or appear and be heard.

F. Multiple Applications. When applications for multiple use permits or variances on a single site are filed at the same time, the Planning Director or Economic Development and Community Development Director shall schedule a combined administrative decision or public hearing.

4105 Required Findings

The Planning Commission, or the Planning Director or Economic Development and Community Development Director, as the case may be, may approve an application for a use permit or variance as it was applied for or in modified form as required by the Planning Director or Economic Development and Community Development Director or Planning Commission if, on the basis of the application, plans, materials, and testimony submitted, the Planning Commission or the Planning Director or Economic Development and Community Development Director finds:

A. For Use Permits.

1. That the proposed location of the use is in accord with the objectives of this ordinance and the purposes of the district in which the site is located.

2. That the proposed location of the conditional use and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan; will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the city.

3. That the proposed conditional use will comply with the provisions of this ordinance, including any specific condition required for the proposed conditional use in the district in which it would be located.

B. For Variances.

1. That because of special circumstances or conditions applicable to the

development site -- including size, shape, topography, location or surroundings -- strict application of the requirements of this ordinance deprive such property of privileges enjoyed by other property in the vicinity and under identical zoning classification;

2. That granting the application will not be detrimental or injurious to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and

3. That granting the application is consistent with the purposes of this ordinance and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district; and, if applicable,

4. OS District Only. That granting the application is consistent with the requirements of Section 65911 of the Government Code and will not conflict with General Plan policies governing orderly growth and development and the preservation and conservation of open-space lands.

4106 Conditions of Approval

In approving a use permit or variance, the Planning Commission, or the Planning Director or Economic Development and Community Development Director as the case may be, may impose reasonable conditions necessary to:

A. Achieve the general purposes of this ordinance or the specific purposes of the zoning district in which the site is located, or to make it consistent with the General Plan;

B. Protect the public health, safety, and general welfare; and

C. Ensure operation and maintenance of the use in a manner compatible with existing and potential uses on adjoining properties or in the surrounding area.

Limits on Conditions of Approval. No conditions of approval of a use permit shall include use, height, bulk, density, open space, parking, loading, or sign requirements that are less restrictive than those prescribed by applicable district regulations.

4107 Effective Date

Effective Date. Use permits administratively approved by the Planning Director or Economic Development and Community Development Director shall become effective on

the date of the Planning Director's or Economic Development and Community Development Director administrative decision, unless appealed to the Planning Commission or the Community Development Commission, as provided for in this article. Use permits and variances approved by the Planning Commission shall become effective on the date of adoption of the Planning Commission or the Community Development Commission resolution, unless appealed, as provided for in Article 46.

4108 Lapse of Approvals; Time Extension; Transferability; Discontinuance; Revocation

A. Lapse of Approvals. A use permit or variance shall lapse two years after the effective date of approval or conditional approval or at an alternative time specified as a condition of approval unless:

1. A grading permit has been issued and grading has been substantially completed and/or a building permit has been issued, and construction diligently pursued; or

2. A certificate of occupancy has been issued; or

3. The use is established; or

4. The use permit or variance is extended.

5. In cases where a use permit or variance is approved concurrently with a Tentative Map and a Final Map or Parcel Map is recorded, the use permit or variance shall be effective for an additional 24 months from the date of recordation of the Final Map or Parcel Map.

B. Time Extension. Upon application by the project applicant filed prior to the expiration of an approved or conditionally approved use permit or variance, the time at which the use permit or variance expires may be extended by the Planning Director, or Economic Development and Community Development Director, or the Planning Commission as the case may be, for a period or periods not to exceed a total of three years. Application for renewal shall be made in writing to the Planning Director or Economic Development and Community Development Director, no less than 30 days or more than 90 days prior to expiration. Decisions on Time Extensions may be appealed, as prescribed in Article 46.

C. Transferability. The validity of a use permit or a variance shall not be affected by changes in ownership.

D. Discontinuance. A use permit or variance shall lapse if the exercise of rights granted by it is discontinued for six consecutive months.

E. Revocation. A use permit or variance that is exercised in violation of a condition of approval or a provision of this ordinance may be revoked, as provided in Section 4706.

4109 Changed Plans

A. Changed Plans. A request for changes in conditions of approval of a use permit or variance, or a change to the approved plans that would affect a condition of approval shall be treated as a new application. The Planning Director or Economic Development and Community Development Director may waive the requirement for a new application if the changes requested are minor, do not involve substantial alterations or addition to the plan or the conditions of approval, and are consistent with the intent of the project's approval or otherwise found to be in substantial conformance.

4110 Appeals

A. Rights of Appeal and Review. Use permit decisions of the Planning Director or the Community Development Commission may be appealed by any interested party to the Planning Commission. Use permit decisions of the Economic Development and Community Development Director may be appealed by any interested party to the Redevelopment Advisory Commission for their recommendation to the Community Development Commission. Use permit and variance decisions of the Planning Commission may be appealed by any interested party to the City Council.

B. Procedures; Public Hearings. Procedures for appeals shall be as prescribed by Article 46.