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DATE: September 9, 2009

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

FROM: Economic and Community Development Department

SUBJECT: **ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO THE SUGGESTED MODIFICATIONS FOR THE LOCAL COASTAL PROGRAM AMENDMENT (LCPA-201-07) AND ZONE AMENDMENT (ZA-201-07) FOR ALLOWING TELECOMMUNICATION FACILITIES WITHIN THE COASTAL ZONE**

**SYNOPSIS**

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-201-07) and introduce an ordinance for Zone Amendment (ZA-201-07), to regulate telecommunication facilities within the coastal zone.

**BACKGROUND**

On November 7, 2007, the Oceanside City Council and Community Development Commission in a joint meeting approved Resolution No. 07-R0673-1 and Ordinance No. 07-OR0724-1, amending Article 12 of the Downtown "D" District allowing for telecommunications facilities within the Coastal Zone.

On May 22, 2008, the California Coastal Commission granted a request to waive the time limits for hearing LCPA-201-07, up to a maximum of one year. On June 11, 2009, the California Coastal Commission approved LCP Amendment 1-08 (LCPA-201-07) with several modifications to the text. Since the text for the telecommunications facilities has been modified from the original City approval, the revised language is required to be approved by the City Council.

**Environmental Determination:** A Certificate of Exemption (Section 15332 (a)) has been prepared for the project. Under the provisions of the California Environmental Quality Act, the Community Development Commission will consider the exemption (Section 15332(a)) during its hearing on the project.

## **ANALYSIS**

Over the last several weeks staff has had several conversations with the Coastal Commission staff regarding modifications to the language for telecommunications facilities located within the Coastal Zone. The Coastal Commission staff wanted to further define Communication Facilities as stipulated within Section 3025 of the Oceanside Zoning Ordinance. In addition, the Coastal Commission staff requested to eliminate stand-alone telecommunication facilities in the Coastal Zone within the Redevelopment Project Area only. (Stand-alone telecommunication facilities are not a co-user facility with typical uses consisting of tower and pole-like structures). The revised language that the Coastal Commission approved to be included within Article 4(a) and Article 12 is described in Exhibit "A"; those items being added are in bold and underlined.

Due to the fact that the revised language is the same as found in Section 3025 of the Oceanside Zoning Ordinance, staff concurred with the Coastal Commission's modifications. Staff also believes the elimination of stand-alone communications facilities is appropriate in the Coastal Zone within the Redevelopment Project Area.

## **COMMISSION OR COMMITTEE REPORTS**

The Redevelopment Advisory Committee (RAC) reviewed the amendment at its August 12, 2009 meeting.

## **FISCAL IMPACT**

Not applicable.

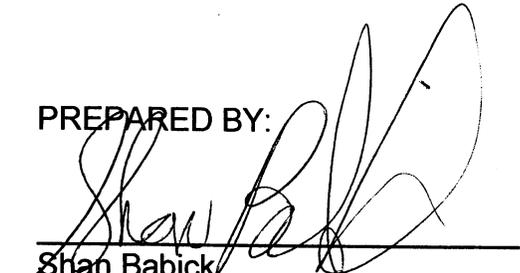
## **CITY ATTORNEY'S ANALYSIS**

Pursuant to the Local Coastal Program and Oceanside Zoning Ordinance Articles 12 and 45, Section 4504 B the City Council is authorized to hold a public hearing on this Zone Amendment and Local Coastal Program amendment. Consideration of the Zone Amendment and LCP Amendment should be based on the evidence presented at the public hearing. After conducting the public hearing, the Commission shall approve, conditionally approve, or disapprove the Zone Amendment and the Local Coastal Program amendment and introduce the ordinance. The referenced documents have been reviewed and approved as to form by the City Attorney.

**RECOMMENDATION**

Staff recommends that the City Council adopt a resolution approving the revisions to the Suggested Modifications to the Local Coastal Plan Amendment (LCPA-201-07) and introduce an ordinance for Zone Amendment (ZA-201-07), to regulate telecommunication facilities within the coastal zone.

PREPARED BY:

  
\_\_\_\_\_  
Shan Babick  
Associate Planner

SUBMITTED BY:

  
\_\_\_\_\_  
Peter A. Weiss  
Executive Director

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager  
Jane McVey, Economic and Community Development Director  
Kathy Baker, Redevelopment Manager



**EXHIBITS/ATTACHMENTS**

1. Resolution
2. Ordinance
3. Exhibit "A"
4. Staff Report dated November 7, 2007
5. Coastal Commission Staff Report dated May 27, 2009
6. Coastal Commission Certification Amendment No. 1-08
7. Notice of Exemption



1 WHEREAS, on September 9, 2009, the Oceanside City Council and Community  
2 Development Commission, after giving the required public notice, conducted a joint public hearing  
3 as prescribed by law to consider the modifications from the California Coastal Commission to  
4 LCPA-201-07, attached hereto as Exhibit "A" incorporated herein; and

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

8 WHEREAS, the Oceanside City Council finds that the revisions to Local Coastal Program  
9 Amendment (LCPA-201-07) as amended by the City Council, conforms with and is adequate to  
10 carry out the land use plan of the Local Coastal Program.

11 NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE as  
12 follows:

13 1. Pursuant to Public Resources Code 30514 (a), the Oceanside City Council hereby  
14 certifies that Local Coastal Program Amendment (LCPA-201-07) is intended to be carried out in a  
15 manner fully in conformity with the Coastal Act.

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

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

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1           WHEREAS, based upon such evidence, testimony and staff reports, this Council finds the  
2 proposed amendments to Articles 4(a) and 12 conform to the City’s Redevelopment Plan and General  
3 Plan;

4           NOW, THEREFORE, the City Council of the City of Oceanside DOES ORDAIN as follows:

- 5  
6           1. That Zone Amendment Application ZA-201-07 and LCPA-201-07 amending the text of  
7           Articles 4(a) and 12 of Oceanside Zoning Ordinance No. 07-0R0236-1 and as specified in  
8           Exhibit “A” is hereby approved and the Economic and Community Development Director is  
9           hereby directed to amend the Zoning Ordinance text as specified by Exhibit “A”.
- 10           2. Provisions of Exhibit “A”, as incorporated, have been included for informational purposes  
11           only and reflect the amended sections of the Oceanside Redevelopment Zoning Ordinance  
12           No. 07-0R0236-1 and which have been stricken, removed or otherwise modified by the  
13           enactment of this Ordinance.
- 14           3. Notice is hereby given that the time within which judicial review must be sought on this  
15           decision is governed by California Government Code Section 65860 (b).
- 16           4. The Ordinance shall not be codified.

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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 9<sup>th</sup> day of September 2009, and, thereafter,

PASSED AND ADOPTED by the Oceanside City Council on this \_\_\_\_ day of \_\_\_\_, 2009, by the following vote:

AYES:

NAYS:

ABSENT:

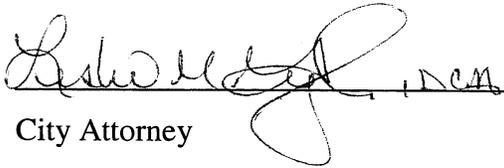
ABSTAIN:

\_\_\_\_\_  
Mayor of the City of Oceanside

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
City Attorney

## **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.

**Reception Antenna and Co-User Communication - Definitions**

- a. **Reception Antenna – An antenna that is designed and used only for the purpose of receiving broad cast and subscriber services such as radio, television, and microwave communication. Typical antenna types include skeletal-type and dish antennas.**
- b. **Co-User Communication Facility – Antenna and facilities that are part of a system or network of voice, data, or information transmission, relay and reception, and which are conducted through the licensed use of an allocation portion of the global electromagnetic spectrum. Services typically provided by these facilities include wireless telecommunication, paging systems and data-link systems. Specifically, a Co-User Communications Facility is shared by more than one communication system or is a facility which is shared by a communication facility and another independent use or activity.**
1. **Minor Co-User Facility – A co-user communication facility with as many as 5 whip or pole antennas.**
  2. **Major Co-User Facility – A co-user communication facility with more than 5 whip or pole antennas or a co-user facility consisting of antennas which are not whip or pole types of antennas.**
- c. **Pole Antenna – An antenna with a rod-like shape.**
- d. **Monitoring Antenna - An antenna that is used to monitor or track the operation of a same-site communication facility.**

- 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 no 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 administered 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 requirements 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&Rs) 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 level 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&Rs (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&Rs (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&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.

q) 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.

r) 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 (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 owner/operator or any 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 owner 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&Rs 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&Rs

(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 each be severally responsible for complying 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 the 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&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(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&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.

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 proceeding 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:

(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 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&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) 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) 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 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 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) 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 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&Rs (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) 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 Fractional Ownership Hotel operator become separate entities, they shall be severally liable for violations of 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&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(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&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.

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](http://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.***





## **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.

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**DOWNTOWN DISTRICT  
PROPERTY DEVELOPMENT REGULATIONS 1232**

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	<b>Basic Requirements</b>	<b>Additional Regulations</b>
<b>Residential Development</b>		(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	

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**D District Property Development Regulations (continued)**

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	<b>Basic Requirements</b>	<b>Additional Regulations</b>
<b>Nonresidential Development</b>		(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	

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**D DOWNTOWN DISTRICT:  
Additional Development Regulations**

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- (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 floodplain 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 than 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 Floodplain 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.

### **Reception Antennas and Co-User Facilities: Purpose and Siting Criteria**

#### **A. Purposes. This section is intended to promote and provide for the following:**

1. **To establish a zoning permit and land use review process consistent with the City's Telecommunication Policies and which accommodate the public's ability to access communication, broadcast and subscription services which are transmitted through the global atmospheric radio-frequency spectrum.**
2. **To maintain certain aesthetic values and land use compatibility through a land use review process for certain types of these facilities that may have potential impact upon public welfare.**
3. **To regulate the siting of telecommunications facilities so as to comply with the limitations, constraints and policies set forth in relevant federal and state telecommunications law.**

#### **B. Reception Antennas: Siting Criteria. A reception antenna is permitted on any structure if it complies with each of the following criteria:**

1. **Maximum Number. The maximum number of reception antennas is limited two per structure.**
2. **Minimum Setbacks.**
  - (a) **Interior side and rear property line – 10 feet.**
  - (b) **Corner-side property line – zoning district standard.**
  - (c) **Reception antennas may not be installed within the front yard setback area of the underlying zoning district.**

3. **Maximum Size.**

(a) **Roof-mounted antenna – 4 feet diameter for dish type and 60 cubic feet for skeletal-type.**

(b) **Ground-mounted – 5 feet diameter for dish type and 60 cubic feet for skeletal-type.**

4. **Maximum Height.**

(a) **Roof-mounted –**

1. **Skeletal-type antennas -1- feet above the district height limit.**

2. **Dish mounted – no higher than the principal or predominant roof-line of the structure.**

(b) **Ground Mounted – 12 feet above grade.**

**Additional height may be authorized through an administrative conditional use permit by the Redevelopment Director in accordance with the provisions of Article 41.**

5. **Surface Materials and Finishes. Reflective surfaces are prohibited.**

6. **Screening: The structural base of a ground-mounted antenna, including all bracing and appurtenances, but excluding the antenna itself, shall be screened from the views from neighboring properties by walls, fences, buildings, landscape or combinations thereof not less than 5 feet high.**

7. **Cable Undergrounding: All wires and cables necessary for operation of the antenna and its reception shall be placed underground, except for wires or cables attached to the exterior surface of a structure.**

C. **Communication Facilities. Siting Criteria. Communication facilities may be installed and operated within any zoning district subject to the following categorical standards and processes:**

1. **Minor Co-User Communication Facilities. Co-User facilities consisting of a limited number of whip or pole antennas and monitoring antennas shall be allowed subject to the following limitations:**

(a) **Antenna Type. Permitted antennas are limited to pole and monitoring antennas.**

(b) **Maximum Number.**

1. Pole Antennas – one per 1,000 square feet of roof area up to a maximum of 5 antennas.
2. Monitoring Antennas - one per every permitted communication facility.

(c) Maximum Height.

1. Pole Antennas 10 feet above height of a building or co-user facility.
2. Monitoring Antennas- 1- foot above height of co-user facility.

(d) Maximum Antenna Size.

1. Pole Antenna – 4 inches in diameter.
2. Monitoring Antenna – 1 cubic foot.

Appearance: Antennas must be colored or painted to blend with the predominant background features (e.g., building, landscape, sky).

3. Administrative Conditional Use Permit Requirement: Major Co-User Communication Facilities and within the coastal zone, Minor Co-User Facilities. In accordance with the requirements specified within Article 41 of the Ordinance, the Redevelopment Director may approve the siting, development and operation of a Major or Minor Co-User Communication Facility through an administrative process. The Redevelopment Director’s decision may be appealed to the Community Development Commission. A permit issued pursuant to this section shall be subject to the requirements set forth in Subsection 3 (A-F) below:

Standard Conditions of Approval. The following standard conditions of approval shall apply to all Minor and Major Co-User Communication Facilities:

- (a) The Conditional Use Permit shall be limited to a term of 5 years. However, the CUP may be renewed in accordance with the provisions of the Zoning Ordinance.
- (b) Upon one year of facility operation, and upon any change-out of facility equipment, the permittee(s) shall provide to the Redevelopment Director a statement of radio-frequency radiation output and output compliance with the limitation of governing licensing authorities.

- (c) The permittee(s) shall exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the approved antenna and facility equipment. The change-out and retro-fit of equipment shall be conducted by the permittee(s) after such equipment becomes available and exhibits common use at similar facilities. Upon the City's request and discretion, the permittee (s) shall be required to provide an independently prepared technical analysis demonstrating compliance with this condition. The permittee (s) inability to demonstrate the use of current technologies may be grounds for the revocation of the CUP.
- (d) The permittee (s) shall exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility provided such shared usage does not impair the operation of the approved use. Upon the City's request and discretion, the permittee (s) shall provide an independently prepared technical analysis to substantiate the existence of any practical technical prohibitions against the operation of a co-use facility. The permittee(s) non-compliance with this requirement may be grounds for the revocation of the CUP.
- (e) The approved communication facility shall be subject to, and governed by, any and all licensing authority by any governmental agency having jurisdiction. The City's local approval of a communication facility shall not exempt the permittee(s) from any such pre-emptive regulations.
- (f) The approved facility shall address the appearance of the entire site and shall upgrade or repair physical features as a means of minimizing view impacts to the community. Such techniques shall include, but shall not be limited to, site landscaping, architectural treatments, painting, and other methods to minimize visual impacts to the public streetscape.

## **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.

# STAFF REPORT



ITEM NO. 17  
CITY OF OCEANSIDE

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DATE: November 7, 2007

TO: Honorable Mayor and Councilmembers  
Chairman and Members of the Community Development Commission

FROM: Economic Development and Redevelopment Department

SUBJECT: **INTRODUCTION OF AN ORDINANCE AMENDING THE "D" DOWNTOWN DISTRICT ZONING REGULATIONS (ZA-201-07) AND ADOPTION OF A RESOLUTION APPROVING LOCAL COASTAL PLAN AMENDMENT (LCPA-201-07) AMENDING ARTICLE 12 DOWNTOWN "D" DISTRICT REGULATIONS TO ALLOW FOR TELECOMMUNICATIONS FACILITIES WITHIN THE COASTAL ZONE - APPLICANT - CITY OF OCEANSIDE**

## SYNOPSIS

The item under consideration is an amendment to the "D" Downtown District to amend Article 12 of the Downtown "D" District to allow for telecommunications facilities within the Coastal Zone. Staff is recommending that the City Council introduce the ordinance amending the Zoning Ordinance; and that the City Council and Community Development Commission (CDC) adopt the resolution approving the Local Coastal Plan Amendment.

## BACKGROUND

In February of 1996, the Telecommunications Act (47 USC & 151 et. sq.) was enacted to clearly define local government authority over the siting of telecommunication systems. In March 1997, the City Council adopted a telecommunications policy, the provisions of which necessitate zoning code revisions for consistency purposes to be consistent with the Telecommunication Act. On March 17, 1999, the City Council adopted Resolution No. R99-043, which in part amended the Communication Facilities (Section 3025 Zoning Ordinance). For these reasons, the City Council revised the zoning code to be consistent with City Policy and the Telecommunications Act.

On January 17, 2007, the Community Development Commission approved a Conditional Use Permit, Variation and Regular Coastal Permit for the installation of a telecommunication facility on an existing building located at 999 North Pacific Street. The project was situated within the appealable area of the coastal zone and the Coastal Commission staff requested the City amend the "D" District zoning text to better define telecommunication facilities located within the "D" District.

The proposed changes to the zoning text are as follows with addition underlined:

Article 12 D Downtown District, Section 1230 Development Regulations:

**See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of “Utilities, minor” shall have the same meaning as “Communication Facilities” Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025.**

Communications Facilities as defined within Section 3025 B. 2. of the Oceanside Zoning Ordinance is as follows:

Antennas and facilities that are part of a system or network of voice, data, or information transmission, relay, and reception, and which are conducted through the licensed use of an allocated portion of the global electromagnetic spectrum. Services typically provided by these facilities include wireless telecommunication, paging systems and data-link systems.

### **ANALYSIS**

Staff has evaluated the changes to the land use element and believes that the telecommunications amended definition is appropriate for the following reasons:

- . The text changes are consistent with Section 3025 of the Zoning Ordinance
- . The text changes will allow for telecommunication facilities within the coastal zone with approval of a use permit
- . The text changes will bring the City policy, Zoning Ordinance, Telecommunications Act and Local Coastal Plan into conformity

Staff also believes the telecommunications definitions are consistent with the Local Coastal Program. The amended text will allow telecommunications facilities within the “D” Downtown District whose design and impact on the community can be controlled through the use permit process.

In accordance with Section 3025 of the Oceanside Zoning Ordinance, a Conditional Use Permit is required for all Stand-Alone Communication Facilities and an Administrative Conditional Use Permit is required for Major Co-User Communication Facilities. A Stand-Alone Communication Facility can be described as a communication facility that is not a co-user facility. Typical facility types consist of tower and pole-like structures. A Major Co-User Facility consists of a communication facility with more than 5 whip or pole antennas or a co-user facility consisting of antennas which are not whip or pole types of antennas.

**COMMISSION/COMMITTEE REPORT**

On July 11, 2007, the Redevelopment Advisory Committee (RAC) approved the project on a 5-1 vote with Carolyn Kramer dissenting.

**FISCAL IMPACT**

Does not apply.

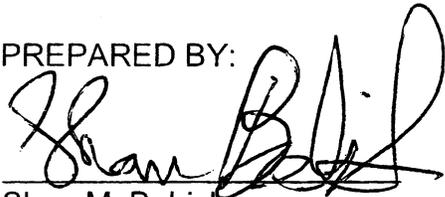
**CITY ATTORNEY'S ANALYSIS**

The City Council and Community Development Commission are required to hold a public hearing on the proposed amendment to Article 12 of the City's Zoning Ordinance. Consideration of the amendment should be based on the evidence presented at the hearing. The proposed ordinance amendment has been reviewed by the City Attorney and approved as to form. The proposed amendment defines the Land Use Category, Utilities Minor, within the Redevelopment Project Area.

**RECOMMENDATION**

Staff recommends that the City Council introduce the ordinance amending the Zoning Ordinance; and that the City Council and Community Development Commission (CDC) adopt the resolution approving the Local Coastal Plan Amendment.

PREPARED BY:



Shan M. Babick  
Associate Planner

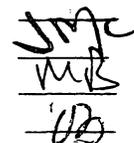
SUBMITTED BY:



Peter A. Weiss  
Executive Director

REVIEWED BY:

Michelle Skaggs-Lawrence, Deputy City Manager  
Jane McVey, Economic and Redevelopment Director  
Mike Blessing, Deputy City Manager  
Kathy Baker, Redevelopment Manager



**ATTACHMENTS/EXHIBITS**

1. Exhibit A – "D" District Text Amendment
2. Ordinance approving "D" District Text Amendment
3. "D" Downtown District Map
4. Federal Communications Commission Document

EXHIBIT "A"  
 "D" Downtown District Ordinance  
 Zoning Text Amendment  
 ZA-201-07 & LCPA-201-07

\* Proposed Changes are Bolded

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**DOWNTOWN DISTRICT  
 PROPERTY DEVELOPMENT REGULATIONS**

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	<b>Basic Requirements</b>	<b>Additional Regulations</b>
<b>Residential Development</b>		(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)
Vehicular Access:	(R)(S)	

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	

**See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "Communication Facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025.**

	Basic Requirements	Additional Regulations
<b>Nonresidential Development</b>		(II)(KK)
Minimum Lot Area (sq. ft.)	5,000	(A)(B)
Minimum Lot Width (ft.)	50	
Minimum Setbacks:		
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	

**See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of “Utilities, minor” shall have the same meaning as “Communication Facilities” in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025.**

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	

See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "Communication Facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025.

**D District Property Development Regulations (continued)**

	<b>Basic Requirements</b>	<b>Additional Regulations</b>
<b>Nonresidential Development</b>		<b>(II)(KK)</b>
Minimum Lot Area (sq. ft.)	5,000	<b>(A)(B)</b>
Minimum Lot Width (ft.)	50	
Minimum Setbacks:		
Front (ft.)	10	<b>(H)</b>
Side (ft.)	0	<b>(H)(I)</b>
Corner Side (ft.)	10	<b>(H)(J)</b>
Rear (ft.)	0	<b>(H)(I)</b>
Maximum Height (ft.) of Structures	45	<b>(M)(N)(O)</b>
Maximum Floor Area Ratio	2	<b>(F)</b>
Minimum Site Landscaping	15%	<b>(P)(Q)(S)</b>
Fences and Walls (ft.)	8'	<b>(Z)(AA)(BB)</b>
Public Access to the Beach		<b>(HH)</b>
Off-Street Parking and Loading		<b>(V)</b>
Signs	See Article 33	<b>(GG)</b>
Outdoor Facilities	See Section 3020	<b>(CC)</b>
Employee Eating Areas		<b>(DD)</b>
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	

See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "Communication Facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025.



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3. The Ordinance shall not be codified.

4. The City Clerk of the City of Oceanside is hereby directed to publish the title of the 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.

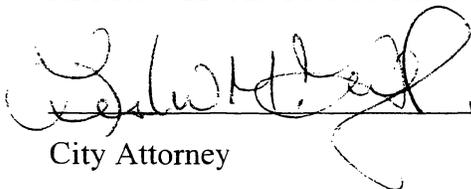
INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the 7<sup>th</sup> day of November 2007, and, thereafter,

PASSED AND ADOPTED by the Oceanside City Council on this \_ day of \_\_\_\_, 2007, by the following vote:

- AYES:
- NAYS:
- ABSENT:
- ABSTAIN:

\_\_\_\_\_  
Mayor of the City of Oceanside

ATTEST:  
  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
City Attorney



1 NOW, THEREFORE, the City Council of the City of Oceanside DOES RESOLVE as  
2 follows:

3 1. Pursuant to Public Resources Code 30510 (a), the Oceanside City Council hereby  
4 certifies that Local Coastal Program Amendment (LCPA-201-07) is intended to be carried out in a  
5 manner fully in conformity with the Coastal Act.

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

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

11 4. Copies of the originals of these revised documents shall be maintained and available  
12 for public review in the offices of the City Planning and Redevelopment Departments.

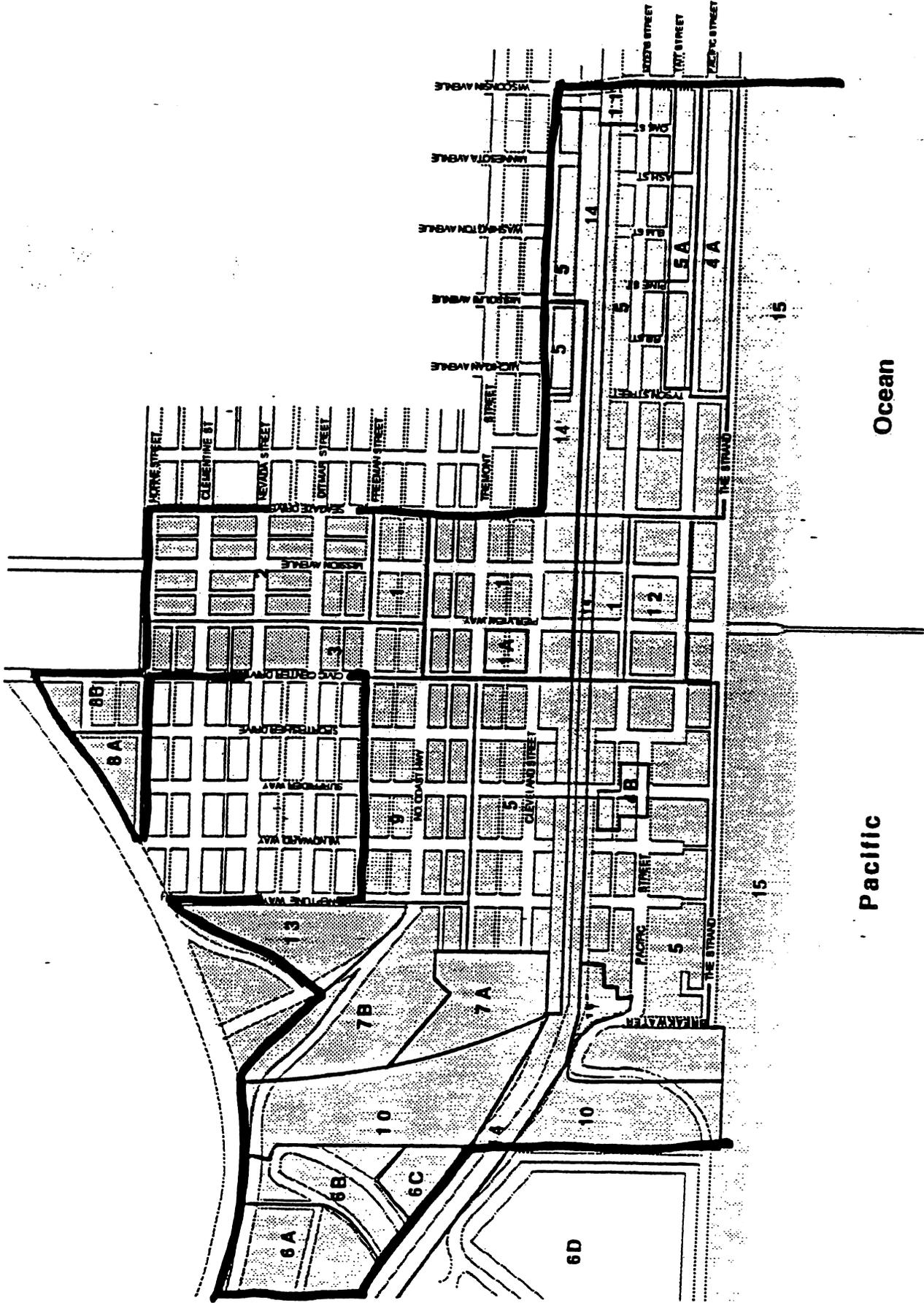
13 PASSED AND ADOPTED by the Oceanside City Council on this \_\_\_\_ day of \_\_\_\_, 2007,  
14 by the following vote:

- 15 AYES:
- 16 NAYS:
- 17 ABSENT:
- 18 ABSTAIN:

19 \_\_\_\_\_  
20 Mayor of the City of Oceanside

21 ATTEST:  
22 \_\_\_\_\_  
23 City Clerk

24 APPROVED AS TO FORM:  
25 \_\_\_\_\_  
26 City Attorney



1 Subdistricts (See Article 12 section 12-10 for use classifications and development regulations).

Transect District Overlay Zone

Redevelopment Project Area

# Downtown District

CITY OF OCEANSIDE  
PLANNING DEPARTMENT

# NOTICE OF EXEMPTION

TO: X RECORDER/COUNTY CLERK  
COUNTY OF SAN DIEGO  
P.O. BOX 1750  
SAN DIEGO, CA 92112-4147

**PROJECT TITLE AND FILE NUMBER:**

ZONE AMENDMENT TO MODIFY ARTICLE 12, SECTION 1230, OF THE "D" DOWNTOWN DISTRICT –  
TO ALLOW FOR TELECOMMUNICATION FACILITIES WITHIN THE COASTAL ZONE.

**PROJECT LOCATION - SPECIFIC:**

Redevelopment Project Area

**PROJECT LOCATION - GENERAL:**

Redevelopment Project Area

ZONE AMENDMENT (ZA-201-07)

LCPA (LCPA-201-07)

**DESCRIPTION OF NATURE, PURPOSE AND BENEFICIARIES OF PROJECT:**

A Zone Amendment to modify Article 12, Section 1230, of the "D" Downtown District to allow for  
telecommunication facilities within the Coastal Zone.

**NAME OF PUBLIC AGENCY APPROVING PROJECT:**

City of Oceanside

**NAME OF PERSON(S) OR AGENCY CARRYING OUT PROJECT:**

City of Oceanside

Shan Babick, Associate Planner

300 North Coast Highway

Oceanside, CA 92054

(760) 435-3354

Exempt Status per the Guidelines to Implement the California Environmental Quality Act (CEQA)  
(Public Resources Code Section 21000 et. al.):

X NOT SUBJECT TO CEQA PER THE GENERAL RULE, SECTION 15061(B)(3)

   STATUTORY EXEMPTION PER ARTICLE 18, SECTION(S)

   CATEGORICAL EXEMPTION PER ARTICLE 19, SECTION 15301(b)

**REASONS WHY PROJECT IS EXEMPT:**

This modification to the zoning ordinance is covered by the general rule that CEQA applies only to projects which can have the  
potential for causing significant effect on the environment.

Contact Person: Shan Babick, Associate Planner

SIGNATURE

October 8, 2007

DATE

For: Jerry Hittleman, Interim City Planning

CITY HALL, 300 NORTH COAST HIGHWAY, OCEANSIDE CA 92054, TELEPHONE (760) 435-3534, FAX (760) 435-3538

## CALIFORNIA COASTAL COMMISSION

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



May 27, 2009

# Th13a

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
TONI ROSS, COASTAL PROGRAM ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF OCEANSIDE MAJOR LCP  
AMENDMENT 1-08 (Telecommunication Facilities) for Commission Meeting of  
June 10-12, 2009**

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## SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on May 9, 2008. The Coastal Act establishes a 60 day review period for implementation plan amendments; however, a one-year time extension was granted on June 12, 2008. As such, the last date for Commission action on this item is July 9, 2009. This report addresses the City's entire submittal.

## SUMMARY OF AMENDMENT REQUEST

The City of Oceanside is requesting an amendment to its Implementation Plan to allow for the placement and/or construction of Co-User Communication Facilities within the Downtown District. Co-User communication facilities can be described as antennas and facilities that are part of a system or network of voice, data, or information transmission, relay, and reception. Currently, the City has only one definition for all types of communication facilities and this definition is too narrow to adequately define the various types of current uses (antenna, reception antenna, telecommunication, switching stations, broadcasting studios, etc). In addition, communication facilities are only permitted in a limited number of the downtown subdistricts. This LCP amendment is intended to address this deficiency and provide modern definitions, siting criteria, and standard conditions of approval for the most commonly used types of communication facilities.

## SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the LCP amendment with several suggested modifications. The City's amendment references language from a policy that was never brought forward to the Commission for certification into its LCP. As such, staff, in coordination with the City, has developed a series of modifications that serve to incorporate the language contained in the City's referenced policy, thereby facilitating the

development of Co-User facilities in the downtown area. The suggested modifications include: incorporating modern definitions, uses and regulations for these various types of Communication Facilities, as well as updating the Downtown District's Commercial Uses Land Use Matrix.

Specifically, the first suggested modification will remove the language proposed by the City, as it does not meet the intent of the City's amendment. The second modification adds five new definitions including: reception antennas, minor and major co-user communication facilities, and pole and monitoring antennas to Article 4a of the City Implementation Plan. The third suggested modification will update the Downtown District's Commercial Land Use Matrix (Article 12) to allow reception antennas as a permitted use, and to conditionally permit minor and major co-user communications facilities. The final suggested modification will provide the siting criteria and standard conditions of approval for the additional types of communication facilities defined above.

Staff recommends that the Commission find the Implementation Plan Amendment 1-08, as modified, consistent with the City of Oceanside's certified LCP; and, therefore, recommends approval of the modified amendment.

The appropriate resolutions and motions begin on page 5. The suggested modifications begin on page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on page 12. The findings for approval of the plan, if modified, begin on page 15.

## **BACKGROUND**

In February 1996, Federal laws were enacted to clearly define local government authority over the siting of telecommunication systems. At that time, the City of Oceanside's existing zoning code provisions had not been updated since 1988, and, as such, the need for revision to that section of the zoning code became apparent. In response, the City of Oceanside amended its zoning code to accomplish the following:

- A comprehensive revision of Section 3025 Antennas and Microwave Equipment. Re-title Section as Reception Antennas and Communication. These changes will be applicable to all zones within the City including the Downtown "D" District.
- Provide a "Definition" section to define and identify reception antennas and the various types of communication facilities.
- Establish categorical zoning standards for permitted reception antenna.
- Establish a multi-tiered permit process for communication facilities. Allows the permitting of certain limited scale and shared use communication facilities through ministerial permit process. Reserves a public hearing Conditional Use Permit (CUP) process for new stand-alone communication facilities. Allows all other types of communication facilities, not eligible for ministerial permitting and not requiring a CUP, to be permitted through an administrative CUP process administered by the Planning Director or the Redevelopment Director within the Downtown District.

Through some miscommunication between the Coastal Commission and the City, the City did not bring forward these modifications to the Commission for review and certification. As such, Commission staff and the City have been working in cooperation to include the most pertinent language of these previously incorporated zoning regulations in its Implementation Plan. Moreover, through review of this amendment, it became apparent that there are several additional updates to the City's Implementation Plan that have not been certified by the Coastal Commission. The City is aware of this deficiency and has expressed its willingness to work with the Commission to bring forward these updates as LCP amendments to be reviewed and approved by the Commission without delay. However, given the scope of work and time necessary to process such an amendment, and the delay this LCP amendment has previously endured, both the City and Commission staff have agreed to move forward with this individual LCP amendment prior to the other updates.

**ADDITIONAL INFORMATION**

Further information on the City of Oceanside LCP Amendment #1-08 may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Oceanside first submitted its Local Coastal Program Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for "commercial" use; the Commission's suggested modification designated it as "open space." On July 10, 1985, the Commission certified the City's Local Coastal Program as resubmitted by the City, including deferred certification on the above parcel.

### **B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

### **C. PUBLIC PARTICIPATION**

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. **MOTION I:** *I move that the Commission reject the Implementation Program Amendment for the City of Oceanside as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a YES vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Oceanside and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

- II. **MOTION II:** *I move that the Commission certify the Implementation Program Amendment for the City of Oceanside if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

Staff recommends a YES vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Oceanside if modified as suggested and adopts the findings set forth below on grounds

that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carryout the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Remove the following language from Article 12 - Downtown District - Property Development Regulations as follows:

~~See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "communication facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025 of the Zoning Ordinance."~~

2. Add language to Article 4a Section 450 G - Communication Facilities, as follows:

#### **450 Commercial Use Classifications**

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.

Reception Antenna and Co-User Communication Facilities shall also be defined in Subsections a-d below:

##### a. Reception Antenna and Co-User Communication Facilities - Definitions

a. Reception Antenna - An antenna that is designed and used only for the purpose of receiving broadcast and subscriber services such as radio, television, and microwave communication. Typical antenna types include skeletal-type and dish antennas.

b. Co-User Communication Facility - Antennas and facilities that are part of a system or network of voice, data, or information transmission, relay,

and reception, and which are conducted through the licensed use of an allocated portion of the global electromagnetic spectrum. Services typically provided by these facilities include wireless telecommunication, paging systems and data-link systems. Specifically, a Co-User Communication Facility is shared by more than one communication system, or is a facility which is shared by a communication facility and another independent use or activity.

1. Minor Co-User Facility - A co-user communication facility with as many as 5 whip or pole antennas.

2. Major Co-User Facility - A co-user communication facility with more than 5 whip or pole antennas or a co-user facility consisting of antennas which are not whip or pole types of antennas.

c. Pole Antenna - An antenna with a rod-like shape.

d. Monitoring Antenna - An antenna that is used to monitor or track the operation of a same-site communication facility.

3. Add Reception Antenna, Minor Co-User Facility, and Major Co-User Facility to the Commercial Uses of Article 12 - Land Use Matrix as follows:

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

Subdistrict	1	1a	2	3	4a	4b	5	5a	6a	6b	6c	7a	7b	8a	8b	9	10	11	12	13	14	15	
	<b>Commercial</b>																						
Ambulance Service	*	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	*	*	*	*	*	*
Animal product sales	C	C	*	C	*	*	C	*	*	*	C	*	C	*	*	C	*	*	*	*	*	*	*
Artist Studio	C	C	*	*	*	*	*	*	*	*	*	*	*	*	*	C	*	C	*	*	*	*	*
Bank / Savings & Loan	P	P	P	P	*	*	*	*	*	*	*	*	U	*	*	P	*	*	*	*	*	*	*
Drive-through/drive up	U	U	U	U	*	*	*	*	*	*	*	*	U	*	*	U	*	*	*	*	*	*	*
Self-service ATM	C	C	C	C	*	*	*	*	*	*	*	*	C	*	*	C	*	*	*	*	*	*	*
Catering Service	C	C	C	*	*	*	*	*	*	*	*	*	*	*	*	C	*	*	*	*	*	*	*
Commercial Recreation & Entertainment	U	*	U	*	*	*	*	*	U	U	U	*	U	*	*	U	U	*	U	*	*	*	*
Communication	U	U	U	*	*	*	*	*	*	*	*	*	*	*	*	U	*	*	*	U	*	*	*



3. Maximum Size.

- A. Roof-mounted antenna - 4 feet diameter for dish and 60 cubic feet for skeletal type.
- B. Ground-mounted - 5 feet diameter for dish type and 60 cubic feet for skeletal-type.

4. Maximum Height.

A. Roof-mounted -

- 1. Skeletal-type antennas - 1- feet above the district height limit.
- 2. Dish mounted - no higher than the principal or predominant roof-line of the structure.

B. Ground-mounted - 12 feet above grade.

Additional height may be authorized through an administrative conditional use permit issued by the Planning Director in accordance with the provisions of Article 41 of this ordinance.

5. Surface Materials and Finishes. Reflective surfaces are prohibited.

6. Screening: The structural base of a ground-mounted antenna, including all bracing and appurtenances, but excluding the antenna itself, shall be screened from the views from neighboring properties by walls, fences, buildings, landscape, or combinations thereof not less than 5 feet high.

7. Cable Undergrounding. All wires and cables necessary for operation of the antenna and its reception shall be placed underground, except for wires or cables attached to the exterior surface of a structure.

C. Communication Facilities. Siting Criteria. Communication facilities may be installed and operated within any zoning district subject to the following categorical standards and processes.

1. Minor Co-User Communication Facilities. Co-User facilities consisting of a limited number of whip or pole antennas and monitoring antennas shall be allowed subject to the following limitations:

A. Antenna Type. Permitted antennas are limited to pole and monitoring antennas/

B. Maximum Number.

1. Pole Antennas - one per 1,000 square-feet of roof area up to a maximum of 5 antennas.
2. Monitoring Antennas - one per every permitted communication facility.

C. Maximum Height.

1. Pole Antennas - 10 feet above height of a building or co-user facility.
2. Monitoring Antennas - 1-foot above height of co-user facility.

D. Maximum Antenna Size.

1. Pole antenna - 4 inches diameter.
2. Monitoring antennas - 1 cubic foot.

E. Appearance. Antennas must be colored or painted to blend with the predominant background features (e.g., building, landscape, sky).

2. Administrative Conditional Use Permit Requirement. Major Co-User Communication Facilities and, within the coastal zone, Minor Co-User Facilities. In accordance with the requirements specified within Article 41 of this Ordinance, the Planning Director may approve the siting, development, and operation of a Major or Minor Co-User Communication Facility through an administrative process. The Planning Director's decision may be appealed to the Planning Commission. A permit issued pursuant to this section shall be subject to the requirements set forth in Subsections 3(A-F) below

3. Standard Conditions of Approval. The following standard conditions of approval shall apply to all Minor and Major Co-User Communication Facilities: -

A. The Conditional Use Permit shall be limited to a term of 5 years. However, the CUP may be renewed in accordance with the provisions of the Zoning Ordinance.

B. Upon one year of facility operation, and upon any change-out of facility equipment, the permittee(s) shall provide to the Planning Director a statement of radio-frequency radiation output and output compliance with the limitation of governing licensing authorities.

C. The permittee(s) shall exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the approved antenna and facility equipment. The change-out and retro-fit of equipment shall be conducted by the permittee(s) after such equipment

becomes available and exhibits common use at similar facilities. Upon the City's request and discretion, the permittee(s) shall be required to provide an independently prepared technical analysis demonstrating compliance with this condition. The permittee(s)' inability to demonstrate the use of current technologies may be grounds for the revocation of the CUP.

D. The permittee(s) shall exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility, provided such shared usage does not impair the operation of the approved use. Upon the City's request and discretion, the permittee(s) shall provide an independently prepared technical analysis to substantiate the existence of any practical technical prohibitions against the operation of a co-use facility. The permittee(s)' non-compliance with this requirement may be grounds for the revocation of the CUP.

E. The approved communication facility shall be subject to, and governed by, any and all licensing authority by any governmental agency having jurisdiction. The City's local approval of a communication facility shall not exempt the permittee(s) from any such pre-emptive regulations.

F. The approved facility shall address the appearance of the entire site and shall upgrade or repair physical features as a means of minimizing view impacts to the community. Such techniques shall include, but shall not be limited to, site landscaping, architectural treatments, painting, and other methods to minimize visual impacts to the public streetscape.

#### **PART IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

##### **A. AMENDMENT DESCRIPTION**

The City of Oceanside is requesting an amendment to its Implementation Plan to allow for the placement and/or construction of Co-User Communication Facilities within the Downtown District. Co-User communication facilities can be described as antennas and facilities that are part of a system or network of voice, data, or information transmission, relay, and reception. Currently, the City has only one definition for all types of communication facilities and this definition is too narrow to adequately define the various types of current uses (antenna, reception antenna, telecommunication, switching stations, broadcasting studios, etc). In addition, Communication Facilities are only permitted in a limited number of the downtown subdistricts. This LCP amendment is intended to address this deficiency and provide modern definitions, siting criteria, and standard conditions of approval for the most commonly used types of communication facilities.

## **B. SUMMARY FINDINGS FOR REJECTION**

This LCP amendment is in response to an appeal filed in 2007 for the placement of a Co-User Communication Facility on an existing building located at 999 Pacific Street, in the North Coast Village residential project. The location is directly adjacent to the coast and south of the San Luis Rey River mouth, and can generally be considered a scenic area. The appellant brought forward concerns of impacts to public coastal views, as well as the lack of a proper use classification for such a project. At the time of the Co-User facility's approval, the definition that most closely fit the proposal was "Communication Facility". Communication Facilities are not a permitted use at the proposed location. As such, the City submitted the subject LCP amendment (1-08) in response to the concerns raised by the appeal. However, the City's proposed language made reference to a policy within its Zoning Ordinance that was never brought forward to be reviewed and approved by the Commission and thus was never incorporated into the certified Implementation Plan. Since that time, the City and Commission staff have worked together to isolate the most pertinent definitions, policies, siting criteria, and standard conditions of approval in order to incorporate them into the certified LCP. Without these modifications, the existing land use matrix would remain, and the proposed communication facility that is the subject of a separate CDP application would not be a permitted use. In addition, the potential impacts to coastal views have not been addressed by the City's IP Amendment submittal. As such, the City's proposed amendment cannot be found consistent with the certified land use plan as submitted.

## **C. SPECIFIC FINDINGS FOR REJECTION**

### **a) Purpose and Intent of the Ordinance.**

The purpose of the "D" Downtown District is to promote the long-term viability and redevelopment of the downtown area. In addition, the ordinance seeks to maintain and promote an appropriate mix of uses while establishing necessary land use controls and development criteria. The "D" Downtown District establishes special land use subdistricts with individual objectives. The proposed LCP amendment includes modifications to two separate Articles within the City of Oceanside's certified Implementation Plan; Article 4a, and Article 12. Both of these articles are specific to only the downtown portion of the City. The specific modifications for each article are discussed below.

### **b) Major Provisions of the Ordinance.**

#### Article 4a

Article 4a was added to the City's LCP in 2008. The City proposed a new sub-article to the existing Article 4 (Use Classifications) to address use classifications specific to the Redevelopment/Downtown area. As such, the City submitted language that mirrored Article 4, the use classifications for the entire City, with modifications to address uses that would only be permitted within the Redevelopment/Downtown area. These uses

included condominium hotels and fractional use hotels. The subject amendment would authorize additional use classifications within the Downtown District associated with the physical facilities required to aid in the transmission of communication and information.

#### Article 12

Article 12 provides land-use controls and development criteria for the downtown area consistent with the City's General Plan, Redevelopment Plan and the Local Coastal Program.

#### c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

#### **City of Oceanside LCP Land Use Policies for Visual Resources**

##### **Findings.**

[...]

2. The City's grid street pattern allows public views of these water bodies from several vantage points. Most east-west streets in the Coastal Zone offer views of the ocean...

##### **Policies.**

#### VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.
3. All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation.
4. The city shall maintain existing view corridors through public rights-of-way.

[...]

8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

#### VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

#### **City of Oceanside LCP – Design Standards for Preserving and Creating Views**

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized deserve consideration in the design and location of further coastal improvements.

**1. Regulating various types of Communication Facilities within the Downtown District.**

Over the past decade, local jurisdictions and the Coastal Commission have both seen an increasing number of proposals for the placement of Co-User Communication Facilities. Companies such as Sprint, Verizon, AT&T, etc. are constantly striving to increase and improve their cellular phone reception capabilities. Proposals include locating these Co-User Communication Facilities on a variety of existing structures ranging from commercial and residential buildings to lamp posts, electrical towers, artificial trees, etc. In order to process these proposals within the coastal zone, many cities have developed policies, siting criteria, and conditions of approval, and incorporated these provisions into their Local Coastal Programs through the certification of an LCP amendment.

To date, the City of Oceanside has yet to receive approval from the Coastal Commission for any such update. In 2007, the City approved a Co-User Communication Facility on an existing multi-family residential structure located within Subdistrict 5 of the Downtown area. A concerned citizen appealed the approved project to the Coastal Commission, contending that such a development was not considered an allowable use within Subdistrict 5. Article 12 of the City's Implementation Plan contains a Land Use Matrix that identifies Land Use Classifications thereby establishing permitted uses within the subdistricts of the Downtown District. Of these uses, a broadly-applied term "Communication Facilities" is a use that is permitted in a limited number of the subdistricts. Commission staff reviewed the project and agreed that the definition "Communication Facility" was the most appropriate Land Use Classification for the proposal and that it was not a permitted use.

The City has since submitted an LCP amendment attempting to address this issue, and proposed language that made reference to a set of definitions, siting criteria, and standard conditions of approval associated with these types of developments. However, the proposed language did not adequately address the concerns raised by the appellant for two reasons. The City made reference to the policies included as suggested modifications herein; however, this language is not part of the certified LCP and thus cannot be applied in the coastal zone. Second, the proposed language does not modify the Downtown Area's Commercial Land Use Matrix to permit such proposals.

The City's proposed language referenced a specific policy contained in a different article of the Zoning document, Article 30. Article 30 contains Site Regulations applicable to all areas of the City. However, through some miscommunication, the City updated this article without bringing forward an amendment request to the Coastal Commission.

Therefore, the language proposed by the City associated with the subject amendment referenced a policy that was not in the certified LCP. As such, the policy could not be used to determine the modern types of Communication Facilities that could be allowed within the Downtown District.

The policy referenced by the City included siting criteria and standard conditions of approval for Co-User Communication Facilities, Stand Alone Communication Facilities and other various types of antennas. These criteria and conditions were developed to address concerns of potential view impacts associated with these types of facilities. Without this language, these concerns have not been addressed. The City's certified land use plan policies included above serve to document the many ways the City protects public coastal views, and as such, the amendment as submitted cannot be considered consistent with these policies.

## **2. Commercial Uses - Land Use Matrix**

Within Article 12 of the City's certified implementation plan, permitted commercial land uses for the Downtown District are provided by a land use matrix. Co-User Communication Facilities are best described by the use classification "Communication Facility" within this land use matrix. However, Communication Facilities are an unpermitted use in the majority of subdistricts within the Downtown District, including subdistrict 5. As previously discussed, this LCP amendment was proposed by the City to allow for the placement of a Co-User Communication Facility within subdistrict 5. However, the City has proposed no new uses be included in the Land Use Matrix, nor has it modified the existing term "Communication Facilities" to be an allowable use within a greater number of the downtown subdistricts, including subdistrict 5. As such, the intent of the amendment has not been met, and Co-User Communication Facilities remain an unpermitted use.

In conclusion, the intent of the City was to modernize Article 12 of its certified Implementation Plan to facilitate the placement of Co-User Communication facilities within various subdistricts in the downtown area. However, the City's proposed language makes reference to a policy that is not part of its certified LCP, and fails to address the issue that these types of uses were currently permitted in a very limited portion of the downtown area. As such, the amendment as proposed does not address the potential impacts of these facilities within the expanded area in which they would be allowed, and thus cannot be found consistent with the certified Land Use Plan.

## **PART V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

The City's proposed language included a reference to a policy, which through some miscommunication, was not certified into its LCP. However, the language included in this referenced policy would adequately address the coastal resource concerns associated with various antenna, reception, and communication facilities. As such, the modifications proposed by the Commission mirror this language. Further, by mirroring

the City's language, the process of approval will remain consistent both inside and outside the coastal zone. Specifically, the suggested modifications will adequately define and regulate various types of Communication Facilities in the Downtown District and include these new uses in the City's Commercial Land Use Matrix. The specific modifications are discussed in detail below.

**A. Specific Findings for Approval.**

**1. Regulating various types of Communication Facilities within the Downtown District.**

The Commission has suggested two modifications to define and regulate the various types of modern antenna and/or communication-facilities. One modification adds new definitions to Article 4a Section 450 - Commercial Use Classifications. These definitions were developed by the City and taken from its code. The language keeps the existing broad definition of Communication Facilities, but further defines Reception Antennas and Minor and Major Co-User Facilities as three new uses. The section also identifies two types of antennas: pole and monitoring. The definitions are included simply to further clarify the types of reception antennas allowed and are not considered new uses. This language will modernize the City's definition of Communication Facilities, and it will provide a method to specify the type of facility allowed, instead of having all uses fall within one general definition, where those facilities were not even permitted uses in the majority of the downtown area.

Another suggested modification (#4) serves to provide regulation for the above described types of communication facilities. Reception antennas are considered the smallest-scale facility, and as such, the suggested modification requires these types of proposals to be limited by number, setbacks, size, and height, screening and cable undergrounding. There is no requirement for a public hearing, or the issuance of a conditional use permit. If the project meets all the above mentioned requirements, no additional conditions will be required. The suggested modification does, however, require additional regulations associated with both Minor and Major Co-User Facilities. These two terms are separated by the number of associated antennas. Minor Co-User facilities have 5 or fewer antennas, where Major Co-User Facilities have more than 5. However, in the coastal zone, both Minor and Major Co-User Facilities are regulated in the same way. The new policy requires that these facilities only be permitted through the issuance of a conditional use permit. The policy further includes six standard conditions of approval. The most pertinent conditions include a requirement that the permittee (or applicant) exercise a good faith effort to incorporate the best equipment technology in order reduce the visual presence of the approved antenna and facility equipment. The condition further requires that the permittee change-out and retro-fit the existing equipment as new technologies are available. The second condition requires that the proposed communication facility address the appearance of the entire site and upgrade or repair any physical features as a means of minimizing view impacts. Included in these are: site landscaping, architectural treatments, and painting. Both of these conditions serve to

adequately address the policies regarding protection of public coastal views that are included in the City's LUP.

Furthermore, it should be noted that Co-User Communication Facilities are traditionally placed on already existing buildings, thus impacts to habitat are unlikely. However, if a proposal came forward for a facility that impacted habitat, under the provisions of the City's certified LCP, such a proposal would require a coastal development permit. It would be during this review that any potential impacts to habitat would be addressed. As such, impacts to sensitive habitat would be addressed consistent with the certified LCP. Therefore, as modified, the Implementation Plan amendment can be found consistent with the City's certified Land Use Plan (LUP).

## **2. Commercial Uses - Land Use Matrix**

As previously discussed, the City uses a land use matrix to identify the permitted commercial uses within the Downtown District. Currently, there is only one type of use to address the numerous sorts of projects pertaining to the transmission of communication and information: Communication Facility. Furthermore, this use classification was only permitted in a limited number of subdistricts. As such, the Land Use Matrix has been updated to include three additional land use classifications: Reception Antennas, Minor Co-User Facilities and Major Co-User Facilities. Reception Antennas are generally defined as the smaller-scale types of projects and, as such, are a permitted use in all subdistricts. As modified by the Commission, Minor and Major Co-User Facilities, coupled with the siting criteria and standard conditions discussed above, are conditionally permitted in all subdistricts.

## **B. Conclusions.**

In 2007, the City of Oceanside approved a project which would likely be considered inconsistent with its LCP, and the City's approval of the CDP was subsequently appealed by a member of the public to the Commission. In response to this appeal, the City submitted an LCP amendment to accommodate the approval of these types of projects within the downtown area. The amendment as proposed by the City simply referred to a policy contained in a different article of its certified Implementation Plan. This policy did define, provide siting criteria, and impose standard conditions of approval for the most widely used types of communication facilities. However, due to some miscommunication between the City and the Commission, these modifications were never brought forth for the Commission's approval and as such could not be considered part of the City's LCP and were not the appropriate standard of review. Additionally, because the article in which this updated language was located (Article 30) was not a component of the City's amendment (Article 12 and 4a), the Commission could not simply modify Article 30 to reflect the City's changes. As such, the Commission identified and included the most important sections of that policy language, contained in Article 30, into the appropriate sections of Article 4a and Article 12 (the Zoning Ordinance specific for the Downtown District).

However, it should be noted that during this amendment review, it became apparent that additional modifications have been made by the City to its Implementation Plan in the past, without submitting those changes for review and approval by the Commission. The City is aware of this, and has agreed to bring forward a comprehensive package of amendments to rectify the disparities. Currently, the City and Commission staff are working cooperatively to identify all uncertified modifications and will continue to work on these revisions and will bring them forward to the Commission for review as soon as possible. However, in the interim, the modifications suggested by the Commission address the intent of this LCP amendment, and the associated appeal until such a comprehensive amendment can be completed. Therefore, the concerns associated with reception antennas and communication facilities; namely public view impacts, have been adequately addressed through the suggested modifications listed above and, as modified by the Commission, can be found consistent with the City's certified LCP.

**PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, as amended, does conform with CEQA provisions. As outlined in the staff report, the IP amendment, as proposed, is inconsistent with the land use policies of the certified LUP. However, if modified as suggested, the amendment can be found in conformity with and adequate to carry out all of the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment 1-08 if modified as suggested herein.

ORDINANCE NO. 07-OR0724-1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY  
OF OCEANSIDE AMENDING SECTION 1230 OF ARTICLE  
12 OF THE OCEANSIDE ZONING ORDINANCE, (ZA-201-  
07 & LCPA-201-07)

RECEIVED  
JAN 24 2008  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COUNTY DISTRICT

(City of Oceanside –Applicant)  
(ZA-201-07 & LCPA-201-07)

WHEREAS, Article 12 of the Oceanside Zoning Ordinance regulates uses within the  
Redevelopment Area;

WHEREAS, it is in the public interest to amend the zoning regulations pertaining to these uses  
to allow telecommunication facilities within the coastal zone;

WHEREAS, the proposed amended section of Article 12 of the Zoning Ordinance which  
further defines various land uses are more particularly described in Exhibit “A”, attached hereto and  
incorporated herein by reference;

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;

WHEREAS, based upon such evidence, testimony and staff reports, this Council finds the  
proposed amendment to Article 12 conforms to the City’s Redevelopment Plan and General Plan;

NOW, THEREFORE, the City Council of the City of Oceanside DOES ORDAIN as follows:

That Zone Amendment Application ZA-201-07 and LCPA-201-07 amending the text of Article  
12 Section 1230 of Zoning Ordinance No. 095-006 as specified in Exhibit “A” is hereby approved and  
the Economic and Redevelopment Director is hereby directed to amend the Zoning Ordinance text as  
specified by this Exhibit.

1. Provisions of Exhibit “A”, as incorporated, have been included for informational  
purposes only and reflect the amended sections of the Zoning Ordinance No. 095-006 which have been  
stricken, removed or otherwise modified by the enactment of this Ordinance.

2. Notice is hereby given that the time within which judicial review must be sought on this  
decision is governed by California Government Code Section 65860 (b).

EXHIBIT #1

Signed Ordinance

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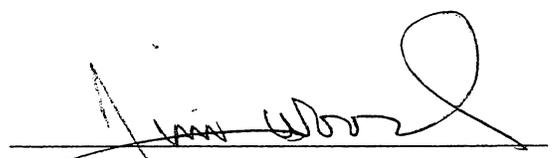
3. The Ordinance shall not be codified.

4. 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 7<sup>th</sup> day of November 2007, and, thereafter,

PASSED AND ADOPTED by the Oceanside City Council on this 5<sup>th</sup> day of December, 2007, by the following vote:

- AYES: CHAVEZ, FELLER, KERN
- NAYS: WOOD, SANCHEZ
- ABSENT: NONE
- ABSTAIN: NONE



Mayor of the City of Oceanside

ATTEST:

APPROVED AS TO FORM:

  
City Clerk

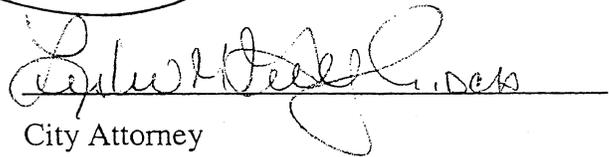
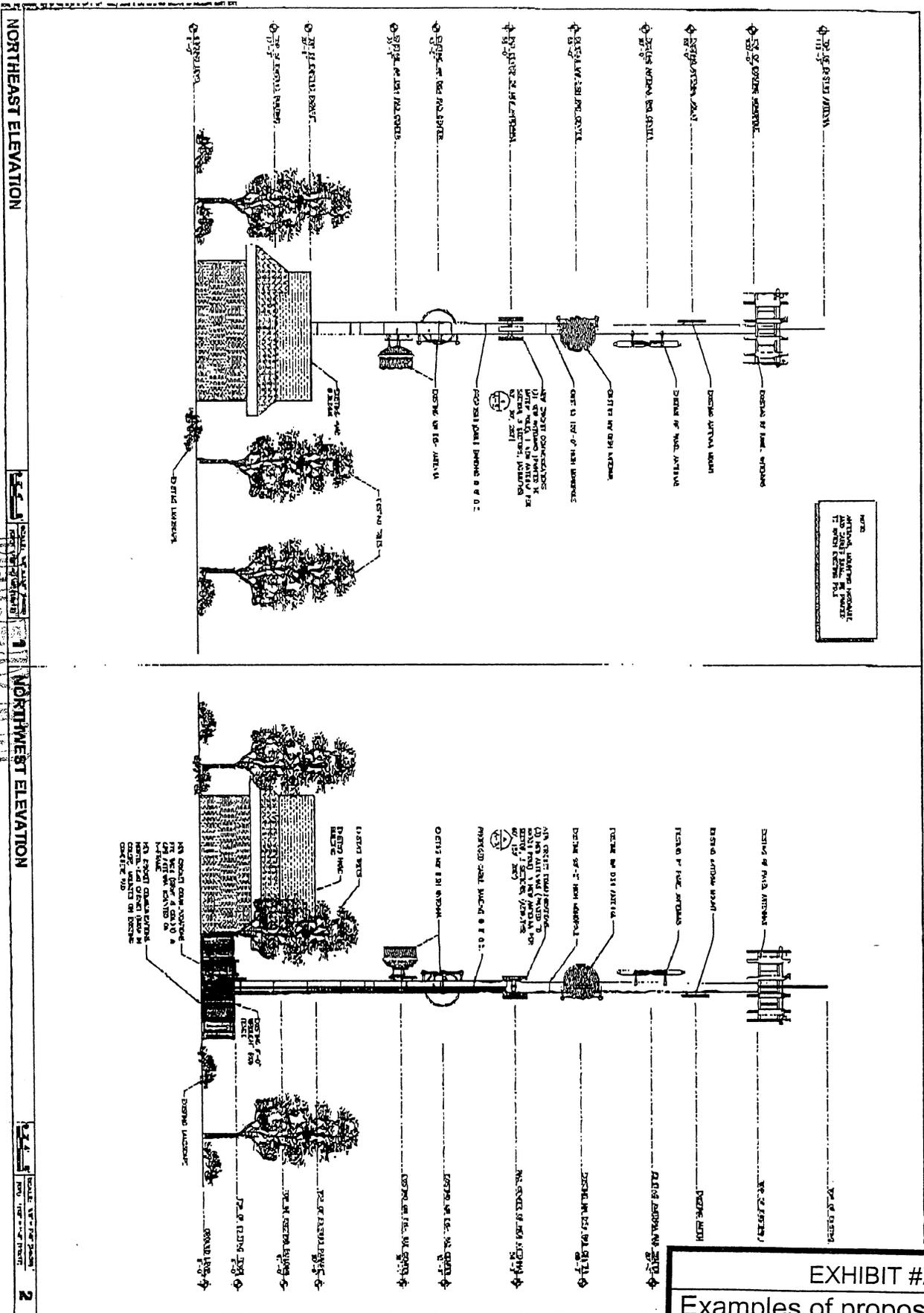
  
City Attorney

EXHIBIT "A"  
"D" Downtown District Ordinance  
Zoning Text Amendment  
ZA-201-07 & LCPA-201-07

\* Proposed Changes are Bolded

**See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "Communication Facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025 of the Zoning Ordinance.**



**EXHIBIT #2**  
**Examples of proposed Co-Use Communication Facilities**  
 LCPC #1-08 Telecommunication Facilities

PROJECT NO.	0700A
SITE NAME	0700A
SITE NUMBER	S
SITE ADDRESS	6511 38 OCEAN
CITY	OCEN
DATE	05/26/09
BY	CT
CHECKED	CT
SCALE	1/8" = 1'-0"
APP. NO.	1
DATE	05/26/09
BY	CT
CHECKED	CT

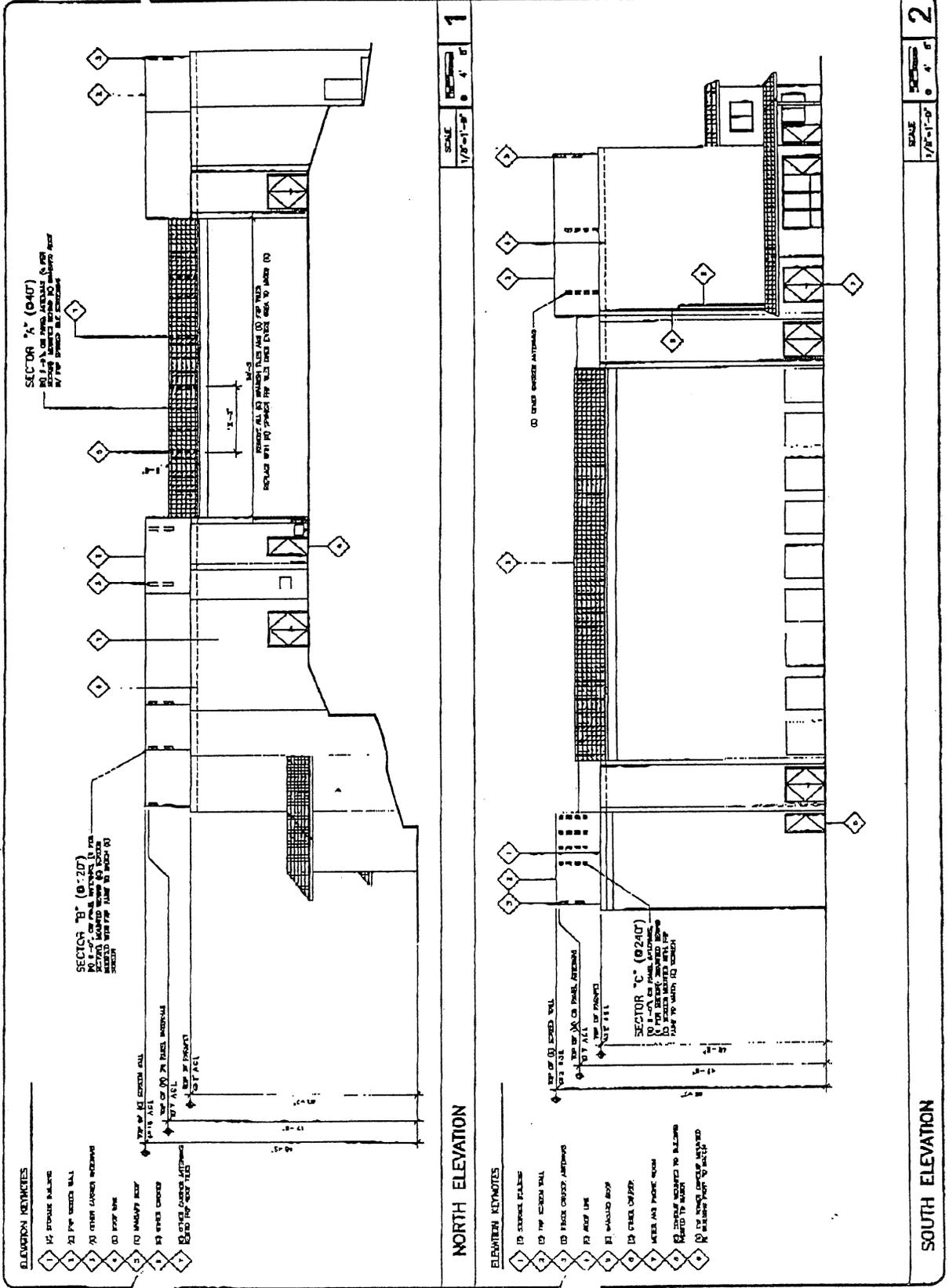
MAY 26 2003  
 CALIFORNIA  
 COASTAL COMMISSION



RECEIVED

MAY 26 2009

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



**JRA**  
JERRY RAY & ASSOCIATES, INC.  
ARCHITECTS & ENGINEERS  
1000 LA JOLLA VILLAGE CENTER, SUITE 200  
LA JOLLA, CALIFORNIA 92037  
(619) 451-2525

**PROFESSIONAL SEAL**  
JERRY RAY  
REGISTERED ARCHITECT  
NO. 10000  
STATE OF CALIFORNIA  
EXPIRES 12/31/08

**PROCESSED FOR**  
**X cingular**  
WIRELESS

PROJECT NAME  
A-1 STORAGE

PROJECT NUMBER  
AS-09-01-P12

PROJECT LOCATION  
SAN DIEGO, CALIFORNIA

DATE OF DRAWING  
05/26/09

DRAWN BY  
JRA

CHECKED BY  
JRA

SCALE  
1/8"=1'-0"

DATE  
05/26/09

DESCRIPTION  
ELEVATIONS

PROJECT NUMBER  
A-1 STORAGE

PROJECT NUMBER  
AS-09-01-P12

PROJECT LOCATION  
SAN DIEGO, CALIFORNIA

DATE OF DRAWING  
05/26/09

DRAWN BY  
JRA

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JRA

SCALE  
1/8"=1'-0"

DATE  
05/26/09

DESCRIPTION  
ELEVATIONS

PROJECT NAME  
A-1 STORAGE

PROJECT NUMBER  
AS-09-01-P12

PROJECT LOCATION  
SAN DIEGO, CALIFORNIA

DATE OF DRAWING  
05/26/09

DRAWN BY  
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SCALE  
1/8"=1'-0"

DATE  
05/26/09

DESCRIPTION  
ELEVATIONS

PROJECT NAME  
A-1 STORAGE

PROJECT NUMBER  
AS-09-01-P12

PROJECT LOCATION  
SAN DIEGO, CALIFORNIA

DATE OF DRAWING  
05/26/09

DRAWN BY  
JRA

CHECKED BY  
JRA

SCALE  
1/8"=1'-0"

DATE  
05/26/09

DESCRIPTION  
ELEVATIONS

A-2

SCALE 1/8"=1'-0"

NORTH ELEVATION

SCALE 1/8"=1'-0"

SOUTH ELEVATION

- ELEVATION KEYNOTES
- 1 1/2" STROKE BALANCE
  - 2 1/2" FOR BRICK WALL
  - 3 1/2" OTHER LARGER WINDOWS
  - 4 1/2" FOR THE
  - 5 1/2" HATCH ROOF
  - 6 1/2" STEEL CORNER
  - 7 1/2" OTHER CORNER ANTENNAS
  - 8 1/2" FOR ROOF TILES

- ELEVATION KEYNOTES
- 1 1/2" STROKE BALANCE
  - 2 1/2" FOR BRICK WALL
  - 3 1/2" OTHER LARGER WINDOWS
  - 4 1/2" FOR THE
  - 5 1/2" HATCH ROOF
  - 6 1/2" STEEL CORNER
  - 7 1/2" OTHER CORNER ANTENNAS
  - 8 1/2" FOR ROOF TILES

SECTION "A" (04-07)  
NO. 1-1/2" FOR BRICK WALL  
NO. 1-1/2" FOR OTHER CORNER ANTENNAS  
NO. 1-1/2" FOR ROOF TILES

SECTION "B" (01-207)  
NO. 1-1/2" FOR BRICK WALL  
NO. 1-1/2" FOR OTHER CORNER ANTENNAS  
NO. 1-1/2" FOR ROOF TILES

SECTION "C" (02-240)  
NO. 1-1/2" FOR BRICK WALL  
NO. 1-1/2" FOR OTHER CORNER ANTENNAS  
NO. 1-1/2" FOR ROOF TILES

**CALIFORNIA COASTAL COMMISSION**

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



July 29, 2009

Shan Babick  
Economic Development and Redevelopment  
City of Oceanside  
300 N. Coast Hwy  
Oceanside, Ca 92054

Re: Certification of City of Oceanside LCP Amendment No. 1-08 (Telecommunication Facilities)

Dear Mr. Babick,

On June 11, 2009, the California Coastal Commission approved the above referenced amendment to the City of Oceanside Local Coastal Program (LCP). The amendment involves modifying the City's Implementation Plan to allow for the placement and/or construction of Co-User Communication Facilities in the Downtown area. The amendment includes new definitions, siting criteria, and standard conditions of approval for Co-User Tele-Communication Facilities.

The Commission approved the LCP amendment with suggested modifications that incorporate the updated definitions and siting criteria into the Implementation Plan. The suggested modifications also update the Downtown District's Commercial Land Use Matrix to include various types of Co-User Facilities as Permitted/Conditionally-Permitted uses and then established the conditional use permitting process for specified telecommunication facilities. 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 plain text or other ordinance revisions. This certification must also include production of new LCP text and Downtown District Commercial Land Use Matrix 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.

July 30, 2009

Page 2

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. Once again, 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,

A handwritten signature in cursive script, appearing to read "Deborah Lee".

Deborah Lee  
District Manager

cc: Toni Ross  
Kathy Baker

(G:\San Diego\Reports\LCPS\Oceanside\OCN LCFA 1-08 TeleFacilities Cert letter.doc)

**CITY OF OCEANSIDE LCP AMENDMENT #1-08  
TELECOMMUNICATION FACILITIES  
SUGGESTED MODIFICATIONS ADOPTED BY COASTAL COMMISSION  
(ON JUNE 11, 2009)**

1. Remove the following language from Article 12 - Downtown District - Property Development Regulations as follows:

~~See Section 3025: Antennas and Microwave Equipment. For the purposes of this section the definition of "Utilities, minor" shall have the same meaning as "communication facilities" in Section 3025 B.2 of the Zoning Ordinance and the siting of Communication Facilities shall be governed by Section 3025 of the Zoning Ordinance."~~

2. Add language to Article 4a Section 450 G - Communication Facilities, as follows:

**450 Commercial Use Classifications**

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.

Reception Antenna and Co-User Communication Facilities shall also be defined in Subsections a-d below:

a. Reception Antenna and Co-User Communication Facilities - Definitions

a. Reception Antenna - An antenna that is designed and used only for the purpose of receiving broadcast and subscriber services such as radio, television, and microwave communication. Typical antenna types include skeletal-type and dish antennas.

b. Co-User Communication Facility - Antennas and facilities that are part of a system or network of voice, data, or information transmission, relay, and reception, and which are conducted through the licensed use of an allocated portion of the global electromagnetic spectrum. Services typically provided by these facilities include wireless telecommunication, paging systems and data-link systems. Specifically, a Co-User Communication Facility is shared by more than one communication system, or is a facility which is shared by a communication facility and another independent use or activity.

1. Minor Co-User Facility - A co-user communication facility with as many as 5 whip or pole antennas.



4. Add new Section 1232 regarding Reception Antennas and Co-User Facilities into Article 12 D Downtown District as follows:

1232 Reception Antennas and Co-User Facilities: Purpose and Siting Criteria.

A. Purposes. This section is intended to promote and provide for the following:

1. To establish a zoning permit and land use review process consistent with the City's Telecommunication Policies and which accommodate the public's ability to access communication, broadcast, and subscription services which are transmitted through the global atmospheric radio-frequency spectrum.
2. To maintain certain aesthetic values and land use compatibility through a land use review process for certain types of these facilities that may have potential impact upon public welfare.
3. To regulate the siting of telecommunications facilities so as to comply with the limitations, constraints and policies set forth in relevant federal and state telecommunications law.

B. Reception Antennas: Siting Criteria. A reception antenna is permitted on any structure if it complies with each of the following criteria:

1. Maximum Number. The maximum number of reception antennas is limited to two per structure.

2. Minimum Setbacks.

A. Interior side and rear property line - 10 feet.

B. Corner-side property line - zoning district standard.

C. Reception antennas may not be installed within the front yard setback area of the underlying zoning district.

3. Maximum Size.

A. Roof-mounted antenna - 4 feet diameter for dish and 60 cubic feet for skeletal type.

B. Ground-mounted - 5 feet diameter for dish type and 60 cubic feet for skeletal-type.

4. Maximum Height.

A. Roof-mounted -

1. Skeletal-type antennas - 1- feet above the district height limit.
2. Dish mounted - no higher than the principal or predominant roof-line of the structure.

B. Ground-mounted - 12 feet above grade.

Additional height may be authorized through an administrative conditional use permit issued by the Planning Director in accordance with the provisions of Article 41 of this ordinance.

5. Surface Materials and Finishes. Reflective surfaces are prohibited.

6. Screening: The structural base of a ground-mounted antenna, including all bracing and appurtenances, but excluding the antenna itself, shall be screened from the views from neighboring properties by walls, fences, buildings, landscape, or combinations thereof not less than 5 feet high.

7. Cable Undergrounding. All wires and cables necessary for operation of the antenna and its reception shall be placed underground, except for wires or cables attached to the exterior surface of a structure.

C. Communication Facilities. Siting Criteria. Communication facilities may be installed and operated within any zoning district subject to the following categorical standards and processes.

1. Minor Co-User Communication Facilities. Co-User facilities consisting of a limited number of whip or pole antennas and monitoring antennas shall be allowed subject to the following limitations:

A. Antenna Type. Permitted antennas are limited to pole and monitoring antennas/

B. Maximum Number.

1. Pole Antennas - one per 1,000 square-feet of roof area up to a maximum of 5 antennas.
2. Monitoring Antennas - one per every permitted communication facility.

C. Maximum Height.

1. Pole Antennas - 10 feet above height of a building or co-user facility.

2. Monitoring Antennas - 1-foot above height of co-user facility.

D. Maximum Antenna Size.

1. Pole antenna - 4 inches diameter.

2. Monitoring antennas - 1 cubic foot.

E. Appearance. Antennas must be colored or painted to blend with the predominant background features (e.g., building, landscape, sky).

2. Administrative Conditional Use Permit Requirement. Major Co-User Communication Facilities and, within the coastal zone, Minor Co-User Facilities. In accordance with the requirements specified within Article 41 of this Ordinance, the Planning Director may approve the siting, development, and operation of a Major or Minor Co-User Communication Facility through an administrative process. The Planning Director's decision may be appealed to the Planning Commission. A permit issued pursuant to this section shall be subject to the requirements set forth in Subsections 3(A-F) below

3. Standard Conditions of Approval. The following standard conditions of approval shall apply to all Minor and Major Co-User Communication Facilities:

A. The Conditional Use Permit shall be limited to a term of 5 years. However, the CUP may be renewed in accordance with the provisions of the Zoning Ordinance.

B. Upon one year of facility operation, and upon any change-out of facility equipment, the permittee(s) shall provide to the Planning Director a statement of radio-frequency radiation output and output compliance with the limitation of governing licensing authorities.

C. The permittee(s) shall exercise a good-faith effort to incorporate the best available equipment technology to effect a reduction in the visual presence of the approved antenna and facility equipment. The change-out and retro-fit of equipment shall be conducted by the permittee(s) after such equipment becomes available and exhibits common use at similar facilities. Upon the City's request and discretion, the permittee(s) shall be required to provide an independently prepared technical analysis demonstrating compliance with this condition. The permittee(s)' inability to demonstrate the use of current technologies may be grounds for the revocation of the CUP.

D. The permittee(s) shall exercise a good-faith effort to cooperate with other communication providers and services in the operation of a co-user facility, provided such shared usage does not impair the operation of the approved use. Upon the City's request and discretion, the permittee(s) shall provide an independently prepared technical analysis to substantiate the existence of any practical technical prohibitions against the operation of a co-use facility. The permittee(s)' non-compliance with this requirement may be grounds for the revocation of the CUP.

E. The approved communication facility shall be subject to, and governed by, any and all licensing authority by any governmental agency having jurisdiction. The City's local approval of a communication facility shall not exempt the permittee(s) from any such pre-emptive regulations.

F. The approved facility shall address the appearance of the entire site and shall upgrade or repair physical features as a means of minimizing view impacts to the community. Such techniques shall include, but shall not be limited to, site landscaping, architectural treatments, painting, and other methods to minimize visual impacts to the public streetscape.

CITY OF OCEANSIDE  
PLANNING DEPARTMENT

# NOTICE OF EXEMPTION

TO: X RECORDER/COUNTY CLERK  
COUNTY OF SAN DIEGO  
P.O. BOX 1750  
SAN DIEGO, CA 92112-4147

PROJECT TITLE AND FILE NUMBER:

ZONE AMENDMENT TO MODIFY ARTICLE 12, SECTION 1230, OF THE "D" DOWNTOWN DISTRICT –  
TO ALLOW FOR TELECOMMUNICATION FACILITIES WITHIN THE COASTAL ZONE.

PROJECT LOCATION - SPECIFIC:

Redevelopment Project Area

PROJECT LOCATION - GENERAL:

Redevelopment Project Area

ZONE AMENDMENT (ZA-201-07)

LCPA (LCPA-201-07)

DESCRIPTION OF NATURE, PURPOSE AND BENEFICIARIES OF PROJECT:

A Zone Amendment to modify Article 12, Section 1230, of the "D" Downtown District to allow for  
telecommunication facilities within the Coastal Zone.

NAME OF PUBLIC AGENCY APPROVING PROJECT:

City of Oceanside

NAME OF PERSON(S) OR AGENCY CARRYING OUT PROJECT:

City of Oceanside

Shan Babick, Associate Planner

300 North Coast Highway

Oceanside, CA 92054

(760) 435-3354

Exempt Status per the Guidelines to Implement the California Environmental Quality Act (CEQA)  
(Public Resources Code Section 21000 et. al.):

X NOT SUBJECT TO CEQA PER THE GENERAL RULE, SECTION 15061(B)(3)

   STATUTORY EXEMPTION PER ARTICLE 18, SECTION(S)

   CATEGORICAL EXEMPTION PER ARTICLE 19, SECTION 15301(b)

REASONS WHY PROJECT IS EXEMPT:

This modification to the zoning ordinance is covered by the general rule that CEQA applies only to projects which can have the potential for causing significant effect on the environment.

Contact Person: Shan Babick, Associate Planner

SIGNATURE

October 8, 2007

DATE

For: Jerry Hittleman, Interim City Planning

CITY HALL, 300 NORTH COAST HIGHWAY, OCEANSIDE CA 92054, TELEPHONE (760) 435-3534, FAX (760) 435-3538

# OCEANSIDE CITY ACCOUNTABILITY FOR NEIGHBORHOODS

Sub-group of REACT, Residents Engaged Against Cell Towers- a Coalition of Southern California

1220 Vista Way

Oceanside, Ca 92054

760-494-8700

Website: [www.oacfn.org](http://www.oacfn.org)

Date: August 12, 2009

TO: Chairperson & Members of the Redevelopment Advisory Committee

FROM: OCAFN; Oceanside City Accountability For Neighborhoods.

SUBJECT: OPPOSE: ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO THE SUGGESTED MODIFICATIONS FOR THE LOCAL COASTAL PROGRAM AMENDMENT (LCPA-201-07) AND ZONE AMENDMENT (ZA-201-07) FOR ALLOWING TELECOMMUNICATION FACILITIES WITHIN THE COASTAL ZONE

Oceanside Citizens Accountability for Neighbors (OCAFN) is a group affiliated with a coalition of Southern California Communities Residents Engaged against Cell Towers (REACT). OCAFN wants to make it clear we aren't opposed to all cell phone towers. We believe that growth for the telecom industry and downtown economic development can be compatible with and provide assurances to Oceanside residents that their quality of life, health and property values will remain protected.

We are however opposed to any ordinance and application that allows for further proliferation of cell phone towers unless such approvals contain findings that are required in the most recent 9<sup>th</sup> Circuit Court of Appeals case, *T-Mobile USA Inc. v. City of Anacortes*, Washington, No. 08-35493 (07/20/2009).<sup>1</sup>

This case makes it clear that decision makers are required to consider certain factors for any application or approvals regarding cell towers/communications towers. In this case, OCAFN does not see the required analyses, findings, or justifications for such the LCP amendment and therefore must oppose adoption/approval of this LCP amendment and zone change.

Findings that must be made are as follows:

1. Alternatives Must be Considered: The provider, or in this case, the City must submit an application that analyzes alternatives, indicating that the preferred option is the *least intrusive* means of fulfilling a significant gap.

The City was required to show the existence of some potentially available and technologically feasible alternatives to the ..location. *Id* 9229

P.2 OCAFN, August 12, 2009 Oppose LCP Amendment (201-07)

<sup>1</sup> <http://www.ca9.uscourts.gov/datastore/opinions/2009/07/20/08-35493.pdf>

2. A Significant Gap in Coverage Must Exist: The provider, or again in this case, the City must show that there is a significant gap in coverage by performing an analysis demonstrating that gap in telecommunications.

The provider's application would have to show how the proposed site would close the coverage gap, *supported by data showing the coverage afforded by other sites.* (emphasis added) *Id p 9228*

In this case, the City has met neither required element. In the *T-Mobile* case the applicant 'presented considerable data' showing coverage...and the other alternatives. (p.9228) Here the City has done neither.

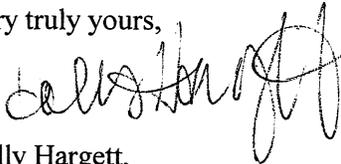
Citizens must have policies for approval of cell facilities to ensure that any placement is truly necessary to fill a gap in service and will be the least intrusive for the community. This will protect their health, safety and property values. The City is required to balance the 'local concerns over the specific locations of such facilities with the national purpose of providing telecommunications' for all. *Id 9228* Again, this was not done. Nowhere in the record is there an analysis of balancing specific community concerns such as property values, aesthetics, retention of views, health risks, or any other such community concerns as may be raised.

Therefore we ask the City of Oceanside to consider working with OCAFN to develop the siting criteria that complies with the T-Mobile case and also do the appropriate analyses in order to assure the citizens that there will not be an over-proliferation of communications towers/antennas in their neighborhoods. We need better deployment of better technology and a clear picture of the network systems being placed in our city. To date the City of Oceanside has not completed a complete inventory of all active sites in the city to properly address such analyses. OCAFN has described goals in the following pages and we must be in opposition of all new zone/code changes to existing telecommunication criteria until these goals are met.

OCAFN calls on the City of Oceanside to follow an agreement signed by the FCC in 1998<sup>2</sup> stating moratoria are appropriate when local government needs time to revise its antenna-siting guidelines. To allow time to study the issue and revise and adopt ordinances to provide the maximum protection for citizens and residential neighborhoods allowed under state and federal law, to comply with the required findings of the T-Mobile case, and complete a full inventory of all active wireless sites in the City of Oceanside, until these have been reached, we ask that an immediate moratorium be enacted and no approvals be granted for the LCP Amendment and Zone Change.

Thank you for allowing us to comment on this very important issue. We look forward to working with the City on a telecommunications citing policy.

Very truly yours,



Holly Hargett,  
Founder, OCAFN

Attachments: following pages.

<sup>2</sup> <http://www.fcc.gov/state/local/agreement.txt>

**RE: OCAFN Goals for rewriting of telecommunication zones/codes.**

- I. OCAFN advocates rewriting the guidelines to show Preferred adjacent zones. So that residential neighborhoods, schools, hospitals, health centers, and places of worship are (disfavored) locations based upon the standard land use legal concepts of 'attractive nuisance' and 'foreseeability', 'property values', and 'health' at which FCC Flux limits exceed.
- II. OCAFN asks the city to have a level of requirement to show the gap in coverage of service that is being filled telecommunication provider's applicant.
- III. OCAFN asks Undergrounding of wireless facilities to the extent possible.
- IV. OCAFN also proposes that the current 5 year permits be changed to 3 years to guide the monitoring of antennas, and towers since newer technologies exist and the applicant must make the appropriate changes.
- V. OCAFN also proposes that independent experts not doing business with the wireless applicants be retained by the City to evaluate each wireless carrier applicant's claims that a particular tower/antenna/ or adding antennas is necessary to provide wireless services to the City of Oceanside. Wireless carriers should be required to document their existing networks, in their entirety of the city. Include a 5 mile radius in adjoining cities, so that an accurate determination of claims of the need for additional antennas by wireless carriers can be fairly and objectively evaluated by the City.
- VI. OCAFN also proposes the sitting criteria to also include that the applicant of construction of cell towers also be held to remove cell towers insuring all safety measures, paid for by the applicant, to make sure that an abandoned cell tower is not left at the City of Oceanside's expense.
- VII. OCAFN also objects to antennas being placed on light and utility poles in public rights-of-way in residential districts and other sensitive locations in the City of Oceanside, California, unless a complete analysis report is done by a third party, since the applicant is of competitive reach for coverage.
- VIII. **Independent scientific measurement and monitoring of cumulative radio frequency (RF) radiation emission levels in the City of Oceanside, California.** OCAFN believes that the City should hire truly independent, third-party experts in the modeling and measurement of RF radiation, paid for by the industry (fee applied to application), to assess the accumulative RF radiation levels that would effect NH (nearest human) NN (nearest neighbor). These experts should also form part of a systematic monitoring process for each and every antenna site in the City of Oceanside, California. As well as be accessible as public information.

**OCAFN with the Residents of Oceanside, Request:**

An immediate six month moratorium on all new antennas until the City of Oceanside achieves 3 primary goals:

- 1) To date the City of Oceanside has not conducted a complete inventory of existing, or active antenna/tower facilities in City of Oceanside, including antennas under the jurisdiction of the Planning Department, Department of Public Works, Redevelopment Agency, Caltrans, Local Coastal Commission.
- 2) Make an independent scientific determination whether each antenna/tower facility and site ***is in compliance with existing FCC radiation emission standards***; and any change outs or work done on towers/antennas should also submit compliance reports (by third party-payable from applicant) is still with existing FCC radiation emission standards to NH (nearest human) or NN (nearest neighbor).
- 3) Fully consider OCAFN suggestions of revisions to all zones/codes/ordinances for antenna-sitting guidelines in a public hearing before the appropriate regulatory agencies and adopt these revisions to the fullest appropriate extent. OCAFN proposes guidelines to include keeping residential neighborhoods, public right of ways, schools, hospitals, senior centers, and other areas where people potentially most vulnerable, decrease property values and vulnerable to microwave radiation gather and reside.



Holly Hargett  
Founder, OCAFN

[www.ocafn.org](http://www.ocafn.org)

Date: August 12, 2009

TO: Honorable Mayor and City Councilmembers  
Chairperson & Members of the Redevelopment Advisory Committee

FROM: Nancy Gregory

SUBJECT: OPPOSE: ADOPTION OF A RESOLUTION TO APPROVE REVISIONS TO THE SUGGESTED MODIFICATIONS FOR THE LOCAL COASTAL PROGRAM AMENDMENT (LCPA-201-07) AND ZONE AMENDMENT (ZA-201-07) FOR ALLOWING TELECOMMUNICATION FACILITIES WITHIN THE COASTAL ZONE

I am writing this to you so you know of my disappointment with the way the city operates I have email after email and letters stating that the permit was to renew or extend not a new permit for sprint@surfride not a new permit which was only brought up at the hearing on May 4<sup>th</sup> because Sprint and the city had allowed the permit to lapse for over 2 ½ years. This was the first time I had heard they were operating with out a permit and for so long, but does not surprise me since I have emails stating how Sprint was over and over again not meeting deadlines and the city would extend them saying they were showing good faith, how come the city does not extend the same good faith to its tax paying citizens, but instead tells them they are confused by the City's attorney. I was so disgusted with the way the city treats us and does not even want to set limits for how many towers can be in an area. We clearly have way over what should be here.

On the cities own agenda # 6 page 5 states how the ACUP was permitted to renew before the five year term expires, but this was never done. The ACUP expired on December 14<sup>th</sup> 2006. The city was not aware of this. It states the staff was not aware that the existing telecommunication facility was operating without the proper permits for over 2 1/2 yrs. once the application for a new Administrative Conditional Use permit was received. The facility was permitted to operate since it received prior approval, but Staff informed the applicant that if the project were denied the telecommunication facility would have to be removed. At this meeting they were also supposed to upgrade the facility to meet newer guidelines.

The city again and again only shows good faith for business and not residents which it views as an annoyance, when they and the surfride make money on this and the only thing we get is unbelievable health risk potential from the saturation of cell phone towers in such a small area. There should at least be a limit to how many towers an area can have I think we have over 75 and they can be split with higher usage what is the affect to have such high concentrations from having multiple cell towers in a small community?

Should the city not play it safe with its resident's health and limit the number of towers in an area? Would you want to be lab rats??? Would you buy my house??? Why are these facilities near children, school, homes we don't get a say about our health and our property values.

Thank you

Nancy Gregory  
760 414- 3515

TO: Honorable Mayor and City Councilmembers  
FROM: OCAFN—Oceanside Accountability For Neighborhoods  
DATE: August 12, 2009  
RE: Request for **Moratorium** on permits and placements of wireless facilities

### **Background:**

1. **Unchecked Proliferation:** The speed with which wireless companies market new wireless services has led to a proliferation of cellular facilities in residential areas and near schools. Cellular facilities are approved without proper justification or proof that the placement is to serve existing demand or provide public safety benefits.
2. **Lack of required notification:** Serious concerns exist regarding wireless permits approved near homes and schools without proper notification to school officials and nearby property owners.
3. **Lack of proper oversight and review:** Wireless applications/facilities often violate building and zoning codes and/or conditions of wireless permits are often violated and/or not enforced.
4. **Request for Wireless Moratorium:** Citizens are alarmed and based on substantial evidence a "time out" is both wise and necessary to provide the City of Oceanside sufficient time to study the problem and address the concerns raised by its citizens regarding the potential for more inappropriate or unnecessary placements, expired, and complete a full inventory on all towers/antennas including networks with adjoining cities for all active wireless sites accurate determination of claims. To date the City of Oceanside lacks an active wireless inventory report.
5. **Global Reaction:** The full European Parliament, on April 2, 2009, adopted (559 votes in favor, 22 against and 8 abstentions) a resolution calling for stricter regulations and protections for residents and consumers and more reliable information be made available about the effects of wireless technology to citizens in an effort to prevent a proliferation of poorly positioned wireless antenna and facilities.

### **Therefore, we request the City of Oceanside the Following:**

1. **Pass a city wide Moratorium** to allow sufficient time to study the issues surrounding the permitting and placement of wireless facilities;
2. **Revise the pending telecommunications ordinance** to provide the public with the maximum protections allowed under State and Federal law and incorporate all local authorities reinstated by the recent decision of the 9<sup>th</sup> Circuit Court of Appeals *Sprint Telephony PCS v. County of San Diego* (filed September 11, 2008);
3. **Work with a citizens' committee** to allow public access and input on the pending wireless ordinance equal to that accorded to the wireless industry and their lobbyists;
4. **Initiate public study sessions** with all relevant staff, including the County Engineers, County Attorneys and independent telecommunications legal experts, to educate the public about the issues and cellular facilities surrounding them;
5. **Support responsible deployment of fiber optic broadband technology**, which is superior to wireless technology in speed, reliability, security, durability and protections it affords people and the environment from potential hazards;
6. **Pass a resolution** in favor of repealing Section 704 of the Federal Telecommunications Act of 1996's preemption of consideration of the health and environmental effects of radio-frequency radiation at levels below current FCC safety standards in decisions involving the placement, construction and modification of wireless facilities, and in favor of amending the California Public Utilities Code to grant local governments authority to regulate wireless facilities in public rights of way pursuant to local planning and zoning ordinances, to be sent to Sacramento and Washington DC.

Note of questionable acts committed by Telecommunications companies, typed this day of 08/11/09

1. One late night around 1:00 am I went out to my car to roll up the windows and lock my car up. On doing so I observed a lot of sparks flying around the top of a cell tower located at the Park and Ride at Moreno and Vista Way. At first I thought the tower was going to explode or catch on fire. On closer observation I could see a shadow of a figure on top of the tower, "He was removing the small transmitters and replacing them with larger transmitters". I would have gone to the Park and Ride to confront the person doing this with no lighting. I was obvious it was done under the cover of darkness for a reason.
2. There is a land line telephone pole located on the east side of my property. There was continued activity concerning the constant reopening of a wire junction seemly on a daily basis. Finally one day I went out as said to one of the guys working on the line, "How come you keep coming back and opening that junction what's wrong with it. Thinking it was a land line problem and the company working on the line was AT&T, naturally I figured there must be a problem in the area concerning land lines. It turned out it had to do with the huge cell tower located at the Park and Ride, which is a cell tower operation. This statement got me wondering. If a cell tower emitted signals then why are the land lines used for cell communications. I then walked to the Park and Ride expecting to see another AT&T worker but instead there is a Sprint/Nextel worker coming out of the build which houses the operations of the tower. Needless to say I was surprised seeing him. I asked him."What seems to be the problem, AT&T has been in front of my house just about daily or at least weekly for some time now?" He said "Ya this tower has been down for awhile." I then said "The whole tower?" He said. "No just ours at the top, Verison is below us". I said. "Really I use Sprint/Nextel and haven't had any problems getting calls or receiving call." He then said. "NAW YOU'LL NEVER HAVE A PROBLEM WITH SERVICE, THERE IS SO MUCH OVERLAP YOU WOULD NEVER KNOW WHEN A TOWER IS DOWN... THIS ONE HAS BEEN DOWN FOR ALMOST A MONTH."
3. Just recently during the month of July AT&T was back again, this time with three trucks on a Saturday morning with cones directing west bound traffic into the center turn lane so they could string a cable along the land lines. The city of Oceanside and the police department was notified of this. When the city did work on the sewer system residents were notified. Why weren't the residents notified that on a Saturday summer morning when traffic is at a peak with garage sale seekers and beach goers were not notified of over head lines were being installed. Was the city not aware AT&T was doing this? Or was the city aware but failed to notify the residents that their busy street was going to be impacted on a Summer Saturday morning.

\*Note: I am very concerned with the weight on the land lines. The telephone poles are bending!

I Sharon M. Newbery attest to what I have witnessed and hereby swear all typed within this state is true.

1. Can you provide the exact number of Telecommunications companies operating within the City of Oceanside? yes
2. Can you confidently say all permits are up to date concerning all cell towers and antennas? no
3. Can you confidently provide evidence these companies are operating within the FCC regulated RF and EMF guidelines?
4. Can you provide transparency overhead projections of all Telecommunication layouts of the City of Oceanside showing the complete coverage for cell phones, WIFI, G3, G4 and any other services provided by each Telecommunication company?
5. Have you conducted any independent study of these Telecommunication companies to assure the City of Oceanside Planning and Council and the general public is not being exposed to excessive amounts of RF or EMF radiation based on the FCC regulations?
6. Are you aware of the placement of larger antenna receivers replacing smaller receivers on towers in the dead of night in violation to city code?
7. Are you aware these larger antenna receivers change the amount of RF & EMF exposure?
8. Are you aware the exposure of RF & EMF's are increased by the amount of Telecommunication companies piggybacking on a single tower or within close proximity of each other is times by the amount of companies occupying the area under regulator FCC standards? Example:  
Sprint/Nextel =FCC regulation + Verison+ Cricket=OVER EXPOSURE by FCC regulation standards?
9. Has the City of Oceanside conducted an independent study to challenge the Telecommunication companies on dropped call coverage during peek hours as the Telecommunication companies attest to, by contacting residents in the areas these companies are applying for permits to operate within our city limits?
10. Will you be willing to inform residents of changes to present locations these Telecommunication companies operate before they will occur?
11. Did you know in September of 2008 the Ninth Circuit Courts of Appeals in California ruled in San Diego County's favor, cities do have the right to deny Telecommunication companies permits in residential areas when the city can provide proof of saturation using a grid of the area communications companies wish to operate, no dropped cell phone calls through contact of residents of areas a tower or antenna's are to be erected and or, provide an alternative site.
12. Is this City of Oceanside willing to stand up and place a temporary moratorium on the addition of new expansion on present towers and those applications to be permitted in the near future to conduct a city wide investigation and assessment of those towers , antennas, and cell phone lines attached to our land line telephone poles, to assure the city Planning and Council along with its general residents that ALL Telecommunication companies operating within our city limits are within FCC regulator standards?