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ELECTRONICALLY FILED  
Superior Court of California,  
County of San Diego

5/30/2025 2:52:42 PM

Clerk of the Superior Court  
By N. Lopez, Deputy Clerk

Attorneys for Cross-Defendant CITY OF SAN DIEGO

Exempt from fees per Gov't Code § 6103  
To the benefit of the City of San Diego

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

FATIMA ABDELRAHMAN, an individual;  
NADIA ABDULRAHMAN, an individual;  
NATALINA KANTIEKO, an individual, and  
IDZAI MUBAIWA, an individual,

Plaintiffs,

v.

CITY HEIGHTS COMMUNITY  
DEVELOPMENT CORPORATION, a  
California Non-Profit Corporation; and DOES 1-  
50, inclusive,

Defendants.

CITY HEIGHTS COMMUNITY  
DEVELOPMENT CORPORATION, a  
California Non-Profit Corporation

Cross-Complainant,

v.

THE CITY OF SAN DIEGO, a California  
municipality; FATIMA ABDELRAHMAN, an  
individual; NADIA ABDULRAHMAN, an  
individual; NATALINA KANTIEKO, an  
individual, and, ROES 1 through 25, inclusive,

Cross-Defendants.

Case No. 37-2024-00027594-CU-OR-CTL

**REQUEST FOR JUDICIAL NOTICE**

I/C Judge: Hon. Katherine A. Bacal

Dept.: 63

Date: August 1, 2025

Time: 11:00 a.m.

Complaint filed: June 12, 2024

Trial: Not Set

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Pursuant to Evidence Code Section 452 and 453, City of San Diego respectfully requests the Court take judicial notice of the following on the grounds set forth herein.

Section 452(d) of the California Evidence Code supports the City's request.

Section 452(b) of the California Evidence Code supports the City's request.

Section 452(b) of the California Evidence Code supports the City's request.

Section 452(b) of the California Evidence Code supports the City's request.

Section 452(b) of the California Evidence Code supports the City's request.

HEATHER FERBERT, City Attorney

Senior Deputy City Attorney  
Attorneys for Cross-Defendant CITY OF  
SAN DIEGO

## **EXHIBIT 1**

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San Diego, CA 92123  
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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/04/2024** at 08:00:00 AM  
Clerk of the Superior Court  
By Melissa Valdez, Deputy Clerk

*Attorney for Plaintiff*

CITY HEIGHTS COMMUNITY DEVELOPMENT CORPORATION, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

CITY HEIGHTS COMMUNITY  
DEVELOPMENT CORPORATION, INC., a  
California Public Benefit Nonprofit  
Corporation

Plaintiff(s),

v.

HUBNER BUILDING COMPANY, a  
corporation; UNION TITLE INSURANCE  
AND TRUST COMPANY, a Trustee; and ALL  
PERSONS UNKNOWN, CLAIMING ANY  
LEGAL OR EQUITABLE RIGHT, TITLE,  
ESTATE, LIEN, OR INTEREST IN THE  
PROPERTY DESCRIBED IN THE  
COMPLAINT ADVERSE TO PLAINTIFF'S  
TITLE, OR ANY CLOUD UPON  
PLAINTIFF'S TITLE THERETO

Defendant(s).

37-2024-00009788-CU-OR-CTL

**VERIFIED COMPLAINT FOR QUIET  
TITLE BY ADVERSE POSSESSION**

(Unlimited Civil Complaint - Amount  
Demanded Exceeds \$35,000)

Plaintiff is City Heights Community Development Corporation, a California Public Benefit  
Nonprofit Corporation, alleges herein as follows:

**INTRODUCTION**

1. This action seeks: to quiet title to the subject property ("Property") by adverse  
possession.

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1 THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH  
2 A CENTRAL ANGLE OF 26° 38' 35" A DISTANCE OF 703.25 FEET TO A  
POINT;

3 THENCE SOUTH 36° 43' 15" WEST 704.89 FEET TO A POINT ON THE WEST  
4 LINE OF SAID SECTION 34; THENCE NORTH 0° 33' 45" WEST, ALONG SAID  
WEST LINE, 186.69 FEET;

5 THENCE NORTH 31° 15' 55" EAST, 353.44 FEET TO THE BEGINNING OF A  
6 TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF  
1500.0 FEET;

7 THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH  
8 A CENTRAL ANGLE OF 24° 42' 20" A DISTANCE OF 646.79 FEET;

9 THENCE NORTH 55° 58' 15" EAST 559.23 FEET TO A POINT ON THE NORTH  
10 LINE OF SECTION 34; THENCE NORTH 89° 24' 10" EAST ALONG SAID  
NORTH 105.24 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF  
CHOLLAS ROAD AS NOW LOCATED;

11 THENCE NORTH 33° 20' 10" EAST ALONG SAID SOUTHEASTERLY LINE  
12 64.06 FEET TO A POINT OF INTERSECTION WITH THE SAID WESTERLY  
LINE OF 54TH STREET;

13 THENCE SOUTH 0° 00' 30" EAST ALONG SAID WESTERLY LINE 53.16 FEET  
14 TO THE POINT OF BEGINNING.

15 SAID DESCRIPTION ALSO INCLUDES A PORTION OF LOT 31 OF MAP NO.  
16 734.

### 17 PARTIES

18 3. Plaintiff City Heights Community Development Corporation ("CHCDC") is, and at  
19 all times mentioned in this Complaint, a California Public Benefit Nonprofit Corporation  
20 who has been in possession of and operated the Property since December 2018. Plaintiff  
21 requests quiet title herein.

22 4. Defendant, Hubner Building Company, is a co-owner of record according to a title  
23 search.

24 5. Defendant, Union Title Insurance and Trust Company, is a co-owner of record  
25 according to a title search.

26 6. The Defendants named herein as "All Persons Unknown, Claiming Any Legal Or  
27 Equitable Right, Title, Estate, Lien, Or Interest In The Property Described In The Complaint  
28 Adverse To Plaintiff's Title, Or Any Cloud Upon Plaintiff's Title Thereto" (the "Unknown

1 Defendants”) (collectively with Defendant, the “Defendants”) are unknown to Plaintiff.  
2 Plaintiff is informed and believes, and on that basis alleges, that the Unknown Defendants,  
3 and each of them, claim some right, title, estate, lien, or interest in the real property and real  
4 property interests that are adverse to Plaintiff’s property interests at issue in this action.

5 **JURISDICTION**

6 7. This Court has jurisdiction over this matter because the amount in question exceeds  
7 the jurisdictional minimum for this Court.

8 **VENUE**

9 8. Venue is proper in this Court because the real property that is the subject of this  
10 action is located within the limits of the City of San Diego, County of San Diego in the State  
11 of California.

12 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

13 9. CHCDC is the owner by adverse possession of the real property located at Chollas  
14 Parkway, San Diego, San Diego County, California, 92105 (the “Property”), as legally  
15 described in Paragraph 2.

16 10. As early as 2008, the City of San Diego, a California municipal corporation, (The  
17 “City”) claimed ownership to the Property.

18 11. On October 17, 2008, the City of San Diego issued a three-year, Neighborhood Use  
19 and Site Development Permit to CHCDC’s predecessor, the International Rescue Committee  
20 (“IRC”), a 501(c)(3) organization, registered in the State of New York, to establish and  
21 operate a community garden on the Property.

22 12. On or about December 2018, IRC transferred possession of the Property to CHCDC.

23 13. Since December 2018, CHCDC has occupied and maintained possession of the  
24 Property described in Paragraph 2 of this Complaint by actual, open, hostile, continuous, and  
25 exclusive possession.  
26  
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1 14. CHCDC's possession has been actual, open, hostile, continuous, and exclusive since  
2 December 2018, in excess of the five-year period set forth in the Code of Civil Procedure  
3 sections 318, 319, 321-323.

4 15. CHCDC has been in possession of the Property described in paragraphs 2 and 9 of  
5 this Complaint by virtue of paying the Property's utility bills to present.

6 16. CHCDC's has been in continuous possession during the five (5) year period  
7 described in paragraph 13 of this Complaint, adverse to Defendants and to all other persons,  
8 in support of CHCDC's title to the Property and as curative of any defects in the title deed,  
9 or other defects which might have existed in reference to it.

10 17. Due to the tax-exempt status of the Property's previous occupiers, property taxes and  
11 assessment have not been levied or assessed against the Property described in Paragraph 2 of  
12 this Complaint, during the five-year period.

13 18. Defendants claim an estate or interest in the Property that is adverse to CHCDC.

14 19. Upon information and belief, Plaintiff alleges that there are no known encumbrances  
15 of record to the Property.  
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17 **FIRST CAUSE OF ACTION**

18 **(Quiet Title By Adverse Possession Against All Defendants)**

19 20. Plaintiff hereby incorporates by reference the allegations contained in each paragraph  
20 above as though fully set forth in full herein.

21 21. By virtue of the foregoing facts, Plaintiff is entitled to a judicial declaration that  
22 Plaintiff is the 100% owner of the Property.

23 22. Accordingly, Plaintiff seeks to quiet title to the Property in Plaintiff's name alone as  
24 of the date of this Complaint.  
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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment as follows against all Defendants:

1. For an order quieting title to the Property;
2. For a judgment that CHCDC is the fee simple owner of all right, title, and interest in and to the Property;
3. For judgment that Defendants do not have any right, title, estate, or interest in or lien on the Property;
4. For attorney's fees, if allowed by law;
5. For costs of suit; and
6. For such other and further relief as the court may deem just and proper.

DATED: March 2, 2024

**TALBERT LAW OFFICE, APC**



Maresa Talbert, Esq.  
Attorney for Plaintiff  
*City Heights Community Development  
Corporation, Inc.*

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**VERIFICATION**

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I have read the foregoing **VERIFIED COMPLAINT FOR QUIET TITLE BY ADVERSE POSSESSION** and know its contents.

The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 15, 2024 at City of San Diego, California.



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Alexis Villanueva, Executive Director  
City Heights Community Development Corporation

## **EXHIBIT 2**

to be in violation of this Section, or any future firm in which such person is financially interested.

*(Amendment voted 11-08-2016; effective 12-19-2016.)*

[Prior Language](#)

## **Section 98: Alteration in Contracts**

*(Amendment voted 06-07-1966; effective 06-29-1966.)*

*(Amendment voted 11-04-1975; effective 12-01-1975.)*

*(Repeal voted 11-08-2016; effective 12-19-2016.)*

[Prior Language](#)

## **Section 99: Continuing Contracts**

The City shall not incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year unless the qualified electors of the City, voting at an election to be held for that purpose, have indicated their assent as then required by the Constitution of the State of California, nor unless before or at the time of incurring such indebtedness provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also provision to constitute a sinking fund for the payment of the principal thereof, on or before maturity, which shall not exceed forty years from the time of contracting the same; provided, however, anything to the contrary herein notwithstanding, when two or more propositions for incurring any indebtedness or liability are submitted at the same election, the votes cast for and against each proposition shall be counted separately, and when the qualified electors of the City, voting at an election for that purpose have indicated their assent as then required by the Constitution of the State of California, such proposition shall be deemed adopted. No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council.

*(Amendment voted 04-22-1941; effective 05-08-1941.)*

*(Amendment voted 06-04-1968; effective 07-22-1968.)*

*(Amendment voted 11-08-2016; effective 12-19-2016.)*

[Prior Language](#)

### **Section 99.1: Sports Stadium**

For the purpose of acquiring, constructing and completing on a site in Mission Valley not to exceed 200 acres and lying westerly of Murphy Canyon Road, northerly of Highway 80 and southerly of Friars Road, and maintaining and operating thereon a coliseum, stadium, sports arena, sports pavilion or other building, or combination thereof, and facilities and appurtenances necessary or convenient therefor, for holding sports events, athletic contests, contests of skill, exhibitions and spectacles and other public meetings, the City may, in addition to other legal methods, enter into contracts, leases or other

## **EXHIBIT 3**

or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports must be made available to the public in accordance with the requirements of the California Public Records Act.

*(Addition voted 06-03-2008; effective 07-08-2008.)*

*(Amendment voted 03-03-2020; effective 05-20-2020)*

*Prior Language*

### **Section 39.3: Independent Budget Analyst.**

Notwithstanding any other provision of this Charter, the City Council shall have the right to establish by ordinance an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall appoint the Independent Budget Analyst, who shall serve at the pleasure of the Council and may be removed from office by the Council at any time. Any person serving as the Independent Budget Analyst shall have the professional qualifications of a college degree in finance, economics, business, or other relevant field of study or relevant professional certification. In addition, such appointee shall have experience in the area of municipal finance or substantially similar equivalent experience. The Independent Budget Analyst shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

*(Addition voted 06-03-2008; effective 07-08-2008.)*

### **Section 40: City Attorney**

A City Attorney shall be elected for a term of four years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission and the Commission on Police Practices, which each shall have its own legal counsel independent of the City Attorney, and in the case of the Office of the City Auditor, which may retain and use independent legal

counsel for the City Auditor, the City Auditor's subordinates, and the Audit Committee on the conditions set forth in Charter section 40.2. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office. The City Attorney must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from

office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California, provided that the salary of the City Attorney may not be decreased during a term of office.

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

*(Amendment voted 04-20-1943; effective 05-04-1943.)*

*(Amendment voted 04-15-1947; effective 05-01-1947.)*

*(Amendment voted 11-04-1958; effective 02-19-1959.)*

*(Amendment voted 11-06-1962; effective 01-21-1963.)*



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*(Amendment voted 11-04-1975; effective 12-01-1975.)*  
*(Amendment voted 06-02-1992; effective 07-13-1992.)*  
*(Amendment voted 11-02-2004; effective 01-21-2005.)*  
*(Amendment voted 11-02-2010; effective 12-22-2010.)*  
*(Amendment voted 06-03-2014; effective 07-24-2014.)*  
*(Amendment voted 11-08-2016; effective 12-19-2016.)*  
*(Amendment voted 11-06-2018; effective 12-24-2018)*  
*(Amendment voted 11-03-2020; effective 12-18-2020)*  
*(Amendment voted 03-05-2024; effective 05-09-2024)*

[Prior Language](#)

#### **Section 40.1: Concurrent Jurisdiction of City Attorney with District Attorney.**

The City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors.

*(Addition voted 03-10-1953; effective 04-20-1953.)*

#### **Section 40.2: Legal Counsel for the Office of the City Auditor and Audit Committee**

The Office of the City Auditor, acting through the City Auditor, may retain and use legal counsel, independent of the City Attorney, for legal support and advice in audits, investigations, and related activities within the authority and duties of the Office of the City Auditor, subject to the limitations set forth in this section.

The Office of the City Auditor must retain independent legal counsel by contract approved by the City Council in a manner consistent with the Charter, including the City's required competitive procurement processes and other applicable laws. The City Council has discretion to determine and appropriate funding for the Office of the City Auditor's independent legal counsel. The City Council is not mandated to provide any minimum level of funding for the independent legal counsel on an annual or regular basis and must determine funding consistent with the City Council's budgetary authority under the Charter. The City Council may, by ordinance, establish additional rules and procedures to implement this section.

Before the Office of the City Auditor may use the independent legal counsel who is under contract, the Audit Committee must determine that the use on an audit, investigation, or related activity is within the "public interest," as that term is defined by generally accepted government auditing standards promulgated by the United States Government Accountability Office or successor agency.

## **EXHIBIT 4**

## Article 6: Development Permits

### Division 2: Neighborhood Use Permit Procedures

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

#### §126.0201 Purpose of the Neighborhood Use Permit Procedures

The purpose of these procedures is to establish a review process for *developments* that propose new uses, changes to existing uses, or expansions of existing uses that could have limited impacts on the surrounding properties. The intent of these procedures is to determine if the *development* complies with all applicable regulations of the zone and any supplemental regulations pertaining to the use, and to apply conditions that may be necessary to help ensure compliance.

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

#### §126.0202 General Rules for a Neighborhood Use Permit

- (a) All existing and proposed uses on the site shall be identified in the permit, including existing or new uses permitted by right in the applicable zone, any uses subject to a use permit, and those proposed uses that require the Neighborhood Use Permit.
  - (b) In granting a Neighborhood Use Permit, the decision maker may impose reasonable conditions as deemed necessary and desirable to protect the public health, safety, and welfare.
  - (c) The privileges and conditions of a Neighborhood Use Permit are a covenant that runs with the land and, in addition to binding the permittee, bind each successor in interest.
  - (d) The decision maker may assign an expiration date to the permit.
- (Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

#### §126.0203 When a Neighborhood Use Permit Is Required

- (a) An application for the following uses in certain zones may require a Neighborhood Use Permit. To determine whether a Neighborhood Use Permit is required in a particular zone, refer to the applicable Use Regulation Table in Chapter 13:

Artisan Food and Beverage Producer  
Automobile service stations  
Boarding kennels/pet day care facilities

Community gardens  
Comprehensive *sign* plans  
Eating and drinking establishments abutting residential zones (under circumstances described in Section 141.0607)  
Employee housing  
Home occupations (under circumstances described in Section 141.0308)  
Interim ground *floor residential* use  
Neighborhood identification *signs*  
Parking facilities as a primary use  
Recycling facilities (under circumstances described in Section 141.0620)  
Revolving projecting signs  
Sidewalk cafes that deviate from the requirements of Section 141.0621(a)  
*Signs* with automatic changing copy  
Active Sidewalks (under certain circumstances described in Section 141.0621(c))  
Streetaries (under certain circumstances described in Section 141.0621(b))  
Temporary construction storage yards located off-site  
Theater *marquees*  
Urgent care facilities  
Veterinary clinics and animal hospitals  
*Wireless communication facilities* (under certain circumstances described in Section 141.0420)

(b) The following activities require a Neighborhood Use Permit in any zone:

- (1) Resumption of a *previously conforming* use that has been discontinued for more than 2 years, as described in Section 127.0108; or
- (2) Expansion of a *previously conforming* use of up to 20 percent of the existing *gross floor area* of the *structure*, as described in Section 127.0109.

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)  
(Amended 8-10-2004 by O-19308 N.S.; effective 4-11-2007.)  
(Amended 11-13-08 by O-19803 N.S.; effective 12-13-2008.)  
(Amended 8-4-2011 by O-20081 N.S.; effective 10-6-2011.)  
(Amended 6-18-2013 by O-20261 N.S.; effective 7-19-2013.)  
(Amended 12-1-2016 by O-20752 N.S.; effective 12-31-2016.)  
(Amended 8-9-2019 by O-21114 N.S.; effective 9-8-2019.)  
(Amended 4-14-2021 by O-21305 N.S.; effective 5-29-2021.)

(Amended 11-23-2021 by O-21391 N.S.; effective 1-6-2022.)  
(Amended 5-23-2022 by O-21458 N.S.; effective 6-22-2022.)

**§126.0204 Decision Process for a Neighborhood Use Permit**

A decision on an application for a Neighborhood Use Permit shall be made in accordance with Process Two.

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

**§126.0205 Findings for Neighborhood Use Permit Approval**

A Neighborhood Use Permit may be approved or conditionally approved only if the decision maker makes the following *findings*:

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

(b) Supplemental Findings -- *Wireless Communication Facilities*

A Neighborhood Use Permit required in accordance with Section 141.0420(b)(3) may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* required in Section 126.0205(a):

- (1) The proposed *wireless communication facility* does not interfere with the free and unobstructed use of the *public right-of-way*;
- (2) The proposed *wireless communication facility* will not adversely affect the aesthetic character of the community; and
- (3) The proposed *wireless communication facility* will not interfere with the City's ability to use the *public right-of-way*.

(c) Supplemental *Findings* – Interim Ground *floor residential*

An application for a Neighborhood Use Permit for interim ground *floor residential* uses may be approved or conditionally approved only if the decision maker makes the following *findings*:

- (1) The proposed *development* is physically suitable for *residential* use and located within an existing vacant commercial space that has been vacant for a minimum of six consecutive months.
- (2) The ground *floor* height complies with Section 131.0548.

(d) Supplemental Findings – Streetaries and Active Sidewalks

A Neighborhood Use Permit required in accordance with Section 141.0621(b)(5) and 141.0621(c)(7) may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* required in Section 126.0205(a):

- (1) The proposed streetary or active sidewalk will not adversely impact the use of the *public right-of-way* by pedestrians or bicyclists;
- (2) The proposed streetary or active sidewalk is compatible with adjacent existing, permitted, or planned land uses; and
- (3) The proposed streetary or active sidewalk will enhance the *public right-of-way* and encourage more pedestrian travel.

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

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

**[Editors Note:** Amendments as adopted by O-20261 N.S. will not apply within the Coastal Overlay Zone until the California Coastal Commission certifies it as Local Coastal Program Amendment.

Click the link to view the Strikeout Ordinance highlighting changes to prior language [http://docs.sandiego.gov/municode\\_strikeout\\_ord/O-20261-SO.pdf](http://docs.sandiego.gov/municode_strikeout_ord/O-20261-SO.pdf) ]

(Amended 8-9-2019 by O-21114 N.S. and O-21117 N.S.; effective 9-8-2019.)

(Amended 11-23-2021 by O-21391 N.S.; effective 1-6-2022.)

**§126.0206 Violations of a Neighborhood Use Permit**

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

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

*(Amended 1-8-2020 by O-21161 N.S.; effective 2-9-2020.)*

**§126.0207 Judicial Review**

For a Neighborhood Use Permit required by Chapter 14, Article 1, Division 11, an *applicant* may seek judicial review of a final decision on the permit application, pursuant to California Code of Civil Procedure section 1094.8. This provision does not limit an *applicant's* ability to seek judicial review by other means.

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

## **EXHIBIT 5**



## Article 6: Development Permits

### Division 4: Neighborhood Development Permit Procedures

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

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

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

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

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

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

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

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

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

(Amended 4-22-2002 by O-19051 N.S.; effective 10-8-2002.)

(Amended 11-28-2005 by O-19444 N.S.; effective 2-9-2006.)

(Amended 6-15-2007 by O-19624 N.S.; effective 7-15-2007.)

(Amended 11-13-08 by O-19803 N.S.; effective 12-13-2008.)

(Amended 10-25-2011 by O-20047 N.S.; effective 1-1-2012.)

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

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

(Amended 9-15-2017 by O-20856 N.S.; effective 10-20-2017.)

(Amended 3-22-2018 by O-20920 N.S.; effective 4-21-2018.)

(Amended 8-9-2019 by O-21117 N.S.; effective 9-8-2019.)

(Amended 9-12-2019 by O21118 N.S.; effective 10-12-2019.)

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

(Amended 10-30-2020 by O-21254 N.S.; effective 11-29-2020.)

(Amended 1-27-2022 by O-21416 N.S.; effective 2-26-2022.)

(Amended 9-21-2022 by O-21528 N.S.; effective 10-23-2022.)

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

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

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

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

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

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

**(a) Findings for all Neighborhood Development Permits**

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

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

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

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

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

(c) Supplemental Findings--Environmentally Sensitive Lands Deviation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

#### **§126.0406 Judicial Review**

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

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