

Proposition D, San Diego Municipal Code and Questions to Consider

I. BACKGROUND MATERIALS

A. Municipal Codes, Technical Bulletin, City Attorney Opinions etc.

- **Proposition D – San Diego Municipal Code Section 132.0505(a)**
“Notwithstanding any section to the contrary, no building or addition to a building shall be constructed with a height in excess of thirty feet within the Coastal Zone of the City of San Diego ... the base of measurement of the height shall be in accordance with the Uniform Building Code of 1970 ... Notwithstanding any section to the contrary, there shall be no exception to the provision of this Ordinance”

- San Diego Municipal Code – Rules for Calculations
<https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art03Division02.pdf>
f (See also discussion below related to “Coastal Zone” and “Special Circumstances”)

- **Aug 2013 – City of San Diego Development Services “Technical Bulletin - Determination of Building Height in the Coastal Height Limitation Overlay Zone”**
<https://www.sandiego.gov/sites/default/files/legacy/development-services/pdf/industry/techbulletin/bldg-5-4.pdf>

(Note: “The City of San Diego Land Development Code and California Building Code may require the height of a building under consideration to be determined in different manners. Each of these regulations shall be consulted prior to determining the maximum allowable height of a building.” Excerpt from Technical Bulletin; emphasis added)

- City of San Diego Land Development Code / (Land Development Code, Chapter 13, Article 2, Division 5) (aka San Diego Municipal Code)
<https://docs.sandiego.gov/municode/MuniCodeChapter13/Ch13Art02Division05.pdf>
f

- **Sept 14, 2011 “Height Regulations – presentation to City Council re City of San Diego Height Regulations -Land Use and Housing Committee”**
https://docs.sandiego.gov/councilcomm_agendas_attach/2011/LUH_110914_2ppt.pdf
 (“1970 UBC is method to demonstrate compliance – Measured from finished grade – Therefore, allows grade to be raised with measurement beginning at that higher point (10 ft max differential)”)

- **March 6, 2006 - Memo of City Attorney re: (height restrictions) “Wireless Antenna Placement within the Coastal Height Limit Overlay Zone”**
<https://docs.sandiego.gov/memooflaw/ML-2006-5.pdf>
 (“The proper method of measurement, per Proposition D, is in accordance with the Uniform Building Code of 1970. This office has previously opined that for the purposes of complying with Proposition D, measurements should be from the

finished grade of a site, rather than the pre-existing grade. City Att’y MOL No. 2004-13 (August 12, 2004). The height of the building is then measured vertically to the uppermost point of the structure. SDMC § 113.0270(a)(3). “)

- **Aug 12, 2004 - Memo of City Attorney (“Method of Height Measurement Under Proposition D”)**
- <https://docs.sandiego.gov/memooflaw/ML-2004-13.pdf>
(concluding that more restrictive residential zoning height measurements may apply even if result is lower than 30-foot measurement otherwise permissible under Proposition D UBC 1970 methodology)
- “The City of San Diego Land Development Code and California Building Code may require the height of a building under consideration to be determined in different manners. Each of these regulations shall be consulted prior to determining the maximum allowable height of a building.”

B Background materials for reference – Samples of editorial and commentary in local press

II. Question to Consider:

Does Technical Bulletin **Fully Capture all applicable requirements** of San Diego Municipal Code and other legislative requirements including especially Section 113.0270(a)(4) related to measurements in “Coastal Zones” and “Special Circumstances.”

Possibly not.

To the extent that technical guidance describes methodology related to “reference datum,” height determination and “finished grade,” it appears to do so consistent with methodology set forth in Uniform Building Code of 1970 – a key methodology explicitly referenced in Proposition D. It is important to note, however, that similar detailed attention and diagrammatic instruction related to other applicable “Rules of Calculation” in the San Diego Municipal Code are not fully outlined - - most notably: The rules related to Height Measurement under Special Circumstances, namely, “Structure Height of Buildings Subject to Coastal Height Limit.” These code sections are copied below.

The Technical Guidance document does contain a brief and somewhat oblique statement that *“The City of San Diego Land Development Code and California Building Code may require the height of a building under consideration to be determined in different manners. Each of these regulations shall be consulted prior to determining the maximum allowable height of a building.”* Excerpt from Technical Bulletin; emphasis added)

It is reasonable to consider and likely conclude that this sentence is meant to incorporate the requirements to apply other code sections so as those specifically related to the special circumstance of Coastal Zones and use methodology resulting in a lower measurement (i.e. “whichever is less”). This reading not inconsistent and arguably better aligned with the City Attorney’s memo addressing different calculations.

San Diego Municipal Code – Rules for Calculations

<https://docs.sandiego.gov/municode/MuniCodeChapter11/Ch11Art03Division02.pdf>

§113.0270 Measuring Structure Height (a) Structure Height of Buildings and Structures (Excluding Fences, Retaining Walls, or Signs) (1) **The maximum permitted structure height is specified in the applicable zone and defines the upper limits of the building envelope for a premises. It is measured vertically from the existing grade or proposed grade, whichever is lower,** to form an imaginary plane that is parallel to grade, below which all buildings and structures must be located, except as otherwise described **in 113.0270(a)(4).** This is illustrated in Diagram 113-02JJ. Diagram 113-02JJ Maximum Permitt

*****SPECIAL CIRCUMSTANCES**

11.0270(a)(4)(D)

Structure Height of Buildings subject to Coastal Height Limit in accordance with Section 132.0505

(D) Structure Height of Buildings subject to Coastal Height Limit in accordance with Section 132.0505

(i) The height of a building is measured to the uppermost point of the structure or any appurtenance placed upon the roof thereof, including signs, penthouses, mechanical equipment, chimneys, vent stacks, spires, or steeples, or other projections

(ii) The base of the measurement shall be taken from finished grade in accordance with the 1970 Uniform Building Code. The height shall be measured from the highest adjoining sidewalk or ground surface within 5 feet of the structure, provided that the height measured from the lowest adjoining surface shall not exceed such maximum height by more than 10 feet.

*** (iii) Structure height of buildings subject to the Coastal Height Limit shall also comply with the height measurement calculations for plumb line in Section 113.0270(a)(2)(A) and overall height in Section 113.0270(a)(2)(B).

III. Do City Attorney Opinions dated March 6, 2006 and Aug 12, 2004 (regarding height restrictions and measurements) provide relevant interpretation or guidance?

Yes. With respect to Proposition D, the text of the Proposition itself refers to measurement in accordance with the Uniform Building Code of 1970 which uses the finished grade rather than existing grade as a measurement standard. Additionally, more than one measurement standard may apply and all relevant height measurements, such as those set forth elsewhere in the San Diego Municipal / Land Development Code and/or the California Building Code should be made and consulted and, as in the case of zoning restrictions, the lesser (lower) measurement may be the applicable standard.

- **March 6, 2006 - Memo of City Attorney re: (height restrictions) “Wireless Antenna Placement within the Coastal Height Limit Overlay Zone”**
<https://docs.sandiego.gov/memooflaw/ML-2006-5.pdf>
 (“The proper method of measurement, per Proposition D, is in accordance with the Uniform Building Code of 1970. This office has previously opined that for the purposes of complying with Proposition D, measurements should be from the finished grade of a site, rather than the pre-existing grade. City Att’y MOL No. 2004-13 (August 12, 2004). The height of the building is then measured vertically to the uppermost point of the structure. SDMC § 113.0270(a)(3). ”)
- **Aug 12, 2004 - Memo of City Attorney (“Method of Height Measurement Under Proposition D”)**
<https://docs.sandiego.gov/memooflaw/ML-2004-13.pdf>
(concluding that more restrictive residential zoning height measurements may apply even if result is lower than 30-foot measurement otherwise permissible under Proposition D UBC 1970 methodology)
- “The City of San Diego Land Development Code and California Building Code may require the height of a building under consideration to be determined in different manners. Each of these regulations shall be consulted prior to determining the maximum allowable height of a building.”

IV. What is the legal significance and/or binding authority of a Technical Guidance Memo

This question is worthy of further investigation. At minimum, it is reasonable to conclude that interpretative administrative guidance is advisory and not binding particularly if it contradicts or amends other legislative text. (See also City Attorney opinion related to Communications Equipment for discussion of unlawful amendment compared to interpretation).

V. Interpretation of “Notwithstanding language” of Proposition D in light of additional requirements in Municipal Code such as measurements in Special Circumstances and Coastal Zones.

The “notwithstanding language” of Proposition D creates potential uncertainty regarding the applicability of other code language which purports to alter strict reference to the Uniform Building Code of 1970 alone without reference to other “lesser” measurements set forth for Coastal Zones. Legislative analysis of the intent of both sections may help cohere the two provisions.