

October 28, 2025

VIA EMAIL: [bothwellm@icloud.com](mailto:bothwellm@icloud.com)

Ms. Marcella Bothwell, MD, MBA, Chair  
Pacific Beach Planning Group

Dear Ms. Bothwell,

Thank you for your follow-up communication requesting information. Please accept my apologies for the significant delay in responding to your initial inquiry.

Please see my responses to your requests for additional information listed here:

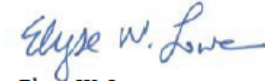
1. *Documentation outlining the new \$34 administrative fee, including the ordinance, resolution, or policy establishing it, its purpose, and how it aligns with the City's commitment to transparency and public access.*
  - a. The fee was established as part of the Department's Enterprise Fund User Fee Study conducted in 2024 and 2025. With the exception of Building and Land Use Enforcement, the Development Services Department is an Enterprise Fund established to account for services funded directly by fees and charges to users intended to be self-supporting. No City General funds are allocated to DSD Records administration. Only City Clerk records management is supported by the General Fund.
  - b. The User Fee Study was publicly noticed and unanimously adopted by the City Council via Resolution [R-315534](#) on May 14, 2024. The fee originally adopted was \$30.00, implemented on July 1, 2024. It has since been updated to the current rate based on City Council-adopted wage increases and inflation index factor.
  - c. The fee's purpose is to enable DSD to be cost recoverable for providing Records Research Assistance in the Records Office.
  - d. DSD's operations were unchanged as it relates to maintaining and providing public access to records; however, staff assistance provided aside from record retrieval is a service that is to be cost-recoverable. The cost was previously associated with permit fees as overhead; however, not all records assistance is associated with a permit.

The User Fee Study's review determined that this administrative fee should be separated from the overhead rates applied to permit fees.

2. *Identification of the department, office, or individual(s) responsible for implementing and approving the \$34 fee and the note-taking restriction policy.*
  - a. The fee was adopted and authorized by the City Council.
  - b. Development Services Department, as the official Custodian of the Building and Land Use Records, maintains chief responsibility for the proper management and protection of the records.
3. *An explanation of the note-taking restriction, including its intended purpose and any supporting documentation or guidelines.*
  - a. The plans in Records are mostly proprietary. The note-taking restriction prohibits making sketches of plans that are proprietary. The Department procedure requires permission from the architect (plan owner) prior to making copies or sketches of the proprietary designs. Customers are allowed to take written notes while viewing plans.
  - b. I also recognize and apologize for any confusion from my team members who misunderstood the note-taking policy during your June appointment. All customers who were prohibited from taking notes were identified by my staff and contacted afterward to correct the error.
4. *Consideration of alternative approaches, such as waiving the fee for noncommercial, public interest reviews.*
  - a. Development Services Department is not authorized to waive its fees. If the fees are waived by the City Council, another source of funding must be made available by Council to backfill what fees would have been collected.
  - b. While understanding the nature and basis of the PBPG's request, as an Enterprise fund, the Department requires full cost recovery, regardless of who the customer is, whether it be an interested individual, a non-profit, a community-based organization, another governmental agency, or a for-profit entity.

5. *Relaxation of the "no phones" policy, an overreach to comply with State Law prohibiting copies, to bar photos only, not note taking, checking or research common to this modern technology*
  - a. The current cell phone policy, as noted on the Records homepage, states, "When viewing records, you are not permitted to make copies, tracings, or take photographs or videos." Customers are allowed to take notes on paper or using their electronic devices, but if they try to trace, draw or photograph the plans without permission, they are asked to remove their devices. The Records Office would need to substantially increase the number of personnel to properly monitor a more relaxed cell phone presence policy, thereby limiting the liability of compromised records and necessitating an increase in fees to recover associated costs.

Sincerely,

A handwritten signature in blue ink that reads "Elyse W. Lowe". The signature is fluid and cursive, with the first name "Elyse" being more prominent.

Elyse W. Lowe  
Director, Development Services Department

EL/km

cc: Honorable Mayor Todd Gloria  
Honorable City Attorney Heather Ferbert  
Honorable Council President and Members of the City Council

# PBPG Questions:

- CA State Law on this issue does not prohibit sketching plans, only the jurisdiction providing copies of plans.
  - Is the City in violation of state law?
- While the "no photos" and "no tracing" are reasonable expansions, "no sketching" is too restrictive.
  - Is the City in violation of state law?
- It appears that the "no cell phone" ban is still in effect due to the "expanded staff resources" needed to enforce a relaxed policy.
  - Are there prohibitions on other electronic devices?
- How can the public view project plans under review without having to pay, a clear violation of an open government.

# Key Legal Provisions

## California Health & Safety Code §§ 19850–19853 (Chapter 10: Building Records):

- § 19850 requires **every city or county building department to maintain an official copy** (e.g., original, microfilm, or photographic) of plans for any building for which a permit was issued, for the building's lifetime.
- § 19851(a) states these **official copies are "open for inspection only on the premises of the building department as a public record."** This allows public viewing but limits reproduction.
- § 19851(b)–(f) **prohibits the building department from duplicating** (copying, scanning, printing, or otherwise reproducing) the plans, in whole or in part, without **written permission** from:
  - The original or current property owner (via affidavit).
  - All certified, licensed, or registered professionals (e.g., architects, engineers) who signed the plans.
- If permission is not granted (or no response within 30 days, extendable to 60), the department cannot provide copies—even to the property owner.
- Exceptions: Duplication is allowed by court order or state agency request. This chapter does not apply to plans for banks, financial institutions, or public utilities (§ 19853). Fees for maintenance and processing are allowed but must be reasonable (§ 19852).

Integration with the California Public Records Act (CPRA, Government Code §§ 7920.000 et seq., formerly §§ 6250 et seq.):

- **Building plans are public records under CPRA (§ 7922.000), entitling the public to inspect them (§ 7922.525).**
- However, CPRA exempts records from disclosure if prohibited by other state or federal law (§ 7922.000, incorporating exemptions like those in Health & Safety Code § 19851). Copyright protections (federal law under 17 U.S.C. §§ 101 et seq.) further restrict reproduction without consent.
- Recent clarification: Government Code § 65103.5 (added by SB 1214 in 2022, effective 2023) **requires local planning agencies to make architectural drawings available for public review without facilitating unauthorized copying** (e.g., no high-resolution online posting; alternatives like site plans or massing diagrams may be used instead).

# Sketching vs. Copying in Practice

- **Inspection and Sketching:** State law emphasizes on-premises viewing to balance public access with copyright protection. During inspection, individuals may take handwritten notes or sketches for personal use, as this does not require the jurisdiction to reproduce the plans. No state statute explicitly prohibits this, and it aligns with CPRA's intent for reasonable access to public records. However, photographing or digitally capturing plans during inspection could violate copyright if done without permission (treated as unauthorized reproduction).
- **Copying by Jurisdiction:** Strictly limited as described above. Requests trigger a formal process (e.g., notarized affidavits sent via certified mail to professionals), which can take 30–60 days or longer. Even property owners must comply.
- **Potential Challenges:** Some legal analyses argue Health & Safety Code § 19851's restrictions may be partially preempted by federal copyright law (e.g., "fair use" under 17 U.S.C. § 107 for litigation or criticism), but building departments still enforce the dual-consent rule to avoid liability. Courts have upheld the inspection-only access (e.g., no automatic right to copies without consent).

# Hand Sketching

Under California state law (specifically Health & Safety Code § 19851 and the California Public Records Act), you can hand-sketch building plans while inspecting them on-site at the local building department. This is considered a form of personal note-taking during the allowed public inspection process and is not prohibited, as it doesn't involve the jurisdiction reproducing or copying the official records (which requires dual permission from the property owner and design professionals).