

February 14, 2008

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, February 14, 2008

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

C. Reference to Fundamental Rights of Public - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

A. WRITTEN

B. PUBLIC COMMENT

IV. CONSENT CALENDAR

Consent Calendar items are considered routine and will be enacted, approved or adopted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker slip for that item.

*Any Item identified as a Public Hearing has been placed on the Consent Calendar because it has not generated any public interest or dissent. However, if any member of the public wishes to comment on a Public Hearing item, or would like the item placed on the regular agenda, please notify the Community Development Staff either prior to, or at the Planning Commission meeting, prior to the reading of the Consent Calendar.

A. Approval of Agenda

[B. Planning Commission Minutes of December 13, 2007](#)

VII. REGULAR AGENDA ITEMS

[A. 1371 EAST SECOND STREET – SUBWAY SANDWICHES AND SALADS USE PERMIT](#)

08PLN-4 Use Permit

1371 East Second Street, APN: 88-111-110

PROPOSAL:

In accordance with Benicia Municipal Code 17.70.350, Formula Businesses, the applicant requests approval of a Use Permit for the establishment of a Subway Sandwiches and Salads restaurant.

Recommendation: Approve a Use Permit based on the findings and conditions in the proposed resolution.

B. ZONING TEXT AMENDMENT TO AMEND TITLE 17.108 (DESIGN REVIEW) OF THE BENICIA MUNICIPAL CODE
Zoning Text Amendment

City Wide

PROPOSAL: The zoning text amendment would update and amend Title 17 (Zoning), specifically Chapter 17.108 amending regulations for design review responsibilities.

Recommendation: City Council approval of update and amendment of Section 17.108 of the Benicia Municipal Code, based on the findings in the proposed resolution.

C. ZONING TEXT AMENDMENT TO CHANGE THE REGULATIONS FOR ANIMAL KEEPING, SUBJECT TO SPECIFIC CRITERIA

Zoning Text Amendment

City Wide

PROPOSAL: The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.70.300 establishing new regulations for animals in a residential district.

Recommendation: Direction to City Council on amendment of Section 17.70.300 of the Benicia Municipal Code, based on the findings in the proposed resolution.

VIII. COMMUNICATIONS FROM STAFF

IX. COMMUNICATIONS FROM COMMISSIONERS

X. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on agendized and non-agendized matters under public comment. Comments are limited to no more than 5 minutes per speaker. By law, no action may be taken on any item raised during the public comment period although informational answers to questions may be given and matters may be referred to staff for placement on a future agenda of the Planning Commission.

Should you have material you wish to enter into the record, please submit it to the Secretary.

Disabled Access

In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact the ADA Coordinator, at (707) 746-4211. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Meeting Procedures

All items listed on this agenda are for Commission discussion and/or action. In accordance with the Brown Act, each item is listed and includes, where appropriate, further description of the item and/or a recommended action. The posting of a recommended action does not limit, or necessarily indicate, what action may be taken by the Commission.

The Planning Commission may not begin new public hearing items after 11 p.m. Public hearing items which remain on the agenda may be continued to the next regular meeting of the Commission, or to a special meeting.

Pursuant to Government Code Section 65009; if you challenge a decision of the Planning Commission in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the Public Hearing. You may also be limited by the ninety (90) day statute of limitations in which to file and serve a petition for administrative writ of mandate challenging any final City decisions regarding planning or zoning.

Appeals of Planning Commission decisions which are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Community Development Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

 [December 13, 2007 minutes.pdf](#)

 [Subway report.pdf](#)

 [Design Review Text Amendment.pdf](#)

 [Animal Keeper Text Amendment.pdf](#)



**BENICIA PLANNING COMMISSION
CITY COUNCIL CHAMBERS**

REGULAR MEETING MINUTES

Thursday, December 13, 2007

7:00 P.M.

I. OPENING OF MEETING

- A. Pledge of Allegiance**
- B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Rick Ernst, Dan Healy, Rod Sherry,
Lee Syracuse, Brad Thomas and Chair Railsback

Absent: None

Staff Present: Charlie Knox, Community Development Director
Principal Planner Damon Golubics
City Attorney Heather McLaughlin
Management Analyst Gina Eleccion

- C. Reference to Fundamental Rights of Public** - A plaque stating the Fundamental Rights of each member of the public is posted at the entrance to this meeting room per Section 4.04.030 of the City of Benicia's Open Government Ordinance.

II. AGENDA CHANGES AND DISCUSSION

None.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**

Three written comments regarding 126 East E Street were previously submitted to the Commission. Copies of the comments were made available to the public. In addition, a letter from a citizen was submitted at the meeting and distributed to the Commission and public.

B. PUBLIC COMMENT

None.

IV. CONSENT CALENDAR

On motion of Commissioner Ernst, seconded by Commissioner Syracuse, the Consent Calendar was approved by the following vote:

- Ayes: Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback
- Noes: None
- Absent: None
- Abstain: Commissioner Bortolazzo (Item V-B only)

A. Approval of Agenda

B. Planning Commission Minutes of November 8, 2007

Charlie Knox introduced Lisa Porras, Senior Planner and Mike Marcus, Assistant Planner. In addition, he announced that Damon Golubics was promoted to Principal Planner. He stated that he is pleased to have such a great staff. The Commission welcomed the new staff.

VI. REGULAR AGENDA ITEMS

A. 149 WEST F STREET - APPEAL

07PLN-80 Appeal
149 West F Street. APN: 0089-115-190

PROPOSAL:

The applicant has appealed the Historic Preservation Review Commission (HPRC) design review condition of approval No. 5 for a proposal to modify a structure in the Downtown Historic District.

Recommendation: Uphold the appeal and overturn the decision of the Historic Preservation Review Commission amending condition of approval No. 5 regarding the window openings.

Commissioner Bortolazzo recused himself due to property ownership within 500' of the project.

Gina Eleccion, Management Analyst, gave a brief overview. The only basis of appeal is the location of the window opening. She recommended the Commission reconsider this condition of approval based on the flexibility allowed in the Downtown Historic Conservation Plan (DHCP).

The public hearing was opened.

Steve McKee, Architect – He gave a brief overview. He noted that the proposed window on the north elevation is in addition to a garage door that was accepted. The proposed

window is more functional for the property owner as it provides more use of the kitchen wall.

Commissioners questioned the need for the window placement. Steve McKee noted that it was for functionality of the kitchen and to approve the design and reduce dust issues.

No public comment. The public hearing was closed.

Commissioner Ernst commented that the design seems appropriate and the existing windows only look out onto a fence.

Chair Railsback and Commissioner Ernst expressed concerns with overturning decisions of another Commission, however, based on the information presented, this seems appropriate.

RESOLUTION NO. 07-18 (PC) - A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA UPHOLDING AN APPEAL OF THE HISTORIC PRESERVATION REVIEW COMMISSION'S CONDITIONS OF APPROVAL FOR A PROJECT AT 149 WEST F STREET

On motion of Commissioner Ernst, seconded by Commissioner Sherry, the above Resolution was approved by the following vote:

- Ayes: Commissioners Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback
- Noes: None
- Absent: None
- Abstain: Commissioner Bortolazzo

B. 126 EAST E STREET - APPEAL
 06PLN-52 Appeal
 126 East E Street. APN: 0089-372-050

PROPOSAL:

The applicant has appealed the Historic Preservation Review Commission's denial of a demolition permit request involving a structure designated as a potential contributor to the Downtown Historic District.

Recommendation: Uphold the decision of denial by the Historic Preservation Review Commission.

Damon Golubics, Principal Planner, gave an overview of the project and the appeal. Background of the demolition process was given. The applicant at this point has not committed to the use of the project, thus an Initial Study can't be prepared evaluating the impacts of the project as a whole. Staff is recommending the Planning Commission uphold the decision of the Historic Preservation Review Commission.

Commissioners questioned whether the Commission felt that they had a choice in making this decision. Heather McLaughlin noted that the word “should” in our regulations, particularly in this case, can be construed as “shall”.

Commissioners questioned if this is a CEQA issue, or simply an issue that our demolition regulations do not allow this. Charlie Knox noted that because this is a potential contributor it is the purview of the HPRC to approve the demolition permit without delisting the property.

Charlie Knox noted that the State Office of Historic Preservation tends to err on the side of protecting all resources. He further noted that the only type of development that does not require design review is a new, single-family residence.

Commissioners questioned if it’s possible to ask the applicant to submit a design. Damon Golubics noted that it is dependent on the type of design proposed. Charlie Knox noted that a Mitigated Negative Declaration for the worst case scenario would have to be prepared if a project has not been proposed.

Commissioners questioned whether anyone is saying this can or can’t be torn down, but if it really is an issue of process. Charlie Knox stated that it is uncertain whether the demolition will be approved. There are certainly members of the community that believe all historic resources should be protected.

Charlie Knox noted that if a new application is submitted, it will be subject to the Downtown Mixed Use Master Plan, which has a mitigation measure of a demolition ordinance. The only way this can continue is for the Planning Commission to remand this back to HPRC pending a new design.

Commissioners commented on the requirements of Neighborhood General Open. Charlie Knox noted that the concept is to create an opportunity to build structures that fit into the historic context of downtown, but that can have multiple uses.

Damon Golubics noted that there was evidence presented that the structure lost its historic integrity, however it was not found to be non-historic. Charlie Knox noted that the applicant has not asked for this structure to be delisted, but that a demolition permit can be approved for a historic structure.

Commissioner Ernst questioned the process. Charlie Knox clarified the process. Commissioner Ernst questioned the demolition process for a landmark vs. a contributor. Charlie Knox noted that it is most likely to see a request to demolish a potential contributor.

The public hearing was opened.

Mark Mitchell, Attorney for Applicant – He noted that the issue is that this structure is a potential contributor. Mr. Donaghue has owned the property for over 10 years. He noted that the historic survey update has been delayed. Based on the recommendation of that survey, this property would no longer be listed as a contributor. He believes that the

HPRC determined that this structure no longer retains historic character. He believes there should have been a CEQA exemption on this structure. He commented on the demolition permit provisions of the DHCP. He does not believe the proper process was followed. He noted that the applicant has plans for a residence.

Commissioner Bortolazzo questioned whether the applicant would rather have this mandated back to HPRC or they would have to resubmit under the guidelines of the Downtown Mixed Use Master Plan.

Bill Royal, 490 East Second Street – He commented on the delays and the misdirection of staff. He believes that this project has been declared non-historic. This project has been delayed and is costing the applicant money.

Sandra Shannonhouse, 110 East E Street – She owns property immediately west of the project. She supports the staff recommendation and would like the rules applied equally. She noted that this project has many effects on neighbors and the City as a whole. All categories of buildings have value. The loss of any old structure diminished the value of the entire downtown historic district. She believes the applicant needs to submit plans.

Donald Dean, 257 West I Street – He previously submitted a letter to the Commission. He supports the staff recommendation. The DHCP is firmly in place to regulate the district. The process exists to protect both the applicant and the public. There is a genuine public that has interest in the historic district. The demolition is subject to CEQA Guidelines.

Jon Van Landschoot, 175 West H Street – He attended all of the previous meetings. He commented on demolition by neglect. He commented on HPRC's knowledge of the DHCP. The City has not delisted this structure. The project can't be segmented and the law needs to be applied.

Pat Donaghue, Applicant – He commented that his project is difficult to approve. He will follow the Downtown Mixed Use Master Plan, but wants something concrete to work with.

Mark Mitchell, Attorney – He commented that the DHCP allows a demolition permit to be issued for a property that has lost its architectural integrity. He disagreed with the comment on neglect. He noted that this is recommended for removal as a potential contributor. The applicant wants to work with the City to produce a good project.

The public hearing was closed.

Charlie Knox noted that HPRC can make the finding that the property no longer retains historic integrity and can approve a demolition permit without delisting. He noted that had the applicant committed to a single-family residence, then staff would have recommended approval of the demolition permit. If the Commission remands this back to HPRC and the applicant submits a single-family residence, staff could support approval of a demolition permit.

The Commission discussed the appeal.

The applicant stated that the Historic Preservation Review Commission asked that a Mitigated Negative Declaration be prepared for demolition only. He was not prepared to submit plans for a single-family residence. He stated that he has plans for a single-family residence and is ready to submit them. He noted that the interaction with staff has been positive and does not believe there is a problem with staff, but rather that the rules and regulations don't work.

Mark Mitchell, Attorney commented that the Commission can issue the permit. The applicant stated that he is willing to go back to HPRC with the single-family residence he is submitting. He noted that a full set of plans will be submitted to the Building Department and will pay all of the necessary fees. The project will meet the requirements of the Downtown Mixed Use Master Plan.

Commissioners discussed the proposal. There is a challenge in discussing historic issues in this city. There is a complicated set of rules. There is still a question as to the historic nature of the property. Any change to historic properties affect all residents of Benicia.

On motion of Commissioner Healy, seconded by Commissioner Bortolazzo, the project was remanded back to the Historic Preservation Review Commission for further review by the following vote:

Ayes:	Commissioners Bortolazzo, Ernst, Healy, Sherry, Syracuse, Thomas and Chair Railsback
Noes:	None
Absent:	None
Abstain:	None

VII. COMMUNICATIONS FROM STAFF

Charlie Knox noted that the January 24th HPRC meeting will be a meeting dedicated to the State Office of Historic Preservation regarding Historic Context, CEQA and the Mills Act.

Damon Golubics wished everyone a Happy Holiday!

VIII. COMMUNICATIONS FROM COMMISSIONERS

None.

IX. ADJOURNMENT

Chair Railsback adjourned the meeting at 8:39 p.m.

AGENDA ITEM
PLANNING COMMISSION MEETING: FEBRUARY 14, 2008
REGULAR AGENDA ITEMS

DATE : January 30, 2008

TO : Planning Commission

FROM : Michael Marcus, Assistant Planner

SUBJECT : **SUBWAY RESTAURANT USE PERMIT APPLICATION FOR A FORMULA BUSINESS**

PROJECT : 1371 East Second Street
08PLN-04 Use Permit for Formula Business
0088-11-1120

RECOMMENDATION:

Approve a Use Permit application for a Formula Business, for the proposed Subway Sandwiches and Salads restaurant located at 1371 East Second Street, based on the findings, and subject to the conditions listed in the attached resolution and as discussed during the public hearing.

EXECUTIVE SUMMARY:

In accordance with Benicia Municipal Code 17.70.350, Formula Businesses, the applicant requests approval of a Use Permit for the establishment of a Subway Sandwiches and Salads restaurant.

BUDGET INFORMATION:

There are no anticipated budgetary implications.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is Categorical Exempt under Section 15301 of the State of California Environmental Quality Act (CEQA). This exemption includes interior and exterior alterations of existing facilities.

BACKGROUND:

Applicant/Owner: Harjeet Singh
General Plan designation: Commercial General

Zoning designation: CG, General Commercial

Existing use: Currently Vacant – Previously a real estate office

Proposed use: Restaurant

Adjacent zoning and uses:

North: CO, Office Commercial; Cable TV Company

East: RS, Single Family Residential; Residential and Church

South: PS, Public and Semi Public; Senior Center

West: CG, General Commercial; professional offices & Solano Square

SUMMARY:

A. Project Description

The applicant anticipates opening a Subway Sandwiches and Salads restaurant inside an existing multi-tenant commercial building. The restaurant will operate seven days a week, typically from 7:00 a.m. to 10:00 p.m.; however, these hours may be modified to accommodate market conditions. Each Subway is individually owned and operated and offers a variety of sandwiches, salads, wraps and soups that may be different from the ones offered by other delis and cafes. The proposed Subway at 1371 East Second Street in Davies Square would be the only Subway establishment within the downtown district, that includes Solano/Davies Square areas (bounded by Military N and West and East Second Streets), where Formula Businesses are regulated. Proposed alterations to the building are minimal; the single proposed exterior alteration is a sign that requires an administrative sign permit.

1. Site Description

The proposed restaurant will be located in an existing building at 1371 East Second Street. Primary access to businesses in the building takes place from East Second Street, with secondary access provided from Military East. Other tenants in the building include Baskin-Robbins, Buon Appetito restaurant, Nation's Hamburgers, and Rrags Caffé. The tenant improvements as well as the exterior sign would not result in any major alteration to the exterior of the building.

B. Project Analysis

1. Consistency with the General Plan

General Plan Goal 2.13 (p. 51) provides general support for the applicant's proposed use in Davies Square. Specifically, it states, "Support the economic viability of existing commercial centers." General Plan Policy 2.13.1 (p. 51) states, "Direct new commercial ventures first, towards Downtown and second, to other existing economic centers (instead of dispersing resources to new areas)." Providing another eating establishment within Davies Square is consistent with the General Plan, in that it would support existing commercial infrastructure in the general downtown vicinity.

2. Zoning Ordinance

Benicia Municipal Code (BMC) Section 17.70.350, Formula Businesses, regulates the

number of formula businesses downtown, including and Solano/Davies Square. A formula business is defined in the zoning code as “an eating and drinking establishment that maintains any of the following features in common with more than four other establishments in the nine Bay Area counties: standardized array of services and/or merchandise, trademark, logo, service mark, symbol, sign, décor, uniform, menu, or other similar standardized feature.” A Use Permit is required for any business that meets this definition in the area regulated.

3. Standard Use Permit Findings

- a. The Planning Commission finds that the proposed development is consistent with the objectives and provisions of Title 17 of the Benicia Municipal Code and the purposes of General Commercial zoning district.

The proposed use is consistent with Title 17 of the Benicia Municipal Code and under the purposes of General Commercial zoning district's Eating and Drinking Establishments.

- b. The proposed location of the Formula Business and the proposed conditions of approval will be consistent with the General Plan and with Title 17 of the Benicia Municipal Code and will not be detrimental to the public health, safety, or welfare of persons residing or working in or adjacent to the neighborhood of the proposed use, nor detrimental to properties or improvements in the vicinity or to the general welfare of the city;

The proposed use is consistent with General Plan Goal 2.13 (p. 51) that provides general support for the applicant's proposed use in Davies Square. Specifically, it states, "Support the economic viability of existing commercial centers." The proposed use is compatible with the existing retail complex and will complement the surrounding businesses while maintaining hours of operation that are consistent with its neighbors.

- c. The proposed Formula Business will comply with the provisions of Title 17 (Benicia Zoning Ordinance), including specific conditions required for use in the district in which it will be located.

The proposed use is consistent with Title 17 of the Benicia Municipal Code since it would be the first formula business of this chain in the immediate vicinity and meets the requirements of the General Commercial zoning designation.

4. Formula Business Use Permit Findings

- a. The proposed business will complement existing uses and enhance the economic health of the surrounding area.

The proposed Subway restaurant complements the other eating and dining establishments within Davies Square and does not duplicate the principle service or product of any of the existing establishments. These tenants include Baskin Robbins, Buon Appetito Italian restaurant, Nation's Hamburgers, and Rrags Café. Additionally, there are several professional offices including a bank, real estate office, dentist and medical clinic where customers would patronize this business.

- b. The proposed business will be operated in a non-obtrusive manner that preserves the city's or area's distinctive character, ambiance, and small-sized city and historic nature

A majority of the proposed alterations to the building are interior renovations. The sole exterior alteration is a sign that requires an administrative sign permit.

- c. The proposed business will not result in a concentration of formula businesses in the vicinity or citywide;

Currently there are no other Subway locations in the Downtown area or within Solano/Davies Square areas. There are two other Subway locations within the City: 836 Southampton Road in the Southampton Shopping Center, and 2052 Columbus Parkway. These locations are spread throughout the city, thus avoiding the concentration of any particular formula business.

- d. The proposed business will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.

Subway offers a different type of eating and drinking establishment to the area. A variety of sandwiches, salads, wraps and soups that are either not offered or are different from the ones offered by existing local delis and cafes, thus increasing food choices for resident and visitor populations.

- e. The proposed business will contribute to an appropriate balance of local, regional or national-based business and small, medium and large-sized businesses in the community.

The addition of a Subway to Davies Square will contribute to an appropriately balanced business community. There are several mom-and-pop eating and drinking establishments (Buon Appetito and Rrag's), as well as several regionally- and nationally-based businesses (Nation's and Baskin-Robbins).

- f. The proposed business will avoid an appearance commonly associated with strip retail or shopping centers.

The proposed business is located in a pre-existing building and the proposed alterations are minimal. Other than the external sign, the applicant is seeking basic interior tenant improvements that are required for this type of commercial restaurant.

C. Conclusion

The proposed business meets the intent of the Formula Business ordinance, with no other Subway restaurants in the above-described district. Permitting Subway to operate in Davies Square would not be detrimental to the immediate area or the community; rather, the new business would enhance the economic health of the square, increase food choices in the downtown area, be of an appropriate scale for the existing development and serve as a good community partner.

FURTHER ACTION:

The Planning Commission's action will be final unless appealed to the City Council within ten business days.

Attachments:

- A. Draft Resolution
- B. Formula Business Ordinance
- C. Written Statement from the Applicant
- D. Project Plans

*** If viewing online, these attachments are available to view in the Community Development Department or in the Benicia Public Library in the February 14, 2008 Planning Commission packet.*

**ATTACHMENT A:
DRAFT RESOLUTION**

RESOLUTION NO. 08- (PC)

**A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF BENICIA APPROVING A USE PERMIT FOR A FORMULA
BUSINESS AT 1371 EAST SECOND STREET**

WHEREAS, Subway restaurant has requested Use Permit approval for a formula business at 1371 East Second Street; and

WHEREAS, the Planning Commission at a regular meeting on February 14, 2008 conducted a public hearing and reviewed the proposed project;

NOW, THEREFORE, BE IT RESOLVED THAT the Planning Commission of the City of Benicia hereby approves the Subway Use Permit for a formula business at 1371 East Second Street; and

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a. The proposed formula business is categorically exempt from California Environmental Quality Act review under Guidelines Section 15301, which applies to interior and exterior alterations of existing facilities.
- b. The proposed formula business is consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code.
- c. The proposed formula business is consistent with the goals, policies, programs, and maps of the General Plan.

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a. The proposed business will complement existing uses and enhance the economic health of the surrounding area.
- b. The proposed business will be operated in a non-obtrusive manner that preserves the city's or area's distinctive character, ambiance, and small-sized city and historic nature
- c. The proposed business will not result in a concentration of formula businesses in the vicinity or citywide;
- d. The proposed business will promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations.
- e. The proposed business will contribute to an appropriate balance of local, regional or national-based business and small, medium and large-sized businesses in the community.

- f. The proposed business will avoid an appearance commonly associated with strip retail or shopping centers.

BE IT FURTHER RESOLVED THAT the Benicia Planning Commission hereby approves the proposed project subject to the following conditions:

1. The plans submitted for approval and development of the site shall be in substantial compliance with the plans dated received "November 16, 2007" prepared by the applicant marked Exhibit "A" and on file in the Community Development Department.
2. Establishment hours shall be between 6:00 a.m. and 12:00 a.m., which is consistent with neighboring businesses.
3. The trash enclosure shall meet all storm water regulations.
4. Use Permit is specifically for the above-mentioned business. Any other Formula Business establishment that wishes to operate out of this space will need Planning Commission approval.
5. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.
6. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on February 14, 2008 by the following vote:

Ayes:

Noes:

Absent:

Charlie Knox
Planning Commission Secretary

**ATTACHMENT B:
FORMULA BUSINESS ORDINANCE**

CITY OF BENICIA

ORDINANCE NO. 07-12

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BENICIA AMENDING SECTION 17.12.030 (DEFINITIONS) OF CHAPTER 17.12 (DEFINITIONS), AMENDING SECTION 17.28.010 (SPECIFIC PURPOSES), AMENDING SECTION 17.28.020 (LAND USE REGULATIONS) OF CHAPTER 17.28 (C COMMERCIAL DISTRICTS), AND ADDING A NEW SECTION 17.70.350 (FORMULA BUSINESSES) TO CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 (ZONING)

Section 1.

Section 17.12.030 (Definitions) of Chapter 17.12 (Definitions) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding this definition to read as follows:

“Formula Business” means an eating and drinking establishment that maintains any of the following features in common with more than four other establishments in the nine Bay Area counties: standardized array of services and/or merchandise, trademark, logo, service mark, symbol, sign, décor, uniform, menu, or other similar standardized feature.

Section 2.

Subsection A of Section 17.28.010 (Specific Purposes – Commercial Districts) of Chapter 17.28 (C Commercial Districts) of Title 17 (Zoning) of the Benicia Municipal Code is amended to add:

9. Preserve a balanced mix of locally, regionally, and nationally based businesses and small and medium sized businesses to maintain and promote the long-term economic health of businesses and the community as a whole.

10. Regulate the location and operation of formula businesses in order to maintain the City’s unique historic small town character, the diversity and economic vitality of the community’s commercial districts and the quality of life of Benicia residents.

Section 3.

The Eating and Drinking Establishment portion of the Schedule of Section 17.28.020 (Land Use Regulations) of Chapter 17.28 (C Commercial Districts), of Title 17 (Zoning) of the Benicia Municipal Code is amended to add formula businesses to read as follows:

	CC	CO	CG	CD	CW	Additional Regulations
Eating and Drinking Establishments	P	P	P	P	P	
Formula Business	U	-	L18	U	-	(L)

L-18 Formula Businesses are a permitted use in the CG zone except for the Solano/Davies Square areas (bounded by Military, N and West and East Second Streets) where a use permit is required.

(L) See BMC 17.70.350 (Formula Businesses).

Section 4.

Chapter 17.70 (Site Regulations) of Title 17 (Zoning) of the Benicia Municipal Code is amended by adding a new section 17.70.350 (Formula Businesses) to read as follows:

17.70.350 Formula Businesses. In the combined CD district and Solano/Davies Square areas (bounded by Military, N and West and East Second Streets), no more than one establishment of any particular formula business shall be allowed. Approval of a use permit for a formula business requires that the planning commission find that the proposed establishment will:

1. Complement existing uses and enhance the economic health of the surrounding area;
2. Be operated in a non-obtrusive manner that preserves the city's or area's distinctive character, ambiance, and small-sized city and historic nature;
3. Not result in a concentration of formula businesses in the vicinity or citywide;
4. Promote diversity and variety to assure a balanced mix of commercial uses available to serve both resident and visitor populations;
5. Contribute to an appropriate balance of local, regional or national-based businesses and small, medium and large-sized businesses in the community; and
6. Avoid an appearance commonly associated with strip retail or shopping centers.

Section 5.

Severability. If any section, subsection, phrase or clause of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

The City Council hereby declares that it would have passed this and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrase or clauses be declared unconstitutional on their face or as applied.

On motion of Council Member **Patterson**, seconded by Council Member **Whitney**, the foregoing ordinance was introduced at a regular meeting of the City Council on the 3rd day of April, 2007, and adopted at a regular meeting of the Council held on the 1st day of May, 2007, by the following vote:

Ayes: **Council Members Hughes, Patterson, Whitney and Vice Mayor Schwartzman**

Noes: **None**

Absent: **None**

Abstain: **Mayor Messina**

Alan Schwartzman, Vice Mayor

Attest:

Lisa Wolfe, City Clerk

**ATTACHMENT C:
WRITTEN STATEMENT FROM APPLICANT**

WRITTEN STATEMENT

For Use Permit

SUBWAY Sandwiches & Salads
1371 E. Second Street
Benicia, CA 94510

SUBWAY restaurant is the world's largest submarine sandwich chain and the second largest fast-food franchise in the world with more than 25,000 restaurants in 83 countries. SUBWAY restaurants offer a delicious variety of foot long and 6-inch sandwiches, salads and wraps that are made with a wide assortment of meats, cheeses, vegetables and toppings. All SUBWAY sandwiches are made on freshly baked bread and are prepared right before your eyes, just the way you like it. The SUBWAY restaurant chain is the undisputed leader in the submarine sandwich category serving fresh, great tasting, made-for-you sandwiches and salads, many of which have 6 grams of fat or less. Offering a healthful alternative to traditionally fatty fast food has made the SUBWAY chain a popular destination for health-conscious consumers. The SUBWAY chain encourages everyone to live healthy, active lives complete with nutritious foods and regular exercise. To help you along the way, SUBWAY restaurants offer many delicious subs that are low in saturated fat and make getting fit easy and enjoyable. The SUBWAY chain has made a significant contribution to raising health awareness by continually advocating and promoting nutrition and physical activity.

Benicia is a historic and family orientated community. The City, rich in tradition, has more than forty historic sites. Benicia is home to about 28,000 residents who have a high level of pride and concern for preserving the quality of life in their community and civic organizations. Benicia hosts a variety of events throughout the year that are enjoyed by residents and visitors, individuals and families such as Annual Peddlers Fair, Handicraft Fair, Opening Day on the Straits, Glass Studios Open House, Heritage Home Tour, Arts in the Park, Christmas at the Clocktower, Downtown Farmers Market and many others. The SUBWAY team values its community partnerships. Part of the SUBWAY restaurants philosophy is giving back to the community, participating in school and charity events and celebrations. While the food we serve is good for you, we are actively working to be good to our communities. SUBWAY is educating the public, emphasizing that you are never too young to learn about proper nutrition and exercise. Through programs, addressing the issue of childhood obesity, and sponsoring the American Heart Walk, SUBWAY restaurants is committed to helping you and your families live a long healthy life.

The SUBWAY restaurant chain has long been active in several civic, educational and charity support services, assisting organizations including American Heart Association, Big Brothers/Big Sisters, the American Red Cross, the Jaycees, Junior Achievement the United Way campaign, the Epilepsy Foundation, March of Dimes, Habitat for Humanity, many local

hospitals, schools and universities. The SUBWAY chain is an official sponsor of Little League Baseball, a pride of the city of Benicia. On a local basis SUBWAY franchisees are involved with many schools and religious or community organizations. Following the footsteps, we, as a Subway franchisee, would help support our local community through monetary and product donations.

In the year 2007, the SUBWAY chain entered its 42nd year of operation. SUBWAY restaurant chain is an established food concept that serves and supports local communities and enhances local economies. A SUBWAY restaurant is a great place to work. SUBWAY restaurants have a very diverse working group consisting of high school, or college students, single mom, senior citizens, part-time or full-time employees. Opening of a SUBWAY restaurant in downtown Benicia would create employment opportunities for the residents and increase customer count, thus complementing other businesses and enhancing the economic health of the surrounding area.

In the CD district and Solano/Davies Square areas of Benicia, the SUBWAY restaurant being proposed at 1371 E. Second Street would be the first and only establishment of SUBWAY sandwiches and salads. Although SUBWAY is a national food chain, each SUBWAY restaurant is individually owned and operated. So, from an individual franchisee's standpoint, SUBWAY restaurant is a small retail business representing the national franchise at the local level and relying on the support of local community for its successful and profitable operation. The construction of the above-mentioned SUBWAY restaurant would not result in any major alterations to the exterior of the building. This would help to preserve the area's distinctive character, ambiance, small-sized city and historic nature and at the same time contribute to an appropriate balance of local, regional or national-based businesses. Subway restaurant would offer a variety of sandwiches, salads, wraps and soups that are either not offered or are different from the ones offered by existing local delis and cafes. This would not only increase food choices for both resident and visitor populations but also promote healthy competition among similar businesses in the area.

Businesses in Benicia consistently rank the City as an outstanding place to do business. Given an opportunity to do our business in historic downtown Benicia, we would reinforce SUBWAY'S commitment to health and community involvement and make our level best endeavors to ensure the continued economic health and prosperity of the city and to preserve the heritage of historic downtown Benicia.

**ATTACHMENT D:
PROJECT PLANS**

(If viewing online, these attachments are available to view in the Community Development Department or in the Benicia Public Library in the February 14, 2008 Planning Commission packet)

AGENDA ITEM
PLANNING COMMISSION MEETING: FEBURARY 14, 2008
PUBLIC HEARING

DATE : February 6, 2008
TO : Planning Commission
FROM : Charlie Knox, Community Development Director
SUBJECT : Zoning Text Amendments – Section 17.108 (Design Review)

RECOMMENDATION:

Recommend that the City Council approve zoning text amendments that maintain commission-level design review authority within historic districts by the Historic Preservation Review Commission (HPRC) and vest authority for commission-level design review authority outside historic districts with the Planning Commission.

EXECUTIVE SUMMARY:

At a special meeting on January 29, 2008, the City Council directed staff to process amendments to the zoning ordinance necessary to transfer authority for commission-level design review outside historic districts from HPRC to the Planning Commission.

BUDGET INFORMATION:

There are no fiscal impacts that would arise as a result of the proposed text amendments.

ENVIRONMENTAL ANALYSIS:

The proposed zoning amendments are Categorically Exempt under Section California Environmental Quality Act Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies) because they do not result in changes in land use.

SUMMARY:

The City of Benicia initially adopted design review regulations in 1987 and has amended them in 1989, 1992, and 2001. The recent direction from Council is intended to focus the mission of HPRC within the historic districts and provide the Planning Commission with the direct opportunity to review the design of multifamily and commercial projects elsewhere in the city.

The purpose of amending Title 17, Section 108 (Design Review) is twofold: (1) to assign the Planning Commission with design review authority in the RS (nonresidential structures only), RM, RH, C, OS, PS, and PD districts, with the exception of Historic Districts; and (2) to make the Historic Preservation Review Commission (HPRC) responsible for design review in Historic Districts. Single-family homes in residential districts, industrial projects, and activities less than 2,500 square feet outside historic districts would continue to require only staff-level review.

Exhibit A of Attachment A shows the amendments, with portions to be deleted in ~~strikeout~~ (~~strikeout~~) and portions to be added as underlined (underlined).

FURTHER ACTION:

The Planning Commission recommendation will be forwarded to the City Council for a first reading of the ordinance.

Attachment A:

- Draft Resolution, including Exhibit A: Draft Ordinance (BMC Title 17.108)

DRAFT RESOLUTION

RESOLUTION NO. 08- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS ESTABLISHING THE PLANNING COMMISSION AS THE AUTHORITY FOR COMMISSION-LEVEL DESIGN REVIEW OUTSIDE HISTORIC DISTRICTS

WHEREAS, on January 29, 2008 the City Council directed staff to prepare draft text amendments to Title 17.108 establishing the Planning Commission as the authority for commission-level design review in the RS (nonresidential structures only), RM, RH, C, OS, PS, and PD Districts, except within Historic Districts, in order to allow the Historic Preservation Review Commission to focus on projects requiring Design Review in Historic Districts only; and

WHEREAS, the Planning Commission at a regular meeting on February 14, 2008, conducted a public hearing and reviewed the proposed text amendments.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends the City Council approve zoning text amendments to change regulations for design review authority;

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a) The proposed amendments are categorically exempt from California Environmental Quality Act review under Guidelines Section 15321, which applies to actions by regulatory agencies to enforce a permit or other entitlement, or adopt an administrative decision to enforce a general rule, standard, or objective.
- b) The proposed zoning text amendments are consistent with the objectives and other provisions of Title 17 of the Benicia Municipal Code and the purposes of Section 108, Design Review.
- c) The proposed zoning text amendment are consistent with the goals, policies, programs, and maps of the General Plan.

BE IT FURTHER RESOLVED THAT the Planning Commission hereby recommends the City Council amend Section 17.108 Design Review to read as shown in attached Exhibit A.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on the 14th day of February, 2008 by the following vote:

Ayes:
Noes:
Absent:

Charlie Knox
Planning Commission Secretary

Exhibit A

17.108.060 Review responsibilities.

A. By the Community Development Director. The community development director shall be responsible for design review for projects in the IG, IL, and IW districts, and for projects outside the district that involve construction of less than 2,500 square feet of floor area.

B. By the Historic Preservation Review Commission. The historic preservation review commission shall be responsible for design review in the ~~RS (nonresidential structures only), RM, RH, C, OS, PS, PD and the H~~ overlay districts, for projects not subject to community development director review. The historic preservation review commission shall hold a public hearing, as provided in BMC 17.108.080, and shall approve, conditionally approve, or disapprove applications for design approval. Decisions of the design review commission may be appealed to the planning commission in accordance with Chapter ~~17.108.100~~ 1.44 BMC.

C. By the Planning Commission. The Planning Commission shall be responsible for design review in the RS (nonresidential structures only), RM, RH, C, OS, PS, and PD districts, except within the H overlay districts, for projects not subject to community development director review. The Planning Commission shall hold a public hearing, as provided in BMC 17.108.080, and shall approve, conditionally approve, or disapprove applications for design approval. Decisions of the Planning Commission may be appealed to the City Council in accordance with Chapter 1.44 BMC. (Ord. 07-67 § 1; Ord. 07-21 § 12; Ord. 01-6 N.S., 2001; Ord. 99-1 N.S.; Ord. 92-15 N.S. § 20, 1992; Ord. 92-9 N.S. § 24, 1992; Ord. 89-1 N.S. § 51, 1989; Ord. 87-4 N.S., 1987).

17.108.070 Review process and time limits.

A. Prerequisite for Review. Unless an applicant selects consolidated review, as provided in BMC 17.108.050(C), review of development plans shall follow design review.

B. By Community Development Director (IG, IL, and IW Districts). The community development director shall review plans submitted for design approval within 30 days of receipt and shall approve, conditionally approve, or disapprove the plans. Within five working days after a decision, notice shall be mailed to the applicant.

C. By the Historic Preservation Review Commission (H Overlay District). After a duly noticed public hearing, the Historic Preservation Review Commission shall approve, conditionally approve or disapprove the plans. Within five working days of a historic preservation review commission decision, the secretary of the commission shall mail notice of the decision to the applicant.

~~D.~~ E. By the Design Review- Planning Commission (R, C, IP, OS, PS and PD Districts, and-except H Overlay District). After a duly noticed public hearing, the design reviewPlanning Commission shall approve, conditionally approve or disapprove the plans. Within five working days of a design reviewPlanning Commission decision, the secretary of the commission shall mail notice of the decision to the applicant.

~~E.~~ F. Action Required. All decisions shall be based on the findings required by BMC 17.108.040. Any conditions imposed shall be reasonable and designed to assure

attainment of the purposes and standards established by this title. (Ord. 01-6 N.S., 2001; Ord. 92-9 N.S. § 24, 1992; Ord. 89-1 N.S. §§ 52, 53, 1989; Ord. 87-4 N.S., 1987).

17.108.080 Notice and public hearing by commission responsible for design review commission.

A. Time of Hearing. Within three working days after acceptance of a complete application for design review, the community development director shall set a date, time, and place for the hearing. A public hearing shall be held within 60 days of receipt of the application, unless the applicant agrees to a later date.

B. Notice. Notice of a public hearing required by this chapter shall be given in the following manner:

1. Posted Notice. Notices shall be posted at least 10 days prior to the hearing on the site of the project.

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

C. Public Hearing. At the time and place set for the public hearing, the commission shall hear comments on the proposed design. The commission may continue a public hearing without additional notice. (Ord. 92-9 N.S. §§ 24, 25, 1992; Ord. 89-1 N.S. § 54, 1989; Ord. 87-4 N.S., 1987).

17.108.090 Effective date – Lapse and renewal – Alterations.

A. Effective Date. Design review decisions shall become effective on the tenth day after the date of the notices of decision required by this chapter, unless appealed as provided in Chapter ~~17.124~~ 1.44 BMC.

B. Lapse of Approvals. Design approval shall lapse two years from its effective date unless:

1. A building permit has been issued and construction diligently pursued; or

2. An occupancy permit has been issued; or

3. The approval is renewed.

C. Renewal. The community development director, or Historic Preservation ~~the design Review Commission~~, or Planning Commission, as the case may be, may renew design approval for a period of one year upon determining that the findings made remain valid. Application shall be made in writing prior to the lapse of the original approval, but no more than 120 days prior to that date.

D. Changed Plans. The community development director, or the Historic Preservation ~~design Review Commission~~, or Planning Commission, as the case may be, may approve changes to approved plans or in conditions of approval without a public hearing upon determining that the changes in conditions are minor and are consistent with the intent of the original approval. Revisions involving substantial changes in project design or conditions of approval shall be treated as new applications. (Ord. 07-67 § 2; Ord. 92-9 N.S. § 24, 1992; Ord 89-1 N.S. §§ 55, 56, 1989; Ord 87-4 N.S., 1987).

17.108.100 Appeals.

A. Rights of Appeal and Review. Design review decisions of the community development director may be appealed by any interested party to the ~~historic preservation review commission~~ Planning Commission. Design review decisions of the Historic Preservation Review Commission may be appealed, by any interested party, to the Planning Commission. Design review decisions of the Planning Commission may be appealed, by any interested party, to the City Council.

B. Procedures – Public Hearings. Procedures for appeals shall be as prescribed by Chapter ~~17.124~~ 1.44 BMC.

C. ~~Limits on Appeals.~~ Appeal decisions of the ~~historic preservation review commission~~ shall be final. (Ord. 07-67 § 3; Ord. 92-9 N.S. § 24, 1992; Ord. 87-4 N.S., 1987).

17.108.110 Design review guidelines.

The ~~design review commission~~ City may adopt guidelines for design review consistent with the purposes of this chapter to facilitate the review process. (Ord. 92-9 N.S. § 24, 1992; Ord. 87-4 N.S., 1987).

**AGENDA ITEM
PLANNING COMMISSION MEETING: FEBURARY 14, 2008
PUBLIC HEARING**

DATE : February 8, 2008
TO : Planning Commission
FROM : Charlie Knox, Community Development Director
SUBJECT : Zoning Text Amendments – Section 17.70.300 (Animals)

RECOMMENDATION:

Recommend that the City Council approve zoning text amendments that changes Section 17.70.300 (Animals) of the Zoning Code to be consistent with recently adopted changes to Title 6 Benicia Municipal Code (Animals).

EXECUTIVE SUMMARY:

At a meeting on December 4, 2007, the City Council adopted an ordinance to amend the animal control provisions of the Benicia Municipal Code. This new ordinance currently conflicts with the existing Zoning Ordinance provisions for caring and keeping animals. The proposed zoning text amendments will remove any conflicts between the two code provisions.

BUDGET INFORMATION:

There are no fiscal impacts that would arise as a result of the proposed text amendments.

ENVIRONMENTAL ANALYSIS:

The proposed zoning amendments are Categorically Exempt under Section California Environmental Quality Act Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies) because they do not result in changes in land use.

SUMMARY:

The last comprehensive review of the City's animal control regulations occurred in 1987. For the last several years, a subcommittee has worked on revising these regulations by researching current law and reviewing regulations from other agencies. The result of this work, was the City Attorney drafting an ordinance (Title 6) that was introduced at the November 20, 2007 City Council meeting and adopted by the City Council on December 4, 2007. The changes to Title 6 update the City's regulations to reflect changes in State law and animal control practices. The dangerous dog/vicious dog provisions in particular, now comply with State law.

The changes to the zoning code (Section 17.70.300) that the Planning Commission is being asked to recommend for approval are very minor and delete outdated rules for care and keeping of animals in the City. Exhibit A contains the amendments, indicating the portions to be deleted in ~~strikeout~~ and the portions to be added as underlined.

FURTHER ACTION:

The Planning Commission recommendation will be forwarded to the City Council for review and adoption of the proposed text amendments.

Attachment A:

- Draft Resolution, including Exhibit A: Draft Ordinance (BMC Title 17.70.300)

DRAFT RESOLUTION

RESOLUTION NO. 08- (PC)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA
RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS
AMENDING SECTION 17.70.300 OF THE ZONING ORDINANCE TO BE
CONSISTENT TITLE 6 OF THE BENICIA MUNICIPAL CODE**

WHEREAS, on December 4, 2007, the City Council adopted an ordinance to amend the animal control provisions of the Benicia Municipal Code. This new ordinance currently conflicts with the existing Zoning Ordinance provisions for caring and keeping animals. The proposed zoning text amendments will remove any conflicts between the two code provisions; and

WHEREAS, the Planning Commission at a regular meeting on February 14, 2008, conducted a public hearing and reviewed the proposed text amendments.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby recommends the City Council approve zoning text amendments to change regulations for the care and keeping of animals in the City;

BE IT FURTHER RESOLVED THAT the Planning Commission finds that:

- a) The proposed amendments are categorically exempt from California Environmental Quality Act review under Guidelines Section 15321, which applies to actions by regulatory agencies to enforce a permit or other entitlement, or adopt an administrative decision to enforce a general rule, standard, or objective.
- b) The proposed zoning text amendments are consistent with the objectives and other provisions of Title 6 of the Benicia Municipal Code and the purposes of Section 17.70.300, Animals.
- c) The proposed zoning text amendment are consistent with the goals, policies, programs, and maps of the General Plan.

BE IT FURTHER RESOLVED THAT the Planning Commission hereby recommends the City Council amend Section 17.70.300 Animals to read as shown in attached Exhibit A.

* * * * *

On motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at a regular meeting of said Commission held on the 14th day of February, 2008 by the following vote:

Ayes:

Noes:

Absent:

Charlie Knox
Planning Commission Secretary

Exhibit A

17.70.300 Animals.

A. Purpose. Supplemental regulations governing the care and keeping of animals are intended to provide for the compatibility between such animals and neighboring land uses. These are in addition to the general requirements governing animals established by BMC Title 6.

B. Domestic and Exotic Animals. In an R district, or in conjunction with any residential uses in any other district, ~~not more than six domestic or three exotic animals, as defined by this title— not more than three of which may be dogs and not more than one of which may be an unspayed female dog may be kept on a lot, subject to the following requirements~~ domestic and exotic animals, as defined by this title, are subject to the following requirements in addition to the regulations of Title 6:

1. Such animals, except cats, shall not be permitted to run at large, but shall be, at all times, confined within a suitable enclosure or otherwise be under the control of the owner of the property; and

2. Any enclosure shall be located in an interior side or rear yard and set back at least five feet from the property line. and

~~3. Newborn and baby animals up to the age of three months shall not be counted in determining compliance with the numerical limits of this subsection.~~

3. The number of allowed animals, as defined by this title, may not exceed the limits set forth in Title 6 unless the property owner has obtained an animal keepers permit and a staff level use permit.

C. Other Animals.

1. In an R district, or in conjunction with any residential use in a C district, one horse, as defined in BMC Title 6, may be kept for each 20,000 square feet of open space, subject to securing a use permit. Paddock and corral areas shall be at least 20 feet from the property line, and stables shall be at least 40 feet from the property line.

2. In an OS district, livestock, farm animals, domestic animals and exotic animals may be kept on a lot 20,000 square feet or more in area, subject to the following requirements:

a. The number of domestic or exotic animals shall not exceed six;

b. Such animals shall not be permitted to run at large, but shall be, at all times, confined within a suitable enclosure; and

c. Any enclosure shall be set back at least 25 feet from the property line.