

August 12, 2010

**BENICIA PLANNING COMMISSION**

**CITY HALL COUNCIL CHAMBERS**

**REGULAR MEETING AGENDA**

Thursday, August 12, 2010

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. ADOPTION OF AGENDA**

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**III. OPPORTUNITY FOR PUBLIC COMMENT**

**This portion of the meeting is reserved for persons wishing to address the Commission on any matter not on the agenda that is within the subject jurisdiction of the Planning Commission. State law prohibits the Commission from responding to or acting upon matters not listed on the agenda.**

**Each speaker has a maximum of five minutes for public comment. If others have already expressed your position, you may simply indicate that you agree with a previous speaker. If appropriate, a spokesperson may present the views of your entire group. Speakers may not make personal attacks on council members, staff or members of the public, or make comments which are slanderous or which may invade an individual's personal privacy.**

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 Minutes of July 8, 2010

V. REGULAR AGENDA ITEMS

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A. ADDING NEW INDUSTRIAL USES TO THE ZONING ORDINANCE

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PROPOSAL:

This is a follow up to staff's June presentation of consideration of land use changes to allow opportunities for high-tech and clean-tech type businesses in the City's industrial zoning districts. The proposed zoning amendments and land use changes will effect approximately one- third of the City's overall incorporated land area. At the June meeting, staff presented a first round of information that included specific recommendations on potential land use changes.

Staff has identified the additional components of this consideration that will be needed for the Planning Commission's review. Once the Planning Commission is in a position to provide final direction relevant to the proposed changes, staff will provide the specific zoning ordinance section revisions in conjunction with the City Attorney's office. Prior to doing so, the Planning Commission will be provided additional environmental information, economic data, and policy consistency and discussion.

**Recommendation:**

**Review and discuss the proposed process and elements of zoning ordinance amendments to add green business and technology uses to industrial and commercial zones to enhance business attraction opportunities, and,**

- **Provide comment on areas of potential environmental concern or impact relevant to the California Environmental Quality Act as discussed in the Environmental Analysis section of the staff report, and,**
  
- **Provide staff with particular informational requests relevant to the proposed land uses as discussed in Policy Discussion of the staff report, and,**
  
- **Review and comment on the work plan outline as proposed in the Further Action section of the staff report.**

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**VI. COMMUNICATIONS FROM STAFF**

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- A. Review City Policies and Regulations on electronic billboard signs.**

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**VII. COMMUNICATIONS FROM COMMISSIONERS**

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**VIII. ADJOURNMENT**

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**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 agenda and non-agenda 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 Commission Secretary.**

#### **Disabled Access**

**In compliance with the Americans with Disabilities Act (ADA), if you need special assistance to participate in this meeting, please contact Valerie Ruxton, 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 the Commission may take.**

**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 that are final actions, not recommendations, are considered by the City Council. Appeals must be filed in the Public Works & Community Development**

Department in writing, stating the basis of appeal with the appeal fee within 10 business days of the date of action.

#### Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the Public Works & Community Development Department during regular working hours. To the extent feasible, the packet is also available on the City's web page at [www.ci.benicia.ca.us](http://www.ci.benicia.ca.us) under the heading "Agendas and Minutes." Public records related to an open session agenda item that are distributed after the agenda packet is prepared are available before the meeting at the Public Works & Community Development Department's office located at 250 East L Street, Benicia, or at the meeting held in the City Hall Council Chambers. If you wish to submit written information on an agenda item, please submit to Lisa Porras, Senior Planner, as soon as possible so that it may be distributed to the Planning Commission.

 [Minutes July 8, 2010](#)

 [Adding New Industrial Uses To The Zoning Ordinance](#)

 [Sign Ordinance - Electronic Billboards](#)



**BENICIA PLANNING COMMISSION  
CITY HALL COUNCIL CHAMBERS**

***DRAFT***  
**REGULAR MEETING MINUTES**  
**Thursday, July 8, 2010**  
**7:00 P.M.**

**I. OPENING OF MEETING**

**A. Pledge of Allegiance**

**B. Roll Call of Commissioners**

Present: Commissioners Richard Bortolazzo, Don Dean, Rick Ernst, Rod Sherry,  
Brad Thomas and Chair Dan Healy

Absent: Commissioner Lee Syracuse

Staff Present: Charlie Knox, Public Works & Community Development Director  
Melissa Morton, Land Use and Engineering Manager  
Kat Wellman, Contract Attorney  
Kathy Trinke Administrative Secretary

**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. ADOPTION OF AGENDA**

On motion of Commissioner Dean, seconded by Commissioner Sherry, the agenda order was adopted, with the exception to continue the last agenda item to the next meeting, by the following vote:

Ayes: Commissioners Bortolazzo, Dean, Ernst, Sherry, Thomas, Chair Healy

Noes: None

Absent: Commissioner Syracuse

Abstain: None

**III. OPPORTUNITY FOR PUBLIC COMMENT**

**A. WRITTEN**

None.

**B. PUBLIC COMMENT**

None.

**IV. CONSENT CALENDAR**

**A. Approval of Minutes of June 8, 2010**

On motion of Commissioner Bortolazzo, seconded by Commissioner Thomas, the consent calendar was adopted by the following vote:

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

**V. REGULAR AGENDA ITEMS**

**A. LOWER ARSENAL MIXED USE SPECIFIC PLAN – RESOLUTION TO DENY  
(CONTINUED)**

**PROPOSAL:**

The Draft Lower Arsenal Mixed Use Specific Plan was prepared to implement the Lower Arsenal Mixed Use Designation of the General Plan. On May 13, 2010 the Planning Commission conducted a public hearing and reviewed the proposed Plan and accompanying Environmental Impact Report (EIR). On June 10, 2010 the Planning Commission received and discussed a draft resolution recommending that the City Council not adopt the Plan and EIR as written. The Commission recommended that the draft resolution be brought back for further discussion on July 8, 2010.

**Recommendation:**

Modify and/or confirm the draft resolution recommending that the City Council not adopt the Lower Arsenal Mixed Use Specific Plan and the EIR as written.

Charlie Knox, Public Works and Community Development Director, reviewed and summarized the past Planning Commission actions on this item.

Questions of staff: none.

Opened for public comment:

Mark Hajjar, resident and Arsenal property owner, spoke in favor of the LAMUSP and EIR and not in favor of the resolution. He expressed concern about two issues: (1) the 1 to 3 ratio of new buildings to existing historic buildings. The number of buildings that are currently not in compliance is large. (2) The existence of the freeway has reduced the value of the historic area. He is concerned that the amount of effort, time and money put

into the plan not be set aside. His project would be hampered by any limitations on residential use. The Specific Plan is a valuable asset in growing the Arsenal area.

Belinda Smith, resident, handed out a one-page summary of recommended changes to the resolution. She recommends that the Commission add more information and provide more background about why the HPRC made their decision. She questioned an assertion that there are 21 new buildings in District C.

Jon Van Landschoot, resident supports Belinda Smith's comments about including the HPRC findings in the resolution.

Dana Dean, 835 First Street, representing Amports spoke in support of the resolution except that she agreed with Ms. Smith's changes and considers them appropriate because they add the why factor, making it stronger. She stated that adding these statements are more in keeping with the original intent discussed at the hearing.

Marilyn Bardet, resident, spoke in support of the resolution and reminded the Commission that in the Whereas clauses everything hinges on environmental issues and clean up of the Arsenal in order to proceed with the Specific Plan. Assemblywoman Yamada's letter to the DTSC Director, urged that DTSC take leadership and promise to compel cleanup through the Army. She reminded the Commission that this is still a process in motion without certainty. She supports Randy Potter's previous letter about cleanup of his property in the Arsenal. She stated that she has a DVD containing research done for Randy Potter's Unico property.

Kathleen Olson, 920 First Street, spoke in favor of the Specific Plan and EIR and not in support of the resolution. She expressed concern about the discussion how adjacent construction could impact our National Register District designation. She stated that the National Register District was formed after the 780 freeway was constructed and wondered what building could trump a freeway through a district. She implored the Planning Commission for balance in their decision. She stated that she had never heard of a National Historic District being taken away and wants to understand why that is a fear of preservationists. Concerning the 3:1 ratio, she stated that she hoped the language will require the research behind how many buildings we have. She believes we may already be defeated in this area.

Closed public comment.

Commission discussion and comments:

Chair Healy asked staff concerning the numbered items listed under the Now Therefore Be it Resolved, #1 about limiting size: does that mean height, square footage?

Mr. Knox responded yes, it is for height, square footage and building footprint. The COQ footprint is 5,000 square feet, excluding the basement.

Chair Healy asked about the 1 to 3 ratio of new to historic buildings. He does not remember locking into specific numbers because it doesn't guarantee the historic integrity of the area.

Mr. Knox responded that we talked about measurable ways to determine (or limit?) new construction. The 2001 SHPO letter mentions the 2:1 or 3:1 ratios. It is true that we are already past the 2:1 or 3:1 ratios in this area.

Chair Healy stated his concern that if we use the ratios, we would be vetoing any new construction, which is not our intent. Rather, we want to determine which and what residential development will be allowed. Is the issue live/work versus work/live use?

Mr. Knox explained that yes, and that Council sets the policy. Staff is not suggesting that the Planning Commission make the decision. More definition would be helpful, with more certainty provided.

Commissioner Dean's questions included: regarding historic and non-historic structures, would we include a 50 year old building, even though it is not considered historic?

Mr. Knox answered, no but in a future update to the Arsenal Historic Conservation Plan we may find additional buildings that should be designed as historic.

Commissioner Dean asked if the Tyler Street buildings are considered historic?

Mr. Knox answered yes, but they are not in Districts C or D. The Administration Building is also not in C or D.

Chair Healy summarized several issues. He is in support of the Whereas clauses in general and agrees with inserting the Secretary of the Interior's standards. He wants to protect the integrity of the district as a whole and is not in support of building ratios.

Commissioner Thomas agreed with referencing standards in the resolution.

Mr. Knox summarized as "sufficiently protect the historic integrity of the district as a whole, encompassing the Secretary of Interior Standards." Mr. Knox suggested that we gather input from the Commission tonight and incorporate that input into the resolution for the Chair's signature, rather than bringing it back to another meeting.

Commission discussion continued:

Commissioner Dean stated that he likes Belinda Smith's whereas recommendation, in compliance with guidance from the State Historic Preservation Office.

Chair Healy stated that he wants to stay away from ratios because the ratio is not possible, but he does agree with the whereas clause mentioning the 2001 guidance from Knox Mellon of SHPO.

Commissioner Ernst suggested trying to identify the residential component, whether we decide to limit it to work/live and incorporate it into the resolution.

Mr. Knox clarified the definition of live/work vs. work/live. He stated that it is hard to categorize without looking into each project because it depends on the type of work--some art is more industrial in nature.

Chair Healy stated that he is concerned about committing to any specific limitation on use of the property.

Mr. Knox explained that the Planning Commission will be recommending that City Council make a policy decision. The Planning Commission may go further into detail, but it is not essential.

Commission Thomas stated that he has no problem with finding #3 (that Council determine whether/which residential use is appropriate) because we're asking that the policy decision be made by the City Council. He prefers that because the Planning Commission doesn't have the knowledge base to make a recommendation with that level of specificity.

Commission Dean stated that he is OK with finding #3 as written.

Chair Healy would like one more item added, that the EIR incorporate more detail in terms of further assessment of the hazardous waste issue. He stated that further environmental analysis is necessary to assess the issues as discussed as recently as the June 16 DTSC letter. Chair Healy suggested adding a new #3 "to further assess the hazardous materials issues related to the lower Arsenal" and add a Whereas clause that the City is pursuing further assessment ....

Re-opened public comment:

Marilyn Bardet suggested, "to resolve Army liability issues and assign responsibility."

At the Chair's request, Mr. Knox suggested "...fully assess hazardous materials issues including issues related to responsibility for remediation."

Kathleen Olson stated her concern that the results of the assessment could leave the property owner to pay for the clean up. Does everything stop until we have the funds?

Mr. Knox responded that the money will likely be there for the assessment. If a major clean up is required, that's where funding may become difficult. It makes sense to know what materials are in this area.

Mark Hajjar stated a concern that if the Army is responsible, what happens to the property owners that have contamination? What happens to the property owners whose property is clean from hazardous materials, why should they be held to this standard? We already have live/work in the Arsenal.

Dana Dean commented that as a point of order, once the resolution is crafted, would someone please read it. She suggested that the last issue has to do with the EIR line that HPRC wrote in their resolution. There is no reference to re-circulation required of the documents.

Public comment closed.

Commissioner Dean stated that he'd like language included that a new economic impact analysis report be updated.

Kat Wellman, Contract Attorney and Mr. Knox summarized the findings and operative clauses of the resolution as suggested to be modified thus far.

Commissioner Ernst stated his concern about some certainty for the property owner, so they will know what they can build.

Mr. Knox responded that it could be added under the Now Therefore Be it Resolved section with Commissioner Dean's note to include the economic impact analysis report.

Mr. Knox restated the additions to the resolution and the findings.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING THAT THE CITY COUNCIL NOT ADOPT THE LOWER ARSENAL MIXED USE SPECIFIC PLAN AND THE EIR AS WRITTEN**

On motion of Commissioner Dean, seconded by Commissioner Thomas, the proposed amended resolution was adopted by the following vote:

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

Charlie Knox, Public Works & Community Development Director introduced Melissa Morton, Land Use and Engineering Manager to the Planning Commission and members of the public.

**B. RECOMMEND AN ORDINANCE AMENDING THE BENICIA INCLUSIONARY HOUSING ORDINANCE BASED ON A RECENT CALIFORNIA COURT OF APPEALS CASE**

**PROPOSAL:**

A recent court case requires an amendment to the City's inclusionary housing ordinance in regard to its application to rental developments. The key impact includes removing the requirement for affordable rental housing in newly created rental developments that receive no assistance from the local government. The City of Benicia cannot impose affordable housing requirements on rental housing as a result of this court case. Developers receiving financial assistance can still be required to provide affordable rental housing. Affordable housing requirements on for-sale housing are not affected by this court case.

**Recommendation:**

Recommend City Council adopt an ordinance to modify and update the existing City inclusionary housing ordinance.

Kat Wellman, Commission Attorney, provided an overview on her staff report recommending a resolution that recommends adoption of an ordinance to modify and update the existing City inclusionary housing ordinance. This action is necessary to bring the City's ordinance in compliance with a recent California Court of Appeal decision that held that inclusionary requirements applied to rental housing violate the Costa-Hawkins Act, the state law governing rent control. The ordinance changes are identified in "underline/strike out" version in the packet. The only changes are under Section 1C. adding a sentence under "definitions," Section D1, adding a phrase referring to "for-sale units" and under Section 3 E. 4. a section referring to requirements "for rental units." Key impacts of this decision include:

- A requirement for affordable rental housing in newly created rental developments receiving no assistance from the local government is no longer permitted;

- Rents may be limited if the developer/builder receives either a financing contribution or a type of assistance specified in density bonus law (i.e, including regulatory relief) and agrees by contract to restrict the rents; and
- Affordable housing requirements imposed on for-sale housing are not affected by this case.

Opened for public comment:

None.

Public comment closed.

Commission discussion items:

Commissioner Ernst asked if because of this court case, we have to adopt these changes?

Ms. Wellman responded yes, we want to comply with this decision.

Commissioner Healy asked how does this apply to units that are built as residential and then converted to condos, thereby avoiding compliance?

Commissioner Sherry stated that a condo conversion would require the project to go through a tentative map process.

Mr. Knox stated that it would be a problem only if the project were built for residential rentals and converted to commercial condos (but not residential condos).

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS TO SECTION 17.70.320 (INCLUSIONARY UNIT REQUIREMENTS FOR NEW RESIDENTIAL DEVELOPMENTS) OF CHAPTER 17.70 (SITE REGULATIONS) OF TITLE 17 OF THE BENICIA MUNICIPAL CODE AMENDING THE APPLICATION OF THE REQUIREMENTS TO CERTAIN PROJECTS**

On motion of Commissioner Ernst, seconded by Commissioner Bortolazzo, the proposed resolution was adopted by the following vote:

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

**C. RECOMMEND AN ORDINANCE AMENDING THE BENICIA DEVELOPMENT AGREEMENT ORDINANCE**

**PROPOSAL:**

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new requirements for any development agreement the City may enter into with a developer, applicant or permittee.

**Recommendation:**

Review and consider proposed revisions to the development agreement ordinance with a recommendation to the City Council regarding potential changes.

Kat Wellman, Attorney, provided an overview of her report. In November 2009, the Planning Commission reviewed sections from the development agreement ordinances of other cities. The City of Livermore does require a development agreement whenever a public benefit is required to justify allowing requested deviations from the City's regulations for certain projects, such as residential or industrial planned developments. Kat further explained the benefits of development agreements. She further stated that the ordinance was written to keep it general and maintain flexibility for the City. This decision will provide the City Council with greater policy discretion.

Commission comments and questions:

Commissioner Ernst asked when was Livermore's ordinance adopted?

Ms. Wellman responded in 1999 and it's still in use.

Commission Bortolazzo asked about special zoning applications?

Ms. Wellman responded that applies when there's a change in zoning.

Commissioner Sherry asked staff to explain the development agreement process.

Mr. Knox explained that it is usually used at the prerogative of the developer for large projects built over a period of time. The City can decide when to use one and the process usually takes 6 to 8 months. It is better to have a development agreement than 200+ conditions of approval. It allows more flexibility for both parties.

Commissioner Sherry expressed concern about the amount of work required to use this process and the inclusion of contiguous parcels. Could a 2 or 3 acre parcel be required to complete a development agreement.

Mr. Knox responded that yes, the only party other than Seeno this may apply to is Amports for the land north of 780.

Commission Dean stated that he is familiar with these documents. They are worked on over time and are part of the approval package. It usually comes at the end of the process and ties everything together.

Opened for public comment:

Dana Dean, 835 First Street, representing Amports, expressed appreciation for the City Attorney's efforts concerning the research. She stated that she doesn't think this concept has been tested by law. On a macro level, it's not a bad idea since it can take 10 years to develop a property. She stated that she has a problem with the ordinance as written. It affects 2 property owners, one of which is Amports. Since Amports owns dozens of tiny properties, would the City require Amports to enter into a development agreement, an excessive burden to the property owner. It should not apply to small parcels and it takes rezoning out of the picture. She suggested that the language require a provision or dedication of land for public purposes, look at the details of the language, and avoid ambiguities.

Closed public comment:

Commission discussion/comments included:

- Adding a lower threshold of 5 or 10 acres
- Keeping 40 acres and no DA required above 5 acres
- Has a similar ordinance been tested by the courts?
- If we keep it to 40 acres, it targets 1 or 2 property owners.
- Should we broaden the requirement not just for acreage but for potential impacts?
- We could have a smaller project that would want to have a development agreement.

Kat Wellman, Contract Attorney, responded that this has not been tested by the courts, only by use. The ordinance contains the word "may" to allow the City discretion not to require a DA for smaller projects.

Mr. Knox responded that if we add 10 acres (floor) and 40 acres (ceiling) that should cover all the issues, except for re-zoning. A master plan overlay is a zoning designation. Rezoning alone does not require a development agreement.

Commissioner Dean commented that there is flexibility for the City to enter into a development agreement or not and flexibility for the applicant to propose an agreement.

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA RECOMMENDING CITY COUNCIL APPROVAL OF ZONING TEXT AMENDMENTS TO CHAPTER 17.116 (DEVELOPMENT AGREEMENTS) OF TITLE 17 OF THE BENICIA MUNICIPAL CODE REQUIRING CERTAIN PROJECTS TO BE SUBJECT TO A DEVELOPMENT AGREEMENT AND AMENDING THE APPLICATION REQUIREMENTS FOR DEVELOPMENT AGREEMENTS**

On motion of Commissioner Bortolazzo, seconded by Commissioner Ernst, the proposed resolution was adopted by the following vote:

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

**VI. COMMUNICATIONS FROM STAFF**

**A. Receive City Policies and Regulations on electronic billboard signs**  
(continued to the next Planning Commission Meeting.)

**VII. COMMUNICATIONS FROM COMMISSIONERS**

Commissioner Dean complimented staff on the content of the June minutes.

**VIII. ADJOURNMENT**

Meeting was adjourned at 8:55 pm.

**AGENDA ITEM**  
**PLANNING COMMISSION MEETING: AUGUST 12, 2010**  
**REGULAR AGENDA ITEMS**

**DATE** : August 1, 2010

**TO** : Planning Commission

**FROM** : Mark Rhoades, Land Use and Engineering Division  
Amalia Lorentz, Economic Development Manager

**SUBJECT** : **ADDING NEW INDUSTRIAL USES TO THE ZONING  
ORDINANCE**

**RECOMMENDATION:**

Review and discuss the proposed process and elements of zoning ordinance amendments to add green business and technology uses to industrial and commercial zones to enhance business attraction opportunities, and,

- Provide comment on areas of potential environmental concern or impact relevant to the California Environmental Quality Act as discussed in the Environmental Analysis section (below), and,
- Provide staff with particular informational requests relevant to the proposed land uses as discussed in Policy Discussion (below), and,
- Review and comment on the work plan outline as proposed in the Further Action section (below).

**EXECUTIVE SUMMARY:**

This is a follow up to staff's June presentation of consideration of land use changes to allow opportunities for high-tech and clean-tech type businesses in the City's industrial zoning districts. The proposed zoning amendments and land use changes will effect approximately one-third of the City's overall incorporated land area. At the June meeting, staff presented a first round of information that included specific recommendations on potential land use changes.

Staff has identified the additional components of this consideration that will be needed for the Planning Commission's review. Once the Planning Commission is in a position to provide final direction relevant to the proposed changes, staff will provide the specific zoning ordinance section revisions in conjunction with the City Attorney's office. Prior to doing so, the Planning Commission will be provided additional environmental information, economic data, and policy consistency and discussion.

The City's adopted 2009-11 Strategic Plan includes the goal of allowing selected technology and related uses in the Benicia Industrial Park (BIP). The proposed zoning ordinance amendments

are consistent with the Strategic Plan's Strategic Action 5.C. in Goal #3, Strengthening Economic and Fiscal Conditions;

"Update zoning code to include clean energy, high-tech, R&D uses in industrial districts."

It is also an economic development initiative supported by the City of Benicia's Economic Development Board (EDB), and the Benicia Industrial Park Association (BIPA).

The proposed amendments are consistent with the City's Climate Action and General Plans as they relate to changes to the zoning ordinance to expand opportunities for high technology, green technology and clean technology businesses. Such provisions help provide for a more balanced future of land uses and employment opportunities for Benicia's daily out-commute of residents. A much more robust discussion of the proposed amendments' consistency with existing policy will be discussed in the next round of staff reporting.

#### **BUDGET INFORMATION:**

Fiscal impacts to the General Fund should be minimal with the exception of the staff time necessary to prepare the appropriate level of review and analyses. Staff will need to conduct some minor analyses relevant to traffic, air quality, and land use consistency. Staff resources will be required from the Public Works and Community Development Department, Economic Development, and the City Attorney's office.

There is the potential that the implementation of policy changes for the business park will result in greater City revenues and substantial new job creation. Staff will research gross economic development data relevant to the proposed uses, and especially the types of employment opportunities they may generate.

#### **ENVIRONMENTAL ANALYSIS:**

The proposed zoning ordinance amendments and potential general plan amendments are legislative actions. The California Environmental Quality Act (CEQA) has neither ministerial nor categorical exemptions for legislative actions. CEQA requires that the City prepare an initial environmental study on the proposed policy and land use changes and then make an environmental determination as to the appropriate level of CEQA review (negative declaration, mitigated negative declaration, or environmental impact report). That CEQA document must be adopted prior to the adoption or implementation of the proposed amendments.

The General Plan EIR is the baseline CEQA document against which the proposed land use changes' effects must be measured. The land use changes under consideration should not have the potential to generate any potential for impacts that were not already considered for the existing underlying zoning capacity. It is staff's belief that the proposed changes do not alter the base land uses or their intensities and characteristics, but that information will need to be derived from additional information and analyses.

Staff is not making recommendations at this time relevant to the existing development standards and building intensities in the zoning ordinance's industrial and commercial zoning districts. As a result, the general land use intensities as they relate to the amount of physical development in the industrial zones will not change. The changes will be limited to allowable uses and the analyses will focus on whether or not particular uses will have the potential to generate impacts. It should be noted that the issue of including (or not) vivaria, and the potential environmental considerations relevant to biosafety could require some additional specialized study for CEQA purposes. Staff will provide additional data relevant to this particular set of issues in future reports.

It is anticipated that information in the following topic areas will need to be provided:

- Traffic/Circulation (changes between currently allowed and proposed land uses),
- Air Quality (and especially concerning the new Bay Area Air Quality Management District standards for Greenhouse Gas Emissions)
- Land Use Policy Consistency (especially General Plan and Climate Action Plan)
- Public Safety (Hazards, Hazardous Materials, Risk of Upset, especially relevant to new categories of chemicals, materials, and organisms)
- Public Facilities and Services (any potential for increased public resources to support the proposed land uses)
- Population/Housing (potential to provide local employment opportunities for Benicia residents who must otherwise commute out of the City for work)

Other CEQA topic areas that will be addressed, but that staff does not perceive to be an issue, include:

- Biological Resources
- Geology
- Hydrology
- Agricultural Resources
- Cultural Resources
- Noise
- Recreation

## **BACKGROUND:**

The Planning Commission reviewed this item previously in June. Staff made a presentation to the Planning Commission in June 2010 to gather initial feedback, which was mainly positive with some concerns regarding the issue of vivaria. The Planning Commission's discussion centered on discretionary thresholds and considerations for vivaria, including additional bases, rationale, policy and/or criteria for their consideration. Staff is providing additional information relevant to the process and information to consider for making zoning amendments to allow new industrial and/or commercial land uses in those zoning districts.

This zoning update is a part of a larger strategy to re-evaluate the role that the business park plays in the local and regional economy, with other efforts such as a Metropolitan Transportation Council grant for an intermodal Transit Plan – Rail Stop/Station Area; and plans to submit a Strategic Growth Council Grant for a Benicia Strategic Infill Plan in the Benicia Business Park/Industrial Park area (further discussion at end of report).

Benicia has a significant opportunity to prepare itself for new market economies and emerging business and technology sectors. Benicia is strategically located at the southern tip of Solano County. An expanded business park with a regional rail stop as a centerpiece would provide the opportunity for job destinations to decrease commuting to points south. It would also allow Benicia to capture revenues and jobs that would otherwise locate in jurisdictions or locations that provide more favorable land use and entitlement conditions.

### **POLICY DISCUSSION:**

The intent is to expand opportunities for high-tech and clean-tech type businesses in Benicia as a sustainable growth and an part of the City's larger economic development strategy. The result of the process will include broader definitions and use classifications and definitions for what is allowed in the various industrial zones. The process will include expanding the types of businesses that are allowed in order to express Benicia's desire to attract a greater variety of clean and green technology businesses.

Staff has not yet had the opportunity to set out a full policy discussion relevant to the proposed amendments. At this juncture planning and economic development staff has been engaged with outlining the process and the components of review that are necessary for this effort.

#### Vivaria and Biosafety

At the June meeting, the Planning Commission requested additional information relevant to vivaria and biosafety levels.

Biosafety levels are taken from the Federal Centers for Disease Control (CDC), which provide biosafety definitions for laboratory worker safety. Each biosafety level (BSL) has a corresponding requirement for security and safety in the working environment, for example, vacuum-sealed doors, protective clothing, etc. The BSLs are 1: mild hazard to humans, 2: moderate hazard, 3: serious hazard but vaccines/treatment available, and 4: high risk with no vaccines/treatment available.

By way of context, there are no City restrictions currently on transporting hazardous materials throughout the industrial park, or on specific uses involving hazardous materials. Currently the City itself stores and uses hazardous materials, including blood borne pathogens, in accordance with State and Federal regulations. Given that State and Federal workplace safety laws highly regulate hazardous materials practices in the workplace, staff recommends allowing BSLs 1-4 as part of the biotechnology industry.

Vivaria are animal testing facilities that may be stand-alone operations or incorporated into a larger biotechnology (or similar) company. The Association for Assessment and Accreditation

of Laboratory Animal Care International (AAALAC) provides best practices for vivarium animal care and treatment. Since vivaria themselves are not a use identified as a target in the Economic Development Strategy, staff recommends as part of this update to define and allow vivaria by right as accessory uses, not stand alone, in the industrial zones. A stand-alone vivarium would require a use permit.

#### Use Classification Changes

The following section of potential revised language was provided in the June staff report. It is provided herein for context and discussion. It has not been modified as of yet. As initially envisioned, the edits as shown would be zoning ordinance text amendments. Necessary environmental review is outlined under "Further Action" (below). It is anticipated that the actual land use changes will be more fully detailed and incorporated into a broader context of zoning ordinance sections. If General Plan language is needed, those amendments will also be fully described and options considered.

Additions and ~~deletions~~ are shown. Any part of the existing code that is not shown does not have any changes proposed for it.

#### USE CLASSIFICATIONS, BMC SECTION 17.16

17.16.060 (B): Industry, General. Manufacturing of products primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture (excluding concrete ready-mix plants) within an enclosed building, and accessory power generation facilities of five megawatts or less in conjunction with a permitted use. This use also includes recycling facilities, cleantech, information technology, computer server farms, and manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology. Examples of packaging include facilities for bottling beverages, canning and wrapping foods, and boxing electronic components.

17.16.060 (C): Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. Industry, Research and Development (as further defined in 17.16.060(D)) also allowed. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials, food processing, and "vehicle/equipment sales and services." Examples of allowed uses include but are not limited to cleantech, information technology, manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology.

17.16.060 (D) Industry, Research and Development. Establishments primarily engaged in the research, development, and controlled production of high technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable, in the opinion of the community development director, by reason of production of offensive odor, dust, noise, vibration, or storage of hazardous materials. Uses include biotechnology, films, and nontoxic computer component manufacturers. Establishments engaged in the theoretical or applied study, testing, engineering, product design, analysis and development of devices, products, processes, or services related to current or new technologies. Research and development may include limited manufacturing, fabricating, processing, assembling or storage of prototypes, devices, compounds, products or materials, or similar related activities, where such activities are incidental to research, development, or evaluation. Examples of uses include, but are not limited to, computer software and hardware firms, computer peripherals and related products, electronic research firms, biotechnical and biomedical firms, instrument analysis, genomics, robotics, pharmaceuticals, and related educational development. Research and development may include the storage or use of hazardous materials not in excess of the exempt quantities listed in Title 15 of the Municipal Code, or etiological (biological) agents up to and including Bio Safety Level 4 classifications as defined by the National Institute of Health (NIH) or the Center for Disease Control (CDC).

Related administrative uses (for example, finance and human resources); provisions of services to others on or off-site; and related educational uses may also be included provided they remain supportive of the primary uses of "research and development" and are part of the same research and development firm or a directly related subsidiary thereof.

- Note L13 (applies to IL and IG): Medical/dental offices (other than occupational health clinics), insurance brokerage offices, and real estate brokerage offices not permitted.

Add Information Technology as allowed uses in the IP/CG/TC/TC-O zoning districts.

#### Changes to Definitions

DEFINITIONS, BMC SECTION 17.12.030

**Biotechnology:** technology that uses living organisms (or parts of organisms) to produce or modify products, to improve plants or animals, or to develop microorganisms for specific uses. May encompass office, industrial, dry lab, and/or wet lab, as primary or accessory land uses, and vivarium as an accessory land use. (new use at 17.16.060(B)2)

**Cleantech:** companies whose operations result in an environmentally sensitive, low-emissions, and/or energy-efficient process, product, or innovation. This sector can include but is not limited to renewable energy, recycling, water and wastewater treatment, and hybrid engines.

(17.16.060(B)3)

**Dry Lab:** facility associated with biotechnology, such as computational labs combined with office uses, not involving testing of living organisms or chemicals in that space. (17.16.060(B)4)

**Information Technology:** Multimedia services, software development, web design, website operation, video production/post-production, electronic commerce, and other computer/Internet-

based technology services, provided either to the general public or to the business community. (17.16.050(FF))

**Nanotechnology:** Companies engaged in research, development, or manufacturing of matter on the atomic and molecular scale, generally 100 nanometers or smaller and the fabrication of devices or materials that lie within that size range. (17.16.060(B)5)

**Occupational health clinic:** Medical office or clinic exclusively used for occupational health (workers' compensation-related) evaluation. (17.16.050(GG))

**Vivarium:** Facility associated with biotechnology that is a laboratory comprised of enclosed areas for keeping and raising animals for observation or research; animal facilities supporting research and development labs by using animals in experiments such as efficacy and toxicology testing prior to clinical trials in humans. They are classed in BSL<sup>1</sup> categories 1-4. (17.16.060(B)6)

**Wet Lab:** facility associated with biotechnology where EPA-licensed and non-licensed chemicals, and FDA-licensed and non-licensed drugs are analyzed. Low-level nuclear materials as well as biological materials also may be analyzed. These uses require water, direct ventilation, and specialized piped utilities. These are classified in BSL categories 1-4. (17.16.060(B)7)

#### Other Zoning Ordinance Amendments

There are a number of other sections of the Zoning Ordinance that will need to be amended in order to accommodate the proposed use changes and amendments. These include, but are not limited to:

- Section 17.32, Industrial Districts – This section will need to be amended to include the proposed uses in the tables and to establish thresholds of ministerial and discretionary review.
- Section 17.74, Use Regulations Summary - This section will need to be amended to include the proposed uses in the tables.
- Section 17.74, Off-Street Parking and Loading Regulations – This section will need to be amended to include the proposed uses in the parking requirements tables, and to establish new parking requirements for the range of proposed new uses.

#### **FURTHER ACTION AND WORK PRODUCTS:**

The national economic recovery is progressing and public and private investments in clean and green technologies are underway. An efficient land use effort will allow Benicia to capitalize on this emerging sector. At this point, the recommendation appears likely to be consistent with the City's adopted General Plan. However, if changes emerge that would require amending the

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<sup>1</sup> Biosafety levels

General Plan, the choices for amending policies will be clearly articulated for the Planning Commission's and the public's future consideration. There are a number of ways that the proposed industrial zone changes could be incorporate into the Zoning Ordinance.

#### Option 1: Modify Use Tables, Establish Thresholds of Discretion and Establish/Modify Zoning Definitions and Use Classifications

This is the methodology proposed by staff. This will require staff to examine the zoning ordinance for areas that refer to or include the categories of industrial and/or commercial uses that are outlined in this report. Staff will work with Economic Development staff to provide additional information relevant to the proposed uses and their potential employment/revenue benefits.

Staff will bring this item back for a public hearing or workshop with any additional information that has been requested by the Planning Commission relevant to the proposed uses. Staff will also provide information relevant to:

- Analysis of compatibility of proposed uses with existing allowed industrial uses
- Research actions taken by other jurisdictions relevant to the proposed land uses
- Additional economic data relevant to the proposed land use changes, and employment and revenue potential.
- Proposed thresholds of discretion and other requirements for new uses, including assignments of parking requirements,
- The proposed level of CEQA review and a draft of an initial study, as noted in "Environmental Analysis" (above),
- Specific policy analysis of the proposed zoning amendments and their consistency with the General Plan and Climate Action Plan (this same analysis is a part of the required CEQA review), and,
- Preparation of specific zoning section amendment language, general plan amendment language if needed, and an ordinance.

#### Option 2: Change Definitions

Staff does not recommend this methodology on its own. This would involve adding the proposed range of new uses to existing Use Classifications and Definitions already specified in the code. However, the nature of some of the uses requires that they have their own unique definition. The Planning Commission may want to carefully consider uses such as vivaria, or businesses that handle biological agents, and the thresholds of discretion that should be required to establish them.

#### Option 3: Change Zoning Designation

Changes to zoning and land use designations are necessary when a city proposes to reconsider the use of land, or to recategorize land based on broader or narrower use characteristics. Such an effort requires modifying the General Plan and the General Plan Land Use Map. Staff is not proposing changes to any underlying use classifications at this time. This methodology is not recommended.

#### Option 4: Form-Based Code

This would involve writing new zoning ordinance provisions that establish a set form and development envelope for broad land use categories. Such an effort is only recommended if the categories of uses are specific enough to allow flexibility within appropriate categories while not disrupting Benicia's quality of life. Such an approach may be appropriate in the future when the City is able to take a more comprehensive approach to the zoning ordinance. This methodology is not recommended at this time.

#### **RELATED TOPICS FOR FUTURE CONSIDERATION AND ACTION:**

##### Benicia Strategic Infill Plan Grant Application

In August, the City of Benicia will apply for a grant from the Strategic Growth Council. The grant will allow Benicia to conduct a targeted update to the land uses in the industrial zoning areas in order to determine how to balance existing housing and employment in Benicia for the purposes of sustainability – environment, equity and economy. If the City is successful with that grant application, these proposed zoning ordinance amendments would be precursor to a much broader examination of land uses, local employment, revenue generation, and development standards and processes. It is likely that these changes will result in targeted General Plan updates.

This grant would give the City the opportunity to address its jobs/housing imbalance by providing clean-tech office, research and development, and modern light industrial space for professional workers in the northeast section of the City, and identifying workforce housing sites in Benicia's walkable, historic downtown which has been designated a Priority Development Area (PDA) by ABAG. Benicia is in an optimal position to embark on such a planning effort with the completion of its Climate Action Plan and Downtown Mixed-Use Master Plan and the update of its Housing Element.

A large portion of Benicia's employed population works outside of Benicia, commuting to employment centers in the Bay Area or Sacramento. At the same time, Benicia has a history of heavy industrial, service, and blue-collar jobs for which workers now must commute into the City. Benicia has an Urban Growth Boundary (UGB), within which it could address its job/housing imbalances and better connect housing and employment through existing and proposed transit connections. There is undeveloped land totaling over 500 acres in north east Benicia as well as vacant parcels within the downtown where the City could address these issues through targeted land use planning and development. With appropriate land use strategies, there is real potential for optimizing rail and water transit connections for commuters as well as optimizing multi-modal transit within the city.

To address the type of employment opportunities needed in Benicia, the Plan would also include a major opportunity for creating a new clean-tech business center within the City limits. The business park development would provide employment for Benicia residents currently commuting to professional employment centers outside of the city and for future residents of the City. The business park would be located in more than 500-acres of land adjacent to Benicia's proposed Multi-Modal Transit Area. Due to topography and the need for proximity to the

Transit Area, only a portion of that area could be developed, with the rest required to be open space.

The project would identify housing sites on vacant and underutilized parcels within walking distance of Benicia's historic downtown, a Priority Development Area designated by the Association of Bay Area Governments (ABAG). These sites would be analyzed for potential housing generation at Benicia's high-density residential designation of 15-21 units per acre. Opportunities for a 100 percent, affordable workforce housing development would also be analyzed. Potential sites in the downtown area have existing infrastructure services as well as access to transit connecting to Benicia's industrial and commercial job centers and to rail and BART transit. The City's Housing Element is in the process of being updated, which will assist in identifying key sites.

At the edge of the UGB, there is a 500-acre development site near the Capitol Corridor rail line. The Infill Plan would analyze this site for a business park with a compact, commercial mixed-use development that could be well served by the rail line. A complementary planning effort to this grant project is the upcoming effort to prepare a Benicia Industrial Park Multi-Modal Transit Area Plan for which MTC has allocated \$1.25 million in planning, design and construction funding. Central to the Transit Area Plan is the consideration of a commuter rail stop for the Capitol Corridor line. This rail stop would serve in-commuters for the business park as well as in-commuters for some of the industrial uses to the south of the proposed station area. In addition, the Capitol Corridor connection could serve Benicia residents who currently out-commute to employment centers in the Bay Area or Sacramento by car.

#### Zoning Ordinance Development Standards and Land Use Intensities

The Planning Commission may want to consider including a recommendation relevant to development standards and intensities to the City Council for their consideration when these amendments for use changes are forwarded. This policy effort is specifically related to the consideration of uses and thresholds of discretion for those uses. Staff is not including any recommendations for review and consideration to the existing zoning ordinance development standards or land use intensities for the industrial or the commercial zoning districts. Such an effort would require significantly more resources than are envisioned for this process. These issues would likely be addressed if the City is successful in receiving the SGC Grant.

Such an effort could also be used as a basis for establishing modified form/use-based zoning provisions that would provide the community with a stronger and clearer set of standards and processes relevant to the industrial and commercial zoning districts. Such standards are important tools for local job creation and overall economic development. Such an effort is consistent with the Climate Action Plan and the need for additional land use intensity within the City's urban growth boundary.

#### Parking Requirements

The City's zoning ordinance parking standards have been the subject of much Council and Planning Commission recently. The Climate Action Plan recognizes that current parking standards are too high and do not allow for land to be used in a sustainable and efficient manner. Recent land use development projects have also illustrated the need to re-examine parking

requirements on a citywide basis. As a part of forwarding any zoning amendments for the Council's consideration, the Planning Commission may want to consider reiterating this need, especially in light of the new land uses that are being considered.

Attachments:

- Excerpt from Economic Development Strategy (2007), p. 9
- Map of Benicia's Industrial Zoned Land
- Staff Report from the Planning Commission Hearing of June 10, 2010

**ATTACHMENT  
EXCERPT FROM ECONOMIC  
DEVELOPMENT STRATEGY (2007), P. 9**

ATTACHMENT A: Excerpt from Economic Development Strategy (2007), p. 9

**II. Increase research and development and campus-style office uses in the Benicia Industrial Park.**

The Benicia Industrial Park (BIP) is in many ways the economic engine in Benicia, as well as a significant employment center in Solano County. Benicia's industrial area is second only to Fairfield's in square footage in the county. Although the BIP is referred to as if it were one entity, in fact it is a business park with many property owners, developed over many years, and housing a variety of industrial and office uses, from biotech sales to construction yards to manufacturing lines. Anchored by the Valero refinery and its supplier companies, the BIP has diversified beyond petroleum into pipe organs, nutraceuticals, and motocross accessories.

The policy recommendations in this section are intended to ease the BIP area into the future without damaging the base. We know that in the future, the addition of the Benicia Business Park acreage will add about 25% more property to the developed BIP, which otherwise has only a couple infill sites remaining. Many factors go into companies' site selection process, such as proximity to workforce, customers, and suppliers, business costs, quality of life (crime, schools, weather), and infrastructure needs (transportation and technology). Each of these will be ranked differently by different companies, and no single community can meet all the criteria for all companies. The recommendations in this section aim at strengthening Benicia's position within the context of a competitive site selection process that offers partial opportunities to influence the outcome.

Update Zoning Code to encourage clean energy, high-tech, research and development (R&D) uses in industrial districts, and/or create new overlay for certain technology uses without discouraging existing businesses.

The existing Zoning Code divides the BIP mainly into Limited (IL) and General (IG) industrial districts, with smaller areas designated as Water-related Industrial (IW) and Industrial Park (IP). Research and development (the Zoning Code definition of which is not detailed) is allowed in all industrial districts except IW. Software design, medical device testing, green energy system designs, and other technology-related uses could fall into a number of categories, including "office", depending on the specifics. Stand-alone office uses are not allowed in any industrial district except IP (which is a very small corner of the BIP covering Bio-Rad).

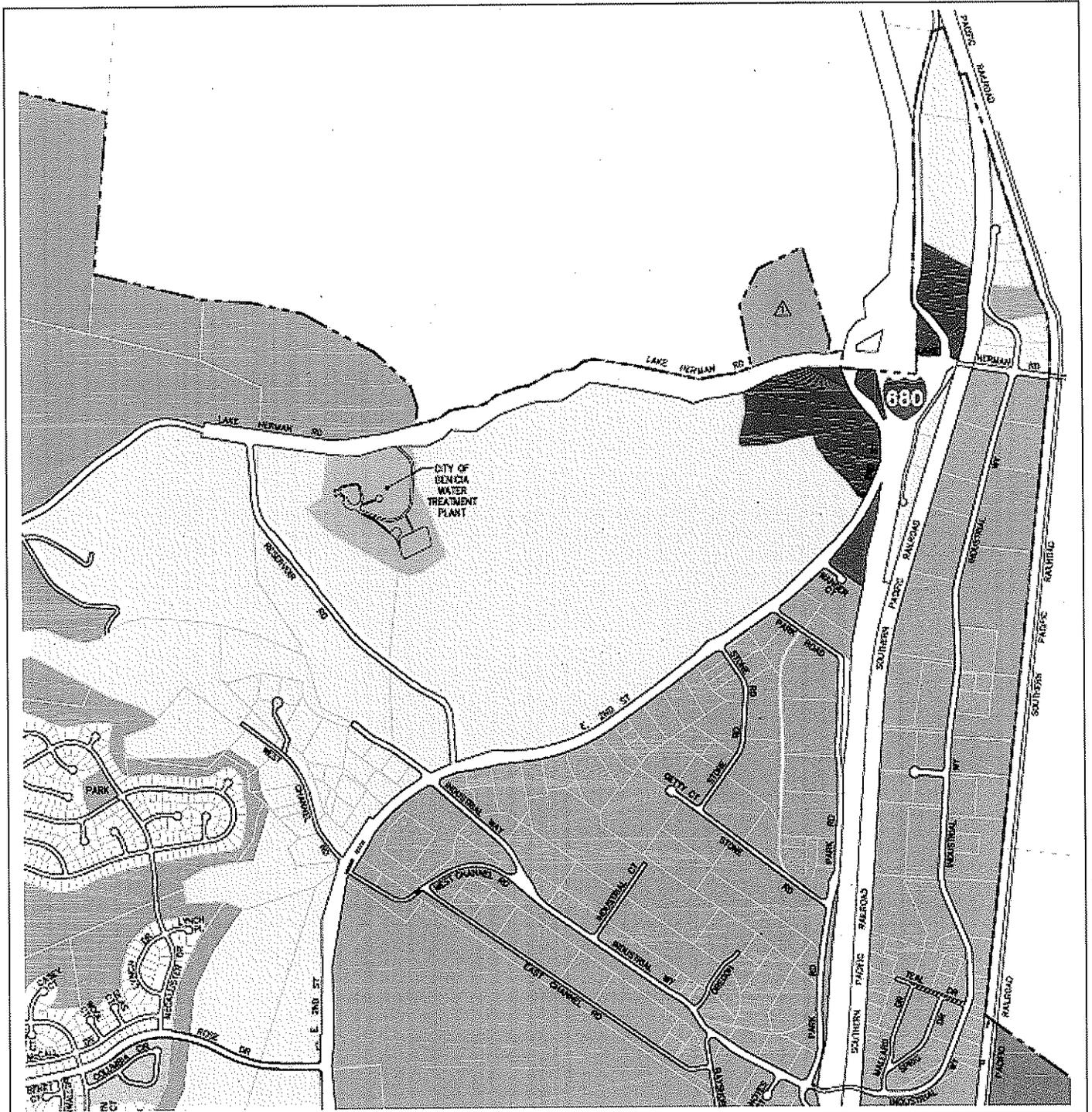
Better defining the uses the community would like to encourage, and clarifying in which districts they are allowed, is a process through the Community Development Department that will assist in attracting those businesses. As staff and the EDB have frequently heard from brokers, adding certainty to the development process is good.

A great example of that is in one of our Solano County neighbors. The City of Dixon recently defined and added "bioscience" to its Zoning Code as allowed in light industrial districts to help bring in those uses to the community. Result: A Genentech research and development campus. The zoning was not necessarily the deciding factor, but according to Dixon City staff, it gave Dixon an advantage because it minimized the company's entitlement time and costs.

**ATTACHMENT  
MAP OF BENICIA'S INDUSTRIAL  
ZONED LAND**



**Benicia General Area Map – Proposed Industrial Land Use Changes**



**ZONING MAP LEGEND:**

	OS OPEN SPACE		CC COMMUNITY COMMERCIAL		IG GENERAL INDUSTRIAL
	PS PUBLIC & SEMI-PUBLIC		CO OFFICE COMMERCIAL		IW WATER RELATED INDUSTRIAL
	RS SINGLE FAMILY RESIDENTIAL • 0 - 7 DU/ACF		CG GENERAL COMMERCIAL		IP INDUSTRIAL PARK
	RM MEDIUM DENSITY RESIDENTIAL • 8 - 14 DU//		CD DOWNTOWN COMMERCIAL		
	RH HIGH DENSITY RESIDENTIAL • 15 - 21 DU/ACF		CW WATERFRONT COMMERCIAL		
	PD PLANNED DEVELOPMENT		IL LIMITED INDUSTRIAL		



**ATTACHMENT  
STAFF REPORT FROM THE PLANNING  
COMMISSION HEARING OF JUNE 10, 2010**

**PLANNING COMMISSION MEETING: JUNE 10, 2010  
COMMUNICATIONS FROM STAFF**

**DATE** : June 3, 2010

**TO** : Planning Commission

**FROM** : Amalia Lorentz, Economic Development Manager  
Mark Rhoades, Interim Land Use and Engineering Manager

**SUBJECT** : **CONSIDERATION OF ADDING NEW INDUSTRIAL USES FOR  
ECONOMIC VITALITY TO THE ZONING ORDINANCE**

**RECOMMENDATION:**

Receive a presentation regarding the City Economic Development Strategy initiative to add green and technology uses to industrial and commercial zones to enhance business attraction opportunities; provide feedback to staff on process for changes.

**EXECUTIVE SUMMARY:**

One of the primary goals of the City's 2007 Economic Development Strategy is to "Update zoning code to include clean energy, high-tech, R&D uses in industrial districts" (See Strategic Action 5.C of Goal #3]. As an economic development initiative supported by the City of Benicia's Economic Development Board (EBD), the Benicia Industrial Park Association (BIPA), and the City's adopted policy documents, the objectives of the proposed changes to the Zoning Ordinance are to expand opportunities for high-tech and cleantech type businesses to locate in Benicia, and better define what is allowed in the various industrial zones, thus reducing uncertainty and processing time. They will "put out the welcome mat" for even more types of businesses. The City has an opportunity to be a leader by doing this groundwork now so that we are ready when "the next Google" walks through the door.

**BUDGET INFORMATION:**

There are no fiscal impacts to the General Fund, other than limited staff time, as a result of this action. There is a strong potential that the implementation of policy changes for the business park will result in greater city revenues and substantial new job creation.

**ENVIRONMENTAL ANALYSIS:**

This action is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15262, which applies to planning studies for possible future actions that the Commission has not approved, adopted, or funded. Any proposed zoning changes and

General Plan amendments will be subject to CEQA review that will be conducted concurrently with policy review and analyses.

## **BACKGROUND:**

Updating the City's zoning regulations to encourage more clean energy, high-tech, research and development (R&D) uses in industrial districts by clarifying that they are allowed, is a concept that originated at the Economic Development Board (EDB) in 2006 during the development of the City's new Economic Development Strategy. This goal was ultimately approved by the City Council in September 2007. The EDB was cognizant of the Benicia Industrial Park's (BIP) strengths in traditional manufacturing, as well as the emergence of industries that did not yet exist when the zoning regulations were drafted. As one EDB member put it, "If the next Google walked through the door, would they be approved to go in the industrial park?"

After much discussion at their public meetings, the EDB adopted language in the Strategy that reflected this concern and transition. After the Strategy was approved by the City Council, the Community Development staff thought there might be an opportunity to do a full zoning code update, of which this BIP piece would be a part, but that didn't come to pass. As that became clear, the Economic Development Manager drafted the proposal for internal and external review. It was "workshopped" with an EDB subcommittee (called the BIP Needs Assessment Committee, comprised of two EDB members, two BIPA members, and one "at-large" member of the public) in summer 2008, which supported carrying it forward to dialogue with the Benicia Industrial Park Association (BIPA).

In 2009, the initiative was reviewed with planning staff and BIPA, which submitted a formal letter of support (attached). During the Spring 2009 budget development process, the project was included in the 2009-11 Strategic Plan. "Update zoning code to include clean energy, high-tech, R&D uses in industrial districts" is Strategic Action 5.C. in Goal #3, Strengthening Economic and Fiscal Conditions.

This request from Economic Development is a part of a larger strategy to re-evaluate the role that the business park plays in the local and regional economy. These efforts include:

1. BIPA/EDB Proposal to expand uses for green tech/economy (Council adopted 2009-2011 Strategic Plan) (the current discussion item);
2. MTC Grant funding for an intermodal Transit Plan – Rail Stop/Station Area; and
3. Proposed Strategic Growth Council Grant (submittal approved by Council 5/18, submittal date TBD) to create Benicia Strategic Infill Plan to look at a clean/green tech office/business park at the Seeno location, balanced by housing infill opportunities in other parts of the city.

Benicia has a significant opportunity to prepare itself for new market economies and emerging business and technology sectors. Benicia is strategically located at the southern tip of Solano County. An expanded business park with a regional rail stop as a centerpiece would provide job destinations to decrease commuting to points south. It would also allow Benicia to capture

revenues and jobs that would otherwise locate in jurisdictions or locations that provide more favorable land use and entitlement conditions.

## **SUMMARY:**

The intent is to expand opportunities for high-tech and clean-tech type businesses in Benicia as part of the City's larger economic development strategy. The result of the process will include better definitions for what is allowed in the various industrial zones, thus reducing uncertainty and processing time. The process will include expanding the types of businesses that are allowed in order to specify Benicia's desire to attract a greater variety of clean and green technology businesses. The City has an opportunity to be a leader by doing this groundwork now so that we are ready when "the next Google" walks through the door.

The General Plan currently includes a number of policies and provisions relevant to expanding the uses in the industrial park area. Policies also include diversifying Benicia's economic base. One of the main General Plan policies relevant to industrial uses is Policy 2.6.1, which states,

"Preserve industrial land for industrial purposes and certain compatible "service commercial" and ancillary on-site retail uses."

This and other policies require the City to carefully review proposed changes to insure that they are not incompatible with existing industrial businesses.

As initially envisioned, the edits as shown would be zoning ordinance text amendments. However, Planning staff is considering the best, most thorough way to process them, as will be discussed in more detail at the meeting, and as outlined under "Further Action," below.

The changes proposed by Economic Development follow.

### **Revised Use Classifications:**

Additions and deletions are shown. Any part of the existing code that is not shown does not have any changes proposed for it.

17.16.060 (B): Industry, General. Manufacturing of products primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture (excluding concrete ready-mix plants) within an enclosed building, and accessory power generation facilities of five megawatts or less in conjunction with a permitted use. This use also includes recycling facilities, cleantech, information technology, computer server farms, and manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology. Examples of packaging include facilities for bottling beverages, canning and wrapping foods, and boxing electronic components.

17.16.060 (C): Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. Industry, Research and Development (as further defined in 17.16.060(D)) also allowed. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials, food processing, and "vehicle/equipment sales and services." Examples of allowed uses include but are not limited to cleantech, information technology, manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology.

17.16.060 (D) Industry, Research and Development. Establishments primarily engaged in the ~~research, development, and controlled production of high technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable, in the opinion of the community development director, by reason of production of offensive odor, dust, noise, vibration, or storage of hazardous materials.~~ Uses include biotechnology, films, and nontoxic computer component manufacturers. Establishments engaged in the theoretical or applied study, testing, engineering, product design, analysis and development of devices, products, processes, or services related to current or new technologies. Research and development may include limited manufacturing, fabricating, processing, assembling or storage of prototypes, devices, compounds, products or materials, or similar related activities, where such activities are incidental to research, development, or evaluation. Examples of uses include, but are not limited to, computer software and hardware firms, computer peripherals and related products, electronic research firms, biotechnical and biomedical firms, instrument analysis, genomics, robotics, pharmaceuticals, and related educational development. Research and development may include the storage or use of hazardous materials not in excess of the exempt quantities listed in Title 15 of the Municipal Code, or etiological (biological) agents up to and including Risk Group 3 or Bio Safety Level 3 classifications as defined by the National Institute of Health (NIH) or the Center for Disease Control (CDC). Higher classification levels of etiological (biological) agents are not allowed without express permission of the Fire Chief.

Related administrative uses (for example, finance and human resources); provisions of services to others on or off-site; and related educational uses may also be included provided they remain supportive of the primary uses of "research and development" and are part of the same research and development firm or a directly related subsidiary thereof.

- Note L13 (applies to IL and IG): Medical/dental offices (other than occupational health clinics), insurance brokerage offices, and real estate brokerage offices not permitted.
- Add Information Technology as allowed in IP/CG/TC/TC-O.

#### **New Definitions:**

**Biotechnology:** technology that uses living organisms (or parts of organisms) to produce or modify products, to improve plants or animals, or to develop microorganisms for specific uses. May encompass office, industrial, dry lab, wet lab, and/or vivarium as primary or accessory land uses. (new use at 17.16.060(B)2)

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**Dry Lab:** facility associated with biotechnology, such as computational labs combined with office uses, not involving testing of living organisms or chemicals in that space. (17.16.060(B)4)

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**Wet Lab:** facility associated with biotechnology where EPA-licensed and non-licensed chemicals, and FDA-licensed and non-licensed drugs are analyzed. Low-level nuclear materials as well as biological materials also may be analyzed. These uses require water, direct ventilation, and specialized piped utilities. These are classified in BSL categories 1-4. (17.16.060(B)7)

#### **FURTHER ACTION:**

The national economic recovery is progressing and public and private investments in clean and green technologies are underway. An efficient land use effort will allow Benicia to capitalize on this emerging sector.

The proposed changes will have a broad effect on the land uses in approximately 1,200 acres of Benicia's existing industrial and business park. The proposed land use process for the Seeno lands could add another 500+ acres to the business park component, with a potential rail stop as a centerpiece to Benicia's largest revenue and employment area.

It is anticipated that a process will include the following components:

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<sup>1</sup> Biosafety levels

1. Identify staff and resources necessary to manage the policy and CEQA effort;
2. Strategic Plan/General Plan/Climate Action Plan review and analyses of policies relevant to the proposed zoning modifications;
3. Analyses of proposed zoning modifications, and major/minor policy changes;
4. Recommendations for implementing zoning changes that are not General Plan Amendment level changes;
5. Recommendations for implementing zoning changes that also require General Plan amendments; and,
6. CEQA review appropriate to the level of policy change.

There are General Plan policies in place that seek to protect the current employment and use base in the industrial park area. These policies must be analyzed with the proposed changes so that Benicia's policy makers can make informed and considered decisions relevant to any new uses or policies. Some of the proposed changes may in fact be consistent with existing policies, and some may not be. The choices for amending policies will be clearly identified for the Planning Commission's and the public's consideration in the future.

Review with Economic Development and Planning staff should also include key issues including but not necessarily limited to:

- Process
- Any parking implications
- Including/excluding vivaria
- Hazardous materials standards

Attachments:

- Excerpt from Economic Development Strategy (2007), p. 9
- Benicia Industrial Park Association letter

## **II. Increase research and development and campus-style office uses in the Benicia Industrial Park.**

The Benicia Industrial Park (BIP) is in many ways the economic engine in Benicia, as well as a significant employment center in Solano County. Benicia's industrial area is second only to Fairfield's in square footage in the county. Although the BIP is referred to as if it were one entity, in fact it is a business park with many property owners, developed over many years, and housing a variety of industrial and office uses, from biotech sales to construction yards to manufacturing lines. Anchored by the Valero refinery and its supplier companies, the BIP has diversified beyond petroleum into pipe organs, nutraceuticals, and motocross accessories.

The policy recommendations in this section are intended to ease the BIP area into the future without damaging the base. We know that in the future, the addition of the Benicia Business Park acreage will add about 25% more property to the developed BIP, which otherwise has only a couple infill sites remaining. Many factors go into companies' site selection process, such as proximity to workforce, customers, and suppliers, business costs, quality of life (crime, schools, weather), and infrastructure needs (transportation and technology). Each of these will be ranked differently by different companies, and no single community can meet all the criteria for all companies. The recommendations in this section aim at strengthening Benicia's position within the context of a competitive site selection process that offers partial opportunities to influence the outcome.

Update Zoning Code to encourage clean energy, high-tech, research and development (R&D) uses in industrial districts, and/or create new overlay for certain technology uses without discouraging existing businesses.

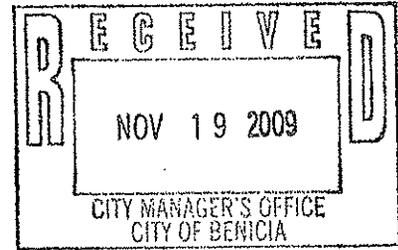
The existing Zoning Code divides the BIP mainly into Limited (IL) and General (IG) industrial districts, with smaller areas designated as Water-related Industrial (IW) and Industrial Park (IP). Research and development (the Zoning Code definition of which is not detailed) is allowed in all industrial districts except IW. Software design, medical device testing, green energy system designs, and other technology-related uses could fall into a number of categories, including "office", depending on the specifics. Stand-alone office uses are not allowed in any industrial district except IP (which is a very small corner of the BIP covering Bio-Rad).

Better defining the uses the community would like to encourage, and clarifying in which districts they are allowed, is a process through the Community Development Department that will assist in attracting those businesses. As staff and the EDB have frequently heard from brokers, adding certainty to the development process is good.

A great example of that is in one of our Solano County neighbors. The City of Dixon recently defined and added "bioscience" to its Zoning Code as allowed in light industrial districts to help bring in those uses to the community. Result: A Genentech research and development campus. The zoning was not necessarily the deciding factor, but according to Dixon City staff, it gave Dixon an advantage because it minimized the company's entitlement time and costs.



BENICIA INDUSTRIAL PARK ASSOCIATION  
601 First Street, Suite 100  
Benicia, California 94510



November 17, 2009

Amalia Lorentz,  
Economic Development Manager  
CITY OF BENICIA  
250 East L Street  
Benicia, California 94510

Dear Amalia:

Thank you for the opportunity to work with you on the proposed zoning code changes for Benicia's Industrial Park. The Benicia Industrial Park Association Trustees reviewed the proposed changes as reflected in the attached document and are in acceptance as submitted.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Bird".

Lauren Bird, President  
Benicia Industrial Park Association

enc

**Zoning Code Proposed Changes – 8-26-09 DRAFT**

*As proposed by Economic Development Manager Amalia Lorentz*

Goals: To expand opportunities for high-tech and cleantech type businesses to locate in Benicia, and better define what is allowed in the various industrial zones, thus reducing uncertainty and processing time.

Process: These edits as shown would be zoning ordinance text amendments, provided to Community Development staff for review and processing through the Planning Commission.

**Revised Use Classifications:**

Additions and deletions are shown. Any part of the existing code (attached) that is not shown does not have any changes proposed for it. August 2009 edits shown in red.

17.16.060 (B): Industry, General. Manufacturing of products primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture (excluding concrete ready-mix plants) within an enclosed building, and accessory power generation facilities of five megawatts or less in conjunction with a permitted use. This use also includes recycling facilities, cleantech, information technology, computer server farms, and manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology. Examples of packaging include facilities for bottling beverages, canning and wrapping foods, and boxing electronic components.

17.16.060 (C): Industry, Limited. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services; both within an enclosed building. Industry, Research and Development (as further defined in 17.16.060(D)) also allowed. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials, food processing, and "vehicle/equipment sales and services." Examples of allowed uses include but are not limited to cleantech, information technology, manufacturing and assembly operations for computer equipment, communications equipment, electronic components and accessories, household audio and video equipment, semiconductor manufacturing equipment, nanotechnology, and biotechnology.

17.16.060 (D) Industry, Research and Development. ~~Establishments primarily engaged in the research, development, and controlled production of high technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable, in the opinion of the community development director, by reason of production of offensive odor, dust, noise, vibration, or storage of hazardous materials. Uses include biotechnology, films, and nontoxic computer component manufacturers. Establishments engaged in the theoretical or applied study, testing, engineering, product design, analysis and development of devices,~~

**Benicia Municipal Code**  
**Excerpts dealing with Commercial and Industrial Zoning Definitions**

**17.16.050 Commercial use classifications.**

A. **Adult Businesses.** A business based primarily upon materials or performances that depict, describe, or relate to "specified sexual activities" or "specified anatomical areas," as defined in Chapter 17.12 BMC. This includes businesses regulated under Chapter 5.44 BMC.

B. **Ambulance Services.** Provision of emergency medical care or transportation, including incidental storage and maintenance of vehicles.

C. **Animal Sales and Services.**

1. **Animal Boarding.** Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care.

2. **Animal Grooming.** Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding of domestic animals for a maximum period of 48 hours.

3. **Animal Hospitals.** Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air-conditioned. Grooming and temporary (30 days) boarding of animals is included if incidental to the hospital use.

4. **Animals – Retail Sales.** Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours.

D. **Artists' Studios.** Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft.

E. **Banks and Savings and Loans.** Financial institutions that provide retail banking services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money.

1. **With Drive-up Service.** Institutions providing services accessible to persons who remain in automobiles.

F. **Building Materials and Services.** Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but excludes retail sales of paint and hardware, except as an accessory use to a lumber yard, and activities classified under "vehicle/equipment sales and services."

G. **Catering Services.** Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also "eating and drinking establishments.")

H. **Commercial Filming.** Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year.

I. **Commercial Recreation and Entertainment.** Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors, ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers having three or more

coin-operated game machines, card rooms, subject to the regulation of Chapter 5.08 BMC, and facilities used exclusively for bingo games, as regulated by Chapter 5.12 BMC.

1. Card room, game center, billiard parlor.

2. Limited. Indoor movie theaters and performing arts theaters.

J. Communications Facilities. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding "Utilities (Major)." This classification includes radio, television, or recording studios; telephone switching centers; and telegraph offices.

K. Conference and Meeting Facilities. Facilities providing indoor and/or outdoor event space for conferences, meetings, weddings, banquets, luncheons or similar events on a commercial basis.

L. Eating and Drinking Establishments. Businesses serving prepared food or beverages for consumption on or off the premises.

1. With Wine and Beer Service. Alcoholic beverages served are limited to wine and beer.

2. With full alcoholic beverage service.

3. With Live Entertainment. Establishments offering live entertainment, as defined in Chapter 17.12 BMC.

4. With Take-Out Service. Establishments at which 20 percent or more of the transactions are sales for off-site consumption, and which serve or deliver prepared food to persons in vehicles or have more than two work stations at which employees package or service prepared food and receive payment.

a. Drive-Up. Service from a building to persons in vehicles through an outdoor service window.

b. Limited. Establishments that do not serve persons in vehicles.

5. Truck Stop. A facility geared primarily to providing services for truckers, including on-site fueling, repair and servicing of freight trucks; restaurant facilities; restrooms; towing services; overnight accommodations and related services.

M. Food and Beverage Sales. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as "catering services" or "eating and drinking establishments."

N. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries.

O. Horticulture, Limited. The raising of vegetables, flowers, ornamental trees and shrubs as a commercial enterprise; provided, that no nursery equipment or materials shall be stored and no structures erected. Commercial horticulture accessory to a dwelling unit shall be regulated as a home occupation.

P. Laboratories. Establishments providing medical or dental laboratory services, or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as "limited industry."

3. Service Stations. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts and accessories. This classification includes incidental maintenance and repair of automobiles and light trucks, but excludes body and fender work or repair of heavy trucks or vehicles.

4. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, auto detailing shops, body and fender shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping.

5. Vehicle/Equipment Sales and Rentals. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, mobile homes, and similar equipment, including storage and incidental maintenance.

6. Vehicle Storage. Storage of operative or inoperative vehicles. This classification includes storage of parking tow-aways, impound yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but does not include vehicle dismantling.

#### DD. Visitor Accommodations.

1. Bed and Breakfast Inns. Establishments offering lodging on a less than weekly basis typically in a converted single-family or multifamily dwelling, with incidental eating and drinking service, for lodgers only, provided from a single kitchen.

2. Hotels and Motels. Establishments offering lodging on a less than weekly basis, and having kitchens in no more than 60 percent of guest units. This classification includes eating, drinking, and banquet service.

EE. Warehousing and Storage, Limited. Provision of storage space for household or commercial goods within an enclosed building. This classification includes mini-storage facilities but excludes "wholesaling, distribution and storage," and "vehicle storage." (Ord. 93-11 N.S. § 6, 1993; Ord. 92-15 N.S. § 5, 1992; Ord. 89-1 N.S. §§ 6 - 10, 1989; Ord. 87-4 N.S., 1987).

### 17.16.060 Industrial use classifications.

A. Industry, Custom. Establishments primarily engaged in off-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment.

1. Limited. Includes mechanical equipment not exceeding two horsepower or a single kiln not exceeding eight kilowatts and the incidental direct sale to consumers of those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture.

2. Boat Building.

B. Industry, General. Manufacturing of products primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, oil and gas refining, stonework and concrete products manufacture (excluding concrete ready-mix plants) within an enclosed building, and accessory power generation facilities of five megawatts or less in conjunction with a permitted use.

1. Water-Related. Industrial activities that use water for transportation of raw materials or finished products, including the following:

2. Warehousing and Transportation. Storage of products or goods; including household goods, with related local or long-distance trucking and transfer of stored items.

3. Trucking Terminal/Freight Transfer Station. A facility where goods and products are transferred, often directly, from one vehicle to another without the storage of such goods and products on a long-term basis within a warehouse building or storage yard. Includes break-bulk facilities. May include related maintenance facilities and incidental storage of trucks on-site when not in use.

4. Package Distribution. A warehousing and distribution facility used primarily to gather and distribute for delivery, packages and mail. (Ord. 93-11 N.S. § 5, 1993; Ord. 89-1 N.S. §§ 11, 12, 1989; Ord. 87-4 N.S., 1987).

**PLANNING COMMISSION MEETING: JUNE 10, 2010  
STAFF COMMUNICATIONS**

**DATE** : June 30, 2010  
**TO** : Planning Commission  
**FROM** : Lisa Porras, AICP, Planning Commission Secretary  
**SUBJECT** : **SIGN ORDINANCE – ELECTRONIC BILLBOARDS**

On June 8, 2010 Commissioner Syracuse requested that staff bring back any regulations that address electronic billboards. Attached is a complete copy of Benicia's Sign Ordinance as outlined in Chapter 18 of the Benicia Municipal Code (BMC).

Areas in the Code generally related to electronic billboards include:

BMC 18.12.010 – Definitions  
BMC 18.12.010 – Design Criteria  
BMC 18.24.030 – Exempt Signs in Industrial or Commercial Districts  
BMC 18.24.040 – Billboard/Nonaccessory Signs

Attachment: City of Benicia Sign Ordinance BMC Chapter 18 Signs

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**Chapter 18.04  
GENERAL PROVISIONS**

Sections:

- 18.04.010 Purpose.
- 18.04.020 Definitions.
- 18.04.030 Applicability.
- 18.04.040 Compliance.
- 18.04.050 Findings.

**18.04.010 Purpose.**

The purpose of this title is to promote and protect the public health, welfare and safety by advancing the goals, policies and strategies of the General Plan to protect, preserve and enhance the vistas, scenic corridors and highways of the city, as well as the aesthetics, traffic safety and environmental values of the city's residential communities and commercial/industrial districts by restricting and regulating signs in the city. This title provides regulations regarding the size, height, design, quality of materials, construction, location, elimination and maintenance of permitted signs and sign structures within the city. (Ord. 07-25 § 1; Ord. 77-12 N.S. § 1, 1977; prior code § 8-901).

**18.04.020 Definitions.**

For the purposes of this title, the following terms shall be defined as follows:

1. "A-board" means a portable sign capable of standing without support or attachment.
2. "Billboard or nonaccessory sign" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.
3. "Community directional sign" means a nonaccessory sign indicating the location of a community service organization, public facility, church, hospital, school or charitable institution.
4. "Construction sign" means a sign identifying an architect, engineer or contractor directly connected with a construction project and which is placed upon the premises where construction, repair or renovation is in progress.
5. "Direction sign" means a sign which directs the eye to places or services, but does not advertise or identify a product or firm.
6. "Directory sign" means a sign displaying the name of each occupant of a building who is engaged in a business, profession or occupation.
7. "Freestanding sign" means a sign which is self-supporting in a fixed location and not attached to a building or structure, and which has no exposed, connecting or supporting wires.

8. "Flashing sign" means an illuminated sign in which the artificial or reflected light is not intended to be maintained at a stationary or constant intensity.
9. "Frontage of property" means the longest single, lineal dimension of a single taxable unit of property abutting on a public or private street.
10. "Frontage of premises" means the longest horizontal straight line dimension of a frontal elevation of the premises which faces either a public street or other public open place. If a premises is so located that more than one side comes within this definition of frontage, each frontage shall be considered separately and no part of a frontage may be used to authorize sign display area on another frontage.
11. "Identification sign" or "accessory sign" means a sign which identifies the business or organization located on the premises, or advertises or informs about business, products or services sold or rendered on the premises.
12. "Mobile sign" means a sign mounted on any type of device which is movable or capable of being moved by a vehicle, but does not include lettering or illustration which is attached to or painted on, and does not extend more than one-fourth inch from the surface of such vehicle.
13. "Moving sign" means a sign which has an actual or apparent moving, revolving or rotating part actuated by electrical, mechanical or other device or by wind current. A moving sign includes, but is not limited to, a banner, pennant, flag (other than a reasonable number of United States or California flags), a balloon, a sign constructed of or faced with scotch light or similar material, a sign which changes or appears to change color, and a sign in which the intensity of light changes or appears to change. The term "moving sign" does not include a time or temperature recording device, nor a motor vehicle.
14. "Nonaccessory sign or billboard" means a sign which advertises or provides information about a business organization or event, goods, products, services or uses, not directly concerning the use on the property upon which the sign is located, and does not include community directional signs or open house signs.
15. "Political sign" means a temporary sign designed for the purpose of soliciting or advertising support of, or opposition to, a political party or candidate, or proposition at a public election.
16. "Portable sign" means a sign which is not attached to the ground or a structure.
17. "Premises" means the building or portion of a building for which a permit for a sign is being sought.
18. "Projecting sign" means a sign other than a wall sign which is suspended from or supported by a building or wall which projects out from the building or wall.
19. "Public open space" is not restricted to areas owned by or dedicated to the public but includes an unenclosed area, square or courtyard open to pedestrian or vehicular traffic, or both.

20. "Reader board" means a permanent structure upon which is displayed advertising material or copy of a temporary or changeable nature.
21. "Shopping center" means an integrated shopping complex comprised of five or more retail stores occupying a developed area of at least two acres.
22. "Shopping center sign" means a freestanding sign which denotes or identifies a shopping center.
23. "Sign" means any structure, natural object or surface, or a device or arrangement attached to or painted or represented upon a structure or natural surface, which attracts or is intended to attract attention to an object, product, place, activity, person, institution, organization or business, or which displays or includes a letter, word, bill, poster, picture, display board, lithograph, map, balloon, banner, "A" frame, "sandwich" board, barber pole, street clock, model, figure, symbol, banner, flag (other than United States or California flags), fluttering object, pennant, insignia, device, or representation used as, or which is in the nature of, an announcement, direction, advertisement, declaration or illumination. Functional architectural features of buildings are not normally signs.
24. "Street setback line" means an official line for planned future street widening adopted by the city council pursuant to applicable state law.
25. "Subdivision" means the area covered by the tentative or final subdivision map filed by a subdivider.
26. "Taxable unit of property" means a parcel of property shown upon the county assessment roll.
27. "Under-marquee sign" means a sign suspended under a marquee, porch, canopy, walkway covering or similar covering structure.
28. "Use" means a purpose or activity for which the land or building is designed, arranged, intended, or for which it is occupied or maintained to function as a separate unit.
29. "Wall sign" means a sign attached parallel to or flat against the exterior wall which faces the frontage of a premises. It includes a sign on a canopy other than an instructional sign.
30. "Window sign" means a sign maintained in or painted upon a window, which is intended to be viewed from outside the window. It does not include merchandise offered for sale on such premises. (Ord. 07-25 § 2; Ord. 77-12 N.S. Appendix I, 1977).

#### **18.04.030 Applicability.**

The sign ordinance applies to each local agency performing governmental or proprietary functions, as well as all commercial and private properties within the city. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-902).

**18.04.040 Compliance.**

Each sign in the city shall comply with the standards and limitations prescribed in Chapter 18.16 BMC and BMC 18.08.010 through 18.08.040, 18.08.070, 18.08.080, 18.12.020, 18.12.030, 18.12.050 through 18.12.080, 18.24.010 and 18.24.020. No existing sign may be replaced or a new sign put in place unless said standards and limitations are met. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-904).

**18.04.050 Findings.**

In adopting this title, the city council finds that excessive and inappropriate signage has an adverse impact on the overall visual appearance and character of the city and its highways, affects the appearance and quality of life of the community, and that it can increase the safety risks to traffic and pedestrians. By adopting this title, the city council intends to comply with the goals and policies of the General Plan to preserve the city's vistas and scenic resources along I-780 and I-680 and to protect the city's ability to apply for state scenic highway designation for the portions of Interstate Highways I-780 and I-680 that run through the city. This title is intended to safeguard and preserve the health, property, and public welfare of residents and businesses by prohibiting, regulating, and controlling the type, design, location and maintenance of signs. (Ord. 07-25 § 3).

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**This page of the Benicia Municipal Code is current through Ordinance 10-01, passed March 2, 2010.**

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**Chapter 18.08  
PERMITS****Sections:**

<u>18.08.010</u>	Required.
<u>18.08.020</u>	Application.
<u>18.08.030</u>	Fees.
<u>18.08.040</u>	Filing – Revision.
<u>18.08.050</u>	Building permit – Required.
<u>18.08.060</u>	Building permit – Approval.
<u>18.08.070</u>	Appeals.
<u>18.08.080</u>	Variance.

**18.08.010 Required.**

A person may not erect or maintain a sign without a permit, except that a permit is not required for:

- A. Temporary signs;
- B. Exempt signs;
- C. For sale, for lease or contractor identification signs;
- D. Open house signs;
- E. Political signs; and
- F. Directional signs in manufacturing zones. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-928).

**18.08.020 Application.**

A. The application for a sign permit shall be on a form prepared by the planning department and, among other matters it may reasonably prescribe, shall contain or include a map or plat and drawings showing the location, size, colors, shape, type of illumination, copy, design and manner of installation of the proposed sign and the frontage of the premises, including exempt signs, giving the size and location of each.

B. The application shall specify whether a variance is requested, and if so, shall specify the manner in which the proposed sign does not comply with this chapter and the factual basis for the findings required by BMC 18.08.080.

C. A single application may cover more than one sign, but shall be limited to a single premises. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-930).

**18.08.030 Fees.**

A. The fee for a sign permit without variance is:

1. Five dollars<sup>1</sup> if the application is for a sign less than 10 square feet in area;

2. Ten dollars<sup>1</sup> if the application is for a sign between 10 and 25 square feet in area;
3. Twenty-five dollars<sup>1</sup> if the application is for a sign more than 25 square feet in area.

B. The fee for a sign permit with variance is the amount in subsection (A) of this section plus \$25.00.<sup>1</sup>

C. The fee shall be paid at the time of filing the application and is not refundable.

D. No fee is required where the application is for:

1. Service club sign, BMC 18.16.090;
2. Neighborhood association sign, BMC 18.16.060;
3. Community directional sign, BMC 18.16.030;
4. A sign in lawful use on the day the ordinance codified in this title takes effect. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-929).

#### **18.08.040 Filing – Revision.**

A. The sign application shall be filed with the planning department. The city planner, who shall be guided by the design criteria in BMC 18.12.010, may require that changes be made in the design of the sign as necessary to carry out the purposes of this title.

B. In the case where no variance is requested in the application and the city planner finds that a variance would be required for approval of the permit, or where the commission finds that the sign as proposed should be modified, the planning commission shall deny the application and advise the applicant of the reasons for denial. In this case the applicant may submit a revised application without payment of an additional fee, unless a variance fee is payable, within 90 days following denial. All actions of the city planner may be appealed to the planning commission by an aggrieved applicant within 10 days of the action. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-931).

#### **18.08.050 Building permit – Required.**

This title does not repeal or supersede any provision of law requiring a building permit for the erection of a sign. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-941).

#### **18.08.060 Building permit – Approval.**

No building permit may be issued for a sign until the city planner or the planning commission approves the application, or until its denial of an application has been reversed upon appeal. Each sign shall be constructed and maintained in accordance with the terms and conditions of the approval. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-934).

**18.08.070 Appeals.**

A. A person aggrieved by the action of the city planner may appeal the action to the planning commission for review in accordance with Chapter 1.44 BMC.

B. There is no fee for this appeal.

C. A person appealing the decision of the city planner shall file a written notice of appeal with the secretary to the planning commission 10 days from the date of the decision being appealed.

D. The procedure for taking an appeal, giving notice, holding the hearing, and making the decision which is prescribed in the case of an appeal for a land use matter shall govern the appeal from a decision of the city planner.

E. The planning commission may reverse, modify, or affirm the action of the planner, on appeal. (Ord. 07-71 § 1; Ord. 77-12 N.S. § 1, 1977; prior code § 8-933).

**18.08.080 Variance.**

When practical difficulty, unnecessary hardship or a result which is inconsistent with the purpose and intent of this title occurs from the strict application of this chapter, the planning commission may grant a variance from the strict application of this chapter in the manner prescribed by BMC Title 17. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-932).

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<sup>1</sup> Fee suggested to city council by planning commission.

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**This page of the Benicia Municipal Code is current through Ordinance 10-01, passed March 2, 2010.**

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**Chapter 18.12  
GENERAL USE REGULATIONS**

Sections:

- 18.12.010 Design criteria.
- 18.12.020 Computation of sign area.
- 18.12.030 Maximum permissible area for wall signs.
- 18.12.040 Maintenance.
- 18.12.050 Projection limits.
- 18.12.060 Height limitation.
- 18.12.070 Restriction near traffic signal or intersection.
- 18.12.080 Clearance from public utility facilities.
- 18.12.090 Obsolete signs.

**18.12.010 Design criteria.**

In its evaluation of quality of design, the city planner and the planning commission shall apply the following criteria among others:

- A. To the extent feasible, signs shall be graphic and nonverbal, with the design emphasis on simplicity, style trademarks, business identification and symbols rather than on extensive wording and advertising messages.
- B. Sign proliferation creates a busy, unpleasant atmosphere and shall be avoided. Good design calls for thoughtful coordination of all signs, in a lesser rather than greater number of locations on the premises.
- C. Signs shall relate to the architectural design of the building. Signs which cover windows, or which spill over natural boundaries or architectural features and obliterate parts of upper floors of buildings are a menace to visual order and shall not be permitted.
- D. The typical plastic-faced sign with white, internally illuminated background shall be discouraged; dark backgrounds with the letters or design lighter to reduce the glare and the resulting bland night-lighting effect are preferred. Sign illumination shall be designed so as to avoid glare and light intrusion onto other signs or premises.
- E. Neon shall be carefully and sparingly used in signs to avoid blatancy and garishness. Neon is usually better used in symbols or design than for lettering.
- F. Good signs can become bad signs by installation on thoughtlessly contrived or overpowering structures. Careful consideration shall be given to minimize and simplify every sign's supporting structure.
- G. The city planner may make design and structure exemptions if the proposed sign attempts to duplicate signs used in certain historical periods: for example, the exposed light bulbs used in the late Victorian period, and the wall-painted sign incorporated into the design facade of the art deco. (Ord. 77-12 N.S. Appendix III, 1977).

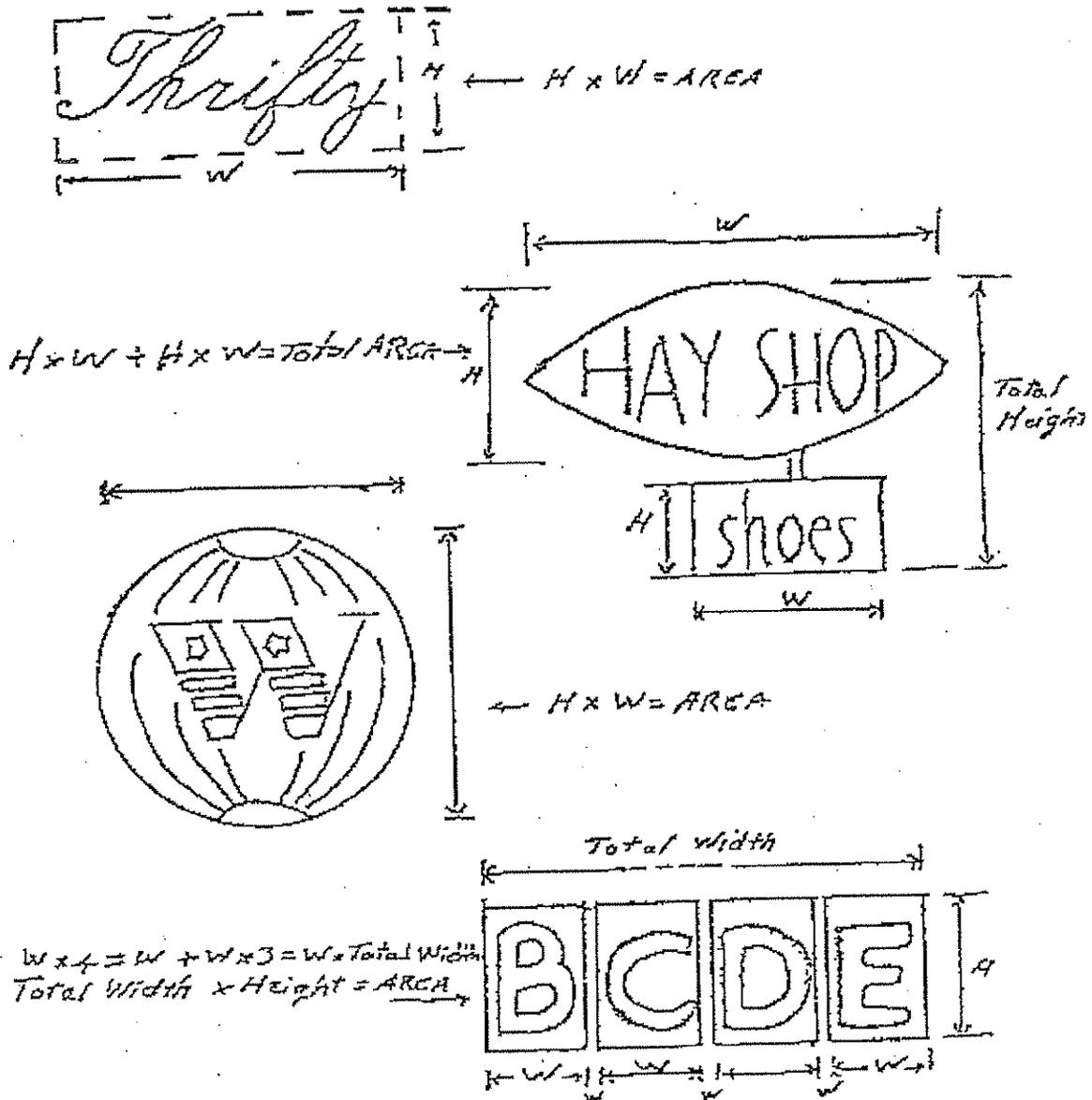
**18.12.020 Computation of sign area.**

A. The sign area is computed by including the maximum single display surface which is visible from a single ground position. The structure supporting a sign is not included in determining the sign area unless the structure is designed in a way as to form part of the display or is an integral background for the display.

B. The area of a sign is determined by computing the area of an encompassing circle or rectangle, whichever is smaller.

C. Where a commercial building is on a corner, the side of the building will be treated as the front in calculating the area allowed for the side sign.

D. The following illustration sets forth the manner for computing facing area:



(Ord. 77-12 § 1, 1977; prior code § 8-913).

**18.12.030 Maximum permissible area for wall signs.**

A. The maximum aggregate area of all wall signs permitted for a frontage of a premises is based upon the frontage of the premises and number of stories of the premises to which the sign will be affixed. This maximum area is set forth in Table I, as follows:

**Table I Maximum Sign Area in Square Feet**

Frontage of Building in Lineal Feet	1-Story or Less Than 15'	2-Story or Less Than 25'	3-Story or Less Than 40'
4	20	20	20
6	20	20	20
8	20	20	20
10	20	20	20
12	20	20	20
14	20	20	29
16	20	20	39
18	20	26	49
20	20	34	57
22	20	42	65
24	20	49	71
26	23	55	78
28	29	61	83
30	34	66	89
32	39	71	94
34	44	76	98
36	49	81	103
38	53	85	107
40	57	89	110
42	61	92	114
44	65	96	118
46	68	99	121
48	71	103	124
50	75	106	127
52	78	109	130
54	81	111	132
56	83	114	135
58	86	117	138
60	89	119	140
62	91	122	142
64	94	124	145
66	96	126	147
68	98	128	149
70	100	130	151

72	103	132	153
74	105	134	155
76	109	136	157
78	110	138	158
80	112	140	160
82	114	142	162
84	116	143	163
86	118	145	165
88	119	147	167
90	121	148	168
92	122	150	169
94	124	151	171
96	125	153	172
98	127	154	174
100	130	156	175
105	134	159	178
110	137	162	181
115	140	165	184
120	143	168	187
125	146	171	190
130	148	173	192
135	151	176	194
140	153	178	197
145	156	181	200
150	160	183	
155	162	185	
160	164	187	
165	166	189	
170	168	191	
175	170	193	
180	172	194	
185	173	196	
190	175	198	
195	177	200	
200	178		
205	180		
210	181		
215	183		
220	184		
225	186		
230	187		
235	188		
240	190		
245	191		
250	192		
255	191		
260	192		

265	193
270	194
275	196
280	197
285	198
290	199
295	200

B. In applying Table I to a building if the frontage of the building is not listed therein, the next larger frontage figure determines the maximum wall sign area.

C. Regardless of the frontage or height of the building, the total permissible aggregate area of all wall signs for a frontage of a building is 200 square feet.

D. The maximum aggregate permissible wall sign area for buildings set forth in this section shall be reduced by the sign area of each freestanding sign and shingle sign on the property, but shall not be reduced by the amount of area used for window signs. However, if the building is set back at least 100 feet from the street line on an official street setback line, if one exists, then the permissible wall sign area is not reduced by the sign area of the freestanding sign. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-905).

#### **18.12.040 Maintenance.**

Each sign shall be maintained in a secure, safe and good condition. If the city building inspector finds that a sign is not secure, safe or in a good state of repair, he shall give written notice in a reasonable manner of this fact to the person responsible for the maintenance of the sign. If the defect in the sign is not corrected within the time permitted by the city, the city planner and/or the planning commission may revoke the permit to maintain the sign and abate it in the manner provided in BMC 18.28.010. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-936).

#### **18.12.050 Projection limits.**

No part of a sign attached to or mounted on a building may project beyond 12 inches from the wall to which it is attached, except as permitted with shingle signs. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-906).

#### **18.12.060 Height limitation.**

No part of a sign affixed to a building may extend above the roof line or ridge line of the building to which it is attached. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-907).

#### **18.12.070 Restriction near traffic signal or intersection.**

No sign may be located in a manner which may obstruct or interfere with the view of a traffic signal. No sign may be located within 100 feet of the intersection of public streets, if it obstructs the vision of a motorist within 100 feet of the intersection. No sign may be located so as to create a hazardous condition to a person using the public right-of-way. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-914).

#### **18.12.080 Clearance from public utility facilities.**

The owner of any sign shall maintain legal clearance from communications and electric facilities. A sign may not be constructed, erected, installed, maintained or repaired in

any manner that conflicts with a rule, regulation, or order of the California Public Utilities Commission pertaining to the construction, operation and maintenance of public utilities facilities. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-918).

**18.12.090 Obsolete signs.**

An accessory sign which ceases to advertise a bona fide business conducted or product sold on the premises shall be removed within 90 days after written notification from the building inspector. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-940).

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**Chapter 18.16**  
**SPECIFIC SIGN REGULATIONS**

Sections:

- 18.16.010 A-board signs.
- 18.16.020 Apartment houses and roominghouses.
- 18.16.030 Community directional signs.
- 18.16.040 For sale, lease and contractor identification signs.
- 18.16.050 Freestanding signs.
- 18.16.060 Neighborhood association signs.
- 18.16.070 Open house signs.
- 18.16.080 Price signs for automobile service stations.
- 18.16.090 Service club signs.
- 18.16.100 Shingle signs.
- 18.16.110 Signs for subdivisions and apartment buildings.
- 18.16.120 Temporary signs.
- 18.16.130 Under-marquee signs.

**18.16.010 A-board signs.**

The A-board sign shall be no taller than 45 inches and no wider than 30 inches. The frame shall be of dark wood. Each business at street level will be allowed only one A-board sign. The area of the sign shall not be included within the allowable sign area permitted the business on-site. The sign will only be displayed in front of the business it is advertising. After January 1, 1980, the existing A-board signs must be discontinued in use, and no new A-board signs will be permitted to be erected thereafter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-912).

**18.16.020 Apartment houses and roominghouses.**

A. The allowable display area for a sign for the identification of an apartment house is computed on the basis of one-half square foot for each dwelling unit.

B. The allowable display area for a sign for the identification of a roominghouse is computed on the basis of one-half square foot for each rentable room.

C. In each case, the maximum display area is 32 square feet. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-923).

**18.16.030 Community directional signs.**

A community directional sign is subject to the following limitations:

A. A community facility may be approved by the city planner;

B. Each sign may not exceed three square feet in area. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-926).

**18.16.040 For sale, lease and contractor identification signs.**

A. A person may, without application for a sign permit, erect one sign on a taxable unit of property for the purpose of advertising construction work on the premises, or of

offering the property for sale or lease. The display area of this sign may not exceed the following limitations:

1. In a land use district designated single-family, four square feet;
2. In any other land use district, 12 square feet per acre of land, not to exceed 40 square feet.

B. The sign shall be removed within 10 days after the sale, lease, or the completion of construction. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-921).

#### **18.16.050 Freestanding signs.**

A. A freestanding sign must meet the design guidelines prescribed in BMC 18.12.010. In addition, the city planner and/or the planning commission may impose reasonable conditions regulating such things as the facing area, duration of the sign, color, structure, material, location and landscaping.

B. A freestanding sign is permitted upon a premises only when the city planner finds that:

1. A freestanding sign is the most feasible means by which the business conducted on the premises can have the same degree of identification to the traveling and shopping public as that available to businesses on neighboring premises without freestanding signs; and
2. The freestanding sign will not give the business on the premises a greater identification to the public than that available to businesses on neighboring premises without freestanding signs, and will not result in an unfair advantage over competitors; and
3. A freestanding sign, if granted, would not adversely affect the preservation of property values in the vicinity;
4. No part of a freestanding sign may extend over 20 feet above the normal contour of the land or surrounding terrain of the business it serves. (Ord. 77-12 N.S. § 1, 1977; prior code §§ 8-908, 8-909).

#### **18.16.060 Neighborhood association signs.**

A. A sign for neighborhood identification is subject to approval by the city planner as to location, size, height, lighting and design. The sign shall be for the sole purpose of identifying the area and may not advertise a dwelling for sale or lease.

B. The city planner shall see that the neighborhood identification signs harmonize with their surroundings. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-925).

#### **18.16.070 Open house signs.**

In addition to the signs authorized by BMC 18.16.040, a person may, without application for a sign permit, erect a nonaccessory or accessory sign, or both, which advertises real estate for sale and open for inspection. The sign may not exceed four square feet in area. Not more than three open house signs may be used in connection

with one taxable unit of property unless approved by the planning commission. The sign may state the name of the selling agent or broker and that the property is open for inspection. The open house sign is permitted only during the hours between 8:00 a.m. and 10:00 p.m. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-922).

**18.16.080 Price signs for automobile service stations.**

On premises where gasoline is dispensed to motor vehicles, a display of a price sign which may be read from a public street is encouraged. In addition to the authorizations and limitations contained elsewhere in this chapter, premises on which gasoline is sold from pumps may have a single sign displaying the prices of such gasoline. The price sign shall not be attached to or mounted on the principal building on the premises, or an under-marquee sign suspended from a canopy. No part of an under-marquee sign, not attached, used as a price sign shall be closer than 20 feet to any street line or official street setback line, if one exists. The price sign shall not exceed eight square feet in size and shall be subject to all applicable provisions of this chapter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-910).

**18.16.090 Service club signs.**

A sign for identification of a service club is subject to approval by the city planner as to location, size, height, width, lighting and general design. This section does not apply to a membership sign displayed by members of a service club. (Ord. 77-21 N.S. § 1, 1977; prior code § 8-924).

**18.16.100 Shingle signs.**

A. Policy. In general, all forms of projecting signs are discouraged and most are prohibited. However, there is a narrow class of projecting graphic signs, called the shingle sign, which is deemed to be a desirable balance of sign function and high aesthetic standards.

B. Criteria. The use of painted wood or material closely simulating painted wood is preferred for shingle signs. Graphic representation in gold or silver shall be stressed. Letters may be used only to announce the name of the business conducted and the principal classification and brand of goods sold or service offered on the premises.

C. Limitations. A shingle sign is subject to the following limitations:

1. It may not be attached to a structure other than a building;
2. It may not project more than 30 inches from the surface of the building to which it is attached;
3. It may not contain more than a total of five square feet of display area, excluding the supporting structure;
4. It may be only as high as the eave line of the building surface to which it is attached or 11 feet above grade, whichever is lower;
5. It may not be lower than seven and one-half feet;
6. It may not be internally illuminated;

7. It may not be more than four inches or less than one-half inch thick, except as reasonably required in connection with some graphic element of the sign;
8. The total wall sign display area otherwise permitted shall be reduced by the display area, excluding the supporting structure, of the shingle sign approved;
9. Only one shingle sign may be approved for installation on a single frontage of a premises;
10. No shingle sign may be approved for a premises for which a freestanding sign permit is outstanding.

D. Required Findings. An application for a shingle sign may not be approved except upon the following written findings;

1. The sign is reasonably required for and assists in the identification of the premises by persons in motor vehicles or by pedestrians approaching along public streets or open spaces; and
2. The sign will have no garish or obtrusive qualities, and embodies strong elements of quality graphic design; and
3. Neither the supporting structure nor the proposed external lighting will materially detract from the design qualities of the sign or building; and
4. The sign will comply with the specific criteria of subsection (B) of this section and the limitations of subsection (C) of this section. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-911).

**18.16.110 Signs for subdivisions and apartment buildings.**

A. A person offering apartments for lease or real estate sale in a recorded subdivision may erect and maintain not more than two temporary signs identifying the subdivision or apartment building.

B. The total maximum display area for each sign is 32 square feet. The sign may not be located within 100 feet of an occupied residence, unless the planning commission finds that the maintenance of such distance is not feasible. The sign may not be illuminated.

C. In those cases where, due to location or size, there is a need of directional signs within the city leading to the subject site, the number, subject matter, design and size of the signs may be approved by the city planner.

D. In addition to all other terms and conditions which the city planner or the planning commission may impose, a person proposing to erect a subdivision sign shall enter into an agreement with the city providing for the following:

1. A deposit, to be determined by the city manager, for each sign guaranteeing maintenance and removal of the sign upon expiration of the permit;

2. Removal of the sign within one year from the date erected, except that the permit may be renewed for additional periods not exceeding one year in the discretion of the planning commission;
3. Permission to the city to remove and dispose of the sign should the sign not be removed by the subdivider; and a covenant to reimburse the city its cost of such removal and disposal if such costs exceed the amount of deposit.

E. A permanent decorative sign, giving the name of an apartment, development, subdivision or any other development, may receive approval at the same time as the planning commission grants architectural, site plan and landscaping approval of the development. If the development does not fall under the review, the community development director may grant the approval. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-920).

#### **18.16.120 Temporary signs.**

A. In addition to other signs permitted by this chapter, a business which sells goods or services to consumers may install and maintain temporary signs on a window of the premises for the purpose of advertising a bona fide special sale or promotion on the premises, subject to the following conditions:

1. No more than 50 percent of the total window space on a wall may be covered by temporary window signs; and
2. Each temporary window sign shall be removed when the sale or promotion advertised ends, or within 30 days following its installation, whichever is sooner; and
3. No sign permit is required in subsections (A)(1) and (2) of this section.

B. Notwithstanding BMC 18.24.020, temporary signs including those involving the use of banners, flyers, pennants, pinwheels, or utilizing two or more light bulbs in a wire string are permitted to advertise or promote a special or seasonal event. However, each such temporary sign shall be removed when the special event ends or within 45 days following installation, whichever is sooner. A sign permit is not required for such temporary signs. Temporary signs allowed in this section may only be used twice a year by any individual business. One period of use may be 30 days and the other period of use may be 45 days, but in no case shall the temporary signs be used more than 75 days in any one year. Seasonal decoration of windows is exempted. (Ord. 77-12 § 1, 1977; prior code § 8-916).

#### **18.16.130 Under-marquee signs.**

Only one under-marquee sign which is no more than three square feet in area is permitted per customer entrance for a retail store. The sign is not included in the computation of the maximum permissible display surface for the premises. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-917).

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## Chapter 18.20 NONCONFORMING SIGNS

### Sections:

- 18.20.010 Existing signs.
- 18.20.020 Removal – Time extension – Application.
- 18.20.030 Time extension – Application – Review.
- 18.20.040 Time extension – Granting.
- 18.20.050 Time extension – Ineligibility.

#### **18.20.010 Existing signs.**

The owner of a sign that is in place at a permanent location on the enactment date of the ordinance codified in this title, which does not comply with this title, is however required to comply with the following procedure. Not later than 24 months following the enactment of the ordinance codified in this title, the owner of a "nonconforming sign," which is in place at a permanent location on the enactment date, shall take one of the following actions:

- A. Remove the sign;
- B. Apply for an extension of time as provided in BMC 18.20.020;
- C. Apply for a permanent sign permit, subject to modifications of the sign to achieve conformity with the provisions of this title. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-938).

#### **18.20.020 Removal – Time extension – Application.**

An application for an extension of the 12-month period allowed for the removal of nonconforming signs shall be filed with the planning department on a form prescribed by it. The application shall contain the name and address of the sign owner and the landowner, and identification of the property, the type of sign, the date erected, the original cost of the sign including its installation, a color photograph of the sign, a detailed statement of reasons for the extension, and the length of time for which the extension is requested. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(a)).

#### **18.20.030 Time extension – Application – Review.**

The application shall be referred to the planning commission for review. The planning commission shall review the application and shall hear arguments for and against the grant of an extension. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(b)).

#### **18.20.040 Time extension – Granting.**

The planning commission may grant an extension of time up to 72 months from the effective date of the ordinance codified in this title, provided the sign complied with this title on the date it was installed. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(c)).

#### **18.20.050 Time extension – Ineligibility.**

A sign which was erected in violation of applicable sign regulations is not eligible for an extension under this chapter. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-939(d)).

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**Chapter 18.24**  
**PROHIBITIONS AND EXEMPTIONS**

Sections:

- 18.24.010 Prohibited signs – Generally.
- 18.24.020 Exempt signs – Generally.
- 18.24.030 Exempt signs – In commercial or industrial districts.
- 18.24.040 Billboards/nonaccessory signs.

**18.24.010 Prohibited signs – Generally.**

Unless specifically authorized under other sections of this title, the following types of signs shall not be erected or maintained: a flashing sign; a moving sign; a sign which has banners, flyers, pennants, pinwheels, or utilizes two or more light bulbs in a wire string; a portable sign; a projecting sign; a sign painted directly on the wall of a building or fence; a dilapidated or abandoned sign or a sign in disrepair or dangerous condition; a sign which is affixed to a fence, utility pole or utility structure, or a tree, shrub, rock or other natural object; a mobile sign or a sign attached to a motor vehicle which is parked with the intent to advertise to the public passing by; a sign containing obscene or profane matter; a sign illuminated by exposed light globes, i.e., clear light bulbs not turned away or properly shrouded from the viewer; and a sign created by the arrangement of vegetation, rocks, or other objects, such as hillside, visible to pedestrians and motorists, without application to and approval by the planning commission. (Ord. 07-25 § 4; Ord. 77-12 N.S. § 1, 1977; prior code § 8-915).

**18.24.020 Exempt signs – Generally.**

Except as to the location of signs with reference to street intersections, the following signs are exempt from this chapter:

- A. Memorial tablet having sign area of four square feet or less; and
- B. Sign identifying a mailbox which does not exceed 60 square inches in sign area; and
- C. Sign identifying a residence on nearby private roads not exceeding 120 square inches for each residence; and
- D. Sign having a display area not exceeding two square feet and intended solely for the information, safety, direction or convenience of the public, rather than the advertisement of goods and services, including a sign which indicates days, hours, emergency telephone number, street address, and/or credit card honored; membership in civic, business or professional organizations; or which direct customers where to park, which identify restrooms, or which locate a public telephone or freight entrance. The aggregate display area of all such signs related to a single occupancy which can conveniently be seen from outside the premises may not exceed 10 square feet, unless the planner finds that a greater area is required for the safety or convenience of the public; and
- E. Sign placed by a public utility showing the location of underground facilities; and

F. Sign advertising a community event of general public interest which does not exceed in the aggregate for all events five square feet of sign area per premises; and

G. Theatre marquee sign, which may utilize changeable lettering, which does not exceed in height the roof line or parapet of the building, or 18 feet, whichever is higher; and

H. Sign which is an integral and appropriate part of a window merchandising display; provided, that the sign:

1. Advertises or relates to goods or services offered on the premises,
2. Is not painted on or affixed to an outside window,
3. Does not contain the name of the business on the premises;

I. Temporary sign required to be maintained by law or governmental order, rule or regulation, and for the safety of persons, preservation of property, or the convenience of the public and authorized in accordance with the regulations of the planning commission. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-919).

#### **18.24.030 Exempt signs – In commercial or industrial districts.**

A. Identification signs within the commercial or industrial districts shall be submitted to the community development director for approval. Directional signs are exempt in this zone. Billboard or nonaccessory signs are prohibited.

B. Any signs within the commercial or industrial zones shall be designed so that the appearance of such signs shall be in keeping with the general surrounding architecture. Special attention shall be directed to those signs visible from freeway entrances to the city. Signs that negatively impact the landscaping, open space requirements, vistas, scenic corridors or general appearance of said freeway structures may be denied. (Ord. 07-25 § 5; Ord. 77-12 N.S. § 1, 1977; prior code § 8-903).

#### **18.24.040 Billboards/nonaccessory signs.**

The city completely prohibits the construction, erection or use of any billboards or nonaccessory signs other than those which legally exist in the city, or for which a valid permit has been issued and has not expired, as of the date on which this provision is first adopted. No permit shall be issued for any billboard which violates this policy, and the city will take immediate abatement action against any billboard or nonaccessory sign constructed or maintained in violation of this policy. In adopting this provision, the city council affirmatively declares that it would have adopted this billboard/nonaccessory sign policy even if it were the only provision in this chapter. The city council intends for this billboard policy to be severable and separately enforceable even if other provision(s) of this chapter or title may be declared, by a court of competent jurisdiction, to be unconstitutional, invalid or unenforceable. This provision does not prohibit agreements to relocate, remodel or enhance presently existing, legal billboards or nonaccessory signs. (Ord. 07-25 § 6).

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**Chapter 18.28  
ABATEMENT AND REMOVAL**

## Sections:

<u>18.28.010</u>	Abatement.
<u>18.28.020</u>	Removal generally.
<u>18.28.030</u>	Violation – Notice.
<u>18.28.040</u>	Notice – Hearing.
<u>18.28.050</u>	Removal by city.
<u>18.28.060</u>	Removal cost.

**18.28.010 Abatement.**

A sign erected or maintained in violation of this title is a public nuisance. The city may take proceedings for the abatement of the nuisance and make the cost of the abatement a special assessment against the premises in accordance with the provisions of Government Code Sections 38773, 38773.5, and those specified in Chapter 8.04 BMC. In addition to all other remedies, the city has a lien upon the sign which it removes and may keep possession of the sign until the owner pays the cost of removal. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-935).

**18.28.020 Removal generally.**

A. Unsafe Signs. A sign which imperils the safety of a person or property may be summarily removed.

B. Removal After Notice and Hearing. A sign which is not removed within the time prescribed in this title, or a sign which is erected in violation of this title is subject to removal in the manner set forth in BMC 18.28.030 through 18.28.060. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(a, b)).

**18.28.030 Violation – Notice.**

The building inspector shall give written notice to the owner of the premises as shown in the last equalized assessment roll or as known to him, and to each person other than the owner who is in possession or control of the premises. The notice of violation shall be by certified mail addressed to the premises where the violation exists. The notice shall contain the following:

A. A general description of the sign which is allegedly in violation;

B. A copy of the section of this title which is being violated;

C. An estimate of cost of the sign together with any substantiating information such as a cost estimate in support of the figure stated;

D. A notice of time and place at which time the owner or the person responsible may appeal and present evidence as to the absence of a violation or the value of the sign or both. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(1)).

**18.28.040 Notice – Hearing.**

The building inspector or his designated representative shall hold a hearing at the time and place set forth in this notice. The purpose of the hearing is to establish whether or not a violation of this title has occurred and is continuing to occur and to fix the value of the sign. At the hearing, either the owner or the occupant of the premises, or both, may appear and be heard upon these questions. A person has the right to appear with an attorney. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(2)).

**18.28.050 Removal by city.**

If at the conclusion of the hearing the city building inspector or his designated representative finds that a violation of this title is continuing to exist and, that upon previous notice to comply, the owner or occupant of the premises failed to correct the violation and that the fair market value of the sign does not exceed \$500.00, then the building inspector may order the sign to be summarily removed. The building inspector shall give the owner and occupant of the premises notice of the time and place of his intention to remove the sign. The owner or occupant may remove the sign at any time prior thereto. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(b)(3)).

**18.28.060 Removal cost.**

Each person who erects a sign which is subject to removal under this chapter is jointly and severally liable for the cost of removal. The city has a lien upon the sign for the cost of removal and may keep possession of the sign until the owner redeems it by paying to the city the cost of removal. The city may dispose of the sign 60 days after removal by giving the owner notice that the owner may redeem the sign by paying the cost of removal or if he fails to do so, the city will dispose of the sign as it sees fit without further liability to the owner for this action. (Ord. 77-12 N.S. § 1, 1977; prior code § 8-937(c)).

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**Chapter 18.32  
FREEWAY ADVERTISING DISPLAYS**

**(Repealed by Ord. 07-25)**

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## Chapter 18.36 OVERHANGING SIGNS

### Sections:

18.36.010 Generally.

18.36.020 Repealed.

### **18.36.010 Generally.**

It is unlawful for any firm, corporation, or person to extend any signs of any nature or kind out over any sidewalk in the city unless the same shall be at least eight feet above the walk. The sign or signs must be wholly supported from the building, and no post or support will be permitted from the street or sidewalk. (Ord. 204 M.C. § 1, 1912).

### **18.36.020 Violation – Penalty.**

Repealed by Ord. 03-9. (Ord. 204 M.C. § 2, 1912).

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