

November 12, 2009

BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING AGENDA

Thursday, November 12, 2009

7:00 P.M.

I. OPENING OF MEETING

A. Pledge of Allegiance

B. Roll Call of Commissioners

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

II. AGENDA CHANGES AND DISCUSSION

III. OPPORTUNITY FOR PUBLIC COMMENT

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 matter 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 Agenda

B. Approval of Minutes of October 8, 2009

C. Approval of Minutes of October 22, 2009 Joint Meeting with the Historic Preservation Review Commission

V. REGULAR AGENDA ITEMS

A. [USE PERMIT - 1100 SOUTHAMPTON ROAD \(APN: 086-151-190\), VERIZON WIRELESS COMMUNICATION FACILITY](#)(Continued Public Hearing Item from October 8, 2009)

09PLN-37 Use Permit

1100 Southampton Road, APN: 086-151-190

PROPOSAL:

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

Recommendation: Approve a Use Permit to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

B. [REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT \(CONDITIONS OF APPROVAL\) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE](#)

PLN 2000-1 Use Permit

10 Solano Square, APN: 087-200-100

PROPOSAL:

The Planning Commission will review and consider previously imposed conditions of approval for Use Permit PLN 2000-1, Chevron Gas Station and Convenience Market. Based on Benicia Municipal Code Section 17.128, the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting one condition of approval is not being followed or implemented by the permittee.

Recommendation: The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 20 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violation.

C. [AMENDMENT OF THE DEVELOPMENT AGREEMENT ORDINANCE](#)

Zoning Text Amendment

City Wide

PROPOSAL:

The zoning text amendment would update and amend Title 17 (Zoning), specifically Section 17.116.020 establishing new application 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.

VI. COMMUNICATIONS FROM STAFF

A. MODEL WATER EFFICIENT LANDSCAPE ORDINANCE – Commission Discussion

Staff will briefly discuss the Water Conservation Act of 2006 (Assembly Bill 1881) that requires cities and counties to adopt landscape water conservation ordinances by January 1, 2010. Local jurisdictions have a choice to either adopt their own modified version of the Department of Water Resources (DWR) landscape water conservation ordinance or a local agency (cities, counties, cities and counties, charter cities and charter counties) can administer the state-prepared Model Water Efficient Landscape Ordinance (MWELO) which will automatically apply within the jurisdiction of that local agency as of January 1, 2010.

VII. COMMUNICATIONS FROM COMMISSIONERS

VIII. ADJOURNMENT

Public Participation

The Benicia Planning Commission welcomes public participation.

Pursuant to the Brown Act, each public agency must provide the public with an opportunity to speak on any matter within the subject matter jurisdiction of the agency and which is not on the agency's agenda for that meeting. The Planning Commission allows speakers to speak on non-agendized matters under public comments, and on agendized items at the time the agenda item is addressed at the meeting. Comments are limited to no more than five 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 may be taken by the Planning Commission.

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

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

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

Public Records

The agenda packet for this meeting is available at the City Clerk's Office, the Benicia Public Library and the 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 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 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 Gina Eleccion, Management Analyst, as soon as possible so that it may be distributed to the Planning Commission.

 [October 8, 2009min\(pdf\)](#)

 [Verizon Use Permit Staff Permit.pdf](#)

 [Chevron Use Permit.pdf](#)

 [Amendment of The development Agreement Ordinance.pdf](#)

 [Model Water Efficient Landscape Ordinance.pdf](#)



BENICIA PLANNING COMMISSION

CITY COUNCIL CHAMBERS

REGULAR MEETING MINUTES

Thursday, October 8, 2009

7:00 P.M.

I. OPENING OF MEETING

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

Present: Commissioners Rod Sherry, Lee Syracuse, Brad Thomas and Chair Healy

Absent: Commissioners Don Dean and Rick Ernst (both excused), Commissioner Richard Bortolazzo

Staff Present: Damon Golubics, Principal Planner
Rhonda Corey, Senior Administrative Clerk

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

II. AGENDA CHANGES AND DISCUSSION

Damon Golubics advised Commissioners that Item V (A) has been pulled from the Agenda and continued to the meeting of November 12, 2009. Additional City staff members need to be consulted regarding the lease agreement and possible additional fees.

III. OPPORTUNITY FOR PUBLIC COMMENT

- A. WRITTEN**
None.
- B. PUBLIC COMMENT**
None.

IV. CONSENT CALENDAR

On motion of Commissioner Syracuse, seconded by Commissioner Sherry, the Consent Calendar was approved with action taken under the adoption of the Agenda to continue Item V(A) to the meeting of November 12, 2009 by the following vote:

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

- A. **Approval of Agenda**
- B. **Approval of Minutes of September 10, 2009**
- C. **Approval of 2010 Planning Commission Meeting Schedule**

V. REGULAR AGENDA ITEMS

- A. **USE PERMIT - 1100 SOUTHAMPTON ROAD (APN: 086-151-190), VERIZON WIRELESS COMMUNICATION FACILITY**
09PLN-37 Use Permit
1100 Southampton Road, APN: 086-151-190

PROPOSAL:

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

Recommendation: Approve a Use Permit to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the proposed Resolution.

This Agenda Item was continued by the Commission to the November 12, 2009 meeting.

VI. COMMUNICATIONS FROM STAFF

- A. **COMMISSION PRIORITY PROJECTS LIST – Commission Discussion**
Staff will facilitate a discussion regarding the Priority Projects list that was assembled in conjunction with the Commission’s review of the City Council’s Strategic Planning process.

Damon Golubics advised that work is still being done on the Priority Projects list. Some items are still in need of funding and re-allocation of staff resources. Additional priorities may be added if the Commission so desires.

The General Plan implementation discussion is tentatively scheduled for November or December. Projects that have already been completed are the Strategic Plan and the Downtown Mixed Used Master Plan.

Damon Golubics stated that the City Manager's Office requested that Commissioners be informed of the upcoming Stimulus Conference on October 13, 2009. Mayor Elizabeth Patterson will be in attendance. Commissioners may attend and carpool with the Mayor if they wish. The fee for the Conference may be paid by Commissioners and will be reimbursed by the City.

Damon Golubics reminded Commissioners about the Special Joint Meeting of the Historic Preservation Review Commission and the Planning Commission on October 22, 2009 at 6:30 pm. Open Government training will be provided for both Commissions as well as discussion of the Lower Arsenal EIR.

VII. COMMUNICATIONS FROM COMMISSIONERS

Chair Healy said that he feels that the Priority Projects List looks good. He suggested that former Chair Railsback be contacted regarding the Pine Lake issue for input since he was particularly concerned about this issue. Damon Golubics agreed and stated he would contact former Chair Railsback regarding the issue.

VIII. ADJOURNMENT

Chair Healy adjourned the meeting at 7:12 pm.

**AGENDA ITEM
PLANNING COMMISSION MEETING: OCTOBER 8, 2009
REGULAR AGENDA ITEM**

DATE : September 28, 2009

TO : Planning Commission

FROM : Sharon Williams, Development Services Technician

SUBJECT : **APPROVAL OF USE PERMIT REQUEST FOR 1100
SOUTHAMPTON ROAD (APN: 086-151-190), VERIZON
WIRELESS COMMUNICATION FACILITY**

RECOMMENDATION:

Approve a Use Permit (09PLN-37) to add three additional antennas to an existing wireless communications facility located on the athletic field of Benicia Middle School at 1100 Southampton Road, based on the Findings and Conditions of Approval set forth in the Resolution.

EXECUTIVE SUMMARY:

The applicant requests approval of a use permit to install three additional wireless communication antennas on top of an existing pole located on the athletic field of Benicia Middle School at 1100 Southampton Road. All associated equipment would be located within the existing equipment shelter along the fence line.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 that exempts additions of 10,000 square feet or less in areas where all public services are available and the area is not environmentally sensitive.

BACKGROUND:

General Plan designation/Zoning: Public & Semi-Public (PS)

Existing use: Benicia Middle School athletic field

Adjacent zoning and uses:

North: RS/Single Family Residential

South: I-780

East: RM/Condominiums

West: RM/Condominiums

SUMMARY:

Verizon Wireless proposes to install three additional panel antennas on top of an existing pole at 1100 Southampton Road. The antennas would be mounted on an existing pole along the south side of the athletic field.

The associated equipment would be located within an existing equipment shelter located along the fence line of the athletic field. The site makes use of an existing pole and will not add to the visual clutter along Interstate 780.

Zoning/General Plan Consistency:

The site has a Zoning and General Plan designation of Public & Semi-Public. Development regulations shall be specified by the use permit. If not regulated, the regulations of the nearest base district shall apply. Per Section 17.40.040 of the Benicia Municipal Code, Medium Density Residential (RM) shall be used as the base district.

General Plan Goal 2.43 is to “*allow installation of telecommunications equipment and distribution networks that maintain and protect health, safety, and quality of life and avoid visual clutter.*” The installation of the proposed antennas will be consistent with that goal because the coverage those customers receive will be expanded and strengthened. In addition, the site makes use of an existing pole and would not add to the visual clutter, which fulfills General Plan Policy 3.9.1 to preserve vistas along Interstate 780.

Public Health and Safety:

The proposed wireless communications antenna upgrade will not create any nuisance or be detrimental to the health, safety or general welfare of persons residing or working in the neighborhood. The Federal Communication Commission sets the limits for human exposure to radio frequency electromagnetic fields. The maximum calculated field strength in publicly accessible areas of the facility with the three proposed additional antennas will be below the applicable public limit for unlimited exposure.

Wireless Communication Finding:

In addition to the findings listed, there are five additional wireless communication facility findings that must be made pursuant to 17.70.250 (H):

- a) The proposed location of the project and the conditions under which it would be operated and maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in the vicinity *because the proposed additional three antennas will be mounted on an existing pole.*
- b) Development of the proposed facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive resources,

community character resources; or, that there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned *because this is an existing wireless facility*.

- c) The proposed facility is in compliance with all FCC regulations *because this facility is already in compliance and will continue to remain in compliance with the proposed additional antennas*.
- d) The proposed location and design of the project and the conditions under which it would be operated or maintained will be consistent with all elements of the Benicia General Plan *because the use is consistent with the Public & Semi-Public zoning designation and the zoning ordinance*.
- e) The proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be visually compatible with the physical design aspects *because it will not add to the visual clutter, which fulfills General Plan Policy 3.9.1 to preserve vistas along Interstate 780*.

FURTHER ACTION:

Planning Commission action will be final unless appealed to the City Council within ten calendar days.

Attachments:

- Draft Resolution
- Photo Simulations
- Project Plans

DRAFT RESOLUTION

RESOLUTION NO. 09- (PC)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BENICIA APPROVING A USE PERMIT (09PLN-37) FOR INSTALLATION OF THREE ANTENNAS AND ASSOCIATED EQUIPMENT AT 1100 SOUTHAMPTON ROAD

WHEREAS, on June 15, 2009, Gale Fink, On Air, LLC on behalf of Verizon Wireless submitted an application for a use permit to install a wireless communication facility consisting of three additional antennas on an existing pole and associated equipment located within at 1100 Southampton Road; and

WHEREAS, staff has determined that this project is categorically exempt from the California Environmental Quality Act pursuant to Section 15301 that exempts additions of 10,000 square feet or less in areas where all public services are available and the area is not environmentally sensitive; and

WHEREAS, development regulations not specified by the subject Use Permit shall be regulated by Medium Density Residential (RM) as the base district; and

WHEREAS, Staff-Level Design Review (09PLN-00074) was approved by the Public Works & Community Development Director on October 5, 2009; and

WHEREAS, the Planning Commission at a regular meeting on October 8, 2009, conducted a public hearing, considered all testimony and documents and reviewed the proposed project.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Benicia hereby approves a Use Permit to construct a wireless communications facility consisting of three additional antennas mounted on an existing pole and associated equipment located in an existing equipment shelter at 1100 Southampton Road and based on the following findings:

- a) The proposed use is consistent with the General Plan Policy 3.9.1 in that the proposed installation of three additional wireless antennas onto an existing pole and will not add visual clutter from Interstate 780 and the public right-of-way.
- b) The use is consistent with the Public & Semi-Public zoning designation and the zoning ordinance.
- c) The proposed location of the project and the conditions under which it would be operated and maintained will not be detrimental to the health, safety, or welfare of persons residing or working in the neighborhood or the general public, and will not be materially injurious to properties or improvements in

the vicinity *because the proposed additional three antennas will be mounted on an existing pole.*

- d) Development of the proposed facility as conditioned will not significantly affect any designated visual resources, environmentally sensitive resources, community character resources; or, that there are no other environmentally equivalent and/or superior and technically feasible alternatives to the proposed wireless communications facility as conditioned *because this is an existing wireless facility.*
- e) The proposed facility is in compliance with all FCC regulations *because this facility is already in compliance and will continue to remain in compliance with the proposed additional antennas.*
- f) The proposed location and design of the project and the conditions under which it would be operated or maintained will be consistent with all elements of the Benicia General Plan *because the use is consistent with the Public & Semi-Public zoning designation and the zoning ordinance.*
- g) The proposed project will complement and harmonize with the existing and proposed land uses in the vicinity and will be visually compatible with the physical design aspects *because it will not add to the visual clutter, which fulfills General Plan Policy 3.9.1 to preserve vistas along Interstate 780.*

BE IT FURTHER RESOLVED that the Planning Commission of the City of Benicia hereby approves the Use Permit subject to the following conditions:

1. The plans and maps submitted for approval and development of the site shall be in substantial compliance with the plans dated received “September 2, 2009” prepared by HMH Design Group consisting of four sheets on file in the Community Development Department.
2. This approval shall expire two years from the date of approval, unless made permanent by the issuance of a building permit and the commencement of work that is diligently pursued to completion. Alternatively, the time period may be extended, by the Public Works & Community Development Director, if the application for time extension is received prior to the end of the initial two year deadline and there has been no change in the City’s development policies which affect the site, and there is no change in the physical circumstances nor new information about the project site which would warrant reconsideration of the approval.
3. The project shall adhere to all applicable ordinances, standard plans, and specifications of the City of Benicia.

4. Any alteration of the approved plans, including substitution of materials or changes in paint colors, shall be requested in writing and approved by the Public Works & Community Development Director or designee prior to changes being made in the field.
5. The wires and cables to the antenna panels shall not be exposed so that they are visible from the public right-of-way.
6. Antennas, support structures and related equipment shall be removed within 90 calendar days of the discontinuation of the use of a wireless communication facility and the site shall be restored to its previous condition. The applicant shall notify the Community Development Department in writing of the intent to remove the facility within 30 days prior to discontinuance.
7. The operator of a wireless communication facility shall correct interference problems experienced by any person or entity with respect to equipment such as television, radio, computer, and telephone reception or transmission that are caused by the facility. The operator shall be responsible for all labor and equipment costs for determining the source of the interference and all costs associated with eliminating the interference.
8. The applicant or permittee shall defend, indemnify, and hold harmless the City of Benicia or its agents, officers, and employees from any claim, action, or proceeding against the City of Benicia or its agents, officers, or employees to attack, set aside, void, or annul an approval of the Planning Commission, City Council, Community Development Director, or any other department, committee, or agency of the City concerning a development, variance, permit or land use approval which action is brought within the time period provided for in any applicable statute; provided, however, that the applicant's or permittee's duty to so defend, indemnify, and hold harmless shall be subject to the City's promptly notifying the applicant or permittee of any said claim, action, or proceeding and the City's full cooperation in the applicant's or permittee's defense of said claims, actions, or proceedings.

* * * * *

On a motion of Commissioner _____, seconded by Commissioner _____, the above Resolution was adopted by the Planning Commission of the City of Benicia at the regular meeting of said Commission held on the 8th day of October, 2009, and adopted by the following vote:

Ayes:

Noes:

Absent:

Abstain:

Dan Healy
Planning Commission Chair

AGENDA ITEM
PLANNING COMMISSION MEETING: NOVEMBER 12, 2009
PUBLIC HEARING

DATE : November 2, 2009

TO : Planning Commission

FROM : Damon Golubics, Principal Planner

SUBJECT : **REVIEW OF A PREVIOUSLY APPROVED 2001 USE PERMIT (CONDITIONS OF APPROVAL) FOR THE CHEVRON GAS STATION AND CONVENIENCE MARKET AT 10 SOLANO SQUARE**

PROJECT: Chevron Gas Station and Convenience Market
PLN 2000-1 Use Permit
10 Solano Square, APN: 87-200-100

RECOMMENDATION:

The Planning Commission should take public testimony, and determine whether there are violations of the original conditions of approval for the Chevron Gas Station and Convenience Market located at 10 Solano Square and consider the proposed amendments to the conditions of approval to remedy any such violations.

EXECUTIVE SUMMARY:

City staff has received multiple complaints over the years regarding the condition of the landscaping along West Second Street adjacent to the Chevron Gas Station and Convenience Market located at 10 Solano Square and the accumulation of trash in its landscape area. Staff has verified that the specific area in question does have overgrown trees and ivy and has trash strewn throughout the overgrown landscaped area. The Chevron Convenience Market project was approved in 2002 with a use permit, subject to a condition of approval that required landscape maintenance.

Staff recommends that the Planning Commission review, discuss and solicit public testimony on this issue and consider amending the conditions of approval to effectively remedy the situation.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- Goal 2.1: Preserve Benicia as a small-sized city.

- Policy 2.1.4: Strive to preserve significant areas of vegetation and open space when approving development projects.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- ❑ Strategic Issue #2: Protect and enhance the environment
- ❑ Strategic Issue #5: Maintain and enhance a high quality of life

BUDGET INFORMATION:

This request has no budgetary impacts since it is an enforcement action using in-house resources.

ENVIRONMENTAL ANALYSIS:

Staff has determined that this project is Categorically Exempt under Section 15321 (Enforcement Actions by Regulatory Agencies) of the California Environmental Quality Act (CEQA). This exemption includes actions by regulatory agencies to enforce a permit of use issued by the regulatory agency or enforcement of a standard (condition of approval) adopted or administered by the regulatory agency.

BACKGROUND:

The Planning Commission approved Use Permit PLN 2000-1 for a Chevron Gas Station and Convenience Market on June 13, 2002. Meeting minutes state that the Commission approved the use permit request with the caveat that the permittee “maintain the landscaping between the development and West Second Street and add a second condition regarding signage which would deal with the noise ordinance and the concept related to the good neighbor behavior.” Staff has interpreted this to mean that landscape maintenance would be effectively addressed by the permittee and that noise issues and good neighbor behavior from employees and patrons of Chevron would be also be addressed.

Benicia Municipal Code Section 17.128 provides that the Community Development Director shall determine if there are reasonable grounds for reconsideration of a Use Permit and whether the Planning Commission shall take appropriate action to remedy any documented violation of the use permit conditions of approval. Evidence shall be presented by staff at the public hearing suggesting that one condition of approval is not being followed or implemented by the permittee.

SUMMARY:

Staff is looking for the Planning Commission to review, consider and possibly amend the conditions of approval for the project that would address the landscape maintenance issue along West Second Street and to ensure that Chevron cleans-up the accumulation of trash in this landscape area. Staff has drafted additional conditions of approval listed below for consideration by the Planning Commission:

- The permittee shall be responsible for garbage pick-up and removal from the entire site on a daily basis. On-site employees shall pick up any trash or garbage found along the West Second Street side of the site or the permittee may contract with a private service to effectively mitigate the documented garbage/trash problem. The permittee shall inform the Public Works & Community Development staff what particular daily method of trash collection will occur on a daily basis at the site.
- Maintenance of the landscape buffer along West Second Street shall be done each week to ensure that existing trees are trimmed and bushes, shrubs and plants in this landscaped area are appropriately maintained. Pine needles from the existing trees must also be cleaned up from the street and sidewalk area along the West Second Street side of the site.
- Planning staff shall conduct monthly inspections of the site and determine whether the litter and landscape problems persist and have been mitigated. If it appears that the landscaping and trash accumulation becomes a problem in the future, planning staff shall bring the matter to the attention of the Planning Commission for review and consideration within 60 days of a documented violation of conditions of approval set forth in this resolution.
- Planning staff shall report back to the Planning Commission on an annual basis whether the litter and landscape problems persist and have been mitigated. This report shall be in a memorandum format and be placed under “Staff Communications” section of the December Planning Commission agenda until the year 2014.

Attachments:

- ❑ Revised Resolution and Conditions of Approval for the Project
- ❑ June 13, 2002 Planning Commission Staff Report & Conditions of Approval
- ❑ Planning Commission Meeting Minutes for June 13, 2002
- ❑ Recent Photographs – East Second Street at 10 Solano Square

AGENDA ITEM
PLANNING COMMISSION MEETING: NOVEMBER 12, 2009
PUBLIC HEARING

DATE : November 2, 2009

TO : Planning Commission

FROM : Heather C. McLaughlin, City Attorney
Damon Golubics, Principal Planner

SUBJECT : **AMENDMENT OF THE DEVELOPMENT AGREEMENT
ORDINANCE**

RECOMMENDATION:

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

EXECUTIVE SUMMARY:

Mayor Patterson requested at a previous City Council meeting that the City Council consider revising the development agreement ordinance to require that projects of more than 40 acres be subject to a development agreement with the City. The revisions that are attached would require any applicant for a vesting tentative map, master plan and/or rezoning for property of 40 acres or more to propose that the City enter into a development agreement. The revisions also include changes to the information required in a development agreement application. The City Council has referred this matter to the Planning Commission for review, comment and any suggested modifications to improve this section of the zoning code. Since the development agreement ordinance has not been revised since 1987, staff recommends that the Planning Commission carefully review the proposed revisions to the development agreement ordinance and make recommendations for any further modifications.

GENERAL PLAN:

Relevant General Plan Goals and Policies include:

- Goal 2.1: Preserve Benicia as a small-sized city.
 - Policy 2.1.1: Ensure that new development is compatible with adjacent existing development and does not detract from Benicia's small town qualities and historic heritage, (and to the extent possible, contributes to the applicable quality of life factors noted above).
 - Program 2.1.A: Adopt development guidelines that retain the scale and character of the city, preserve public view corridors, and reflect the subdivision and development patterns within existing neighborhoods.

STRATEGIC PLAN:

Relevant Strategic Plan Issues and Strategies:

- ❑ Strategic Issue #2: Protect and enhance the environment
 - Strategy #3: Pursue and adopt sustainable practices
- ❑ Strategic Issue #3: Strengthen economic and fiscal conditions
 - Strategy #5: Increase economic viability of industrial park and other commercial areas, while preserving existing economic strengths and historic resources
- ❑ Strategic Issue #4: Preserving and enhancing infrastructure
- ❑ Strategic Issue #5: Maintain and enhance a high quality of life

BUDGET INFORMATION:

There are no additional costs to draft/revise this ordinance if the work is done in-house.

BACKGROUND:

The legislature enacted Government Code Section Sections 65864, et. seq. to provide for development agreements as a way to provide security to both cities and developers. The legislation (and our existing ordinance) address the need to provide developers with some assurance that they will be able to build large/long term projects once they get the necessary approvals.

Staff reviewed the development agreement ordinances of other cities, and all of them provide that an applicant may apply for a development agreement. Staff was unable to find any other city ordinance where a developer was required to apply for a development agreement to go forward on a project. An attachment showing selected sections from a variety of cities is provided for information.

The key in trying to implement a requirement for a development agreement is to ensure that the City has the ability to reject a development agreement if it does not meet the City's needs. Thus, the proposed revision requires the developer to *propose* a development agreement with the City, but does not make such an agreement mandatory if the proposed agreement does not meet the City's needs.

Other changes regarding the amount of detail required of an application for a development agreement have also been included in the attached document, which is in a redline/strikeout format. The City Council and Planning Commission may want to consider whether any further changes are needed since the ordinance has not been revised since 1987.

SUMMARY:

Staff is looking to the Planning Commission to review and consider these revisions to better and strengthen the existing development agreement regulations.

Other issues for the Planning Commission to consider during their review of this issue would be:

- A provision requiring a mitigation monitoring plan as it pertains to the final CEQA document for any future project requiring a development agreement.
- Any project that requires a development agreement would also require completion and adoption of a specific plan for the proposed development site.
- A requirement that General Plan amendments be sought for the project that meets the overall objectives of the General Plan but are not technically met by the current General Plan designations.

Attachments:

- Proposed Changes to the Development Agreement Ordinance (underline & strikeout)
- Selections from Other Cities

Chapter 17.116
DEVELOPMENT AGREEMENTS

Sections:

- 17.116.010 Purpose.
- 17.116.020 Application requirements.
- 17.116.030 Department review and recommendation.
- 17.116.040 Public hearing required.
- 17.116.050 Planning commission action.
- 17.116.060 City council action.
- 17.116.070 Annual review.
- 17.116.080 Modification and termination.
- 17.116.090 Administration.

17.116.010 Purpose.

In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development, the Legislature of the state of California adopted Section 65864 et seq. of the Government Code, authorizing local governments to enter into development agreements with applicants for development projects. The objective of such an agreement is to provide assurances that, upon approval of the project, the applicant may proceed with the project in accord with existing policies, rules and regulations, subject to the conditions of approval, thus vesting certain development rights in the property. The purpose of this chapter is to establish procedures and requirements for consideration of development agreements by the city consistent with state law. (Ord. 87-4 N.S., 1987).

17.116.020 Application requirements.

A. An applicant may propose that the city consider entering into a development agreement pursuant to Article 2.5, Chapter 4, Title 7 of the California Government Code commencing with Section 65864, by filing an application with the planning community development department.

B. An applicant for a vesting tentative map, master plan and/or rezoning for property 40 acres or more in size shall propose that the city consider entering into a development agreement pursuant to Article 2.5, Chapter 4, Title 7 of the California Government Code commencing with Section 65864, by filing an application with the community development department.

C. The application shall be accompanied by the following:

1. A proposed agreement, which shall contain the following:
 - a. A legal description of the property sought to be covered by the agreement,
 - b. A complete list of legal property owners,

- c. A statement of concurrence in the application by the owner if the applicant is not the fee owner,
 - d. A complete list of proposed parties to the agreement,
 - e. A description of the proposed development project including a description of the proposed uses, height and size of building(s), density or intensity of use, phasing of the development, provision for reservation or dedication of land for public purposes, and such other information as is relevant to any other project approvals required for the development such as site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary.
 - f. Identification of all other city planning, zoning or other approvals and of other governmental agencies.
 - g. All proposed conditions, terms, restrictions, and requirements for subsequent city discretionary actions,
 - h. The proposed public facilities financing plan.
 - i. The proposed time when construction would be commenced and completed for the entire project and any proposed phases, and
 - j. The termination date for the agreement.
2. A completed initial study form;
 3. A statement documenting that the project is consistent with the general plan and all applicable specific plans;
 4. Such other information as the planning department or city attorney may require by policy or to satisfy other requirements of law;
 5. The required fee. (Ord. 87-4 N.S., 1987).

17.116.030 Department review and recommendation.

The department shall, at the applicant's expense and in accord with city procedures for implementation of CEQA, undertake environmental review and, upon completion of such review, transmit the application, together with the department's recommendations thereon, to the planning commission. (Ord. 87-4 N.S., 1987).

17.116.040 Public hearing required.

Upon receipt of an application, the results of the environmental review, and the recommendations of the department, the planning commission shall schedule a public hearing. Notice of intention to consider the application shall be given as provided in Sections 65090 and 65091 of the California Government Code. In addition, if the application is being processed together with the development project, notice of such intention shall be given as required for consideration of the development project. (Ord. 87-4 N.S., 1987).

17.116.050 Planning Commission action.

After the public hearing is closed, the commission shall recommend either approval, modification, or disapproval of the proposed development agreement. The commission shall transmit its recommendation to the city council within 30 days. (Ord. 87-4 N.S., 1987).

17.116.060 City Council action.

A. Upon receipt of the application, the results of the environmental review, and the recommendations of the department and the planning commission, the city council shall schedule a public hearing on the application. Notice of intention to consider the application shall be given in the same manner as set forth in BMC 17.116.040.

B. If the application is being processed together with the development project, the public hearing on the application may be held concurrently with the hearing on the project.

C. After the public hearing is closed, the city council shall approve, modify, or disapprove the proposed development agreement. An agreement shall not be approved unless the city council finds that the provisions of the agreement, as submitted or as modified, are consistent with the general plan and with any specific plan. Any approval of a proposed agreement shall be made by ordinance, which shall authorize the mayor and the director to sign the agreement on behalf of the city.

D. No agreement shall be signed by the mayor and the director until it has been duly signed by the applicant and owner, if the applicant is not the owner. If the applicant has not signed and returned the approved agreement to the mayor and the director for signing within 30 days of council approval, said application shall be deemed withdrawn by the applicant.

E. Within 10 days after the mayor and the director sign a development agreement and the ordinance becomes effective, the director shall cause a copy thereof to be recorded.

F. All agreement provisions are subject to modification or suspension as set forth in Article 2.5, Chapter 4, Title 7 of the Government Code, commencing with Section 65864. (Ord. 87-4 N.S., 1987).

17.116.070 Annual review.

A. All development agreements shall be reviewed by the community development director at least once every 12 months, unless the agreement provides for more frequent review, in which case the agreement shall prevail.

B. The purpose of the review shall be to inquire into the good faith compliance of the applicant with the terms and conditions of the agreement and for any other purpose specified in the agreement.

C. Prior to each review, the department shall prepare a report relative to all development that has occurred under the agreement subsequent to the last past review and any other matters the department wishes to bring to the director's attention.

D. If the department report recommends modification or termination of the agreement, or if the community development director proposes to make such a recommendation to the city council, he shall schedule a public hearing on the agreement. If the department report or director's recommendation involves land use issues, the director shall schedule the hearing before the planning commission. Notice of intention to modify or terminate the agreement shall be given in the same manner as set forth in BMC 17.116.040. At such hearing the applicant shall have the burden of demonstrating his good faith compliance with the terms and conditions of the agreement.

E. If, after the public hearing is closed, the community development director, in consultation with the planning commission if land use issues are involved, determines that the agreement should be terminated or modified, the matter shall be referred to the city council for proceedings for termination or modification.

F. Upon receipt of the community development director's recommendation, the city council shall schedule a public hearing. Notice of intention to modify or terminate the agreement shall be given in the same manner as set forth in BMC 17.116.040.

G. If, after the public hearing is closed, the city council finds and determines on the basis of substantial evidence that the applicant or its successor in interest has not complied in good faith with the terms and conditions of the agreement, the city council may modify or terminate the agreement. Any modification or termination is subject to the provisions of BMC 17.116.080. (Ord. 87-4 N.S., 1987).

17.116.080 Modification and termination.

Any development agreement may be amended, or canceled in whole or in part, by mutual consent of the applicant (or its successor in interest) and the city, or it may be modified or terminated pursuant to the provisions of BMC 17.116.070. Notice of intention to take any such action shall be given in the manner provided by BMC 17.116.040; provided, however, that the parties may set forth an alternative procedure in the agreement for processing insubstantial amendments. Any significant amendment shall be subject to the provisions of the California Government Code, Section 65867.5. (Ord. 87-4 N.S., 1987).

17.116.090 Administration.

The community development director shall prepare and adopt such application forms, checklists, and other documents as considered necessary and desirable to implement these procedures and requirements. (Ord. 87-4 N.S., 1987).

Sample Selections of Development Agreement Ordinances

Rohnert Park

Chapter 17.21 DEVELOPMENT AGREEMENT PROCEDURE

Sections:

17.21.010 Authority and purpose.

17.21.020 Application.

17.21.030 Procedure.

17.21.040 Factors for consideration.

17.21.050 Periodic reviews.

17.21.060 Adherence to development agreement, and amendment or cancellation by mutual consent.

17.21.070 Recording.

17.21.010 Authority and purpose.

This chapter is enacted pursuant to the authority contained in Section 65864 et. seq. of the California Government Code. The purposes of these provisions are to prescribe the procedure for consideration of development agreements, encourage private participation in comprehensive planning, and reduce the economic costs of development.

(Ord. 695 § 3, 2003)

17.21.020 Application.

Application for a development agreement shall be made by a person, or the authorized agent of a person, having a legal or equitable interest in the affected property. Application shall be made on a form prescribed by the planning and community development director and shall be filed with such department. The application shall be accompanied by a fee prescribed by the city council, and a project description, which shall include the following:

A. A legal description of the affected property, a listing of property owners, and the proposed parties to the agreement;

B. A description of the development project, indicating the permitted uses of the property, floor-area ratio or density, building height and size, phasing of development, provisions for the reservation and dedication of land for public purposes and such additional information as may be required to allow the applicable criterion and factors to be applied to the proposal. Such information may include, but is not limited to, site and building plans, elevations, relationships to adjacent properties, and operational data. Where appropriate, the description may distinguish between elements of the project that are proposed to be fixed under the agreement and those that may vary;

C. An identification of any planned unit development permit or other special zoning approval that has already been obtained for the development project;

D. The special conditions, if any, to be imposed;

E. The timing of the development project;

F. Public facilities financing plan;

G. A statement of the relationship to the specific plan and to the general plan; and

H. Other items specific to the project proposal, as determined by the city attorney or planning and community development director.

(Ord. 695 § 3, 2003)

17.21.030 Procedure.

A. An application for a development agreement shall be considered by the planning commission, which shall hold a public hearing on the application. Notice of the hearing shall be given as provided in Sections 65090 and 65091 of the California Government Code in addition to any other notice required by law for other actions to be considered concurrently with the development agreement. The planning commission shall determine whether the proposal is consistent with the city's general plan and any applicable specific plan, and may recommend approval or disapproval of the application, or recommend its approval subject to changes in the development agreement or conditions of approval, giving consideration to the factors set forth in Section 17.21.040.

B. After a recommendation has been rendered by the planning commission, the city council shall hold a public hearing on the application. Notice of the hearing and the intention to consider adoption of a development agreement shall be given as provided in Sections 65090 and 65091 of the California Government Code in addition to any other notice required by law for other actions to be considered concurrently with the development agreement. The council shall review the recommendation of the commission and determine whether the proposal is consistent with the city's general plan and any applicable specific plan, and may approve or disapprove the proposed development agreement, or approve it subject to changes therein or conditions of approval, giving consideration to the factors set forth in Section 17.21.040. If the council approves the development agreement or approves it subject to changes or conditions, it shall do so by ordinance.

(Ord. 695 § 3, 2003)

17.21.040 Factors for consideration.

In reviewing an application for a development agreement, the planning commission and city council shall give consideration to other pending applications and approved projects; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; ability of the applicant to fulfill public facilities financing plan obligations; the relationship of the project to the city's growth management program; the provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessible to the public; the type and magnitude of the project's economic effects to the city of Rohnert Park, and of its contribution if any toward meeting the city's housing needs; and to any other comparable, relevant factor.

(Ord. 695 § 3, 2003)

17.21.050 Periodic reviews.

A. Periodic review. Each development agreement shall be reviewed at least once every twelve months, and the review period shall be specified in the agreement. Application for periodic review shall be made on a form prescribed by the planning and community development director and shall be filed with such department. A fee prescribed by the city council shall accompany the application. Failure to file for such review within thirty days of a written notice sent by the planning and community development director of the requirement to file within the time limits specified in the agreement shall render the agreement null and void. The applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the

agreement. If the planning and community development director finds that such compliance has been deficient, he or she shall forward this finding and his or her recommendation to the city council for consideration in accordance with subsection B of this section.

B. Termination. At any time the city council may, at a public hearing, consider whether there are grounds for termination of any development agreement. Notice of the hearing shall be given by posting notices thereof within three hundred feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the development agreement, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. At the hearing, the applicant or successor in interest shall be required to demonstrate good faith compliance with the terms of the agreement. If as a result of such review, the council finds and determines, on the basis of substantial evidence, that the applicant or successor thereto has not complied in good faith with the terms or conditions of the agreement, the council may terminate or modify the agreement in whole or in part.

(Ord. 695 § 3, 2003)

17.21.060 Adherence to development agreement, and amendment or cancellation by mutual consent.

A development agreement shall not be transferred or assigned to a new person without the written consent of the city. A successor in interest shall provide proof of ability to fulfill the applicant's obligations pursuant to the development agreement. In any case, the burdens of such agreement shall also bind, and its benefits shall also inure to, all successors in interest. A development agreement may be amended, or canceled in whole or in part, by the mutual consent of the parties to the agreement or their successors in interest. Such amendments and cancellations shall be processed in the same manner as an original application and shall be subject to the same procedural requirements.

(Ord. 695 § 3, 2003)

17.21.070 Recording.

No later than ten calendar days after the city enters into a development agreement, the city clerk shall record with the county recorder a copy of the agreement, which shall describe the land subject thereto. If the agreement is amended, canceled, or revoked pursuant to Sections 17.21.070 and 17.21.080, the city clerk shall record notice of such action with the recorder.

(Ord. 695 § 3, 2003)

West Hollywood

Chapter 19.66 Development Agreements

19.66.010 Purpose.

This chapter establishes procedures and requirements for the review and approval of development agreements consistent with the provisions of state law.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.020 Application.

A. *Owner's Request.* An owner of real property may request and apply through the department to enter into a development agreement provided that:

1. The status of the applicant as property owner or bona fide representative of the owner is established to the satisfaction of the Director;
2. The application is accompanied by all documents, information, and materials required by the department.

B. *Director Review.* The Director shall receive, review, process, and prepare recommendations for Commission and Council consideration on all applications for development agreements.

C. *Concurrent Processing and Public Hearings.* All development-related applications shall be processed and scheduled for public hearing concurrently with the application for a development agreement. The Council shall be the review authority for the development agreement and all associated applications.

D. *Fees.* The application for approval of a development agreement shall include the processing fee established by the city's Fee Resolution. Additionally, appropriate fees shall be established and collected for periodic reviews conducted by the Director in compliance with Section 19.66.070(A), below.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.030 Public Hearings.

A. *Commission Hearing.* The Director, upon finding the application for a development agreement complete, shall set the date for a public hearing before the Commission in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of a public hearing, the Commission shall adopt a resolution and make a written recommendation to the Council that it approve, conditionally approve, or deny the application.

B. *Council Hearing.* Upon receipt of the Commission's recommendation, the City Clerk shall set a date for a public hearing before the Council in compliance with Chapter 19.74 (Public Hearings and Notice). Following conclusion of the public hearing, the Council shall approve, conditionally approve, or deny the application with appropriate findings in compliance with subsection (E) (Required Findings), below.

If the Council proposes to adopt a substantial modification to the development agreement not previously considered by the Commission during its hearings, the proposed modification shall be first referred back to the Commission for its recommendation, in compliance with state law (Government Code Section 65857). Failure of the Commission to report back to the Council within forty days after the referral, or within a longer time set by the Council, shall be deemed a recommendation for approval of the proposed modification.

C. *Notice of the Hearings.* Notice of the hearings outlined in subsections (A) and (B), above, shall be given in the form of a notice of intention to consider approval of a development agreement in compliance with state law (Government Code Section 65867).

D. *Adopting Ordinance.* Should the Council approve or conditionally approve the application, it shall, as a part of the action of approval, direct the preparation of a development agreement embodying the conditions and terms of the application as approved or conditionally approved by it, as well as an ordinance authorizing execution of the development agreement by the Council, in compliance with state law (Government Code Section 65867.5).

E. *Required Findings.* The ordinance shall contain the following findings and the facts supporting them. It is the responsibility of the applicant to establish the evidence in support of the required findings.

1. The development agreement is in the best interests of the city, promoting the public interest and welfare;

2. The development agreement is consistent with all applicable provisions of the General Plan, any applicable specific plan, and this Zoning Ordinance;

3. The development agreement does not:

a. Adversely affect the comfort, health, peace, or welfare, or valuation of property, of persons residing or working in the vicinity of the proposed development; or

b. Endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or general welfare.

4. The development agreement is in compliance with the conditions, requirements, restrictions, and terms of Sections 19.66.040.A (Mandatory contents) and 19.66.040.B (Permissive contents), below.

F. *Referendum.* The ordinance is subject to referendum in compliance with state law (Government Code Section 65867.5).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.040 Content of Development Agreement.

A. *Mandatory Contents.* A development agreement entered into in compliance with this chapter shall contain the mandatory provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]).

B. *Permissive Contents.* A development agreement entered into in compliance with this chapter may contain the permissive provisions (e.g., conditions, requirements, restrictions, and terms) specified by state law (Government Code Section 65865.2 [Agreement contents]), and

any other terms determined to be appropriate and necessary by the Council, including provisions for the payment to the city of monetary consideration.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.050 Execution and Recordation.

A. *Effective Date.* The city shall not execute any development agreement until on or after the date on which the ordinance approving the agreement becomes effective, and until it has been executed by the applicant.

B. *Agreement Deemed Withdrawn.* If the applicant has not executed the development agreement and returned the executed agreement to the City Clerk within thirty days of the effective date of the entitlement, the development agreement application shall be deemed withdrawn. If this occurs, the Mayor shall not execute the agreement. The Council may extend the thirty-day period if a written request is filed before the expiration.

C. *Other Permits or Entitlements.* The provisions of this chapter shall not be construed to prohibit the Director, Commission or Council from conditioning approval of a discretionary permit or entitlement on the execution of a development agreement where the condition is otherwise authorized by law.

D. *Recordation.* A development agreement shall be recorded with the County Recorder no later than ten days after it is executed, in compliance with state law (Government Code Section 65868.5).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.060 Environmental Review.

The approval or conditional approval of a development agreement in compliance with this chapter shall be deemed a discretionary act for purposes of the California Environmental Quality Act (CEQA).

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.070 Periodic Review.

A. *Periodic Review.* Every development agreement approved and executed in compliance with this chapter shall be subject to periodic review by the Director during the full term of the agreement. Appropriate fees to cover the city's costs to conduct the periodic reviews shall be collected from the contracting party in compliance with Section 19.66.020(D) (Application), above.

B. *Purpose of Periodic Review.* The purpose of the periodic review shall be to determine whether the contracting party or the successor-in-interest has complied in good faith with the

terms and conditions of the development agreement. The burden of proof shall be on the applicant or contracting party or the successor to demonstrate compliance to the full satisfaction of, and in a manner prescribed by, the city.

C. *Result of Periodic Review.* If, as a result of a periodic review in compliance with this section, the Director finds and determines, on the basis of substantial evidence, that the contracting party or the successor-in-interest has not complied in good faith with the terms or conditions of the agreement, the Director shall notify the Commission which may recommend to the Council that the agreement be terminated or modified.

The procedures for the termination or modification hearing shall comply with Section 19.66.030 (Public Hearings and Notice), above.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.080 Amendment or Cancellation of Development Agreement.

A development agreement may be amended or canceled, in whole or in part, by mutual consent of all parties to the agreement, or their successor-in-interest, in compliance with state law (Government Code Section 65868), or as set forth in the agreement. The requested amendment or cancellation shall be processed in the same manner specified by this chapter for the adoption of a development agreement.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.090 Effect of Development Agreement.

Unless otherwise provided by the development agreement, the rules, regulations, and official policies governing allowed uses of the land, density, design, improvement and construction standards and specifications, and Building Code provisions applicable to development of the property subject to a development agreement, are the rules, regulations, and official policies in force at the time of execution of the agreement.

Unless specifically provided for in the development agreement, the agreement does not prevent the city, in subsequent actions applicable to the property, from applying new rules, regulations, and policies which do not conflict with those rules, regulations, and policies applicable to the property under the development agreement. Further, a development agreement does not prevent the city from conditionally approving or denying any subsequent development project application on the basis of existing or new rules, regulations, and policies.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

19.66.100 Approved Development Agreements.

Development agreements approved by the Council shall be on file with the City Clerk.

(Ord. 01-594 § 2 (Exh. A (part)), 2001)

Indian Wells

16.40.010(b) Discretionary Use of Development Agreements. It is not mandatory that a development agreement be executed for every development. The discretion to submit a development agreement for consideration hereunder may be exercised by the applicant, the Planning Commission or City Council.

Lancaster

16.08.230 Tentative maps subject to adopted development agreements.

The expiration and extension of tentative maps which are subject to an adopted development agreement pursuant to Section 65864 et seq. of the California Government Code shall be processed in accordance with the following regulations:

A. Concurrent Applications. When a tentative map and a development agreement are being considered concurrently, the development agreement shall be written to require the first periodic review of the agreement to occur within twelve (12) months after adoption, with subsequent periodic reviews to coincide with the dates of action on the request for the extension of the tentative map provided that the subsequent periodic reviews occur within twelve (12) months after the most recent review of the agreement.

B. Tentative map that is approved prior to the adoption of the development agreement. When the development agreement is adopted subsequent to the approval of the tentative map, the development agreement shall be written to require that at the earliest opportunity the expiration of the tentative map shall coincide with the date of the annual review of the development agreement.

C. Tentative maps approved after the adoption of the development agreement. When the tentative map is to be approved after the adoption of the development agreement subsequent time extensions on the tentative map shall be adjusted such that future dates will coincide with the date of the annual review of the development agreement.

D. Extension Procedures. The following extension procedures shall apply to tentative maps subject to adopted development agreements:

1. The applicant shall submit a written request for extension of the map in accordance with Section 16.08.150.

2. The city council shall hold a noticed public hearing on the request for extension, pursuant to Section 16.08.160 concurrent with the annual review of the development agreement. The city council shall approve, approve with conditions, or deny the extension based on the evidence submitted and the findings contained in Section 16.08.170.

3. A tentative map on property covered by a development agreement may continue to receive extensions for the period of time provided for in the agreement, but not beyond the duration of the agreement.

(Ord. 661 § 1 (220.300), 1994)

Vallejo

17.10.020

A. The purpose of Chapters 17.10 to 17.22 inclusive, is to strengthen the public planning process, encourage private participation and comprehensive planning, and reduce the economic costs of development by providing an option to both the city and development by providing an option to both the city and developers to enter into development agreements. Such agreements shall only be used for projects such as large multiphase subdivision developments, low and moderate income housing developments, and developments involving public service and facilities installations which may require several years to complete.

B. To accomplish this purpose the procedures, requirements and other provisions of these chapters are determined to be necessary to promote orderly growth and development, the community's economic welfare, and to ensure provisions for adequate circulation, utilities and services.



Public Works &
Community Development Department
MEMORANDUM

Date: November 2, 2009

To: Planning Commission

From: Damon Golubics
Principal Planner

Cc: Charlie Knox
Public Works & Community Development Director

Re: Model Water Efficient Landscape Ordinance

The Water Conservation Act of 2006 (Assembly Bill 1881) requires cities and counties to adopt landscape water conservation ordinances by January 1, 2010. The State agency in charge of making sure this is implemented is the Department of Water Resources (DWR). Local jurisdictions have a choice to either adopt their own modified version of the DWR's landscape water conservation ordinance or a local agency (cities, counties, cities and counties, charter cities and charter counties) can administer the state-prepared Model Water Efficient Landscape Ordinance (MWELo) which will automatically apply within the jurisdiction of that local agency as of January 1, 2010.

Presented below are several subject areas that may be helpful in understanding each local agencies role in implementing the MWELo:

Water purveyors have an important role: The enabling statute was directed to local agencies that make land use decisions and approve land development. Active participation by water purveyors can make the implementation, enforcement and follow-up actions of an ordinance more effective.

Most new and rehabilitated landscapes are subject to a water efficient landscape ordinance. Public landscapes and private development projects including developer installed single family and multi-family residential landscapes with at least 2500 sq. ft. of landscape area are subject to the Model Ordinance.

Homeowner provided landscaping at single family and multi-family homes are subject to the Model Ordinance if the landscape area is at least 5000 sq. ft.

Existing landscapes are also subject to the Model Ordinance: Water waste is common in landscapes that are poorly designed or not well maintained. Water waste from runoff, overspray, low head drainage, leaks and excessive amounts of applied irrigation water in landscapes is prohibited by Section 2, Article X of the California Constitution.

Any landscape installed prior to January 1, 2010 that is at least one acre in size may be subject to irrigation audits, irrigation surveys or water use analysis programs for evaluating irrigation system performance and adherence to the Maximum Applied Water Allowance as defined in the 1992 Model Ordinance with an Evapotranspiration Adjustment Factor (ETAF) of 0.8. Local agencies and water purveyors (designated by the local agency) may institute these or other programs to increase efficiency in existing landscapes.

All new landscapes will be assigned a water budget: The water budget approach is a provision in the statute that ensures a landscape is allowed sufficient water. There are two water budgets in the Model Ordinance; the Maximum Applied Water Allowance (MAWA) and the Estimated Total Water Use (ETWU).

The MAWA, is the water budget used for compliance and is an annual water allowance based on landscape area, local evapotranspiration and ETAF of 0.7. The ETWU is an annual water use estimation for design purposes and is based on the water needs of the plants actually chosen for a given landscape. The ETWU may not exceed the MAWA.

Water efficient landscapes offer multiple benefits: Water efficient landscapes will stretch our limited water supplies. Other benefits include reduced irrigation runoff, reduced pollution of waterways, less property damage, less green waste, increased drought resistance and a smaller carbon footprint.

The Department of Water Resources will offer technical assistance: The Department plans to offer a series of workshops, publications and other assistance for successful adoption and implementation of the Model Ordinance or local water efficient landscape ordinances. Information regarding these resources may be found on the DWR website: <http://www.water.ca.gov/wateruseefficiency/landscapeordinance/> Questions on the Model Ordinance may be sent by e-mail to DWR staff at: mweo@water.ca.gov.

It is my sincere hope that this memorandum clearly outlines the new MWELO and its importance to the state. Should you need any additional clarification regarding this matter, please feel free to contact me at extension 4221, send me an e-mail (dgolubics@ci.benicia.ca.us) or drop by the Public Works & Community Development Department offices for assistance.

Attachment: Model Water Efficient Landscape Ordinance