

AGENDA
CITY OF RANCHO CORDOVA
CITY COUNCIL

Monday, February 7, 2005

5:30 p.m. – Regular Meeting

Council Chambers
3121 Gold Canal Drive, Rancho Cordova, California



Ken Cooley, Mayor
Robert J. McGarvey, Vice Mayor
Linda Budge, Council Member
David M. Sander, Council Member
Dan Skoglund, Council Member

MAKING YOUR POINT – MAKING IT COUNT

Government decision-making takes time—time for public input, time for analysis, and time for weighing both sides of the issue before making an informed decision.

People sometimes complain that the process takes too long, delay progress, costs extra money and is frustrating for discussion participants. Others say that the process doesn't give people enough time to comment and that decisions are made too quickly without enough consideration for all sides of the issue.

The foundation for democracy in America is our constitutional right to tell our elected leaders what we think about issues that affect us. This right is enjoyed by all citizens, regardless of education, background, or experience. Rancho Cordova leaders welcome you to public meetings and encourage you to participate in discussions that affect you.

The way you present your message at the podium can help or hurt your ability to persuade your audience. It can either facilitate or obstruct the public participation process. Whether you are an experienced public speaker or speaking at the podium for the first time, it may be helpful to remember these public meeting tips:

- Identify your main points. Writing them down will help you organize your thoughts and remember them when you're at the podium.
- Check your facts. Accuracy improves your credibility and helps you make a positive impression.
- Handouts summarizing your position may be distributed to policy makers and staff before or after your presentation. Busy leaders appreciate clear, concise information (one or two pages) that helps them identify your key points and remember your presentation.
- Don't be nervous. If you are, don't apologize for it. Public Officials see many citizens who are nervous when speaking in front of an audience. It may help to take a deep breath and exhale slowly just before you approach the podium.
- As you begin to speak, state your name and address clearly for the record. If you represent a group or organization, please state that information as well.



- Make your position known at the beginning, then present supporting information. You will sound organized, which helps people to understand your position.
- Keep your presentation short and simple. Attention spans are brief and people will remember a short presentation better than they will one that rambles and includes too much information.
- Don't repeat yourself. It uses valuable time and people tune out when they hear the same thing over and over. If a previous speaker has already made the point you planned to make, simply refer to that speaker and emphasize your support for that position.
- Be cautious about using humor which is very subjective. While some may laugh, others may be offended.
- Persuade, don't badger your audience. Compelling presentations can be very persuasive to both policy makers and public meeting audiences; however, insulting or degrading language can make you appear belligerent, reducing your credibility as well as the power of your message.
- Close your comments with an action statement such as, "Adopt this resolution" or "I urge you to vote 'no' on this ordinance."

Rancho Cordova City leaders appreciate your interest in issues that affect the community. We hope these tips will help you prepare and present your remarks so they will be clear, concise, accurate and credible. If you follow these guidelines, your audience is likely to listen, pay attention, and maybe even agree with you!

Rancho Cordova City government is not the City Council, City staff or Rancho Cordova citizens – it's all of us working together to understand each others' opinions so we can make the best decisions for our community.

THANK YOU FOR PARTICIPATING!



CITY COUNCIL AGENDA
City Council Chambers
3121 Gold Canal Drive, Rancho Cordova

Monday, February 7, 2005
5:30 P.M. – Regular City Council Meeting

Call to Order

Roll Call: Council Members: Budge, McGarvey, Sander, Skoglund & Mayor Cooley

Metro Cable TV Telecast Announcement

Pledge of Allegiance

Invocation

1. Reverend Ted Smith, Senior Pastor, First Covenant Church of Sacramento

Presentation

2. Proclamation for Spay Day

Consent Calendar

3. **Subject:** Minutes of City Council Meetings
 - a. Special Meeting of January 3, 2005
 - b. Special Meeting of January 18, 2005
 - c. Regular Meeting of January 18, 2005

Recommendation: Adopt Minutes.

4. **Subject:** Election Results of Mail Ballot Elections Regarding Special Taxes for Police Services for Police Tax Area Zone 24

Recommendation: Declare results.

5. **Subject:** Second Reading of Ordinance No. 01-2005 Establishing a Special Tax for Police Protection Services for the Anatolia II Lot 8 (Anatolia Commons) Project.

Recommendation: Waive second reading and adopt Ordinance No. 01-2005. **(Roll Call Vote)**

6. **Subject:** Supplemental Law Enforcement Services Fund FY 2005 Allocation
Recommendation: Receive and file report and set a public hearing on the appropriation of funds at the Council Meeting of February 22, 2005.
7. **Subject:** Quarterly Financial Report
Recommendation: Receive and file report.
8. **Subject:** Adoption of Resolutions to Memorialize the Employer Paid Member Contribution (EPMC) and Reporting the Value of Employer Paid Member Contributions to the California Employees Retirement System (CalPERS)
Recommendation: Adopt Resolution Nos. 20-2005 and 21-2005

Consent Public Hearings

9. **Subject:** Ordinance Amending Rancho Cordova Municipal Code Chapter 4.54, Article 7, "Fireworks," Relating to the Permitting and Sale of Fireworks in the City
Recommendation: Waive first reading and introduce Ordinance No. 04-2005. **(Roll Call Vote)**

Oral Communications

10. Public Comment

Citizens wishing to address the Council for any matter not on the agenda may do so at this time. If you wish to be heard on a listed agenda item other than a Consent Calendar item, please wait until that point on the agenda. Comments on Consent Calendar items will be heard prior to action on the Consent Calendar by providing a Speaker Card to the City Clerk before the Consent Calendar is discussed. **Please keep your comments to three minutes or less and provide a Speaker Cards to the City Clerk.** Please state your name and community of residence.

Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any unagendized item unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

Public Hearings

11. **Subject:** Ellenwood Estates – RC-04-125 – Design Review. Project was continued from the December 6, 2004 Council meeting to allow a sub-committee to meet with the applicant for project review.
Recommendation: Review and discuss comments from sub-committee and make one of the following determinations: a. Remand the project back to the Planning Commission for further consideration subject to the Council listed concerns; b. Review the submitted project and deny the proposed project; or c. Affirm the Planning Commission's approval. **(Continued from December 6, 2004 & January 18, 2005).**
12. **Subject:** Zinfandel Square Shopping Center – RC-04-133 – Design Review. Remodel/Facelift of existing shopping center with some modification and enhancement to the existing landscape.
Recommendation: Adopt Resolution No. 19-2005 approving the design review for the remodel of 11009, 10947, and 10981 Olson Drive.

13. **Subject:** Tobacco Licensing Ordinance and AB 71.
Recommendation: Waive first reading and introduce Ordinance No. 03-2005. **(Roll Call Vote)**

***7:00 pm Break**

Regular Calendar Items

14. **Subject:** Property Maintenance Ordinance Presentation
Recommendation: Provide direction to staff on the nature and scope of a Property Maintenance Ordinance **(continued from December 20, 2004 & January 18, 2005).**
15. **Subject:** Consider Appointment of a Director and an Alternate to the Sacramento Metropolitan Air Quality Management District Board.
Recommendation: Adopt Resolution No. 15-2005 **(continued from January 18, 2005).**
16. **Subject:** Resolution for Formation of Rancho Cordova Financing Corporation
Recommendation: Adopt Resolution No. 22-2005
17. **Subject:** Resolution for the Issuance of Bonds
Recommendation: Adopt Resolution No. 23-2005
18. **Subject:** Fiscal Year 2006 City of Rancho Cordova Legislative Program
Recommendation: Review Projects for the FY 2006 Appropriations Cycle and Set Legislative Priorities
19. **Subject:** Authorize City Manager to Execute Contract with Hansen for Integrated Software Package.
Recommendation: Consider and direct staff accordingly.

Correspondence

Council Reports

Council Requests for Future Agenda Items

City Manager's Report

Adjournment

Upcoming Meeting Dates:

Wednesday, February 16, 2005 – Special Study Session – 2005-07 Strategic Planning Outcomes

****Tuesday, February 22, 2005 – Regular Meeting (**Tuesday due to Presidents' Day Holiday)**

Tuesday, March 1, 2005 – Special Study Session with Planning Commission Regarding Design Guidelines

Monday, March 7, 2005 – Regular Meeting

Wednesday, March 16, 2005 – Special Study Session – Housing

Monday, March 21, 2005 – Regular Meeting

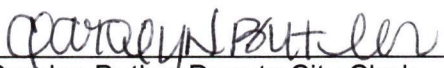
Tonight's meeting of the Rancho Cordova City Council is being telecast on Metro Cable TV, Channel 14, the Government Affairs Channel on the Comcast, SureWest and Strategic Technologies Cable Systems, and will be shown in its entirety. Tune to Metro Cable Channel 14, for playback times. It will be webcast at www.sacmetroable.tv. The city does not control scheduling of this telecast and persons interested in watching the televised meeting should confirm this schedule with Metro Cable TV, Channel 14.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 942-0255 or lhare@cityofranhocordova.org at least 48 hours prior to the meeting.

City Clerk's Certificate of Posting of Agenda

I, Carolyn Butler, Deputy City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the February 7, 2005 Regular Meeting of the Rancho Cordova City Council was posted on February 3, 2005 at the office of the City of Rancho Cordova, 3121 Gold Canal Drive, Rancho Cordova, California, 95670 and was available for public review at that location. The agenda is also available on the city web site at www.cityofranhocordova.org.

Signed this 3rd day of February 2005 at Rancho Cordova, California.


Carolyn Butler, Deputy City Clerk

**City of Rancho Cordova
Special Meeting of the City Council
Monday, January 3, 2005**

MINUTES

CALL TO ORDER – MOMENT OF SILENCE

The meeting was called to order at 5:35 p.m. by Mayor Cooley who requested a moment of silence be observed in honor of Congressman Robert Matsui.

ROLL CALL

Present: Council Members: Budge, McGarvey, Sander, Skoglund, and Mayor Cooley.

Staff Present: Gaebler, Lindgren, Olea-Moger, Butler, Junker, Johns, Abhar, Howard.

ORAL COMMUNICATIONS

1. Public Comment

Dennis Dunn addressed the Council to advise he is pleased they are working on agreements for development and including transportation and air quality issues in their consideration. He stressed the city needs to be involved in transportation and roads when new schools are being planned.

STUDY SESSION

2. **Subject:** Adoption of General Plan Draft Land Use Map as part of the Vision Book/Interim General Plan, Direction to staff to proceed with preparation of a Final Land Use Map and with the creation of a Draft General Plan which implements the Draft Land Use Map and with preparation of a Draft Environmental Impact Report based on the Draft Land Use Map
Recommendation: Consider staff's presentation and comments from the public and provide direction.

The following individual(s) addressed the Council on this item:

- Ron Alvarado regarding his property in Easton Planning Area and interest for involvement when that area is under plan development stage in next 5-10 years.
- Marilyn Carney regarding her preference for more industrial or urban uses over agricultural uses.

OUTCOME: Staff noted Council and public comments for the next iteration of the General Plan Draft Land Use Map scheduled for review by Council at their meeting on January 18, 2005.

3. **Subject:** 2005-2007 Strategic Planning Outcomes Workshop
Recommendation: Discuss 2005-07 Strategic Plan Mission, Values, Goals and Priorities.

ACTION: By consensus, this item was continued to a future meeting.

ADJOURNMENT

The meeting adjourned at 10:10 p.m. in memorial to Congressman Robert Matsui.

Respectfully submitted,

Anna Olea-Moger, Assistant City Clerk

**City of Rancho Cordova
Special Meeting of the City Council
Tuesday, January 18, 2005**

MINUTES

CALL TO ORDER

The meeting was called to order at 4:42 p.m. by Mayor Cooley.

ROLL CALL

Present: Council Members: Budge, McGarvey, Sander, Skoglund, and Mayor Cooley

Staff Present: Gaebler, Meyers, Hare, Carney, Thomas

ORAL COMMUNICATIONS

1. Public Comment

None

ADJOURNMENT TO CLOSED SESSION

The Council adjourned to Closed Session for a discussion of the item listed below:

2. Conference with Real Property Negotiators (pursuant to G.C. Section 54956.8):

Property: APN's: 072-0610-039, 072-0610-053

Agency Negotiators: Ted Gaebler, Bill Thomas

Negotiating Parties: Hawaii Sheet Metal Workers Pension Fund

Under Negotiation: Price and Terms of Payment

Present in Closed Session were all Council Members, City Manager Ted Gaebler, City Attorney Steve Meyers, and Finance Director Bill Thomas.

OPEN SESSION

The Council reconvened into Open Session at 5:10 p.m.

REPORTS FROM CLOSED SESSION

No reportable action.

ADJOURNMENT

The meeting was adjourned at 5:11 p.m.

Respectfully submitted,

Lillian E. Hare, City Clerk

**City of Rancho Cordova
Regular City Council Meeting**

Tuesday, January 18, 2005

MINUTES

CALL TO ORDER

The meeting was called to order by Mayor Cooley at 5:30 p.m.

ROLL CALL

Present: Council Members Budge, McGarvey, Sander, Skoglund & Mayor Cooley
Staff Present: Gaebler, Meyers, Hare, Olea-Moger, Thomas, Haven, Trimberger, Franklin,
Junker, Abhar, Howard, Lopez, Garcia, Dehaan

PLEDGE OF ALLEGIANCE

The Pledge was led by Councilmember Dan Skoglund.

INVOCATION

1. Reverend Becky Goodwin, United Methodist Church of Rancho Cordova, gave the invocation.

PRESENTATIONS

2. 2004 Comprehensive Annual Financial Report
Finance Director Bill Thomas gave an overhead presentation on the 2004 Comprehensive Annual Financial Report for the city.
3. New Employee Introductions
Human Resource Director Lillian Hare introduced Administrative Secretary Maria Lopez and Sr. Management Analyst Beverly Howard. City Manager Ted Gaebler introduced Chief Building Official Tom Trimberger.

CONSENT CALENDAR

ACTION: Motion by Budge, second by Sander and unanimously carried by roll call vote, Council adopted the Consent Calendar with the exception of Item #7, which was pulled for individual consideration, and with modification to Item #10 to read, "...for Police Tax Area Zones 16 through 23" (not 16 through 24).

4. **Subject:** Minutes of City Council Meetings
 - a. Special Meeting of December 1, 2003
 - b. Special Meeting of January 15, 2004
 - c. Special Meeting of February 2, 2004
 - d. Regular Meeting of February 2, 2004
 - e. Regular Meeting of February 17, 2004
 - f. Special Meeting of February 25, 2004

- g. Regular Meeting of March 1, 2004
- h. Regular Meeting of March 15, 2004
- i. Special Meeting of March 24, 2004
- j. Special Meeting of April 1, 2004
- k. Special Meeting of April 13, 2004
- l. Special Meeting of June 7, 2004
- m. Special Meeting of June 21, 2004
- n. Special Meeting of July 15, 2004
- o. Special Meeting of July 21, 2004
- p. Special Meeting of August 11, 2004
- q. Regular Meeting of December 20, 2004.

Recommendation: Adopt Minutes.

5. **Subject:** Resolution Authorizing City Manager to Execute MOU with the Folsom South Canal Partners for Participation in the Folsom South Canal Development Plan.

Recommendation: Adopt Resolution No. 09-2005.

6. **Subject:** Resolution Authorizing City Manager to Secure Traffic Engineering Services.

Recommendation: Adopt Resolution No. 10-2005.

8. **Subject:** Resolution Changing Signatories on City's Checking Account and Money Market Account with US Bank.

Recommendation: Adopt Resolution No. 01-2005.

9. **Subject:** Resolution Creating Special Tax Area Zone 25 and Ordinance Establishing a Special Tax for Police Protection Services for the Anatolia II Lot 8 (Anatolia Commons) Project.

Recommendation: Adopt Resolution No. 11-2005, waive the first reading and introduce Ordinance No. 01-2005. **(Roll Call Vote)**

10. **Subject:** Resolution Declaring the Results of Mail Ballot Elections Regarding Special Taxes for Police Services for Police Tax Area Zones 16 through 24

Recommendation: Adopt Resolution No. 12-2005.

11. **Subject:** Resolution Adopting Records Retention Schedule

Recommendation: Adopt Resolution 02-2005.

The following item was pulled from the Consent Calendar for individual consideration:

7. **Subject:** Resolution Updating Local Goals and Policies Concerning the Use of Mello-Roos Community Facilities Act of 1982

Recommendation: Adopt Resolution No. 17-2005.

Tim Taron addressed the Council to question use of the Mello Roos fee as presented in the staff report and recommended delaying action at this time. City Attorney Steve Meyers advised that in talking with Mr. Taron, he thought appropriate language could be incorporated to address Mr. Taron's concerns.

ACTION: Motion by Budge second by Sander and unanimously carried, Council continued this item to February 7th meeting.

CONSENT PUBLIC HEARINGS

None

ORAL COMMUNICATIONS

12. Public Comment

Mani Holcomb addressed the Council to share her concerns regarding youth wandering the streets late at night and the benefits of a youth center, the homeless problem in Rancho Cordova as well as her encouragement to Council Members not forget the Rancho Cordova “old timers” when new development is being planned and approved.

PUBLIC HEARINGS

13. **Subject:** Ellenwood Estates – RC-04-125 – Design Review. Project was continued from the December 6, 2004 Council meeting to allow a sub-committee to meet with the applicant for project review.

Recommendation: Review and discuss comments from sub-committee and make one of the following determinations: a. Remand the project back to the Planning Commission for further consideration subject to the Council listed concerns; b. Review the submitted project and deny the proposed project; or c. Affirm the Planning Commission’s approval.

ACTION: By consensus, this item was continued to February 7, 2005 as requested by the applicant.

By consensus, Council agreed to take Items #14-17 together.

14. **Subject:** 3791 Recycle Road – RC-04-127 – Conditional Use Permit - Applicant is requesting a Conditional Use Permit to allow the Auto Dismantling Use in the South Sunrise Special Planning Area.

Recommendation: Adopt Resolution No. 05-2005 approving Conditional Use Permit for the auto recycling use at 3791 Recycle Road.

15. **Subject:** 3781 Recycle Road – RC-04-128 – Conditional Use Permit - Applicant is requesting a Conditional Use Permit to allow the Auto Dismantling Use in the South Sunrise Special Planning Area.

Recommendation: Adopt Resolution No. 06-2005 approving the Conditional Use Permit for the auto recycling use at 3781 Recycle Road.

16. **Subject:** 3806 Recycle Road – RC-04-129 – Conditional Use Permit - Applicant is requesting a Conditional Use Permit to allow the Auto Dismantling Use in the South Sunrise Special Planning Area.

Recommendation: Adopt Resolution No. 07-2005 approving the Conditional Use Permit for the auto recycling use at 3806 Recycle Road.

17. **Subject:** 3811 Recycle Road – RC-04-130 – Conditional Use Permit - Applicant is requesting a Conditional Use Permit to allow the Auto Dismantling Use in the South Sunrise Special Planning Area.

Recommendation: Adopt Resolution No. 08-2005 approving Conditional Use Permit for the auto recycling use at 3811 Recycle Road.

Mayor Cooley opened the public hearing. Mr. Bill Moore, representing the developer on Items #14-17, addressed the Council to answer any questions and state that he agreed to all conditions of approval. Mayor Cooley closed the public hearing.

ACTION: Motion by Budge, second by McGarvey and unanimously carried, Council determined the projects exempt under Section 15332 of the CEQA Guidelines and adopted Resolution Nos. 05-2005, 06-2005, 07-2005, and 08-2005 approving the Conditional Use Permits for auto recycling uses at 3791, 3781, 3806, 3811 Recycle Road.

18. **Subject:** Kimberly's Residential Home Care – RC-04-092 – Conditional Use Permit: Applicant requests a Conditional Use Permit to increase the capacity of licensed beds in an adult care facility from six to twelve beds. A Variance is required to reduce the number of parking spaces from 6 to 4. Applicant appealed the Planning Commission's denial. The City Council shall review the entire proceeding held before the Planning Commission, de novo, and may make any order it deems just and equitable including the grant of any permit (Title I, Chapter 15, Article 3, Section 115-38)

Recommendation: Adopt Resolution No. 03-2005 approving the Conditional Use Permit and Variance for Project.

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

Heather Lane, Sacramento County Mental Health Department, to advise that her agency contracts with Mr. Tampus and to encourage Council support of his request.

Mike Tampus, Kimberly's Residential Home Care's owner, to answer any questions and offer his reasons for increasing the capacity from six to twelve beds.

Mariel Donohue, parent of an adult child housed in such a facility, to give testimony on the benefits of such services to her daughter's quality of life and independent living ability.

Police Chief Tom McMahon to advise that the Rancho Cordova Police Department was no longer concerned about the number of calls received from Kimberly's Residential Home Care (12 calls in 6 months) given the nature of calls (non-safety issues) with regard to medical challenges of residents.

Mayor Cooley closed the public hearing.

ACTION: Motion by McGarvey, second by Skoglund and passed by 3-2 roll call vote (Sander and Budge dissenting), Council found the Negative Declaration adequate according to CEQA Guidelines and adopted Resolution 03-2005 approving the Conditional Use Permit and Variance for the project.

At this point, Council adjourned for a brief recess. The full Council reconvened.

19. **Subject:** Trinity Garden Estates – RC-04-092 – Design Review - Applicant is requesting Design Review for a 21 unit, one and two-story residential development with enclosed garages and landscaped central court yards.

Recommendation: Adopt Resolution No. 04-2005 approving the Design Review subject to the Findings and Conditions of Approval.

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

Dr. Joseph Martel, applicant, to give an overview and explain his intent of the project as well as to clarify entrances/exits for the planned development.

Mr. Bob Marin, representing the homeowners' association, to express support for this project but concern about traffic safety due to street width.

Mr. Mark Raus, homeowner, to express concern about traffic safety and suggested consideration be given to installing crosswalks and/or stop signs to increase pedestrian safety.

Mayor Cooley closed the public hearing.

ACTION: Motion by Budge, second by Sander and unanimously carried, Council determined the project is exempt under Section 15332 of the CEQA Guidelines and adopted Resolution 04-2005 approving Design Review subject to the Findings and Conditions of Approval contained in the staff report and the addition of the following conditions:

- Fire exit gate may be eliminated if Fire Department determines an alternative access is acceptable
- Roof materials - shall be concrete tile or similar material
- Lighting – applicant to work with staff on decorative lighting
- Traffic – applicant to work with Public Works/Planning staff to provide enhanced pedestrian circulation

20. **Subject:** Pedestrian Master Plan and Americans with Disabilities (ADA) Transition Plan
Recommendation: Begin 45-day public comment period.

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

Judy Waegell to express interest in being part of the focus group process for these plans.

Mayor Cooley closed the public hearing.

ACTION: Motion by Budge, second by McGarvey and unanimously carried, Council acted to receive the staff report and begin the 45-day public comment period.

21. **Subject:** Ordinance Amending Rancho Cordova Municipal Code Chapter 4.54, Article 7, "Fireworks," Relating to the Permitting and Sale of Fireworks in the City
Recommendation: Waive first reading and introduce Ordinance No. 02-2005. **(Roll Call Vote)**

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

David Shephard, Vice President of the Orangevale Rotary and Chairman of its Fireworks Committee, to state the proposed ordinance would not allow local service clubs to operate booths, that the city would be restricting how sale proceeds could be used by the Rancho Cordova only restriction and that a 501(3)(c) designation is eliminating nonprofits.

Rod Borba, President of Rancho Cordova Girls Softball, to state his opposition to the \$200 fee but his acknowledgement of how it would ultimately benefit his organization if fee were approved.

Les Passuello, Director of Finance for VSP and an Orangevale Rotary Club member, to point out that if ordinance is adopted as proposed it would restrict people who work in Rancho Cordova and spend their dollars here but are not Rancho Cordova residents.

Russell Reams, President-Elect of the Orangevale Rotary Club, to advise that the club has a lot at stake if they must move their booth to another location and are not allowed to support organizations not in the city of Rancho Cordova. He requested a one-year extension to 2006 and consideration of eliminating the 50% membership residency requirement.

Helen Stanley, MCC Sacramento Church, to state her opposition to the \$200 fee.

Reverend Freda Smith to seek opinion on whether or not her chapel was located within the city's boundaries. Council Member Budge affirmed the location of the chapel as being within the city.

Dennis Revell, lobbyist, to endorse the proposed ordinance and propose the following changes:

- Issue of minimum of 20 members versus 50% of membership living in city – do one or the other but not both.
- \$200 fee is too high
- Safety and education issues – rewrite from “may” include to “shall” include
- Penalty section – consider infraction (citation) versus breaking the law (arrest)

Pat Stokes, El Camino Chapter of Eastern Star member, to express desire to remain at their Dawes/Folsom Blvd. location even though they meet none of the criteria of the proposed ordinance and to encourage Council to think broadly and allow more than Rancho Cordova-only beneficiaries.

Dave Shira, Rancho Cordova community volunteer to oppose the proposed ordinance for the following reasons:

- \$200 fee is too high
- Reporting requirement is too cumbersome
- Clause restricting booth workers to organization members and that only members can benefit from booth as too stringent.

David Cole, United Methodist Church member, to express following concerns:

- Fee increase is too much
- Reporting requirements too much
- Provisions of where money is spent in general is too limiting/restrictive

Lee Frechette, Rancho Cordova Community Council Board Member, in support of the proposed ordinance and concept that Rancho Cordova charities receive “first” designation of dollars.

Dave Harris, District Governor Elect of District 180 Rotary, to express opposition to “flavor” of Rancho Cordova-only policy tones as not allowing or encouraging partnerships with other organizations beyond Rancho Cordova’s boundaries.

Pedro John Hernandez, President of Optimist Club, to express concern that:

- Fee increase is too high
- Requirement for Rancho Cordova-only beneficiaries is too restrictive and will not foster partnerships

Tom Steinbach, United Methodist Church of Rancho Cordova and Fireworks Committee member, to advise the proposed \$200 fee is too high.

Mayor Cooley closed the public hearing.

ACTION: Motion by Skoglund, second by Budge and carried by 4-1 vote (McGarvey dissenting), Council directed staff to rewrite the proposed ordinance to include the following general modifications and return, for first reading, a revised ordinance:

- Fee of \$40
- Organization must have a bonafide address and regular meeting location within the city’s planning area and a minimum of 20 members residing in Rancho Cordova
- Grandfather clause to allow existing fireworks sellers not meeting the bonafide address within the city’s planning area a one-year extension
- Scope of education programs to be directed at policy level
- Rewrite penalty language (citation vs. arrest)
- Rewrite language so it does not restrict volunteers from working/being in the fireworks sale booth

At this point, Council took a brief recess. The full Council reconvened and reordered the agenda to consider Item #23 next.

23. **Subject:** Revised Park and Open Space Standards - Presentation of proposed Cordova Recreation and Park District park standards and review of City proposed open space standards.

Recommendation: Direct staff to continue working with the Cordova Recreation and Park District, the development community, the City Attorney’s Office, and other stakeholders on proposed park and open space standards. Provide direction on appropriate standards and implementation strategies.

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

Bron Leatham, representing six of the eleven villages, to ask what is nexus of 7-acres of parkland set-aside per 1,000 people and 10% set-aside target for recreational open space.

Judy Waegell to ask what standards are applied in other communities and what kind of restrictions apply.

Rex Albright, CEO of Rancho Cordova Chamber, requesting more time to review all aspects of the plan and its financing.

Ardie Zahedani, BIA representative, to point out that proposal before Council is significantly different than what was presented at December 20th meeting, to ask if it is quality or quantity that is being sought, to suggest that the LOS (level of service) must be closely analyzed, and to request more time for adequate review and response.

David Hatch, GenCorp Real Estate, to comment that a policy by the Park District Board or City Council should not be set without thorough review of fee details and maintenance costs.

Jay Pawlek, Pulte Homes, distributed a comparison of current fees and proposed fees, advised that any change to standards for projects in the pipeline would be very difficult, and inquired on justification for choosing public parkland of 7 acres per 1,000 persons and 10% target for recreational open space of each residential project.

Thad Johnson, landowner for current project in the pipeline, to comment that more projects are in the pipeline than what was viewed on overhead--projects well beyond the planning stages.

Rod Borba, President of Rancho Cordova Girls Softball, to advise he participated in the Parks District Master Plan meetings and is in full support of the proposed guidelines. He suggested that Rancho Cordova "stop making do" with existing facilities and move forward with providing adequate lighted facilities.

Mayor Cooley closed the public hearing.

ACTION: Motion by Sander, second by Budge and unanimously carried, Council continued this item to the February 22nd meeting and directed staff to work with all the stakeholders for consensus on proposed alternatives before the item returns to Council.

At this point, motion by Sander, second by Budge and unanimously carried, Council voted to continue the conduct of business beyond 11 p.m.

22. **Subject:** Adoption of General Plan Draft Land Use Map as part of the Vision Book/Interim General Plan, and direction to staff to proceed with preparation of a Final Land Use Map and with the creation of a Draft General Plan which implements the Draft Land Use Map and with preparation of a Draft Environmental Impact Report based on the Draft Land Use Map.

Recommendation: Adopt Resolution No. 13-2005 that City Council consider staff's presentation and comments from the public and provide direction (**continued from January 3, 2005**).

Mayor Cooley opened the public hearing. The following individual(s) addressed the Council on this item:

Judy Waegell to point out that one town center and one village center are to be included in the Sunrise Blvd. Planning Areas.

Mayor Cooley closed the public hearing.

ACTION: Motion by Budge second by McGarvey and unanimously carried, Council adopted the Draft Land Use Plan/Map for the purpose of moving forward with environmental review. Resolution No. 13-2005 was not adopted.

REGULAR CALENDAR ITEMS

24. **Subject:** Property Maintenance Ordinance Presentation

Recommendation: Provide direction to staff on the nature and scope of a Property Maintenance Ordinance (**continued from December 20, 2004**).

ACTION: Due to time constraints, by consensus, this item was continued to February 7th meeting.

25. **Subject:** A Resolution Designating the Current Rancho Cordova Planning Area Boundaries as the Boundaries for the Redevelopment Survey Area.

Recommendation: Adopt Resolution No. 16-2005.

ACTION: Motion by Budge second by Skoglund and unanimously carried, Council adopted Resolution No. 16-2005.

26. **Subject:** Consider Appointment of a Director and an Alternate to the Sacramento Metropolitan Air Quality Management District Board.

Recommendation: Adopt Resolution No. 15-2005.

ACTION: By consensus, Council continued this item to February 7th meeting.

27. **Subject:** Consider Appointment of a Director and an Alternate to the Sacramento Placerville Transportation Corridor Joint Powers Authority.

Recommendation: By Minute action, appoint a Director and an Alternate.

ACTION: By consensus, Council Member Budge will serve on this JPA and an alternate will be determined at later date.

28. **Subject:** Council Member Appointments

Recommendation: That Council Member appointments for 2005 be made/confirmed for the listed boards, commissions and 2x2 meetings (**continued from December 20, 2004**).

ACTION: By consensus, the Council confirmed the appointments to regional jurisdictions, as presented in the staff report. The 2x2 meetings with other agencies to be constituted as follows:

2x2 Meetings	Attendees
Folsom Cordova Unified School District	Mayor, Councilmember Sander, and City Manager
Sacramento County	Mayor, Vice Mayor and City Manager
Sacramento Metro Fire	Vice Mayor, Councilmember Budge, and City Manager
Elk Grove Unified School District	Mayor, Councilmember Sander, and City Manager

The Cordova Recreation and Park District 2x2 – Councilmember Linda Budge volunteered to serve with the Mayor and City Manager

CORRESPONDENCE

None

COUNCIL REPORTS

None

COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

None

CITY MANAGER'S REPORT

None

ADJOURNMENT

The meeting adjourned at 1:30 a.m.

Respectfully submitted,

Anna Olea-Moger, Assistant City Clerk

Staff Report

Date: February 7, 2005

To: Honorable City Council

From: Adam U. Lindgren, Assistant City Attorney



Subject: Declaring the Results of Mail Ballot Election Regarding Special Taxes for Police Services for Special Police Tax Area Zone 24 (Kennedy/Mills Station Road); RC 04-113

RECOMMENDATIONS

Staff recommends announcing the results of the police tax election concerning Special Tax Area Zone 24 (Kennedy/Mills Station Road).

DISCUSSION

On July 1, 2003, the City Council approved Resolution 30-2003, which created the Rancho Cordova Special Police Tax Area and announced the City's intention to impose a police services tax on new development within the City. Pursuant to that resolution, a property owner must approve a special tax on the parcel(s) within a subdivision as a condition of approval by the City. The City Council must then adopt a resolution establishing a zone encompassing the subdivision, and an ordinance creating the special tax. Finally, in order to go into effect, the ordinance must be approved by two-thirds of the affected property owners voting in a mail-ballot election to be held by the City.

Pending Elections

In accordance with this above-described process, the City recently adopted Resolution 178-2004 on November 15, 2004, which created Tax Zone 24, and Ordinance 65-2004, on December 6, 2004, which established a special tax for police services subject to landowner-voter confirmation. A ballot was mailed out to property owner Chris Kennedy following approval of the ordinance.

The ballot has been tabulated and the Council should now announce the result of the elections. If the tax in Zone 24 was approved by at least two-thirds of the property owners voting, this tax will go into effect effective July 1, 2005.

"Special Tax Area Zone 24: 1 "yes" vote; ___ "no" vote

CITY OF RANCHO CORDOVA

ORDINANCE NO. 01-2005

**AN ORDINANCE OF THE CITY OF RANCHO CORDOVA
ESTABLISHING A SPECIAL TAX FOR POLICE PROTECTION
SUBJECT TO VOTER CONFIRMATION
FOR THE ANATOLIA II LOT 8 ("ANATOLIA COMMONS") SUBDIVISION**

THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

Section 1. Purpose, Intent and Authority.

It is of critical importance to the City Council of the City of Rancho Cordova that residents of the City be provided with high quality police services. In carefully reviewing the City's preincorporation Comprehensive Fiscal Analysis (CFA) with the Sheriff's Department, it has become clear to City staff that the City budget does not contain adequate funding to assure the continued delivery of adequate high quality law enforcement services unless additional revenues are obtained.

It is the purpose and intent of this Ordinance to generate additional funds to pay for police services by authorizing the levy of a tax on improved parcels of real property on the secured property tax roll of Sacramento County that are within Zone 25 of the Rancho Cordova Special Police Tax Area.

This tax is a special tax within the meaning of Section 4 of the Article XIII A of the California Constitution. Because the burden of this tax falls upon property, this tax also is a property tax, but this tax is not determined according to nor in any manner based upon the value of property; this tax is levied on a parcel and use of property basis. Insofar as not inconsistent with this Ordinance or with legislation authorizing special taxes and insofar as applicable to a property tax that is not based on value, such provisions of the California Revenue and Taxation Code and of Article XIII of the California Constitution as relate to ad valorem property taxes are intended to apply to the collection and administration of this tax (Section 4 of this Ordinance), as authorized by law.

The revenues raised by this tax are to be used solely for the purposes of obtaining, furnishing, operating, and maintaining police protection equipment or apparatus, for paying the salaries and benefits of police protection personnel, and for such other police protection service expenses as are deemed necessary for the benefit of the residents of Zone 25.

This Ordinance is enacted pursuant to the authority of Government Code Section 53978.

Section 2. Definitions.

The following definitions shall apply throughout this Ordinance.

A. "Constant first year dollars" shall mean an actual dollar amount which, in years subsequent to

the first fiscal year the tax is levied, shall have the same purchasing price as the base amount in first fiscal year dollars as measured by the Consumer Price Index. The base amount shall be the amount of tax per parcel as specified in Section 3.A herein. The adjustments from actual to constant dollars shall be made by use of the Consumer Price Index, as specified in Section 3.B herein.

B. "Consumer Price Index" means the Consumer Price Index for all Urban Consumers (CPI-U) for the San Francisco-Oakland-San Jose Area as published by the U.S. Department of Labor, Bureau of Labor Statistics. If the Consumer Price Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Consumer Price Index had not been discontinued or revised.

C. "Fiscal year" means the period of July 1 through the following June 30.

D. "Rancho Cordova Special Police Tax Area" means all the properties within the jurisdictional limits of the City of Rancho Cordova.

E. "Rancho Cordova Special Police Tax Area Zone 25" ("Zone 25") means that portion of the incorporated area of the City of Rancho Cordova located within the boundaries described in Exhibit A hereto and as shown on the map Exhibit B hereto.

F. "Parcel" means the land and any improvements thereon, designated by an assessor's parcel map and parcel number and carried on the secured property tax roll of Sacramento County. For the purposes of this Ordinance, parcel does not include any land or improvements outside of the boundaries of Zone 25 nor any land or improvements owned by any governmental entity.

G. Pursuant to Government Code §53978, "voter" means a person owning real property within Zone 25 at the time this Ordinance was adopted, as shown on the last equalized assessment roll prepared by the Sacramento County Assessor's Office.

Section 3. Amount and Level of Taxes.

The tax per year on each parcel in Zone 25 shall not exceed the amount applicable to the parcel, as specified below.

A. For First Fiscal Year:

The tax shall be assessed on a residential parcel within Zone 25 in the first fiscal year after a residential building permit has been issued for the parcel. The tax per year for the first fiscal year shall be the amount of Tax per Parcel for the Land Use Code Category as set forth on Exhibit C hereto. The use code assigned to each parcel shall be reviewed and updated periodically.

B. For Subsequent Fiscal Year:

In order to keep the tax on each parcel in constant first year dollars for each fiscal year subsequent to the first fiscal year, the tax per year shall be adjusted as set forth below to reflect any

increase in the Consumer Price Index beyond the first fiscal year the tax is levied.

In June or July of each year, City Council shall determine the amount of taxes to be levied upon the parcels in Zone 25 for the then current fiscal year, as set forth below.

For each Land Use Code Category on Exhibit C, the tax per year on each parcel for each fiscal year subsequent to the first fiscal year shall be an amount determined as follows:

$$\begin{array}{rclcl} \text{Tax per Parcel} & & \text{Tax per Parcel} & & \text{Consumer Price Index} \\ \text{for then Current} & = & \text{for First} & \times & \text{for the Period from April of} \\ \text{Fiscal Year} & & \text{Fiscal Year} & & \text{Immediately Preceding Fiscal} \\ & & & & \text{Year to April of then Current} \\ & & & & \text{Fiscal Year} \end{array}$$

Provided, however, that in no event shall the tax per parcel for any fiscal year be less than the amount established for the first fiscal year.

The taxes levied on each parcel pursuant to this Article shall be a charge upon the parcel and shall be due and collectible as set forth in Section 4, below.

Section 4. Collection and Administration.

A. Taxes as Liens Against the Property.

The amount of taxes for each parcel each year shall constitute a lien on such property, in accordance with Revenue and Taxation Code Section 2187, and shall have the same effect as an ad valorem real property tax lien until fully paid.

B. Collection.

The taxes on each parcel shall be billed on the secured roll tax bills for ad valorem property taxes and are to be collected in the same manner in which Sacramento County collects secured roll ad valorem property taxes. Insofar as feasible and insofar as not inconsistent with this Ordinance, the times and procedure regarding exceptions, due dates, installment payments, corrections, cancellations, refunds, late payments, penalties, liens, and collections for secured roll ad valorem property taxes shall be applicable to the collection of this tax. Notwithstanding anything to the contrary in the foregoing, as to this tax:

- i) The secured roll tax bills shall be the only notices required for this tax, and
- ii) The homeowners and veterans exemptions shall not be applicable because such exemptions are determined by dollar amount of value.

C. Costs of Administration by County.

The reasonable costs incurred by the County officers collecting and administering this tax shall be

deducted from the collected taxes.

Section 5. Severability Clause.

If any article, section, subsection, sentence, phrase or clause of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The voters of Zone 25 hereby declare that they would have adopted the remainder of this Ordinance, including each article, section, subsection, sentenced phrase or clause, irrespective of the invalidity of any other article, section, subsection, sentence, phrase or clause.

Section 6. Effective Date and Posting.

This Ordinance shall take effect immediately upon its confirmation by two-thirds of the voters voting within Zone 25 in an election to be held on March, 21 2005, so that taxes shall first be collected hereunder for the tax year beginning July 1, 2005.

ADOPTED, THIS 7th day of February, 2005 by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

Ken Cooley, Mayor

Lillian E. Hare, City Clerk

Exhibit A

Description of Property

Exhibit B

Map of Property

Exhibit C

Amount of Tax per Parcel by Land Use Category

A. Residential Dwelling Units

The amount of Tax per Parcel for all residential dwelling Land Use Code Categories shall be \$250 for each residential dwelling unit. (Multi-family residential units on a single parcel shall be assessed on a proportionately equivalent basis (e.g., a two-unit attached housing structure, such as a duplex, would be deemed to consist of two residential parcels for purposes of the police tax)).

B. Non-Residential

The amount of Tax per Parcel for all Non-Residential Land Use Per Categories (except Recreational and Agricultural) shall be \$.015 for each square foot of gross parcel area.

Memorandum

Date: February 1, 2005

To: Mayor and Council Members

From: William J. Thomas, Finance Director



Subject: SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND FY 2005 ALLOCATION

RECOMMENDATION

Accept the report from the Police Department and set a public hearing on the appropriation of these funds at the February 22, 2005 Council meeting.

BACKGROUND AND DISCUSSION

The State of California budget for FY 2005 includes significant appropriations for the State Supplemental Services Fund for distribution to cities and counties to support jails, criminal prosecution and front-line law enforcement operations and services. These funds are limited as follows:

- In the cases of cities, these funds must be used exclusively to fund front-line police operations and services in accordance with a written request from the Police Chief.
- For both county and cities, these funds must supplement existing services and cannot be used to supplant existing funding for current law enforcement services.

Government Code Section 30061 mandates that cities develop a plan for the expenditures of SLESF funds and that the City Council approve such expenditures as a separate matter (apart from the normal budget process). The funding for the City is \$100,000. The Police Department has requested that these funds be used for "one-time" purchases which are provided, as follows:

Digital Cameras	\$	4,292
Flash Drives		2,700
LCD Monitors		2,661
Motorola VRMs		24,090
Hand held citation system		52,200
Computers		11,350
EDGE cards		2,707
	\$	<u>100,000</u>

This item is intended to accept the Chief of Police's allocation request and set the public hearing date. On February 22, 2005, the Council will act on the actual appropriation of the funds.

Attachments: Police Department Memo
Sheriff's Department Letter



RANCHO CORDOVA POLICE DEPARTMENT

Memorandum

January 6, 2005

To : LIISA BEHREND
Senior Accountant, City of Rancho Cordova

From : LIEUTENANT GARY ILG 
Assistant Chief of Police, Rancho Cordova Police Department

Subject : **CITIZEN'S OPTION FOR PUBLIC SAFETY (COPS) PROGRAM**

The Rancho Cordova Police Department is recommending the following expenditures for the COPS funding:

Digital Cameras	\$ 4,292.00
Flash Drives	\$ 2,700.00
LCD monitors	\$ 2,661.00
Motorola VRM's	\$24,090.00
Hand-held citation system	\$52,200.00
Computers	\$11,350.00
EDGE Cards	\$ 2,707.00

cc: Tom McMahon, Chief of Police
Bill Thomas, Finance Director ✓
File

**SACRAMENTO
SHERIFF'S**



**COUNTY
DEPARTMENT**

**Lou Blanas
Sheriff**

December 15, 2004

Mr. Bill Thomas
City of Rancho Cordova
Finance Director
3121 Gold Canal Drive
Rancho Cordova, CA 95670

**RE: DISBURSEMENT OF FISCAL YEAR 2004/05 CITIZEN'S OPTION FOR PUBLIC
SAFETY PROGRAM FUNDING**

Dear Mr. Thomas

With the adoption this year of Senate Bill (SB) 823 the requirements relating to the annual disbursement of *Citizen's Option for Public Safety Program (COPS)* funding to recipient agencies has changed. Government Code Section 30061 now requires that the County Auditor "not transfer those moneys to a recipient agency until the *Supplemental Law Enforcement Oversight Committee (SLEOC)* certifies receipt of an approved expenditure plan from the governing board of that agency."

The amount each city receives is determined by the relative population of the cities within the County and the unincorporated area of the County. By law, the relative population of each city is based on the most recent January estimate by the population research unit of the State Department of Finance, and as adjusted to provide a grant of at least \$100,000 to each law enforcement jurisdiction. It is anticipated that the amounts received by each city will be very similar to those received during Fiscal Year 2004/05 as detailed below:

Citrus Heights	\$129,896
Elk Grove	\$160,583
Folsom	\$100,000
Galt	\$100,000
Isleton	\$100,000
Rancho Cordova	\$100,000
Sacramento	\$640,000

In order to expedite the receipt of your 2004/05 funding, please forward a copy of your expenditure plan as approved by your city council as soon as possible to Nancy Gust, Administrative Services Officer, at the address below

Very truly yours,

LOU BLANAS, SHERIFF
Member, SLEOC

Gene Webb
Chief of Departmental Administrative Services
Administrative Division

Memorandum

Date: February 1, 2005

To: Mayor and Council Members

From: William J. Thomas, Finance Director



Subject: SECOND QUARTER FISCAL YEAR 2005 FINANCIAL REPORT

RECOMMENDATION

The Finance Department has prepared the following financial report that provides information on the financial operations of the City from July 1, 2004 through December 31, 2004. This report is the second of four that will be provided to the Council at regularly scheduled Council meetings during the year. This report is intended for informational purposes and the Council is encouraged to review this report.

Staff will return at the February 22, 2005 Council meeting to propose any changes to the adopted budget based on the results of the first half of FY 2005.

RESULTS OF OPERATIONS

Overall revenues for the first half were \$9,694,524 while overall expenditures were \$8,841,591 resulting in a surplus of funds in the amount of \$852,933. General Fund operations, which account for the majority of the activity in the City, received \$7,351,086 in revenues. Expenditures in the General Fund were \$7,660,237 resulting in a deficit of \$205,526. The following provides revenue and expenditure summary for the General Fund.

GENERAL FUND

	Budget	Actual	% of Budget
Revenues:			
Property Taxes	\$ 4,800,000	\$ -	0.00%
Sales Taxes	9,500,000	3,167,306	33.34%
Utility Users Taxes	1,350,000	584,307	43.28%
Transient Occupancy Taxes	2,250,000	972,619	43.23%
Other Taxes	1,022,000	350,829	34.33%
Licenses & Permits	6,488,309	1,266,711	19.52%
Fines & Forfeiture	310,000	81,258	26.21%
Interest	25,000	42,107	168.43%
Intergovernmental	4,080,750	759,778	18.62%
Charges for Services	350,000	97,392	27.83%
Other Revenue	157,250	28,780	18.30%
Total Revenue	30,333,309	7,351,086	24.23%
Expenditures:			
General Government	3,363,460	1,139,203	33.87%
Police	13,296,569	4,252,110	31.98%
Planning & Code Enforcement	2,032,675	1,028,051	50.58%
Building & Safety	1,956,000	479,729	24.53%
Public Works	245,363	91,969	37.48%
Non Departmental	7,260,000	669,175	9.22%
Total Expenditures	28,154,067	7,660,237	27.21%
Net Surplus/(Deficit)	\$ 2,179,242	\$ (309,151)	-14.19%

GENERAL FUND REVENUES

Property taxes are recorded at a gross amount and then reduced by expenditure equal to the Revenue Neutrality payment which will be equal to 95% of property taxes in FY 2005. The City expects to receive property taxes in late January. Sales taxes are subject to the "Triple Flip" provisions of the State. This results in ¼ of sales taxes being withheld from the city and paid back with property taxes in January and May of each year. Those payments will be based on estimates and the "clean-up" payment will be made in January 2006. Sales taxes shown in the above table represent 5 payments. The City received a payment of \$511,900 in January that is not represented in the above. Transient Occupancy taxes are currently being paid by all but one motel in the City. The City and the District Attorney are actively pursuing collection and have made substantial progress on bringing all motels and hotels into compliance. Of all other taxes, the City will not receive any Police Tax in FY 2005 since no permits had been issued to be included on the property tax roles. This revenue source will begin in FY 2006.

License and permits is representative of building permits, planning fees and developer reimbursements. The amounts listed above do not include the December activity of Building and Safety. The City has not received the receipts for December from the County but expect them within the next week. Fines and forfeitures are expected to be significantly above the \$310,000 budgeted due to the Police Department's traffic activities. The actual receipt of these funds is received after the individual citations are adjudicated. Interest earnings represent investments of idle cash in compliance with the established Investment Policy. The City is currently limiting investments by placing all funds in the Local Agency Investment Fund (LAIF). This provides maximum cash flow opportunities.

Intergovernmental includes Motor Vehicle In-Lieu payments. These payments, except for recently incorporated cities, have been significantly cut back by the State. Initially it was discussed that the City's allocation would be cut back due to State Controller's office recognizing actual population instead of the 3x registered voter population. If that would have happened, the City's VLF would have been reduced by 24%. However, the State Controller's office has taken the stand that all newly incorporated cities would not be penalized and it appears that we will receive the full allocation. This is still being confirmed and when it is confirmed we will advise the Council through a Friday Memo.

Other revenues include charges for services (City Attorney cost recoveries) and miscellaneous revenue. It also includes "transfers in" which will be made from several Special Revenue funds including CFD 2003-1, CFD 2004-1 and CDBG.

If VLF fees are reduced, it will result in overall revenues will be down by approximately 25% from budget estimates of \$30 million. This is primarily due to sales taxes, vehicle in-lieu fees, and developer related reimbursements. If the City does receive its full allocation of VLF, this shortfall will be reduced. Developer reimbursements will be covered by savings in expenditures while the other shortfall will be covered by a decrease in expenditures, as discussed below.

GENERAL FUND EXPENDITURES

Overall expenditures are at 27.21% of budget at December 31, 2004. Not included in expenditures are the December billings for Building and Safety and City Attorney. The former will be offset completely by building permit revenue while the latter will be offset partially by cost recovery billings. Overall expenditures are expected to be less than budget with the following savings anticipated:

- Police Department minimum savings of \$250,000
- Non-Departmental savings including:
 - Furniture and Fixtures...\$40,000
 - Office Improvements...\$150,000
 - Contingency...\$450,000
 - 1st Year Transition Costs...\$750,000

Non-developer related revenues in the General Fund (excluding sales taxes) are projected to be approximately \$1.355 million (including the reduction in VLF). Savings identified above will provide \$1.64 million which is well above the projected deficits.

A detailed report is provided as an attachment to this report. That report provides revenue breakdowns as well as expenditures by department.

OTHER FUNDS

The City maintains a number of Special Revenue Funds. Overall revenues in these funds total \$2.225 million. This represents 36.8% of the estimated budget revenue of \$6.035 million. The following provides a summary of Special Revenue activity through the first six months.

SPECIAL REVENUES

	Budget	Actual	% of Budget
Revenues:			
Gas Tax	\$ 1,235,500	\$ 688,732	55.75%
CFD 2004--1	185,536	-	0.00%
CFD 2003-1	1,092,717	-	0.00%
Measure A	2,336,000	-	0.00%
CDBG	784,050	-	0.00%
Impact Fees	401,750	1,516,290	377.42%
Asset Seizure	-	888	-
State Grants	-	19,917	-
Police Grants	-	-	-
Total Revenue	<u>6,035,553</u>	<u>2,225,826</u>	36.88%
Expenditures:			
Gas Tax	788,299	198,517	25.18%
CFD 2004--1	205,545	28,745	13.98%
CFD 2003-1	1,099,356	21,397	1.95%
Measure A	2,334,500	512,951	21.97%
CDBG	145,950	13,213	9.05%
Impact Fees	700,000	384,997	55.00%
Asset Seizure	-	-	-
State Grants	-	-	-
Police Grants	-	-	-
Park Development Admin	-	6,098	-
Public Works Reimbursed	-	10,588	-
Total Expenditures	<u>5,273,650</u>	<u>1,176,505</u>	22.31%
Surplus/(Deficit)	<u>\$ 761,903</u>	<u>\$ 1,049,321</u>	137.72%

The City has submitted the first quarter request for Measure A funds. The funds for CFD 2004-1 and CFD 2003-1 will be realized when the property tax is received. Gas Tax is received on a monthly basis and the above figure includes revenue through the first six months. CDBG revenues are shown at what the City would receive if the City was receiving funds directly from the Federal Government. Those funds are passed through Sacramento Housing and Redevelopment Agency (SHRA). Impact fees are collected on building permit issuance and are expected to be significant as building begins. These funds will be used to pay debt service on both the Prospect Park (City Hall) property and the City Operations Facility (Geremia) when debt is issued beginning in March. The state grant is a recycling grant. The police grant will be the Traffic Safety grant which went into effect in January 2005. The park development admin fund will be used to track city expenses on behalf of the Park District and will be reimbursable from future Park Development fees. The Public Works reimbursed fund represents cost recoveries on the part of the Engineering section of the Public Works department.

Overall, Special Revenue funds are expected to meet budget revenue estimates and expenditures will track with revenues received. Special revenue funds are limited in their use and expenditures are generally not made from these funds unless specific revenue has been or is anticipated to be received.

CAPITAL PROJECT FUNDS

The City has established three capital project funds to track activity for the following projects:

- City Hall (Prospect Park): Costs associated with acquisition and tenant improvements. Revenues will consist of funds from the Civic Center and Community Center impact fees as well as revenues associated with the existing leases.
- City Operations Facility (Geremia): Costs associated with the acquisition as well as any improvements to be made to the office building. Revenues will consist of funds from the Corporation

Yard and Museum impact fees as well as revenues associated with the existing leases including the rental of the vacant land by the Sewer District and the potential placement of a cell tower to support the ongoing maintenance costs of the cemetery.

- Redevelopment: Costs associated with the formation of the Redevelopment Agency, the survey costs and other staff time that is associated with this agency. Revenues will be tied to tax increment in the future. The City will provide a "loan" to this agency at year end equal to the expenditures made. This fund will require future "loans" from the General Fund until the City begins to receive tax increment.

For the first six months these funds did not record activity. Any activity has been tracked in the appropriate Special Revenue fund but will be transferred to these funds at year end.

Summary

The City continues to be able to meet its current needs with current revenues. Although the cutbacks in motor vehicle in-lieu and the deferral of a portion of sales tax revenue pose problems, shortfalls are covered by decreases on the expenditure side. The City Manager will be reviewing budget results with each department and will provide recommendations on any budget adjustments at the February 22, 2005 meeting.

Attachments

REVENUES

	BUDGET	YEAR TO DATE	PROJECTED ADDITIONAL REVENUE	TOTAL ESTIMATED REVENUE	VARIANCE	PERCENT OF BUDGET ESTIMATE
GENERAL FUND						
PROPERTY TAXES	4,800,000	-	4,800,000	4,800,000	-	100.00%
SALES TAXES	9,500,000	3,167,306	3,957,694	7,125,000	(2,375,000)	75.00%
BUSINESS LICENSE	100,000	36,754	35,000	71,754	(28,246)	71.75%
PROPERTY TRANSFER TAXES	215,000	108,768	115,000	223,768	8,768	104.08%
TRANSIENT OCCUPANCY TAX	2,250,000	972,619	1,300,000	2,272,619	22,619	101.01%
UTILITY USERS TAXES	1,350,000	584,307	800,000	1,384,307	34,307	102.54%
OTHER TAXES	150,000	-	-	-	(150,000)	0.00%
FRANCHISE FEES	557,000	180,015	375,000	555,015	(1,985)	99.64%
IMPACT FEES	-	25,292	75,000	100,292	100,292	-
TOTAL TAXES	18,922,000	5,075,061	11,457,694	16,532,754	(2,389,246)	87.37%
LICENSES	75,850	27,880	27,880	55,760	(20,090)	73.51%
DEVELOPMENT FEES	6,312,459	1,238,811	1,238,811	2,477,622	(3,834,837)	39.25%
OTHER PERMITS AND FEES	100,000	20	-	20	(99,980)	0.02%
FINES AND FORFEITURES	310,000	81,258	200,000	281,258	(28,742)	90.73%
TOTAL LICENSES, PERMITS, FEES & FINES	6,798,309	1,347,969	1,466,691	2,814,660	(3,983,649)	41.40%
USE OF CITY PROPERTY	-	-	-	-	-	-
INTEREST EARNINGS	25,000	42,107	25,000	67,107	42,107	268.43%
TOTAL USE OF PROPERTY & INTEREST	25,000	42,107	25,000	67,107	42,107	268.43%
MOTOR VEHICLE IN LIEU	3,750,000	750,913	2,024,087	2,775,000	(975,000)	74.00%
OTHER STATE AND COUNTY SUBVENTIONS	-	-	-	-	-	-
FEDERAL GRANTS AND SUBVENTIONS	50,750	8,865	41,750	50,615	(135)	99.73%
PROP 172 SALES TAX FOR PUBLIC SAFETY	275,000	-	-	-	(275,000)	0.00%
HOMEOWNERS EXEMPTION	5,000	-	5,000	5,000	-	100.00%
OTHER PASS THROUGH	-	-	-	-	-	-
TOTAL OTHER GOVERNMENT SUBVENTIONS	4,080,750	759,778	2,070,837	2,830,615	(1,250,135)	69.37%
CHARGES FOR SERVICES	50,000	48,968	49,000	97,968	47,968	195.94%
CHARGES FOR DEVELOPER SERVICES	-	-	-	-	-	-
LEGAL COST RECOVERY	300,000	48,424	50,000	98,424	(201,576)	32.81%
OTHER COST RECOVERY	-	-	-	-	-	-
TOTAL CHARGES FOR SERVICES	350,000	97,392	99,000	196,392	(153,608)	56.11%
MISCELLANEOUS REVENUE	37,000	28,780	29,000	57,780	20,780	156.16%
TRANSFERS IN	120,250	-	120,250	120,250	-	100.00%
TOTAL GENERAL FUND REVENUE	30,333,309	7,351,086	15,268,472	22,619,558	(7,713,751)	74.57%
SPECIAL REVENUE FUNDS:						
GAS TAX FUND	1,235,500	688,732	546,768	1,235,500	(0)	100.00%
CFD 2004-1	185,536	-	185,536	185,536	-	100.00%
CFD 2003-1	1,092,717	-	1,092,717	1,092,717	-	100.00%
MEASURE A	2,336,000	-	2,336,000	2,336,000	-	100.00%

	BUDGET	YEAR TO DATE	PROJECTED ADDITIONAL REVENUE	TOTAL ESTIMATED REVENUE	VARIANCE	PERCENT OF BUDGET ESTIMATE
CDBG	784,050	-	784,050	784,050	-	100.00%
IMPACT FEES:						
CIVIC CENTER	-	158,270	150,000	308,270	308,270	-
PARKING GARAGE	-	66,393	66,000	132,393	132,393	-
GENERAL PLAN	-	27,634	27,600	55,234	55,234	-
POLICE FACILITY	-	208,037	208,000	416,037	416,037	-
COMMUNITY CENTER	-	191,489	191,500	382,989	382,989	-
CORPORATION YARD	-	56,866	57,000	113,866	113,866	-
MUSEUM	-	61,914	62,000	123,914	123,914	-
LIBRARY	-	104,937	105,000	209,937	209,937	-
TRAFFIC IMPACT	5,250	467,678	325,000	792,678	787,428	15098.63%
VERY LOW INCOME HOUSING	96,500	75,511	75,000	150,511	54,011	155.97%
LIBRARY -- ZINFANDEL	-	55,223	-	55,223	55,223	-
TRAFFIC -- ZINFANDEL	300,000	42,336	-	42,336	(257,664)	14.11%
TOTAL IMPACT FEES	401,750	1,516,290	1,267,100	2,783,390	2,381,640	692.82%
ASSET SEIZURE	-	888	2,700	3,588	3,588	-
STATE GRANTS	-	19,917	-	19,917	19,917	-
POLICE GRANTS	-	-	-	-	-	-
TRANSIT IMPACT FEES **	-	117,612	-	117,612	117,612	-
TOTAL SPECIAL REVENUE FUNDS	6,035,553	2,343,438	6,214,871	8,558,309	2,522,756	141.80%
CAPITAL PROJECTS FUNDS						
CITY HALL (PROSPECT PARK)	-	-	-	-	-	-
GEREMIA PROJECT	-	-	-	-	-	-
REDEVELOPMENT	-	-	-	-	-	-
TOTAL CAPITAL PROJECTS FUNDS	-	-	-	-	-	-
TOTAL ALL FUNDS	\$ 36,368,862	\$ 9,694,524	\$ 21,483,343	\$ 31,177,867	\$ (5,190,995)	85.73%

EXPENDITURE SUMMARY

	Budget	Year to Date	Remaining Balance	Pctg. Expd.
City Council				
Salaries and Benefits	19,828	16,778	3,051	84.61%
Operating Supplies	88,150	10,982	77,168	12.46%
Total Department	107,978	27,759	80,219	25.71%
Advisory Boards				
Salaries and Benefits	-	-	-	-
Operating Supplies	14,500	8,396	6,104	57.90%
Total Department	14,500	8,396	6,104	57.90%
City Attorney				
Salaries and Benefits	-	-	-	-
Operating Supplies	700,000	350,859	349,141	50.12%
Total Department	700,000	350,859	349,141	50.12%
City Manager				
Salaries and Benefits	478,916	170,140	308,776	35.53%
Operating Supplies	291,000	62,249	228,751	21.39%
Total Department	769,916	232,389	537,527	30.18%
Economic Development				
Salaries and Benefits	153,119	68,475	84,644	44.72%
Operating Supplies	130,500	22,674	107,826	17.37%
Total Department	283,619	91,149	192,470	32.14%
City Clerk				
Salaries and Benefits	273,241	134,104	139,137	49.08%
Operating Supplies	113,600	37,953	75,647	33.41%
Total Department	386,841	172,058	214,783	44.48%
Human Resources				
Salaries and Benefits	5,000	-	5,000	0.00%
Operating Supplies	41,000	26,707	14,293	65.14%
Total Department	46,000	26,707	19,293	58.06%
Finance				
Salaries and Benefits	492,406	207,414	284,992	42.12%
Operating Supplies	255,950	6,168	249,782	2.41%
Total Department	748,356	213,582	534,774	28.54%
Information Technology (IT)				
Salaries and Benefits	-	-	-	-
Operating Supplies	56,500	13,723	42,777	24.29%
Total Department	56,500	13,723	42,777	24.29%
Animal Control				
Salaries and Benefits	-	-	-	-
Operating Supplies	249,750	2,581	247,169	1.03%
Total Department	249,750	2,581	247,169	1.03%
Police				
Salaries and Benefits	-	-	-	-
Operating Supplies	13,296,569	4,252,110	9,044,459	31.98%
Total Department	13,296,569	4,252,110	9,044,459	31.98%
Planning				
Salaries and Benefits	-	-	-	-
Operating Supplies	1,443,675	719,133	724,542	49.81%
Total Department	1,443,675	719,133	724,542	49.81%

EXPENDITURE SUMMARY

	Budget	Year to Date	Remaining Balance	Pctg. Expd.
Code Enforcement				
Salaries and Benefits	-	-	-	-
Operating Supplies	589,000	308,918	280,082	52.45%
Total Department	589,000	308,918	280,082	52.45%
Building & Safety				
Salaries and Benefits	-	-	-	-
Operating Supplies	1,956,000	479,729	1,476,271	24.53%
Total Department	1,956,000	479,729	1,476,271	24.53%
Public Works				
Salaries and Benefits	65,363	17,874	47,489	27.35%
Operating Supplies	180,000	74,095	105,905	41.16%
Total Department	245,363	91,969	153,394	37.48%
Non-Departmental				
Salaries and Benefits	-	3,124	(3,124)	-
Operating Supplies	7,260,000	666,051	6,593,949	9.17%
Total Department	7,260,000	669,175	6,590,825	9.22%
TOTAL GENERAL FUND				
Salaries and Benefits	1,487,873	617,909	869,964	41.53%
Operating Supplies	26,666,194	7,042,327	19,623,867	26.41%
Total Department	28,154,067	7,660,237	20,493,831	27.21%
SPECIAL REVENUE FUNDS				
Gas Tax				
Salaries and Benefits	455,299	123,582	331,717	27.14%
Operating Supplies	333,000	74,935	258,065	22.50%
Total Department	788,299	198,517	589,782	25.18%
CFD 2004-1				
Salaries and Benefits	105,545	28,745	76,800	27.23%
Operating Supplies	100,000	-	100,000	0.00%
Total Department	205,545	28,745	176,800	13.98%
CFD 2003-1				
Salaries and Benefits	79,106	21,397	57,709	27.05%
Operating Supplies	1,020,250	-	1,020,250	0.00%
Total Department	1,099,356	21,397	1,077,959	1.95%
Measure A				
Salaries and Benefits	-	-	-	-
Operating Supplies	2,334,500	512,951	1,821,549	21.97%
Total Department	2,334,500	512,951	1,821,549	21.97%
CDBG				
Salaries and Benefits	25,815	13,138	12,677	50.89%
Operating Supplies	120,135	75	120,060	0.06%
Total Department	145,950	13,213	132,737	9.05%
Impact Fee - Civic Ctr.				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	80,174	(80,174)	-
Total Department	-	80,174	(80,174)	-

EXPENDITURE SUMMARY

	Budget	Year to Date	Remaining Balance	Pctg. Expd.
Impact Fee - Housing				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	5,677	(5,677)	-
Total Department	-	5,677	(5,677)	-
Impact Fee - General Plan				
Salaries and Benefits	-	-	-	-
Operating Supplies	700,000	299,146	400,854	42.74%
Total Department	700,000	299,146	400,854	42.74%
Impact Fee - Police				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Impact Fee - Comm. Ctr				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Impact Fee - Corp. Yard				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Impact Fee - Museum				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Impact Fee - Library				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Impact Fee - Traffic				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Redevelopment				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	2,424	(2,424)	-
Total Department	-	2,424	(2,424)	-
Park Development				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	6,098	(6,098)	-
Total Department	-	6,098	(6,098)	-
State Grants				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-

EXPENDITURE SUMMARY

	Budget	Year to Date	Remaining Balance	Pctg. Expd.
Police Grants				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
Public Works Reimbursed				
Salaries and Benefits	-	10,588	(10,588)	-
Operating Supplies	-	-	-	-
Total Department	-	10,588	(10,588)	-
TOTAL SPECIAL REVENUE FUNDS				
Salaries and Benefits	665,765	199,874	465,891	30.02%
Operating Supplies	4,607,885	981,479	3,626,406	21.30%
Total Department	5,273,650	1,181,354	4,092,296	22.40%
CAPITAL PROJECT FUNDS				
City Hall				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
City Operation Facility				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
TOTAL CAPITAL PROJECT FUNDS				
Salaries and Benefits	-	-	-	-
Operating Supplies	-	-	-	-
Total Department	-	-	-	-
TOTAL ALL CITY FUNDS				
Salaries and Benefits	2,153,638	817,784	1,335,854	37.97%
Operating Supplies	31,274,079	8,023,807	23,250,272	25.66%
Total Department	33,427,717	8,841,591	24,586,127	26.45%

Memorandum



Date: February 1, 2005

To: Mayor and Council Members

From: Lillian Hare, City Clerk

Subject: Adoption of Resolutions to Confirm the Employer Paid Member Contribution (EPMC) and Reporting the Value of Employer Paid Member Contributions to the California Employees Retirement System (CalPERS)

RECOMMENDATION:

Adopt Resolutions 20-2005 and 21-2005.

BACKGROUND:

PERS has requested a resolution be approved to confirm the City's current benefit of paying the employee's 7% portion of the CalPERS retirement contribution. The City currently is also responsible for paying the employer contribution. All of our surrounding cities except one (which pays the majority portion) also pay the employees share of the CalPERS contribution. This resolution codifies our current practice of paying the employee's 7% PERS contribution.

In addition, a resolution is being submitted to authorize us to report to CalPERS the full monetary value of employer-paid contributions on behalf of our employees. This is a common reporting method also utilized by the majority of our surrounding cities and allows the value of employer paid member contributions to be part of the employee's compensation, therefore, allowing an employee's retirement benefit to be increased.

Both of these actions do not affect our current employer rate with CalPERS.

Attachment: Resolution 20-2005
Resolution 21-2005

RESOLUTION NO. 20-2005

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO
CORDOVA REGARDING PUBLIC EMPLOYEES RETIREMENT SYSTEM
EMPLOYER PAID MEMBER CONTRIBUTIONS**

Whereas, the governing body of the City of Rancho Cordova has the authority to implement Government Code Section 20691; and

Whereas, the governing body of the City of Rancho Cordova has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer; and

Whereas, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Rancho Cordova of a Resolution to commence said Employer Paid Member Contributions (EMPC):

- This benefit shall apply to all local miscellaneous members.
- This benefit shall consist of paying 7% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be February 7, 2005.

Now, Therefore, be it Resolved that the governing body of the City of Rancho Cordova elects to pay the EPMC, as set forth above.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on February 7, 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ken Cooley, Mayor

ATTEST:

Lillian E. Hare, City Clerk

RESOLUTION NO. 21-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA REGARDING PAYING AND REPORTING THE VALUE OF PUBLIC EMPLOYEES RETIREMENT SYSTEM EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC)

Whereas, the governing body of the City of Rancho Cordova has the authority to implement Government Code Section 20636 (c) (4) pursuant to Section 20691; and

Whereas, the governing body of the City of Rancho Cordova has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer, and reported as additional compensation; and

Whereas, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the City of Rancho Cordova of a Resolution to commence paying and reporting the value of said Employer Paid Member Contributions (EPMC); and

Whereas, the governing body of the City of Rancho Cordova has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all local miscellaneous members.
- This benefit shall consist of paying 7 % of the normal contributions as EPMC, and reporting the same percent (value) of compensation earnable (excluding Government Code Section 20636 (c)(4) as additional compensation.
- The effective date of this Resolution shall be February 7, 2005.

Now, Therefore, be it Resolved that the governing body of the City of Rancho Cordova elects to pay and report the value of EPMC, as set forth above.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on February 7, 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ken Cooley, Mayor

ATTEST:

Lillian E. Hare, City Clerk

AMENDED MEMORANDUM



DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Curt Haven, Dir. of Economic Development
SUBJECT: ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 4.54,
ARTICLE 7, "FIREWORKS,"

RECOMMENDATION

Introduce Ordinance **Amended** 04-2005, waive its full reading, and continue the ordinance to the City Council meeting of February 22, 2005, for adoption.

BACKGROUND

Staff and the Fireworks Distributors have agreed on the following changes to:

4.54.350-2-License Restriction: (Changing from the "boundaries" of the City of Rancho Cordova to the "planning area" of the City of Rancho Cordova)

4.54.360-6 Application: (changing the date from the second Tuesday in April to May 15)

4.54.410-b Enforcement: (changing the inspection of the site by Metro Fire.)

Attachment(s): Ordinance **Amended** 04-2005

AMENDED (2/7/05)

CITY OF RANCHO CORDOVA

ORDINANCE NO. 04-2005

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA AMENDING RANCHO CORDOVA MUNICIPAL CODE CHAPTER 4.54, ARTICLE 7, "FIREWORKS," RELATING TO THE PERMITTING AND SALE OF FIREWORKS IN THE CITY

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO
CORDOVA DOES ORDAIN AS FOLLOWS:**

SECTION 1. Title 4, Chapter 4.54, Article 7, "Fireworks," of the Rancho
Cordova Municipal Code is hereby amended to read as follows:

"Article 7 Fireworks

- 4.54.300 General Prohibition Against Possession, Sale or Use of Fireworks.
- 4.54.310 Exception--Certain Public Displays.
- 4.54.320 Exception--Safe and Sane Fireworks.
- 4.54.330 License to Sell Fireworks Required.
- 4.54.340 Wholesale Storage of Fireworks.
- 4.54.350 License Restricted.
- 4.54.360 Application.
- 4.54.370 Denial of License.
- 4.54.375 General Provisions.
- 4.54.380 Operation of Stand.
- 4.54.390 Temporary Fireworks Stand.
- 4.54.400 General Requirements for Licensees.
- 4.54.410 Enforcement.
- 4.54.405 Public Education.
- 4.54.420 Revocation of License--Appeal.
- 4.54.430 Penalty; Infraction.
- 4.54.440 Seizure of Fireworks.
- 4.54.450 Concurrent Authorities.

4.54.300 General Prohibition Against Possession, Sale or Use of Fireworks.

Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or

other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

4.54.310 Exception--Certain Public Displays.

Public displays of fireworks may be given with a written permit issued by the fire chief so long as such display takes place under the supervision and direction of a State of California licensed operator. For purposes of this Article, "fire chief" shall mean the Fire Chief of the Sacramento Metropolitan Fire District, or his or her designee.

4.54.320 Exception--Safe and Sane Fireworks.

It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as "safe and sane fireworks" in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28 and ending at 10.00 p.m. on July 4 of the same year.

4.54.330 License to Sell Fireworks Required.

It shall be unlawful for any person to sell "safe and sane fireworks" within the City without a valid City business license authorizing such sales.

4.54.340 Wholesale Storage of Fireworks.

The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the fire district and the City's building department. Any such storage is limited to the period from June 1st through July 15th of each year.

4.54.350 License Restricted.

a. No City business license authorizing the sale of "safe and sane fireworks" shall be issued to any person, firm, corporation, organization or group other than:

1. A non-profit organization or group organized primarily for civic betterment and/or charitable purposes having status as a Section 501 (c) organization under the Internal Revenue Code and as a Section 23701 (d) organization under the Revenue and Taxation Code of the State of California, provided that the organization or group satisfies the following criteria:

i. It has its principal and permanent meeting place in the City of Rancho Cordova or its adopted Planning Area;

ii. It has been organized and established in the City of Rancho Cordova or its adopted planning area for a continuous period of at least one year immediately proceeding the application for a permit; and

iii. It has a bona fide membership of at least twenty (20) members.

The City reserves the right to require the applicant to submit a roster based on complaints or allegation of non-compliance with City policy; or

2. an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district and/or school district that services in whole or in part the residents of Rancho Cordova or a religious non-profit elementary, junior high and/or high school located ~~within the boundaries~~ **within the planning area** of Rancho Cordova.

b. No organization shall submit more than two applications for licenses to sell fireworks within the City. Submittal of more than two such applications shall be grounds for denial of all applications.

c. City business licenses authorizing the sale of "safe and sane fireworks" shall not be transferable to another organization.

d. Transfer of temporary stands from the location for which the license was initially issued may be made provided that the application is made to the City's Director of Finance ("Finance Director") on or before the first day of June, provided further that any such location change has been approved in writing by the fire chief, the chief of police, and the City's Chief Building Inspector, and otherwise complies with all provisions of this Article regulating the location of temporary fireworks stands.

4.54.360 Application.

a. All applications for a City business license to sell fireworks shall be in writing to the Finance Director on forms supplied by the City. Applications shall be received and filed with the Finance Director no earlier than March 1st, nor later than the second Tuesday in April of each year. Applications shall:

1. Specify the proposed location of the fireworks stand, and be accompanied by a copy of a plot plan showing the location of the fireworks stand in relation to the public right-of-way; curb cuts and/or driveways and identifying the nearest available fire hydrants;

2. Specify the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored;

3. Be accompanied by a declaration certifying the applicant's status as a Section 501 (c) organization under the Internal Revenue Code and as a Section 27301 (d) organization under the Revenue and Taxation Code;

4. Be accompanied, in accordance with the provisions of Section 4.54.375, by an accounting of the funds derived from the sale of fireworks for the previous year if the organization operated a stand(s) in the City during the previous year. The permittee shall fully expend the net proceeds derived from its operations under such license or demonstrate the dedicated purpose of the funds. This requirement shall not go into effect until July 5, 2005;

5. Be accompanied by a written statement of the applicant's intended use for any funds realized from the sale by such organization;

6. Be accompanied by the name and address of the owner of the designated location of the fireworks stand. The applicant shall supply a copy of a recorded deed evidencing its ownership of the designated location, or an executed lease, rental or license agreement evidencing that the applicant has the legal authority to locate and operate a fireworks stand at the designated location. The information required by this subsection (6) may be submitted separately from the other information required under Section 4.54.360, but in no case shall the information required by this subsection (6) be submitted to the City later than the ~~second Tuesday of April~~ **May 15th** of each year;

7. Be accompanied by such other information as may be required by the Finance Director;

8. Be accompanied by an application fee in the amount of \$40.00; and

b. The application shall be made in triplicate. The original of the application shall be retained by the Finance Director, one copy shall be transmitted to the fire chief, and one copy shall be sent to the City building department. The fire chief shall review the location of the proposed fireworks stand for compliance with fire safety regulations and shall have authority to disapprove the location if, in the fire chief's opinion, the location would pose a fire hazard. Notice of the application and a description of the proposed location of the stand shall be forwarded to the chief of police who has the authority to disapprove the location if, in the chief's opinion, a traffic hazard will be created thereby. For applications received on or before the second Tuesday of April of each year, determinations regarding the adequacy of the proposed location shall be made no later than May 15 of each year.

c. Applicants for a license shall be notified by the Finance Director of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two weeks of the notification of

the tentative approval of the City business license, the applicant shall furnish to the Finance Director evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury, contractual liability, independent contractors, and products/completed operations, with a \$1 million combined single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products, premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self insurance maintained by the City of Rancho Cordova shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Risk Manager shall be the certificate holder. In the event of non-renewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the Finance Director. The insurance policy shall be limited to the specific location for which the City business license is issued. The Finance Director shall issue the license to the applicant upon the presentation of required proof of insurance.

d. A copy of the City business license shall be transmitted to the fire district.

e. The continued validity of any City business license issued pursuant to this Article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by the fire district. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

4.54.370 Denial of License.

a. The Finance Director shall issue the City business license to sell fireworks unless:

1. The Finance Director finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Article;

2. The Finance Director finds in writing that the applicant is not in compliance with any of the requirements of this Article;

3. The Finance Director finds in writing that the applicant falls within the provisions of subdivision (c) of Section 4.54.420 of this Article; or

4. Either the fire chief, the chief of police or the City building department fails to approve the application.

b. Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in subdivision (b) of Section 4.54.420 of this Article.

4.54.375 General Provisions.

a. The licensee shall use the net proceeds derived from its operations under such license only for non-profit, charitable purposes.

b. Each organization granted a permit must submit a verified financial statement to the City showing the total gross receipts, all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof, and to whom and for what purpose the net proceeds were distributed. The financial statements shall be made on forms furnished by the City or photocopied directly from the organization's financial report. Statements must be filed with the City no later than March 1 of the year after the year in which the permit was issued. The filing of a verified financial statement is a condition precedent to the granting of any subsequent permit to any such organization.

c. Beginning in 2006, no organization shall receive a license for a fireworks stand if such organization received a permit for the previous year and has failed to file the report required in subsection (b) or otherwise violated any provisions of the Rancho Cordova Municipal Code relating to such prior year's license or to the licensee's operations thereunder.

d. Licensees shall not place signs on retail fireworks stands or at locations on public property, except as permitted or required by the City. Signs on private property shall be as permitted by the property owner and shall comply with all applicable City sign regulations.

4.54.380 Operation of Stand.

a. All organizations must obtain a fireworks retail license issued by the State Fire Marshal under Section 12574 of the Health and Safety Code of the State of California.

b. No person shall sell fireworks to any person under the age of eighteen. Proof that the fireworks stand operator/organization demanded, was shown and acted in reliance upon bona fide evidence of age and identity in any sale of fireworks forbidden by this Article shall be a defense for any proceedings for suspension or revocation of its permit or any criminal proceedings for violations of this Article. For purposes of this section, bona fide evidence of age and identity of purchaser is a document issued by a federal, state, county or municipal government that contains a photograph of the purchaser including, but not limited to, a valid California Driver's License or Identification Card issued to a member of the Armed Forces.

c. Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 4th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

d. No person other than the licensee organization shall operate the stand for which the license is issued.

e. No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.

f. No person under the age of eighteen shall sell or participate in the sale of fireworks.

g. Merchandise shall be displayed in such a manner that it cannot be handled by patrons reaching over the selling counter or through other openings in the stand. A suitable shelf or counter may be required in order to comply with this requirement so that patrons will not be able to reach merchandise over the top of the counter.

h. The business license to sell fireworks issued by the City and the retail license issued by the State Fire Marshall must be prominently displayed inside the booth at all times.

i. No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand, provided, however, that compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.

j. Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

4.54.390 Temporary Fireworks Stand.

All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

a. No fireworks stand shall be located within twenty-five feet of any other building or within one hundred feet of any gasoline pump or distribution point.

b. Fireworks stands need not comply with the provisions of the Building Code of the City; provided, however, that stands that need any electrical installations shall apply for all necessary permits and comply with all applicable codes and shall be

subject to inspection and approval by the Chief Building Inspector, or his or her designee.

c. No stand shall have a floor area in excess of seven hundred and fifty square feet.

d. Each stand shall have at least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart; provided, however, that in no case shall the distance between exits exceed twenty feet. Exit doors shall be not less than twenty-four inches wide and six feet and two inches in height and shall swing in the direction of exit travel. No supplies or other materials shall be stored in front of exit doors. All exit doors shall remain unlocked whenever the stand is occupied.

e. The aisle or passageway in the fireworks stand must be kept clear and unobstructed so as not to impede anyone leaving the stand in an emergency.

f. Each stand shall be provided with two (2) two and one-half gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.

g. Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the Fire Chief certifies in writing to the Finance Director that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

4.54.400 General Requirements for Licensees.

a. Stands shall not be located closer than six hundred feet apart, unless separated by a principal arterial roadway.

b. All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five feet surrounding the stand.

c. "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.

d. Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.

e. All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the 4th day of July shall be returned to the distributor or wholesaler and removed from the City within ten days. On closing of stands, all litter shall be removed from the premises.

- f. No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of a fireworks stand.
- g. No vehicles shall be parked within 25 feet of the fireworks stand unless loading or unloading fireworks.
- h. No flammable liquids are permitted within 50 feet of the fireworks stand.
- i. Signs shall be posted that 1) illustrate that illegal fireworks are prohibited in Rancho Cordova, that violators will be cited, what the citation fines are and that this will be strictly enforced and 2) list (to the public) places within Rancho Cordova where fireworks are allowed to be used, as well as places where fireworks are *not* allowed to be used, if any.
- j. Handout material shall be issued with each sale that describes proper use of Safe & Sane fireworks and general safety practices to be followed when handling fireworks. Failure to issue the education material may result in the revocation of the permit and immediate closure of the stand.

4.54.405 Public Education.

- a. The City of Rancho Cordova has determined that public education is critical to the safe use of fireworks within the City and that those fireworks suppliers and distributors who profit from the sale of fireworks in the City should be required to assist the City in educating the public about the safe use of fireworks.
- b. Suppliers and distributors shall work with the City Manager, or his or her designee, and the Fire District to provide education materials to every school within Rancho Cordova. The materials shall describe and illustrate the proper use of State-approved fireworks, the prohibition of illegal fireworks, the consequences of violating fireworks laws and regulations and general safety practices to be followed when handling fireworks. Each fireworks supplier or distributor shall meet and confer with the City Manager by March 1 of each year to determine whether a Public Education Plan shall be required.
- c. If requested by the City Manager, each fireworks supplier or distributor shall annually submit a Public Education Plan to the City by May 20 of each year. The plan should illustrate how the public will be educated about the City's no tolerance policy for illegal fireworks and the proper use of State-approved fireworks. At the City Manager's discretion, the plan may:
 - 1. Include samples of all signs, messages, graphics, text, etc. that will be displayed in the City;
 - 2. Graphically identify all locations throughout the City where public education messages are to be displayed and/or posted;

3. Include an accounting and samples of education materials distributed to every school in Rancho Cordova. These materials shall describe and illustrate the proper use of State-approved fireworks, the prohibition of illegal fireworks, and the consequences of violating fireworks laws and regulations and general safety practices to be followed when handling state-approved fireworks. Suppliers and distributors shall request that schools hand out these materials out to every child a minimum of one month prior to the end of the school year;

4. Establish that all retail fireworks stands will have warning signs posted that illustrate that illegal fireworks are prohibited in Rancho Cordova, that violators will be cited, what the citation fines are and that this will be strictly enforced. The signs shall also include a listing of areas within the City where NO FIREWORKS of any kind are permitted to be used, if any;

5. Establish that City approved signs will be posted on public property at central entrances to the City. These signs shall illustrate the City's "No Tolerance" position on illegal fireworks, that violators will be cited, what the citation fees are and that this will be strictly enforced. The signs shall also include a listing of all areas within the City where NO FIREWORKS of any kind are permitted to be used, if any; and/or

6. State that signs and messages shall be posted and displayed no earlier than June 1, no later than June 15 and removed from said locations no later than July 7.

4.54.410 Enforcement.

a. The City Manager, or his or her designated representatives shall have authority to enforce this Article and issue citations for violations.

b. All fireworks stands shall be erected in a manner approved by the fire district in order to reasonably ensure the safety of attendants and patrons. A site inspection is required after the structure has been erected, ~~stocked and prior to the commencement of sales. The field inspector will permit the sales to begin if each item shown or stated in the application packet are consistent with the conditions observed.~~ The license will be subject to revocation if there are inconsistencies, omissions or changes from the approved plot plan or fire/life safety hazards are observed.

In the event that electrical systems are installed, the City's building department shall inspect the electrical systems prior to the stocking and commencement of sales. A fireworks stand shall not be permitted to open until the electrical system have been approved by the City's building department.

c. Each fireworks stand shall be subject to inspection(s) by the fire district at any time during each day of sales. If, in the opinion of the fire chief (or designee) the

construction or the location of a stand, or the conduct of operations therein do not conform to these provisions, the fire chief (or designee), may order the stand immediately closed until such time as the stand does conform to the provisions herein.

4.54.420 Revocation of License--Appeal.

a. The Finance Director may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of subsection (e) of Section 4.54.360, subsections (a), (b), (c) or (f) of Section 4.54.380, or subsection (d) of Section 4.54.400. If the revocation occurs between June 22nd and July 5th, the Finance Director shall inform the licensee that the licensee may seek review of the Finance Director's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the Finance Director shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee and the Finance Director on that day to review the Finance Director's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) shall apply.

b. The Finance Director, or the Finance Director's designee, may revoke the license of any licensee who violates any provision of this Article not specified in subsection (a). Such revocation shall not take effect for five days, during which time the licensee may seek review of the Finance Director's decision by submitting a written request for review to the City Manager. The Finance Director shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's designee, shall meet with the licensee and the Finance Director to review the Finance Director's decision. The decision of the City Manager or his designee shall be final.

c. Any licensee whose permit has been revoked pursuant to subsections (a) or (b) hereof shall be barred from receiving a license under this Article for five (5) years from the date of revocation.

4.54.430 Penalty; Infraction.

a. Notwithstanding the provisions of any other section of this Code, and with the exception of the fourth and subsequent violation of this Article within one year as provided in subdivision (c) of this section, the violation of any of the provisions of this Article is an infraction.

b. Every violation of any provision of this Article constituting an infraction is punishable as follows:

1. a fine not exceeding one hundred (\$100) dollars for a first violation;
2. a fine not exceeding two hundred (\$200) dollars for a second violation of this Article within one year; and
3. a fine not exceeding five hundred (\$500) dollars for a third or subsequent violation of this Article within one year.

c. The fourth and/or any subsequent violation of this Article within one year may, within the discretion of the charging officer, be charged as a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the County Jail for not more than six (6) months, or both.

4.54.440 Seizure of Fireworks.

The Fire Chief, or the Fire Chief's designee, may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent threat to public health or safety.

4.54.450 Concurrent Authorities.

This Article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the City, the State, or any other legal entity or agency having jurisdiction."

SECTION 2: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION 3: Effective Date and Publication

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Grapevine Independent, a newspaper of general circulation printed and published in Rancho Cordova City and circulated in the City of

Rancho Cordova, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption. Provided, however, that section 4.54.350(a)(1)(i), which requires the applicant to have its principal and permanent meeting place in the City of Rancho Cordova or its adopted Planning Area, shall not be operative until January 1, 2006.

* * * * *

PASSED AND ADOPTED this ____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

MAYOR

ATTEST:

CITY CLERK

717673_6

MEMORANDUM

DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Curt Haven, Dir. of Economic Development
Steven Meyers, City Attorney



**SUBJECT: ORDINANCE AMENDING MUNICIPAL CODE CHAPTER 4.54,
ARTICLE 7, "FIREWORKS,"**

RECOMMENDATION

Introduce Ordinance 04-2005, waive its full reading, and continue the ordinance to the City Council meeting of February 22, 2005, for adoption.

BACKGROUND

This ordinance was originally introduced at the January 18, 2005, City Council meeting. After discussion on this matter, the Council directed staff to make a number of changes to the ordinance and bring it back for a subsequent first reading. Pursuant to the Council's requests, the following changes have been made to the ordinance:

- Location requirements for applicant groups have been expanded to include the City's adopted Planning Area;
- Implementation of the location requirement that applicants be located within Rancho Cordova or its adopted Planning Area will be delayed until January 1, 2006;
- The requirement that at least 50% of each applicant group's membership be residents of Rancho Cordova has been removed;
- The proposed application fee has been reduced from \$200 to \$40;
- Restrictions pertaining to the use of sales proceeds has been simplified to state only that such proceeds shall be used for non-profit, charitable purposes;

- A restriction related to the sharing of profits with other groups has been removed;
- A requirement that fireworks suppliers produce a public education plan shall now be required only at the City Manager's discretion; and
- For a fourth or subsequent violation, law enforcement officers shall now have discretion to charge the violation as either an infraction or a misdemeanor.

REQUESTED MOTION

"I move that the City Council introduce the ordinance amending Chapter 4.54, Article 7, "Fireworks," of the Rancho Cordova Municipal Code, waive its full reading, and continue it to the Council meeting of February 22, 2005, for adoption."

Attachment(s):

1. Ordinance 04-2005

728739_2

CITY OF RANCHO CORDOVA

ORDINANCE NO. 04-2005

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
RANCHO CORDOVA AMENDING RANCHO CORDOVA
MUNICIPAL CODE CHAPTER 4.54, ARTICLE 7, "FIREWORKS," RELATING
TO THE PERMITTING AND SALE OF FIREWORKS IN THE CITY**

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES ORDAIN AS FOLLOWS:

SECTION 1. Title 4, Chapter 4.54, Article 7, "Fireworks," of the Rancho Cordova Municipal Code is hereby amended to read as follows:

"Article 7 Fireworks

- 4.54.300 General Prohibition Against Possession, Sale or Use of Fireworks.
- 4.54.310 Exception--Certain Public Displays.
- 4.54.320 Exception--Safe and Sane Fireworks.
- 4.54.330 License to Sell Fireworks Required.
- 4.54.340 Wholesale Storage of Fireworks.
- 4.54.350 License Restricted.
- 4.54.360 Application.
- 4.54.370 Denial of License.
- 4.54.375 General Provisions.
- 4.54.380 Operation of Stand.
- 4.54.390 Temporary Fireworks Stand.
- 4.54.400 General Requirements for Licensees.
- 4.54.410 Enforcement.
- 4.54.405 Public Education.
- 4.54.420 Revocation of License--Appeal.
- 4.54.430 Penalty; Infraction.
- 4.54.440 Seizure of Fireworks.
- 4.54.450 Concurrent Authorities.

4.54.300 General Prohibition Against Possession, Sale or Use of Fireworks.

Except as otherwise provided in this Article, no person shall possess, sell, use, display or explode any rocket, firecracker, roman candle, squib, torpedo, torpedo cane, fire balloon, wire core sparkler, wooden core sparkler, black cartridge or other combustible device or explosive substance or any kind of fireworks, by whatsoever name known, within the City.

4.54.310 Exception--Certain Public Displays.

Public displays of fireworks may be given with a written permit issued by the fire chief so long as such display takes place under the supervision and direction of a State of California licensed operator. For purposes of this Article, "fire chief" shall mean the Fire Chief of the Sacramento Metropolitan Fire District, or his or her designee.

4.54.320 Exception--Safe and Sane Fireworks.

It shall not be unlawful to possess, sell, use, display or discharge within the City those fireworks as are defined and classified as "safe and sane fireworks" in Part 2 (commencing with Section 12500) of Division 11 of the California Health and Safety Code during that time period beginning at 12:00 noon on June 28 and ending at 10.00 p.m. on July 4 of the same year.

4.54.330 License to Sell Fireworks Required.

It shall be unlawful for any person to sell "safe and sane fireworks" within the City without a valid City business license authorizing such sales.

4.54.340 Wholesale Storage of Fireworks.

The wholesale storage of fireworks shall be unlawful in the City without valid permits for such storage from the fire district and the City's building department. Any such storage is limited to the period from June 1st through July 15th of each year.

4.54.350 License Restricted.

a. No City business license authorizing the sale of "safe and sane fireworks" shall be issued to any person, firm, corporation, organization or group other than:

1. A non-profit organization or group organized primarily for civic betterment and/or charitable purposes having status as a Section 501 (c) organization under the Internal Revenue Code and as a Section 23701 (d) organization under the Revenue and Taxation Code of the State of California, provided that the organization or group satisfies the following criteria:

- i. It has its principal and permanent meeting place in the City of Rancho Cordova or its adopted Planning Area;
- ii. It has been organized and established in the City of Rancho Cordova or its adopted planning area for a continuous period of at least one year immediately proceeding the application for a permit; and

- iii. It has a bona fide membership of at least twenty (20) members.

The City reserves the right to require the applicant to submit a roster based on complaints or allegation of non-compliance with City policy; or

2. an organization affiliated with and officially recognized by an elementary, junior high and/or high school and/or school district and/or school district that services in whole or in part the residents of Rancho Cordova or a religious non-profit elementary, junior high and/or high school located within the boundaries of Rancho Cordova.

b. No organization shall submit more than two applications for licenses to sell fireworks within the City. Submittal of more than two such applications shall be grounds for denial of all applications.

c. City business licenses authorizing the sale of "safe and sane fireworks" shall not be transferable to another organization.

d. Transfer of temporary stands from the location for which the license was initially issued may be made provided that the application is made to the City's Director of Finance ("Finance Director") on or before the first day of June, provided further that any such location change has been approved in writing by the fire chief, the chief of police, and the City's Chief Building Inspector, and otherwise complies with all provisions of this Article regulating the location of temporary fireworks stands.

4.54.360 Application.

a. All applications for a City business license to sell fireworks shall be in writing to the Finance Director on forms supplied by the City. Applications shall be received and filed with the Finance Director no earlier than March 1st, nor later than the second Tuesday in April of each year. Applications shall:

1. Specify the proposed location of the fireworks stand, and be accompanied by a copy of a plot plan showing the location of the fireworks stand in relation to the public right-of-way; curb cuts and/or driveways and identifying the nearest available fire hydrants;

2. Specify the name, address and telephone number of one or more responsible adults who will be in charge of and responsible for the fireworks stand during the period fireworks are sold, displayed or stored;

3. Be accompanied by a declaration certifying the applicant's status as a Section 501 (c) organization under the Internal Revenue Code and as a Section 27301 (d) organization under the Revenue and Taxation Code;

4. Be accompanied, in accordance with the provisions of Section 4.54.375, by an accounting of the funds derived from the sale of fireworks for the previous year if the organization operated a stand(s) in the City during the previous year. The permittee shall fully expend the net proceeds derived from its operations under such license or demonstrate the dedicated purpose of the funds. This requirement shall not go into effect until July 5, 2005;

5. Be accompanied by a written statement of the applicant's intended use for any funds realized from the sale by such organization;

6. Be accompanied by the name and address of the owner of the designated location of the fireworks stand. The applicant shall supply a copy of a recorded deed evidencing its ownership of the designated location, or an executed lease, rental or license agreement evidencing that the applicant has the legal authority to locate and operate a fireworks stand at the designated location. The information required by this subsection (6) may be submitted separately from the other information required under Section 4.54.360, but in no case shall the information required by this subsection (6) be submitted to the City later than the second Tuesday of April of each year;

7. Be accompanied by such other information as may be required by the Finance Director;

8. Be accompanied by an application fee in the amount of \$40.00; and

b. The application shall be made in triplicate. The original of the application shall be retained by the Finance Director, one copy shall be transmitted to the fire chief, and one copy shall be sent to the City building department. The fire chief shall review the location of the proposed fireworks stand for compliance with fire safety regulations and shall have authority to disapprove the location if, in the fire chief's opinion, the location would pose a fire hazard. Notice of the application and a description of the proposed location of the stand shall be forwarded to the chief of police who has the authority to disapprove the location if, in the chief's opinion, a traffic hazard will be created thereby. For applications received on or before the second Tuesday of April of each year, determinations regarding the adequacy of the proposed location shall be made no later than May 15 of each year.

c. Applicants for a license shall be notified by the Finance Director of the tentative approval or denial of the application for a City business license by the first Monday in May of each calendar year. Within two weeks of the notification of the tentative approval of the City business license, the applicant shall furnish to the Finance Director evidence of insurance providing comprehensive general liability coverage written on an occurrence basis, including but not limited to premises/operations, personal injury, contractual liability, independent contractors, and products/completed operations, with a \$1 million combined

single limits for bodily injury and property damage. The insurance policy shall designate the City, its officers, agents, employees and volunteers as additional insureds as to products, premises/operations of the named insured. The insurance policy shall further be endorsed to provide that any insurance and/or self insurance maintained by the City of Rancho Cordova shall apply in excess of, and not contribute with, insurance provided by the applicant. The City Risk Manager shall be the certificate holder. In the event of non-renewal or cancellation of the insurance policy, thirty (30) days advance notice shall be provided to the Finance Director. The insurance policy shall be limited to the specific location for which the City business license is issued. The Finance Director shall issue the license to the applicant upon the presentation of required proof of insurance.

d. A copy of the City business license shall be transmitted to the fire district.

e. The continued validity of any City business license issued pursuant to this Article shall be subject to the requirement that at least one of the responsible adults listed in the licensee's application shall attend a fireworks stand operator seminar conducted by the fireworks industry and approved by the fire district. The failure of a licensee to have such a responsible individual attend such safety seminar shall subject the City business license to revocation.

4.54.370 Denial of License.

a. The Finance Director shall issue the City business license to sell fireworks unless:

1. The Finance Director finds in writing that the applicant has failed to provide sufficient or adequate plans, information or other data necessary to permit a determination respecting compliance with the requirements of this Article;

2. The Finance Director finds in writing that the applicant is not in compliance with any of the requirements of this Article;

3. The Finance Director finds in writing that the applicant falls within the provisions of subdivision (c) of Section 4.54.420 of this Article; or

4. Either the fire chief, the chief of police or the City building department fails to approve the application.

b. Any denial of a license pursuant to this section may be appealed pursuant to the procedures set forth in subdivision (b) of Section 4.54.420 of this Article.

4.54.375 General Provisions.

- a. The licensee shall use the net proceeds derived from its operations under such license only for non-profit, charitable purposes.
- b. Each organization granted a permit must submit a verified financial statement to the City showing the total gross receipts, all expenses incurred and paid in connection with the purchase of fireworks and the sale thereof, and to whom and for what purpose the net proceeds were distributed. The financial statements shall be made on forms furnished by the City or photocopied directly from the organization's financial report. Statements must be filed with the City no later than March 1 of the year after the year in which the permit was issued. The filing of a verified financial statement is a condition precedent to the granting of any subsequent permit to any such organization.
- c. Beginning in 2006, no organization shall receive a license for a fireworks stand if such organization received a permit for the previous year and has failed to file the report required in subsection (b) or otherwise violated any provisions of the Rancho Cordova Municipal Code relating to such prior year's license or to the licensee's operations thereunder.
- d. Licensees shall not place signs on retail fireworks stands or at locations on public property, except as permitted or required by the City. Signs on private property shall be as permitted by the property owner and shall comply with all applicable City sign regulations.

4.54.380 Operation of Stand.

- a. All organizations must obtain a fireworks retail license issued by the State Fire Marshal under Section 12574 of the Health and Safety Code of the State of California.
- b. No person shall sell fireworks to any person under the age of eighteen. Proof that the fireworks stand operator/organization demanded, was shown and acted in reliance upon bona fide evidence of age and identity in any sale of fireworks forbidden by this Article shall be a defense for any proceedings for suspension or revocation of its permit or any criminal proceedings for violations of this Article. For purposes of this section, bona fide evidence of age and identity of purchaser is a document issued by a federal, state, county or municipal government that contains a photograph of the purchaser including, but not limited to, a valid California Driver's License or Identification Card issued to a member of the Armed Forces.
- c. Sale of fireworks shall begin no earlier than 12:00 noon on June 28th and shall not continue after 10:00 p.m. on July 4th of the same year. Sale of fireworks shall be permitted only from 9:00 a.m. to 10:00 p.m. daily.

- d. No person other than the licensee organization shall operate the stand for which the license is issued.
- e. No person other than the individuals who are members of the licensee organization or the wives, husbands, parents or adult children of such members shall sell or otherwise participate in the sale of fireworks at such stand.
- f. No person under the age of eighteen shall sell or participate in the sale of fireworks.
- g. Merchandise shall be displayed in such a manner that it cannot be handled by patrons reaching over the selling counter or through other openings in the stand. A suitable shelf or counter may be required in order to comply with this requirement so that patrons will not be able to reach merchandise over the top of the counter.
- h. The business license to sell fireworks issued by the City and the retail license issued by the State Fire Marshall must be prominently displayed inside the booth at all times.
- i. No person shall be paid any consideration by the licensee or any wholesale distributor of "safe and sane" fireworks for selling or otherwise participating in the sale of fireworks at such stand, provided, however, that compensation may be paid for security personnel during non-sale hours and to the party authorizing location of the stand on its property.
- j. Fireworks stands shall be removed from the temporary locations by noon on July 18th, and all accompanying litter shall be cleared from such locations by that date and time.

4.54.390 Temporary Fireworks Stand.

All retail sales of "safe and sane" fireworks shall be permitted only from within a temporary fireworks stand, and the sale from any other building or structure is hereby prohibited. Temporary stands shall be subject to the following provisions:

- a. No fireworks stand shall be located within twenty-five feet of any other building or within one hundred feet of any gasoline pump or distribution point.
- b. Fireworks stands need not comply with the provisions of the Building Code of the City; provided, however, that stands that need any electrical installations shall apply for all necessary permits and comply with all applicable codes and shall be subject to inspection and approval by the Chief Building Inspector, or his or her designee.

- c. No stand shall have a floor area in excess of seven hundred and fifty square feet.
- d. Each stand shall have at least two exits. Each stand in excess of forty feet in length shall have at least three exits spaced approximately equidistant apart; provided, however, that in no case shall the distance between exits exceed twenty feet. Exit doors shall be not less than twenty-four inches wide and six feet and two inches in height and shall swing in the direction of exit travel. No supplies or other materials shall be stored in front of exit doors. All exit doors shall remain unlocked whenever the stand is occupied.
- e. The aisle or passageway in the fireworks stand must be kept clear and unobstructed so as not to impede anyone leaving the stand in an emergency.
- f. Each stand shall be provided with two (2) two and one-half gallon "water-type" (minimum rating 2A) fire extinguishers in good working order and easily accessible for use in case of fire.
- g. Fireworks stands shall be located on property zoned SC, LC, GC, AC, TC, M-1 or M-2, or in any other zoning classification if the Fire Chief certifies in writing to the Finance Director that the operation of a fireworks location in such other zoning classification will not endanger the health and safety of the community or create a fire hazard to surrounding properties.

4.54.400 General Requirements for Licensees.

- a. Stands shall not be located closer than six hundred feet apart, unless separated by a principal arterial roadway.
- b. All weeds and combustible material shall be cleared from the location of the stand to a distance of at least twenty-five feet surrounding the stand.
- c. "NO SMOKING" signs shall be prominently displayed on and in the fireworks stand.
- d. Each stand must have an adult watchman in attendance and in charge thereof when the stand is being used for sale, dispensing or storage of fireworks.
- e. All unsold stock of fireworks in the hands of the retailer after 10:00 p.m. on the 4th day of July shall be returned to the distributor or wholesaler and removed from the City within ten days. On closing of stands, all litter shall be removed from the premises.
- f. No fuel-powered generator or similar equipment shall be allowed within fifty (50) feet of a fireworks stand.

g. No vehicles shall be parked within 25 feet of the fireworks stand unless loading or unloading fireworks.

h. No flammable liquids are permitted within 50 feet of the fireworks stand.

i. Signs shall be posted that 1) illustrate that illegal fireworks are prohibited in Rancho Cordova, that violators will be cited, what the citation fines are and that this will be strictly enforced and 2) list (to the public) places within Rancho Cordova where fireworks are allowed to be used, as well as places where fireworks are *not* allowed to be used, if any.

j. Handout material shall be issued with each sale that describes proper use of Safe & Sane fireworks and general safety practices to be followed when handling fireworks. Failure to issue the education material may result in the revocation of the permit and immediate closure of the stand.

4.54.405 Public Education.

a. The City of Rancho Cordova has determined that public education is critical to the safe use of fireworks within the City and that those fireworks suppliers and distributors who profit from the sale of fireworks in the City should be required to assist the City in educating the public about the safe use of fireworks.

b. Suppliers and distributors shall work with the City Manager, or his or her designee, and the Fire District to provide education materials to every school within Rancho Cordova. The materials shall describe and illustrate the proper use of State-approved fireworks, the prohibition of illegal fireworks, the consequences of violating fireworks laws and regulations and general safety practices to be followed when handling fireworks. Each fireworks supplier or distributor shall meet and confer with the City Manager by March 1 of each year to determine whether a Public Education Plan shall be required.

c. If requested by the City Manager, each fireworks supplier or distributor shall annually submit a Public Education Plan to the City by May 20 of each year. The plan should illustrate how the public will be educated about the City's no tolerance policy for illegal fireworks and the proper use of State-approved fireworks. At the City Manager's discretion, the plan may:

1. Include samples of all signs, messages, graphics, text, etc. that will be displayed in the City;

2. Graphically identify all locations throughout the City where public education messages are to be displayed and/or posted;

3. Include an accounting and samples of education materials distributed to every school in Rancho Cordova. These materials shall describe and illustrate

the proper use of State-approved fireworks, the prohibition of illegal fireworks, and the consequences of violating fireworks laws and regulations and general safety practices to be followed when handling state-approved fireworks. Suppliers and distributors shall request that schools hand out these materials out to every child a minimum of one month prior to the end of the school year;

4. Establish that all retail fireworks stands will have warning signs posted that illustrate that illegal fireworks are prohibited in Rancho Cordova, that violators will be cited, what the citation fines are and that this will be strictly enforced. The signs shall also include a listing of areas within the City where NO FIREWORKS of any kind are permitted to be used, if any;

5. Establish that City approved signs will be posted on public property at central entrances to the City. These signs shall illustrate the City's "No Tolerance" position on illegal fireworks, that violators will be cited, what the citation fees are and that this will be strictly enforced. The signs shall also include a listing of all areas within the City where NO FIREWORKS of any kind are permitted to be used, if any; and/or

6. State that signs and messages shall be posted and displayed no earlier than June 1, no later than June 15 and removed from said locations no later than July 7.

4.54.410 Enforcement.

a. The City Manager, or his or her designated representatives shall have authority to enforce this Article and issue citations for violations.

b. All fireworks stands shall be erected in a manner approved by the fire district in order to reasonably ensure the safety of attendants and patrons. A site inspection is required after the structure has been erected, stocked and prior to the commencement of sales. The field inspector will permit the sales to begin if each item shown or stated in the application packet are consistent with the conditions observed. The license will be subject to revocation if there are inconsistencies, omissions or changes from the approved plot plan or fire/life safety hazards are observed.

In the event that electrical systems are installed, the City's building department shall inspect the electrical systems prior to the stocking and commencement of sales. A fireworks stand shall not be permitted to open until the electrical system have been approved by the City's building department.

c. Each fireworks stand shall be subject to inspection(s) by the fire district at any time during each day of sales. If, in the opinion of the fire chief (or designee) the construction or the location of a stand, or the conduct of operations therein do not conform to these provisions, the fire chief (or designee), may order the stand

immediately closed until such time as the stand does conform to the provisions herein.

4.54.420 Revocation of License--Appeal.

a. The Finance Director may revoke, immediately and without notice or hearing, the license of any licensee who violates the provisions of subsection (e) of Section 4.54.360, subsections (a), (b), (c) or (f) of Section 4.54.380, or subsection (d) of Section 4.54.400. If the revocation occurs between June 22nd and July 5th, the Finance Director shall inform the licensee that the licensee may seek review of the Finance Director's decision by the City Manager, or the City Manager's designee, on the next business day. At the earliest opportunity on the next business day after the revocation, the Finance Director shall provide the City Manager with written notice that a fireworks business license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. If requested by the licensee, the City Manager, or the City Manager's designee, shall meet with the licensee and the Finance Director on that day to review the Finance Director's decision. The decision of the City Manager or his designee shall be final. If the revocation occurs before or after the specified period, the appeal procedures of subsection (b) shall apply.

b. The Finance Director, or the Finance Director's designee, may revoke the license of any licensee who violates any provision of this Article not specified in subsection (a). Such revocation shall not take effect for five days, during which time the licensee may seek review of the Finance Director's decision by submitting a written request for review to the City Manager. The Finance Director shall provide the City Manager with written notice that a fireworks license has been revoked, including the name of the licensee and a brief statement of the grounds for revocation. The City Manager, or the City Manager's designee, shall meet with the licensee and the Finance Director to review the Finance Director's decision. The decision of the City Manager or his designee shall be final.

c. Any licensee whose permit has been revoked pursuant to subsections (a) or (b) hereof shall be barred from receiving a license under this Article for five (5) years from the date of revocation.

4.54.430 Penalty; Infraction.

a. Notwithstanding the provisions of any other section of this Code, and with the exception of the fourth and subsequent violation of this Article within one year as provided in subdivision (c) of this section, the violation of any of the provisions of this Article is an infraction.

b. Every violation of any provision of this Article constituting an infraction is punishable as follows:

1. a fine not exceeding one hundred (\$100) dollars for a first violation;
 2. a fine not exceeding two hundred (\$200) dollars for a second violation of this Article within one year; and
 3. a fine not exceeding five hundred (\$500) dollars for a third or subsequent violation of this Article within one year.
- c. The fourth and/or any subsequent violation of this Article within one year may, within the discretion of the charging officer, be charged as a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment in the County Jail for not more than six (6) months, or both.

4.54.440 Seizure of Fireworks.

The Fire Chief, or the Fire Chief's designee, may seize, take, remove or cause to be removed, at the expense of the licensee, all stocks of fireworks offered or exposed for sale, stored or held in violation of this Article when such violation creates an imminent threat to public health or safety.

4.54.450 Concurrent Authorities.

This Article is not the exclusive regulation for fireworks within the City. It shall supplement and be in addition to the other regulatory codes, statutes, and ordinances heretofore and hereafter enacted by the City, the State, or any other legal entity or agency having jurisdiction."

SECTION 2: Severability

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

SECTION 3: Effective Date and Publication

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Grapevine Independent, a newspaper of general circulation printed and published in Rancho Cordova City and circulated in the City of Rancho Cordova, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption. Provided, however, that section 4.54.350(a)(1)(i), which requires the

applicant to have its principal and permanent meeting place in the City of Rancho Cordova or its adopted Planning Area, shall not be operative until January 1, 2006.

* * * * *

PASSED AND ADOPTED this ____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

MAYOR

ATTEST:

CITY CLERK

717673_6

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MEMORANDUM

DATE: February 7, 2005

TO: Mayor and Council Members

FROM: Kathleen Franklin, Assistant Planner

SUBJECT: Ellenwood Estates – RC-04-125 – Design Review. Project was continued from the December 6, 2004 Council meeting to allow a Council appointed sub-committee to meet with the applicant for project review.

Location: Ellenwood Drive

APN: 077-0200-009 and 077-0370-097



<u>OWNER/APPLICANT:</u>	<u>REPRESENTATIVE:</u>
D R Horton Cori VanDyck 4401 Hazel Ave, Suite 225 Fair Oaks, CA 95628	Bloodgood Sharp Buster Paulina Vo 1107 Investment Blvd, Suite 200 El Dorado Hills, CA 95762

RECOMMENDATION

Review the elevations for the Ellenwood Estates Project as revised by the Sub-committee and make one of the following determinations: 1. Deny the revised project elevations; or 2. Adopt Resolution No. 18-2005 approving the revised elevations.

BACKGROUND

The Design Review for the Ellenwood Estates project was approved by the Planning Commission at its October 28, 2004 meeting. The Design Review was for a 60 unit residential development located on Ellenwood Drive at the intersection of Nut Plains Drive and Ellenwood. Subsequent to the Planning Commission hearing, the City Council exercised its appeal option and asked to review the project. The City Council reviewed the project at its December 6, 2004 meeting and subsequently appointed a sub-committee made up of two Council members, David Sander and Dan Skoglund, and Planning Commissioners Smith, Burke and Vance to meet with the applicant to discuss possible revisions.

Sub-Committee Meeting – December 21, 2004

Attendees: Council Members Sander and Skoglund; Planning Commissioners Smith, Burke and Vance; Planning Department staff Bill Campbell and Kathleen Franklin; Applicants included representatives from D R Horton, builder; and Bloodgood, Sharp, and Buster, architect.

Kerrin West, Architect with BSB presented the sub-committee with revised plans based on the comments the City Council had made at its December 6, 2004 meeting. The revisions included:

Plan 1: Extended standard front porch on corner lots (all elevations); iron porch rail; the removal of the shutters and the addition of an iron basket at the front window; increased stone on front entry gable; increased stone on columns to roof; increased stone on front entry gable; continued wainscot stone wrap at garage to side yard fence; lap siding at front, sides, and rear gables; two coach lights at carriage door; garage carriage doors.

Plan 2: Metal porch rail; widened base of columns under arches; stucco trim at top of arch window; eave detail at front and rear gables; lat siding at front, sides, and rear gables; two coach lights at garage door; garage carriage doors.

Plan 3: Iron basket at side window; widened base of columns under arches; revised roof over garage; iron porch rail; two shutters at side window; "iron cross" element at entry gable; increased stone at front entry gable; eave detail at front and rear gables; frieze band at rear gables; eave detail at front and rear gables; lap siding at front, sides, and rear gables; two coach lights at garage door; garage carriage doors.

The applicant and committee discussed several issues, one of which was the possibility of extending the depth of the proposed porch on the narrow lot homes from six feet to eight feet for a more usable porch area. Councilmember Sander was also interested in making sure there was a meaningful offset to the front setbacks to provide a "stagger" to the streetscape. Suggestions of the addition of a "Bay Window" to the side elevation of Plan 1 was suggested; a change the rear roof line from front gable to a hip in Plan 3; and add "closed" shutters and /or a false window to the side elevation of Plan 3. It was also requested that the proposed color scheme be modified to include whites and greys.

Sub-Committee Meeting January 10, 2005

At the applicant's request a second meeting was called to ensure all the changes discussed at the first meeting had been addressed to the sub-committee's satisfaction. The sub-committee reviewed the proposed changes and was supportive of the revisions. The applicant stated that two of the requests, the change of the rear roof line from gable to hip and the addition of a false window on Plan 3 were not feasible and/or necessary. This was discussed and the sub-committee agreed with the applicant on the difficulty of changing the rear roof line on Plan 3. However, with regards to the addition of a false window to the side elevation, it was agreed that the false window would be added whenever this elevation was used on a corner lot.

The sub-committee requested the final revisions and most specifically a pre-plot exhibit, be submitted to the Planning Department by January 24, 2005. The pre-plot exhibit would demonstrate how the homes with the wrap-around porches would fit on the corner lots; and would show the "stagger" in the front yard setback to illustrate how the streetscape would appear. Although the Design Review Package was submitted, at the time of preparation of the staff report, the pre-plot exhibit had not yet been received.

ENVIRONMENTAL ANALYSIS:

The project was environmentally assessed by an earlier adopted Negative Declaration. Within the study of the environmental issues, aesthetics of the new development were identified and reduced the negative impacts of poor design to less than significant.

CONCLUSION:

It is staff's opinion the applicant has produced a Design Package that appears to meet the sub-committees direction. Staff has provided a resolution for approval should the City Council choose to support the project at this time.

RECOMMENDED MOTIONS:

1. "I move the City Council find the Negative Declaration for the Ellenwood Estates Subdivision adequately addressed any environmental issues for this project."
2. "I move the City Council adopt Resolution No. 18-2005 approving the Design Review for Ellenwood Estates as presented subject to the Findings, Design Review Package (Exhibit A) and Conditions of Approval (Exhibit B)."

ATTACHMENTS

1. Resolution No. 18-2005 with Design Review Package including Renderings (Exhibit A) and Conditions of Approval (Exhibit B).
2. (A) Design Review Package; (B) Color Renderings – Front Elevations

RESOLUTION # 18-2005

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
APPROVING DESIGN REVIEW FOR ELLENWOOD ESTATES
PROJECT # RC-04-125**

WHEREAS, D.R. Horton (hereinafter referred to as Applicant) filed an application with the City of Rancho Cordova (hereinafter referred to as City) for Design Review for Ellenwood Estates; and

WHEREAS, upon appeal of the project by the City Council, Council is the appropriate authority to hear and take action on this project; and

WHEREAS, a Negative Declaration was prepared for the Ellenwood Estates subdivision and adopted by the Ranch Cordova City Council, thereby satisfying the requirements for the California Environmental Quality Act; and

WHEREAS, the City Council of the City of Rancho Cordova has conducted a properly noticed public hearing pursuant to Government Code section 65090 and has duly considered all written and verbal testimony presented during the hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA HEREBY RESOLVES AS FOLLOWS:

Approve the Design Review, subject to the Project Plans (Exhibit A) and Conditions of Approval (Exhibit B), based on the following findings:

Findings:

1. CEQA

Finding:

The project site has been analyzed by the preparation of a Negative Declaration in compliance with the California Environmental Quality Act (CEQA).

Evidence: The City of Rancho Cordova City Council adopted a Negative Declaration on February 2, 2004. The environmental issues of aesthetics of the development for the project site were adequately addressed within the Negative Declaration. This project will not create any significant adverse impact on the environment.

2. DEVELOPMENT PLAN REVIEW

Approve the Development Plan Review subject to the Design Package (see Exhibit A) and the Conditions of Approval (see Exhibit B) based on the following findings:

Findings:

1. Home designs that incorporate authentic architectural styles. Particular attention shall be paid to the design of all front and side elevations facing the street or open space areas. All other elevations interior to the lot shall include, at a minimum, the articulation of all windows and doors (e.g., three-dimensional trim);

2. Diversity of homes within the subdivision by size and mass, elevation, garage orientation, and setbacks to avoid repetition of floor plans and elevations on adjacent homes within each subdivision and/or unit within a master planned area. The intent is to create sufficient variation among home plans to ensure visual interest along residential streets throughout each neighborhood;
3. Variety in mass and scale of homes that is visually appealing from the street;
4. Landscape that softens the appearance of pavement and structures, and provides an eventual tree canopy along the street; and
5. Encourage home designs with a wide range of pricing levels to accommodate all income levels within the City.

Evidence:

1. The developer has presented a design package which includes a total of three different plans with three elevations each. Homes will range in square footage from 1873 to 2240 square feet. Two of the home models have large covered front porches. The elevations are designed to represent Mediterranean themes, i.e. "Spanish", "Italian", and "French", which will provide some diversity within the 60 unit development. Elevations are accented with authentic and rustic appearing window shutters, stucco coved eaves, court walls, wrought iron railings, louvered shutters, etc. Articulation of the windows and doors has been provided on all elevations.

2. The Planning Department will review the production plans for compliance with setbacks and also to ensure the unit types, sizes, and colors achieve a mix that avoids repetition of floor plans and elevations. All dwellings are proposed to be two-story. This was discussed at the meeting between the applicant and staff to help alleviate the problems with development on the relatively small lots within this subdivision. With the required setbacks it was difficult for the applicant to meet the intent of the Garage Policy and provide a housing product of adequate size.

3. The applicant has submitted two floor plans that would meet the 50% rule of the City's Garage Orientation and Placement Policy to reduce the volume of garage doors fronting the street. A condition has been placed on the project requiring Plans 1 and 3 to be used for 50% of the housing product within the subdivision. The applicant has agreed to use different styles of light panels within the garage doors to match the style to the architectural style of the home.

4. Staff has reviewed the proposed landscape plans and has determined the plans to be adequate to meet the intent of the conditions of approval. Staff will make a final review of landscaping and street trees prior to final installment. Installation of the landscape will be done prior to issuance of occupancy permits.

5. The model homes include three two-story models. The Subdivision is Zoned RD-7 with 1/3 of the lots required to meet the RD-5 development standards. This subdivision will provide a new housing supply within the already established residential area of Rancho Cordova and provides a product for middle income levels within the City.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 7th day of February, 2005.

AYES:
NOES:
ABSENT:
ABSTAIN:

KEN COOLEY, MAYOR of the
CITY OF RANCHO CORDOVA

ATTEST:

LILLIAN HARE
CITY CLERK

DR HORTON

ellenwood

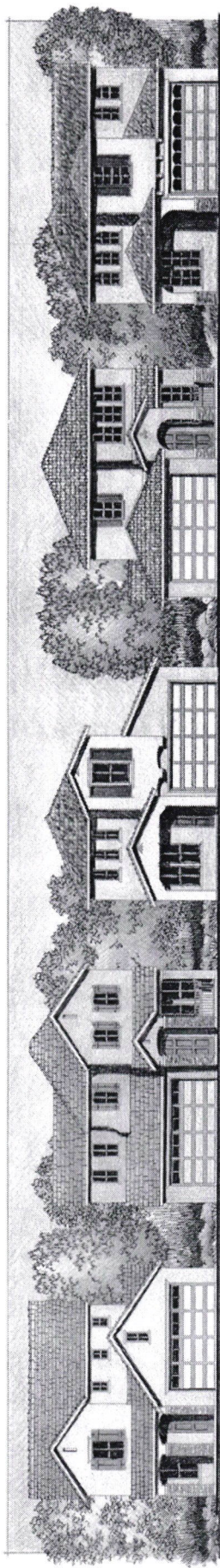
JANUARY 4, 2005

Architects and Planners, Inc.



Bloodgood Sharp Buster

Exhibit A



ELLENWOOD

streetscape



Architects and Planners, Inc.

Bloodgood Sharp Buster



ELLENWOOD

site plan



Architects and Planners, Inc.

Bloodgood Sharp Buster

CORNER LOT ANY PLAN

SOUTH OR WEST FACING LOTS

- A) DIETES VEGATA (FORTNIGHT LILY) 5 GAL.
- B) JUNIPER CHINENSIS (GOLD COAST) 5 GAL.
- C) NANDINA DOMESTICA (HEAVENLY BAMBOO) 5 GAL.
- D) RAPHIOLEPIS INDICA (JACK EVANS) 5 GAL.
- E) GREVILLEA (NOELLII) 5 GAL.
- F) PITTOSPORUM TOBIRA (VARIEGATA) 5 GAL.
- G) CONVOLVULUS CNEORUM (BUSH MORNING GLORY) 5 GAL.
- H) JUNIPER HORIZONTALIS (BLUE CARPET) 1 GAL.
- I) JUNIPER CHINENSIS (GOLD COAST) 1 GAL.
- J) PHORMIUM TENAX (BRONZE BABY) 1 GAL.
- K) PITTOSPORUM TOBIRA (WHEELER DWARF) 1 GAL.
- L) PYRUS CALLERIANA (CHANTICLEER) 24" BOX
- T) PRUNUS CERASIFERA (KRAUTER VESUVIUS) 24" BOX

NORTH OR EAST FACING LOTS

- A) NANDINA DOMESTICA (COMPACTA) 5 GAL.
- B) AZALEA (SOUTHERN INDICA) 5 GAL.
- C) CAMELLIA SASANQUA 5 GAL.
- D) VIBURNUM TINUS (SPRING BOQUET) 5 GAL.
- E) EUNYMIUS JAPONICA (GOLD SPOT) 5 GAL.
- F) PHOTINIA FRASERI 5 GAL.
- G) RAPHIOLEPIS INDICA (BALLERINA) 5 GAL.
- H) JUNIPER HORIZONTALIS (BLUE CARPET) 1 GAL.
- I) CONVOLVULUS CNEORUM (BUSH MORNING GLORY) 1 GAL.
- J) LARDOPE MUSCARI (LILY TURF) 1 GAL.
- K) PITTOSPORUM TOBIRA (WHEELER DWARF) 1 GAL.
- L) PYRUS CALLERIANA (CHANTICLEER) 24" BOX
- T) PRUNUS CERASIFERA (KRAUTER VESUVIUS) 24" BOX

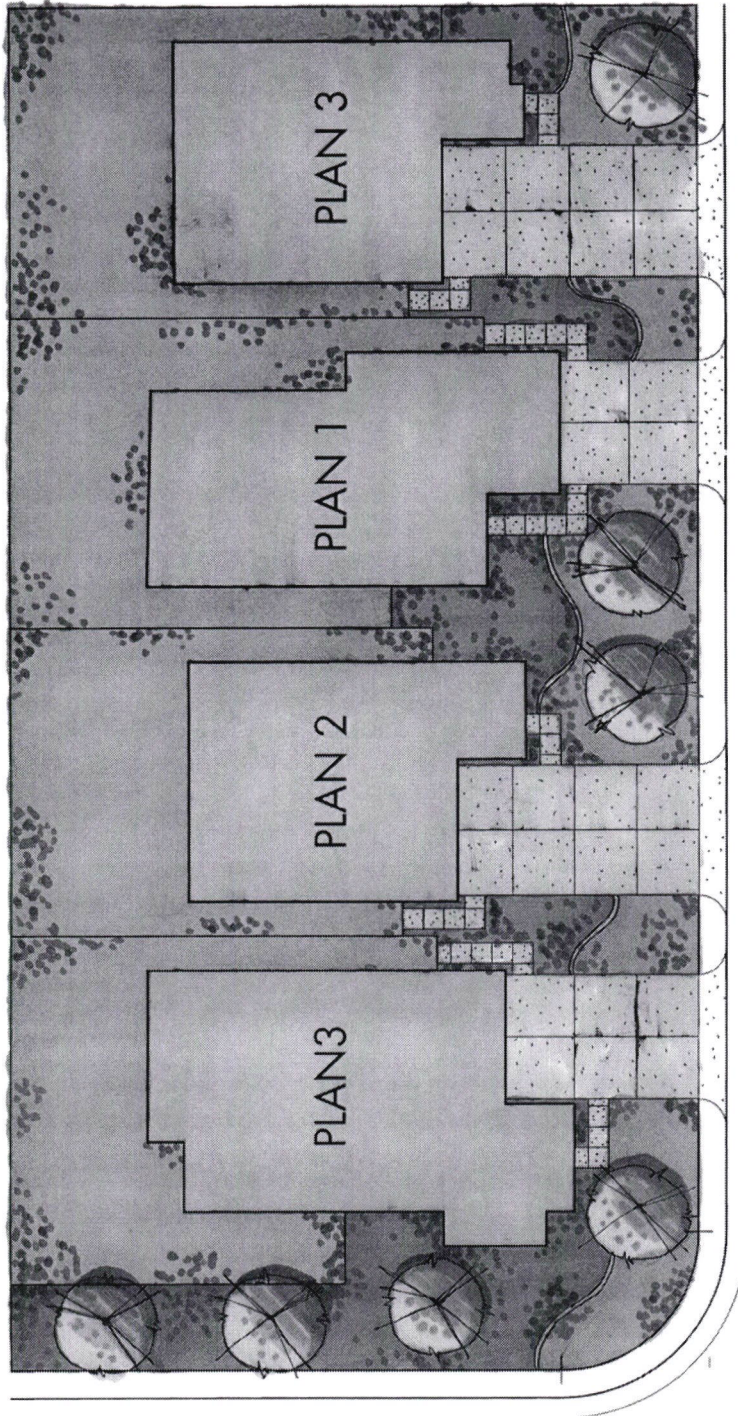
INTERIOR LOT ANY PLAN

SOUTH OR WEST FACING LOTS

- A) PITTOSPORUM TOBIRA (WHEELER DWARF) 5 GAL.
- B) NANDINA DOMESTICA (HEAVENLY BAMBOO) 5 GAL.
- C) RAPHIOLEPIS INDICA (BALLERINA) 5 GAL.
- D) GREVILLEA (NOELLII) 5 GAL.
- E) AGAPANTHUS (PETER PAN) 1 GAL.
- F) CONVOLVULUS CNEORUM (BUSH MORNING GLORY) 1 GAL.
- T) LAGERSTROEMIA INDICA (WATERMELON RED) 24" BOX

NORTH OR EAST FACING LOTS

- A) CONVOLVULUS CNEORUM (BUSH MORNING GLORY) 5 GAL.
- B) JUNIPER CHINENSIS (GOLD COAST) 5 GAL.
- C) AZALEA (SOUTHERN INDICA) 5 GAL.
- D) CAMELLIA SASANQUA 5 GAL.
- E) PHORMIUM TENAX (BRONZE BABY) 1 GAL.
- F) TRACHELOSPERMUM JASMINOIDES (STAR JASMINE) 1 GAL.
- T) LAGERSTROEMIA INDICA (WATERMELON RED) 24" BOX



ELLENWOOD

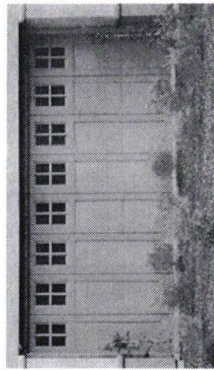
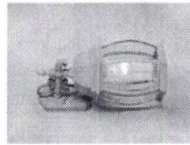
generic street landscape



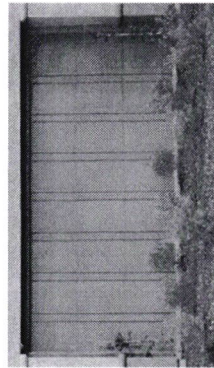
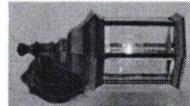
Architects and Planners, Inc.

Bloodgood Sharp Buster

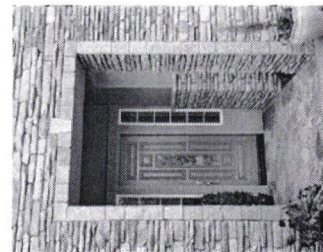
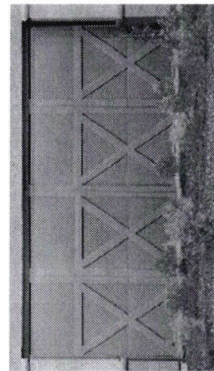
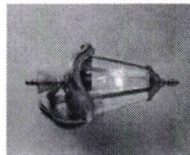
Spanish



Italian



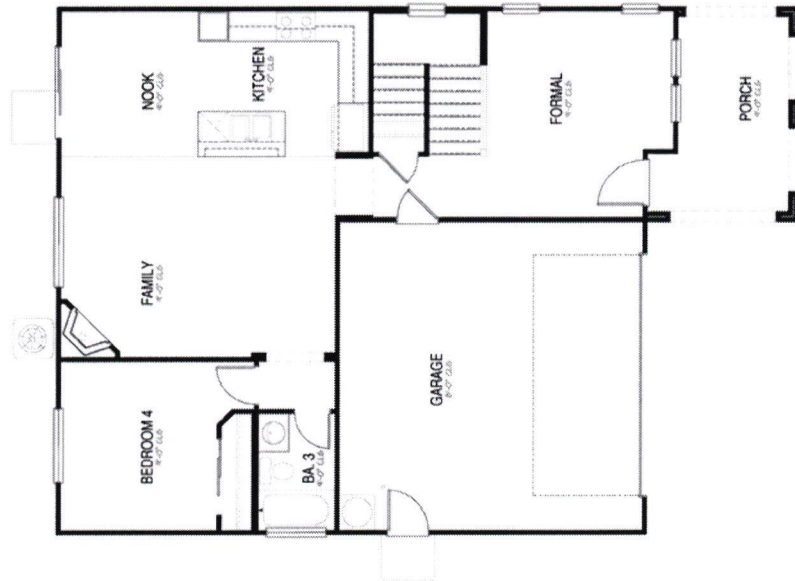
French



Optional Front Doors

ELLENWOOD

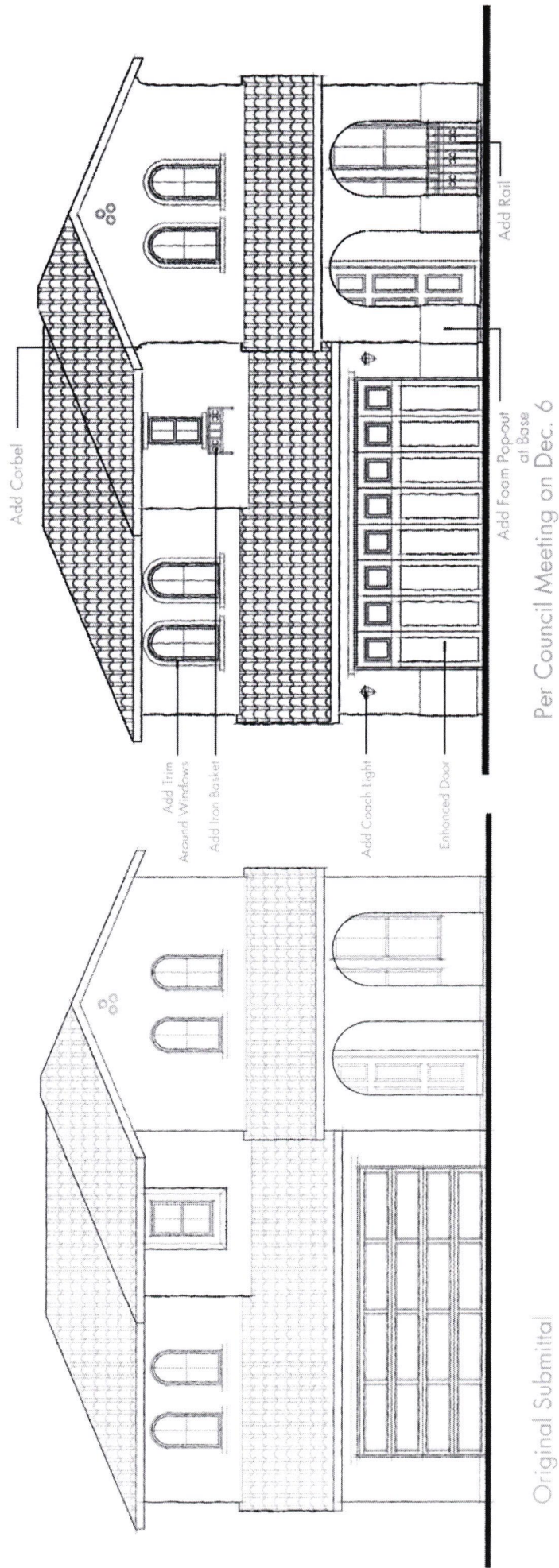
garage doors and coach lights

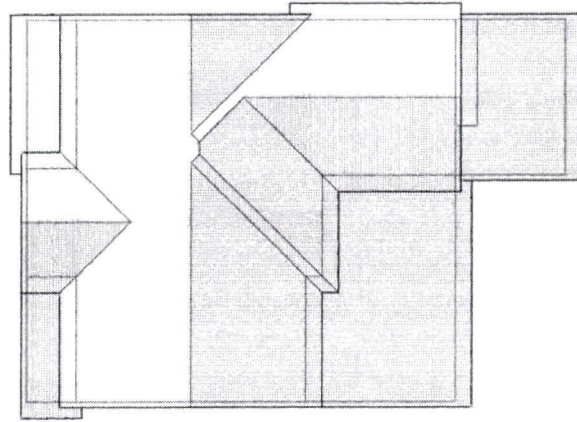


Plan 1-Main
SCALE: 1/8" = 1'-0"

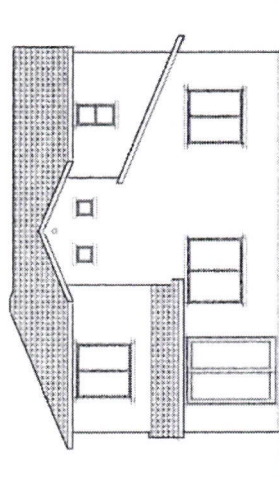


Plan 1-Upper
SCALE: 1/8" = 1'-0"

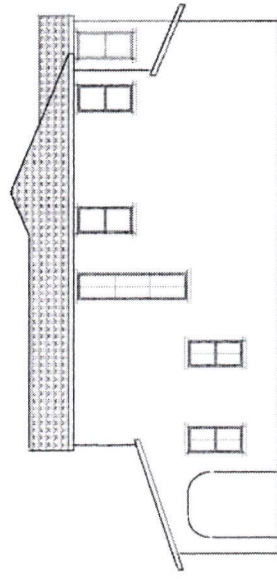




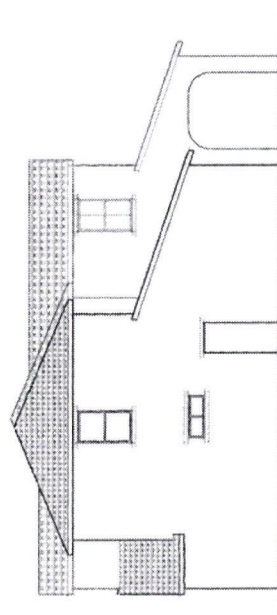
Roof Plan - A
SCALE: 1/8" = 1'-0"



Rear Elevation - A
SCALE: 1/8" = 1'-0"

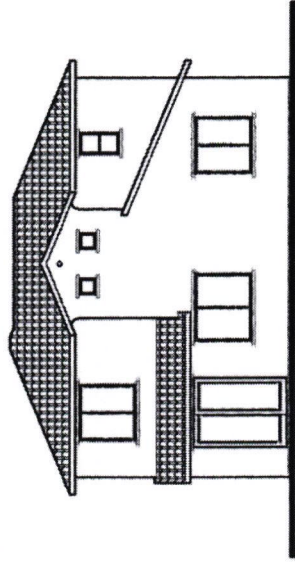


Right Elevation - A
SCALE: 1/8" = 1'-0"



Left Elevation - A
SCALE: 1/8" = 1'-0"

Original Submittal



Rear Elevation - A
SCALE: 1/8" = 1'-0"

Add Additional Window Grids for Corner Lot

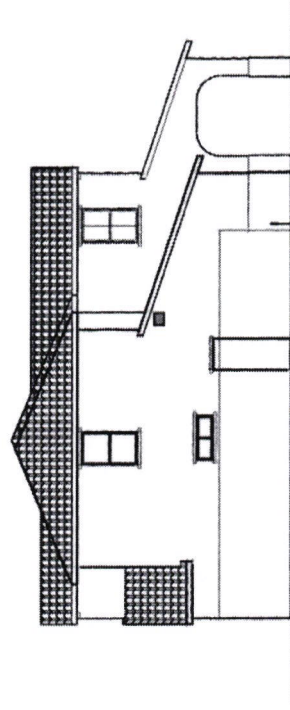
Add Additional Window Grids for Corner Lot

Add Iron Basket at Corner Lot

Add Rail Add Foam Pop-out at base

Right Elevation - A
SCALE: 1/8" = 1'-0"

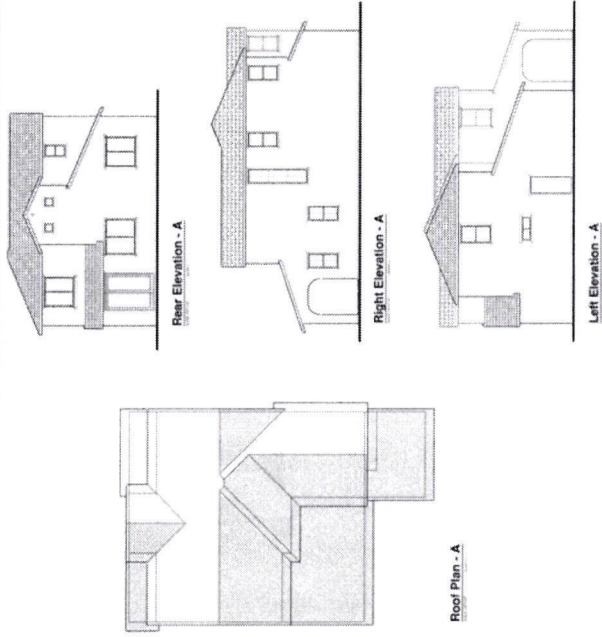
Move Back Fence Line at Corner Lots and Increase Landscape



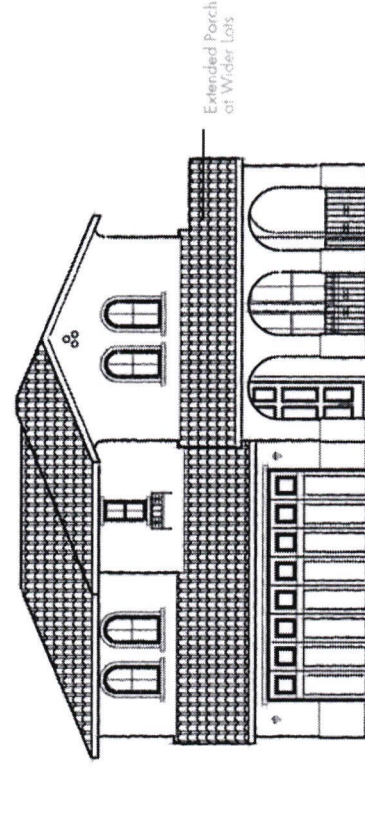
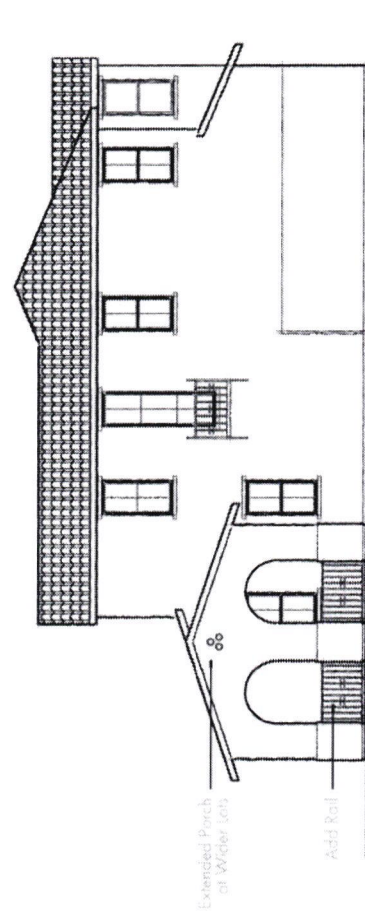
Left Elevation - A
SCALE: 1/8" = 1'-0"

Extended Foam Pop-out to Fence Line

Per Council Meeting on Dec. 6



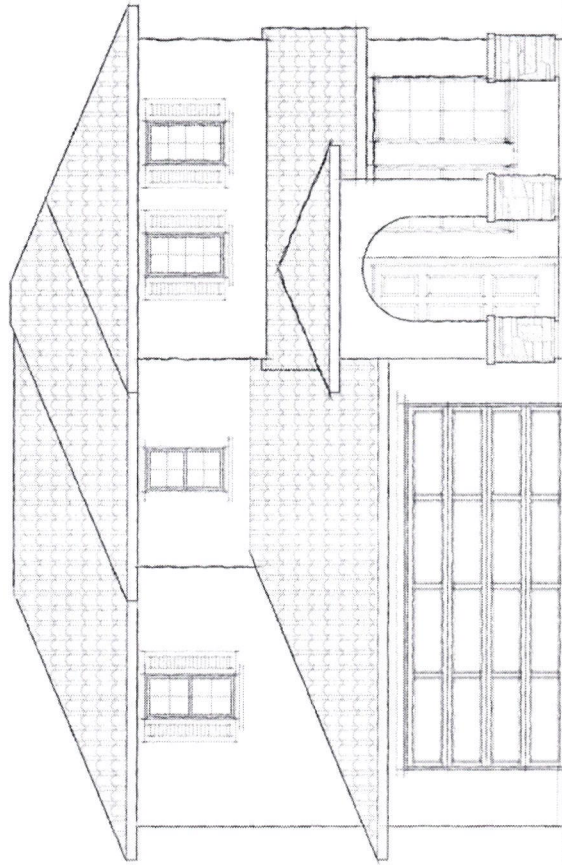
Original Submittal



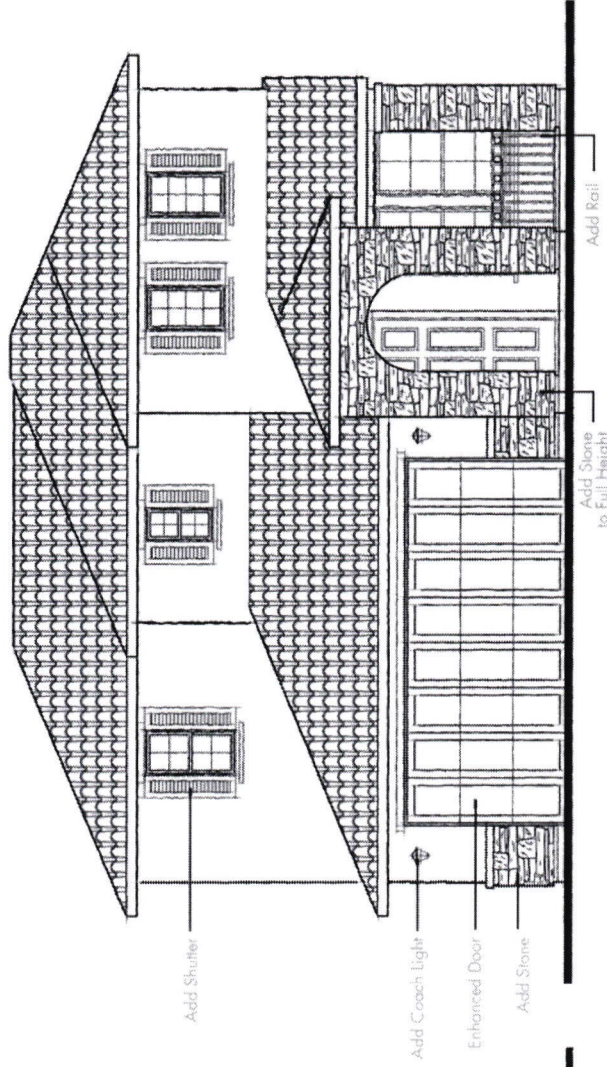
Per Council Meeting on Dec. 6

ELLENWOOD

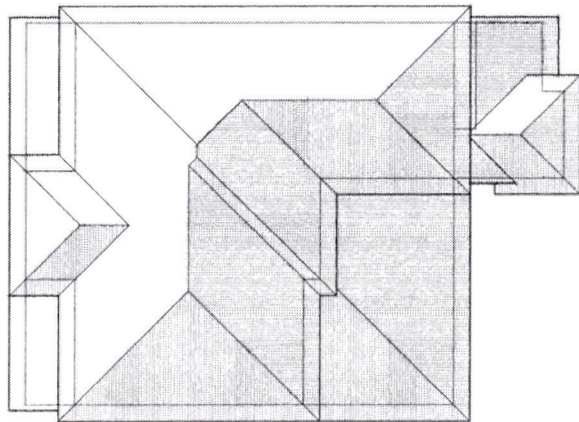
Plan 1 Spanish Colonial Extended Porch



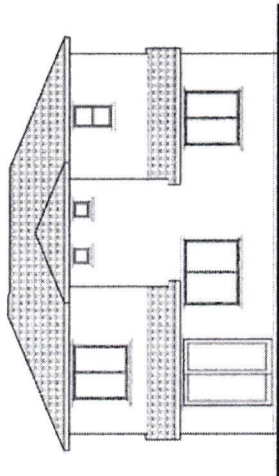
Original Submittal



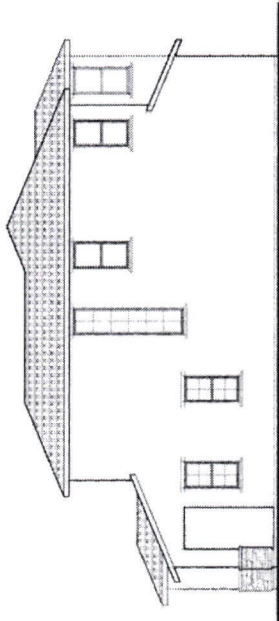
Per Council Meeting on Dec. 6



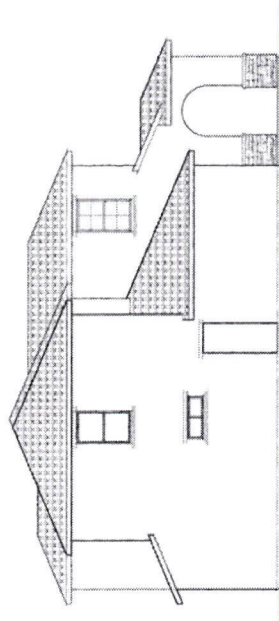
Roof Plan - B



Rear Elevation - B

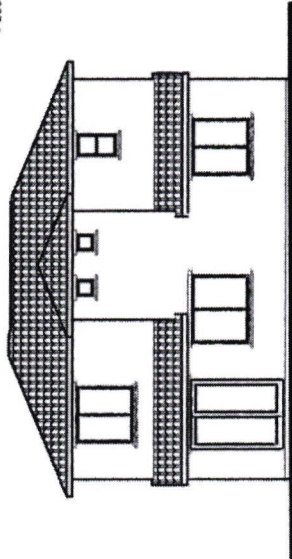


Right Elevation - B

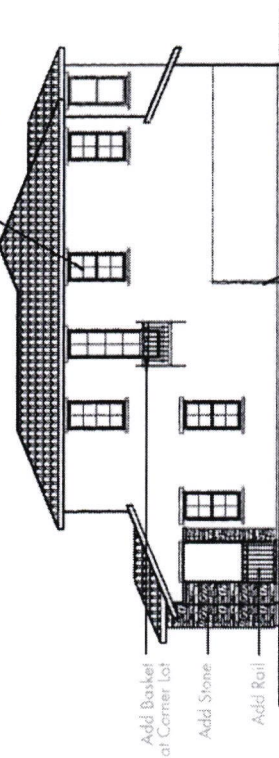


Left Elevation - B

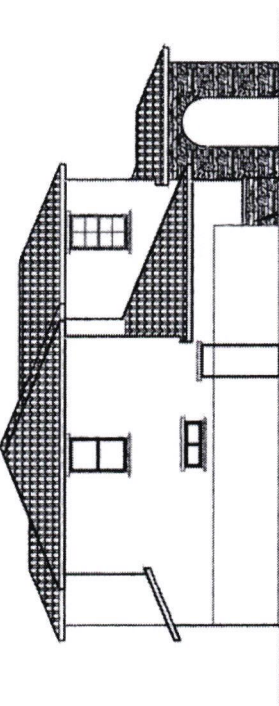
Original Submittal



Rear Elevation - B

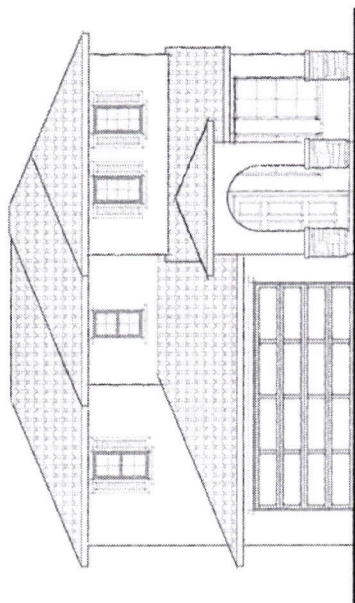
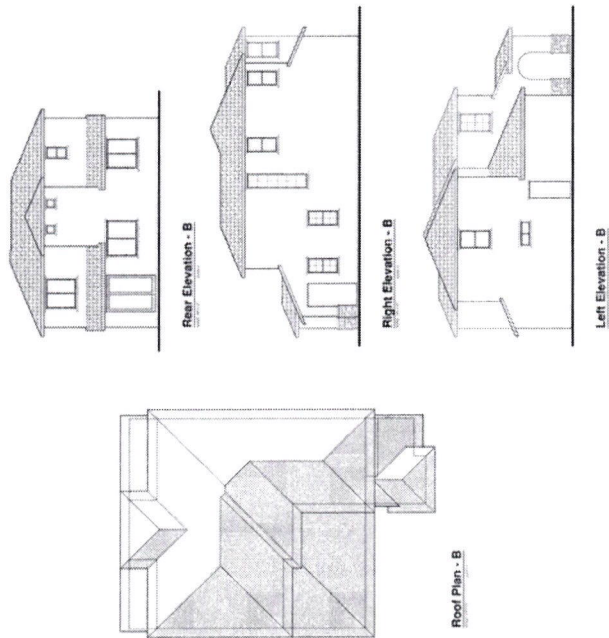


Right Elevation - B

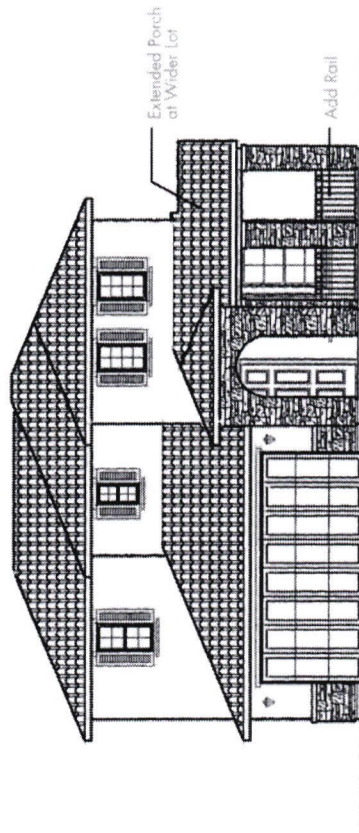
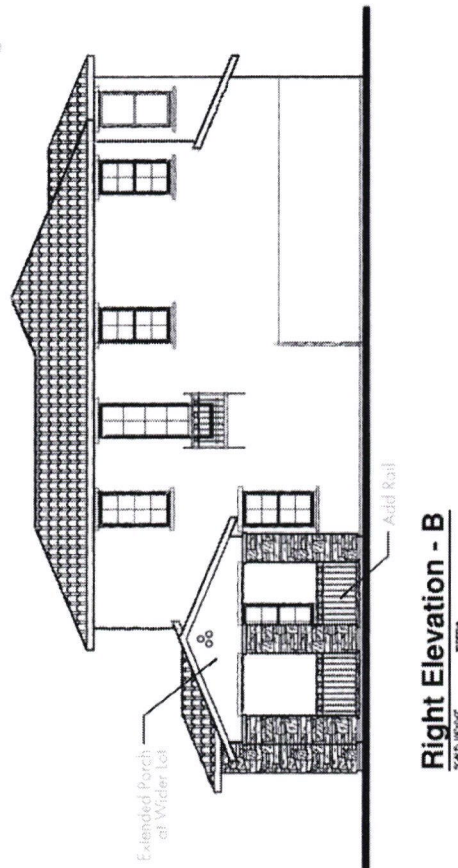


Left Elevation - B

Per Council Meeting on Dec. 6



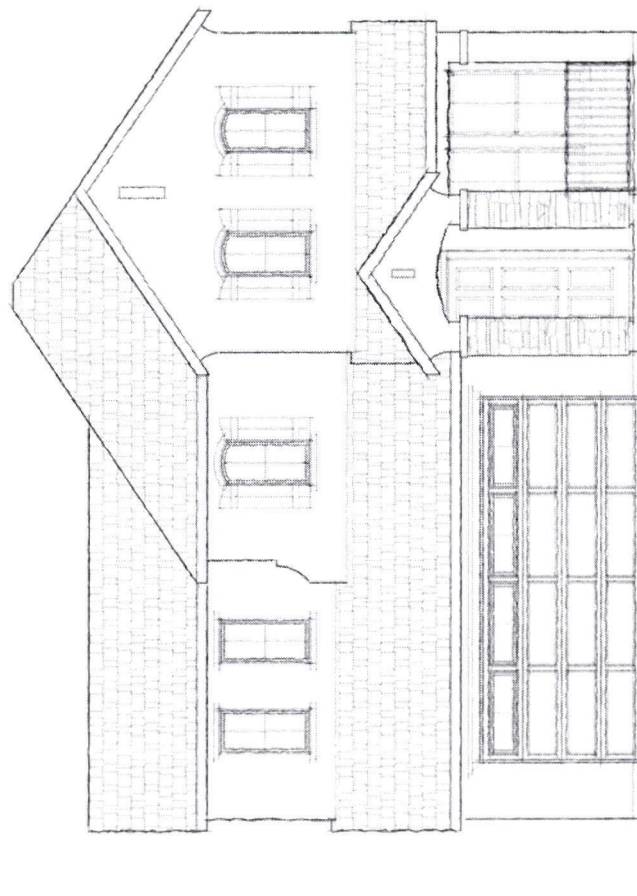
Original Submittal



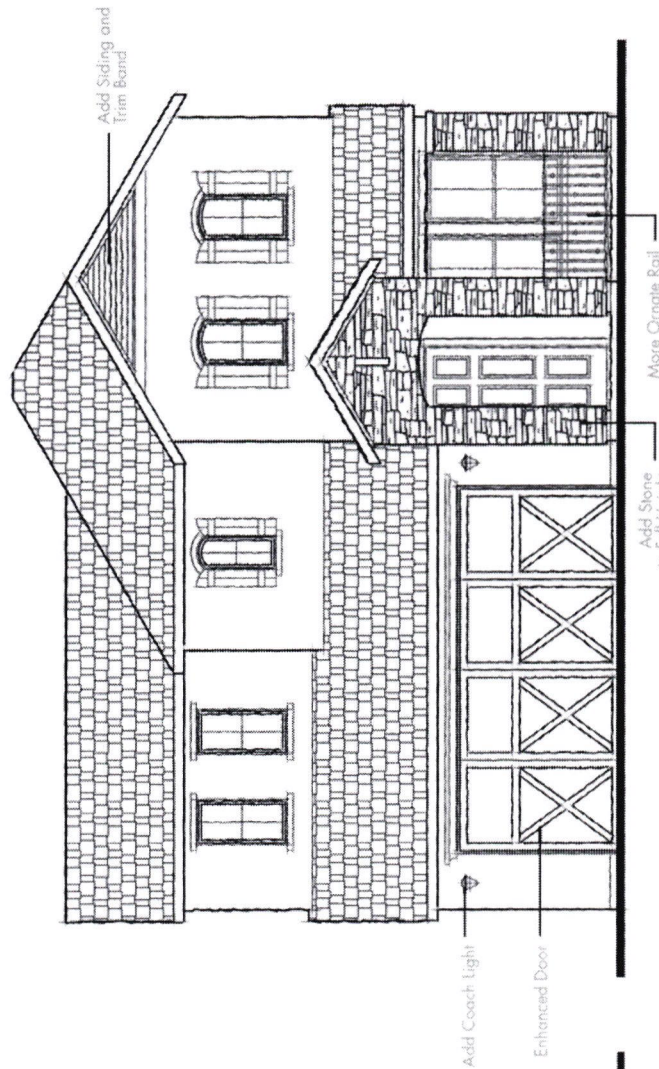
Per Council Meeting on Dec. 6

ELLENWOOD

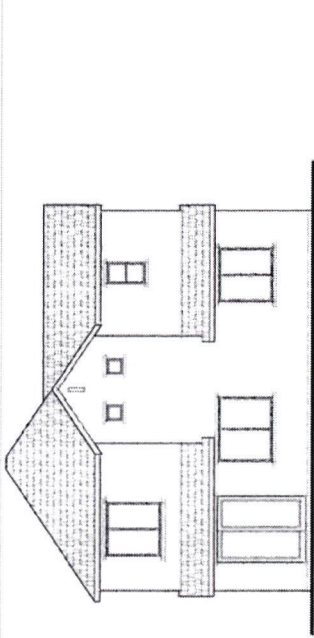
Plan 1 Italian Country Extended Porch



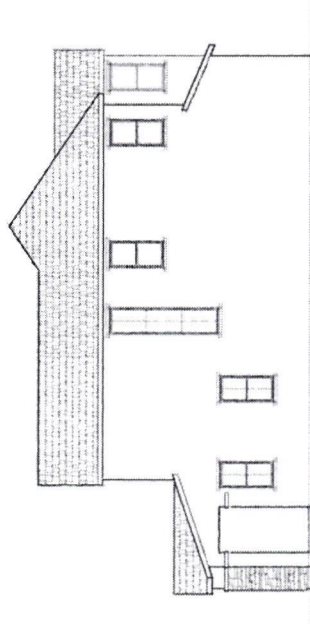
Original Submittal



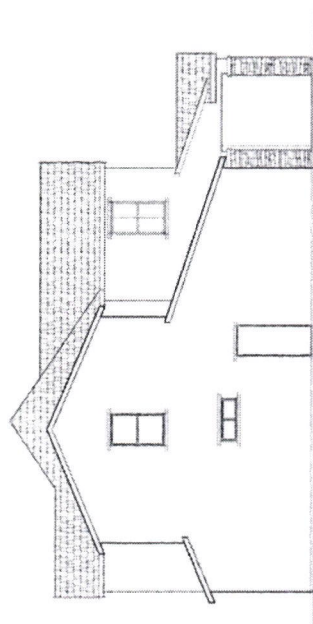
Per Council Meeting on Dec. 6



Rear Elevation - C

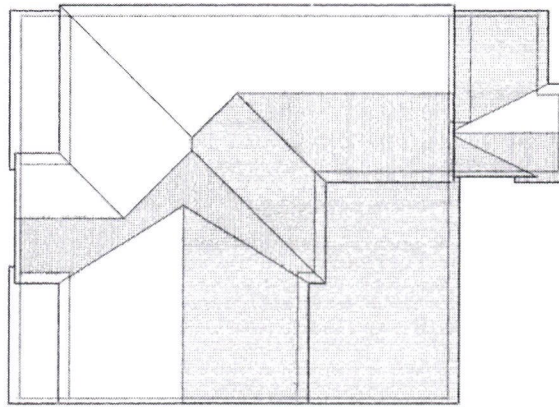


Right Elevation - C

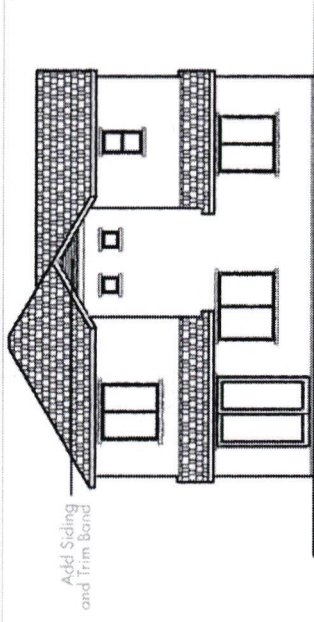


Left Elevation - C

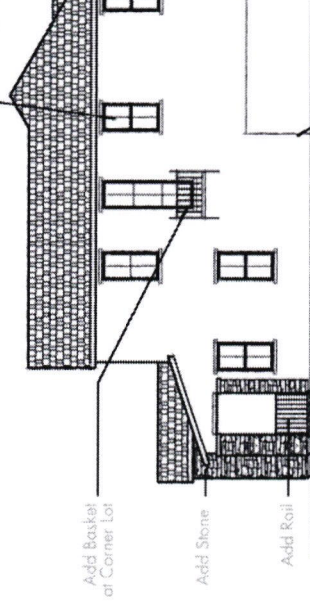
Original Submittal



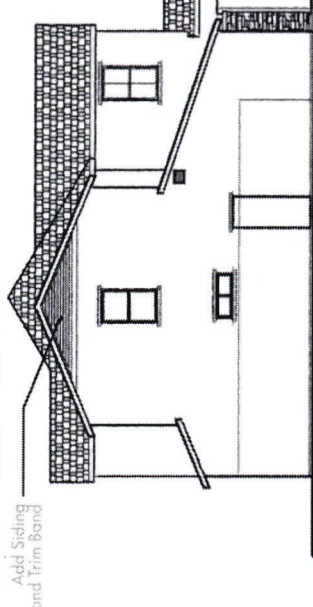
Roof Plan - C



Rear Elevation - C

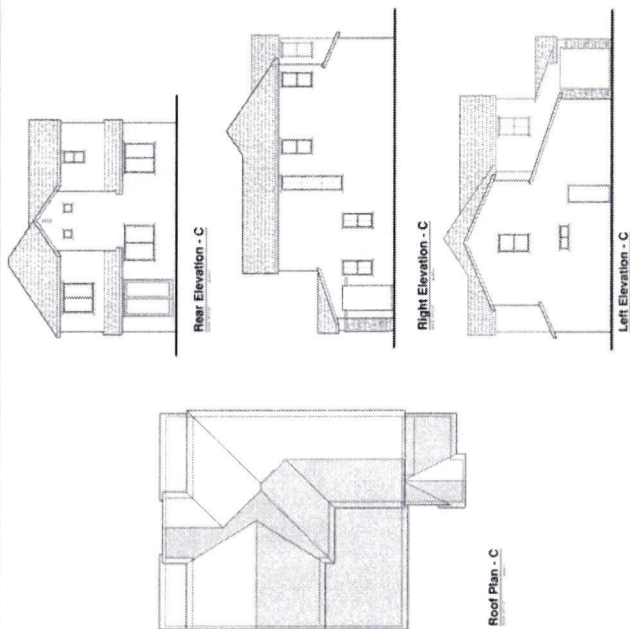


Right Elevation - C

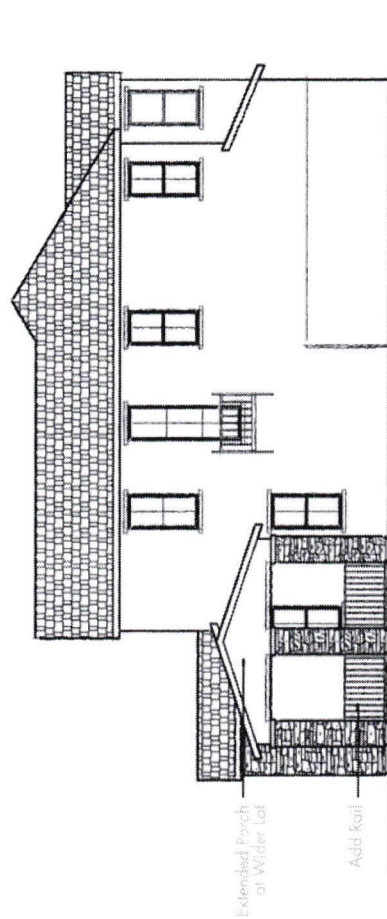
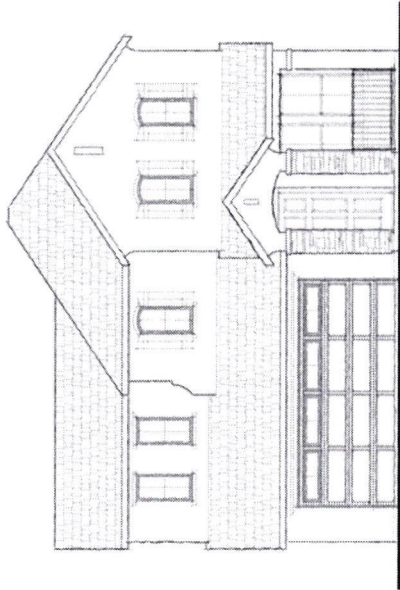


Left Elevation - C

Per Council Meeting on Dec. 6

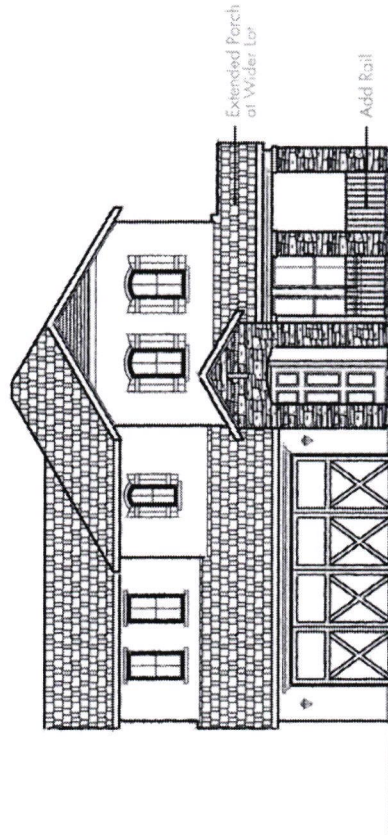


Original Submittal



Right Elevation - C Extended Porch
SCALE 1/8"=1'-0"

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Front Elevation - C Extended Porch
SCALE 1/8"=1'-0"

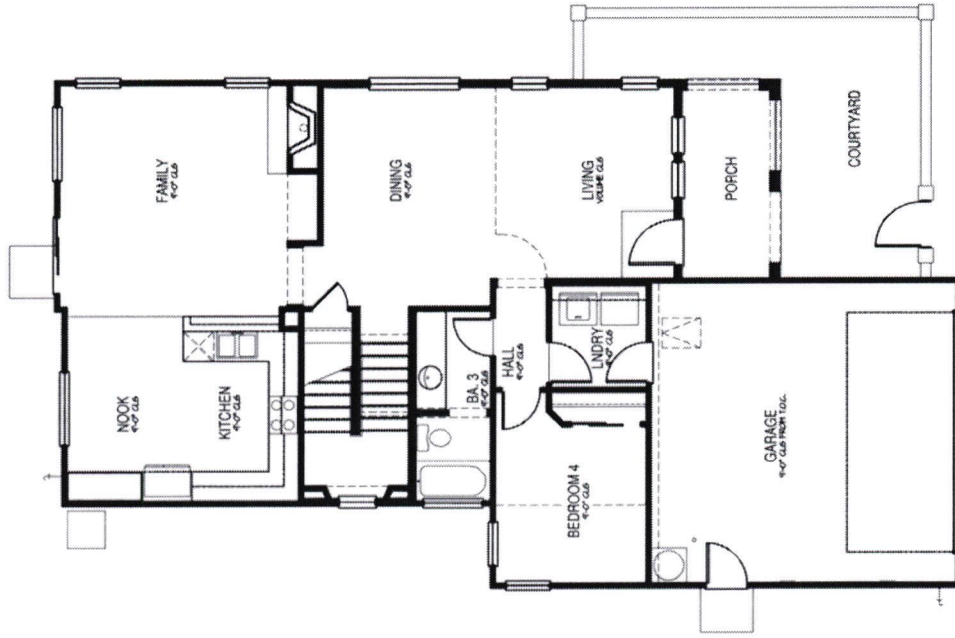
ELLENWOOD

Plan 1 French Extended Porch



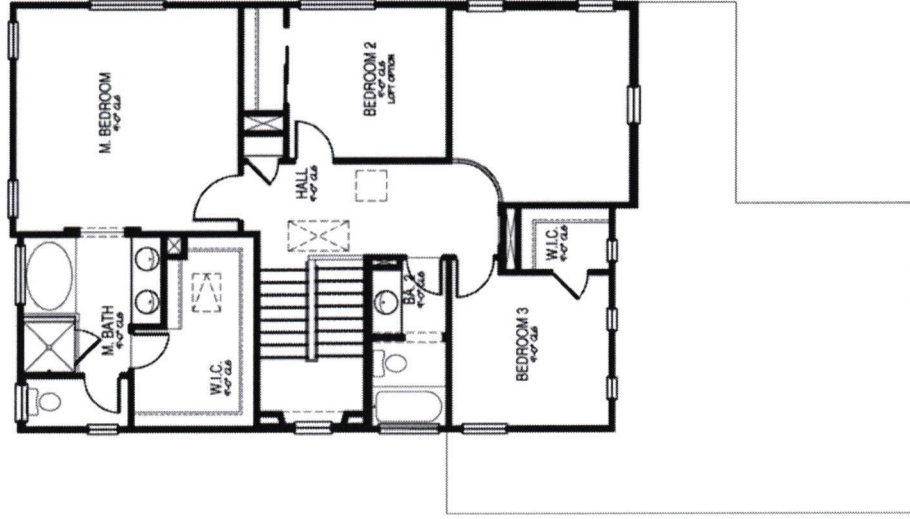
Architects and Planners, Inc.

Bloodgood Sharp Buster



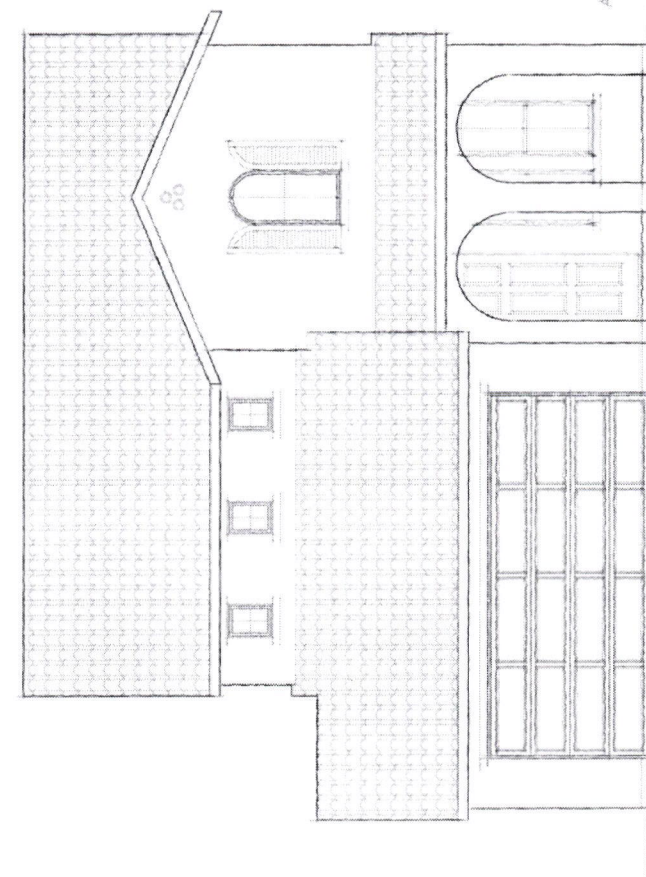
Plan 2-Main
SCALE 1/4" = 1'-0"

Per Council Meeting on Dec. 6

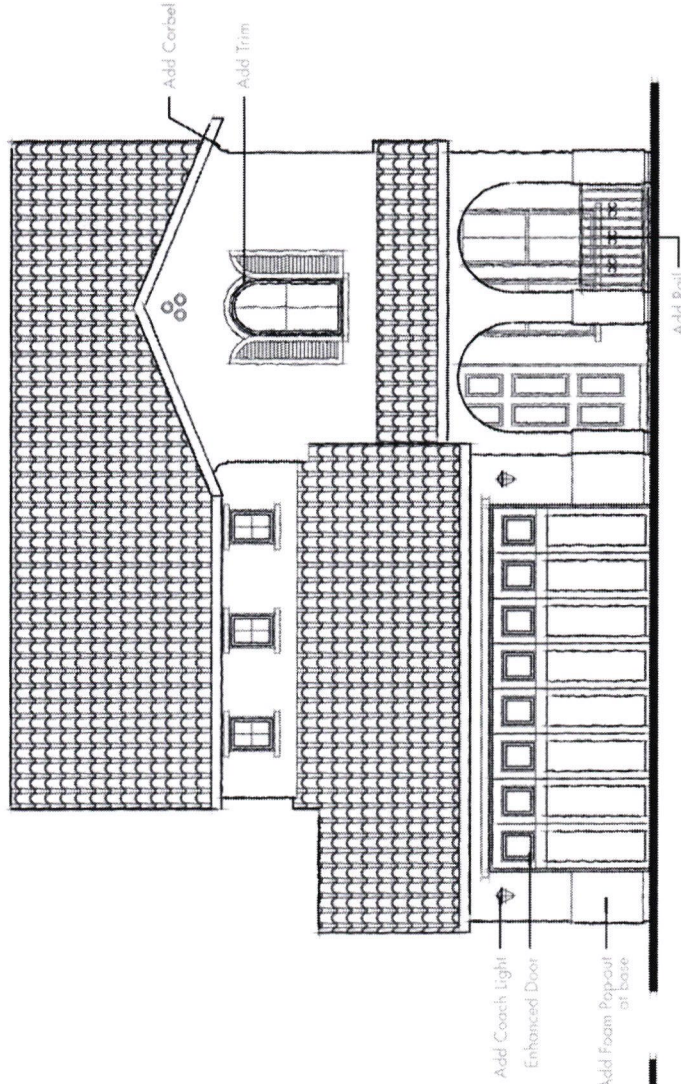


Plan 2-Upper
SCALE 1/4" = 1'-0"

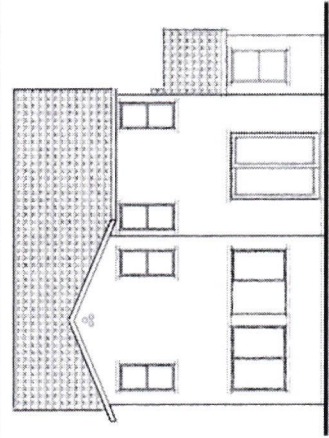
Per Council Meeting on Dec. 6



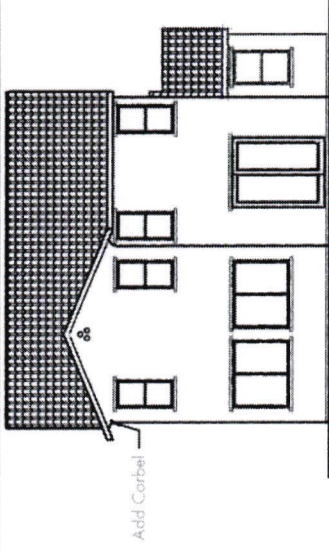
Original Submittal



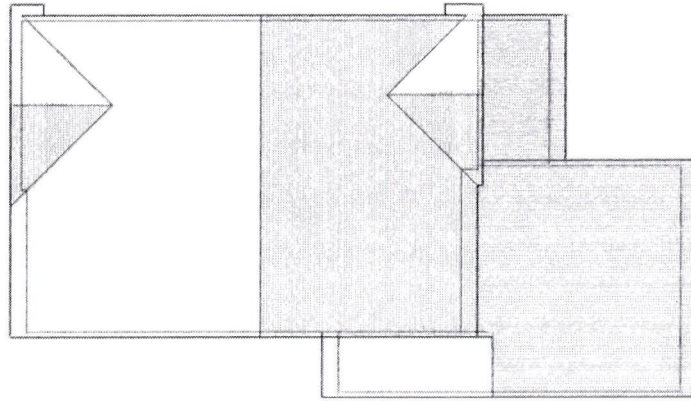
Per Council Meeting on Dec. 6



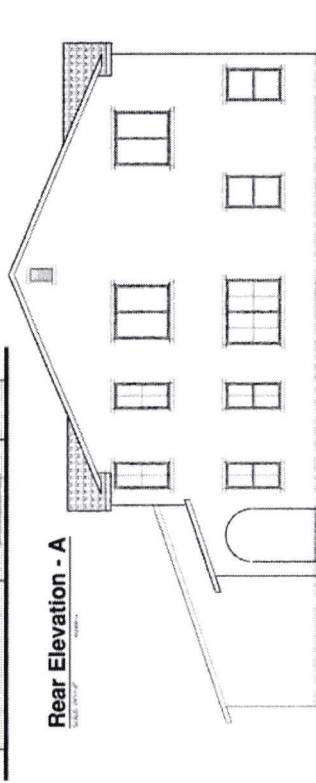
Rear Elevation - A
SCALE: 1/8" = 1'-0"



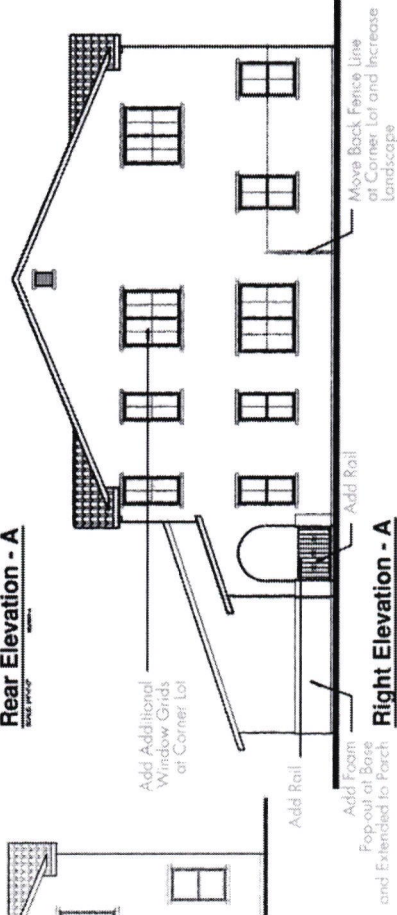
Rear Elevation - A
SCALE: 1/8" = 1'-0"



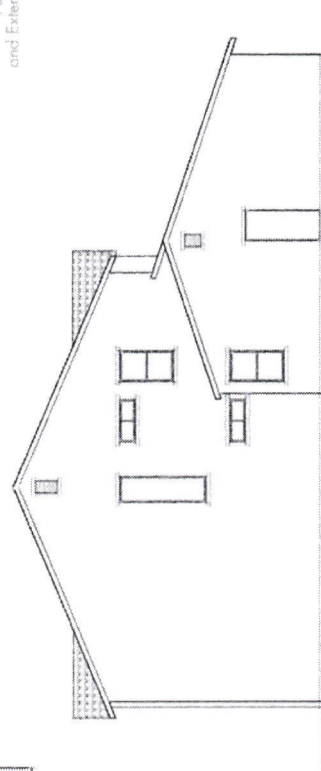
Roof Plan - A
SCALE: 1/8" = 1'-0"



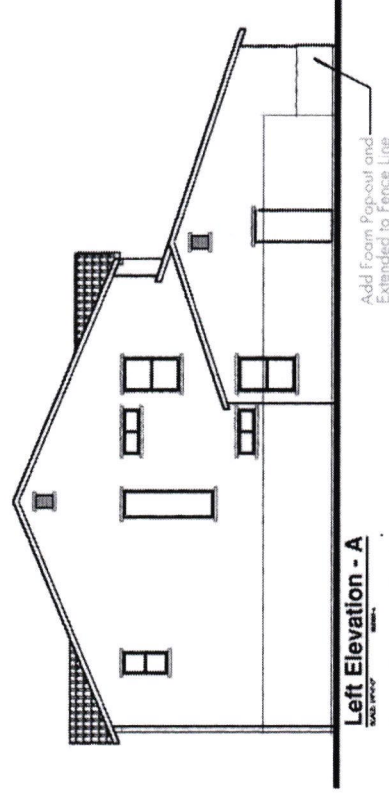
Right Elevation - A
SCALE: 1/8" = 1'-0"



Right Elevation - A
SCALE: 1/8" = 1'-0"



Left Elevation - A
SCALE: 1/8" = 1'-0"



Left Elevation - A
SCALE: 1/8" = 1'-0"

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Original Submittal

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Plan 2 Spanish Colonial Elevations



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SPANISH-VILLA TILE
Right Elevation - A
SCALE 1/8" = 1'-0"

SPANISH-VILLA TILE
Front Elevation - A Courtyard
SCALE 1/8" = 1'-0"

Per Council Meeting on Dec. 6

Add Courtyard Option
at Wider Lot

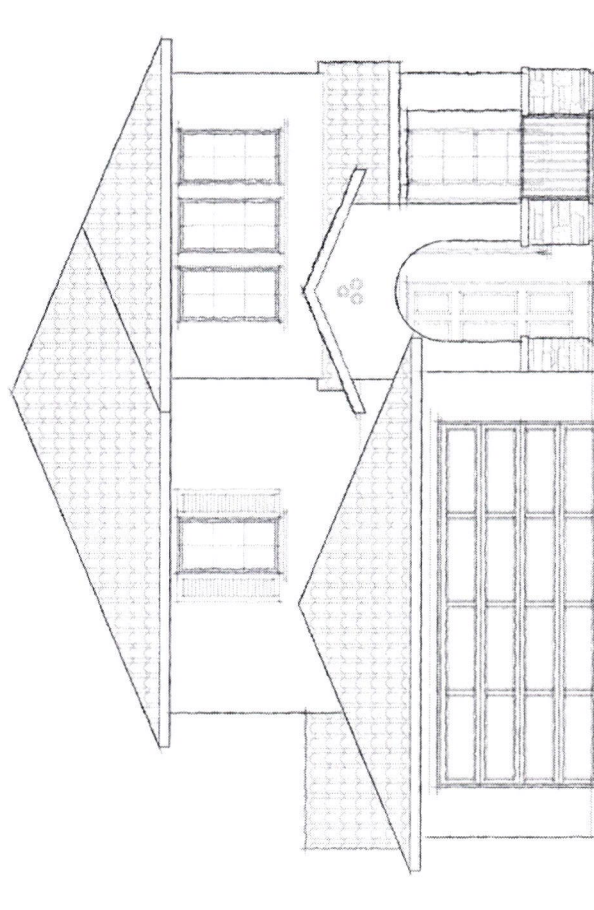
ELLENWOOD

plan 2 Spanish Colonial Courtyard

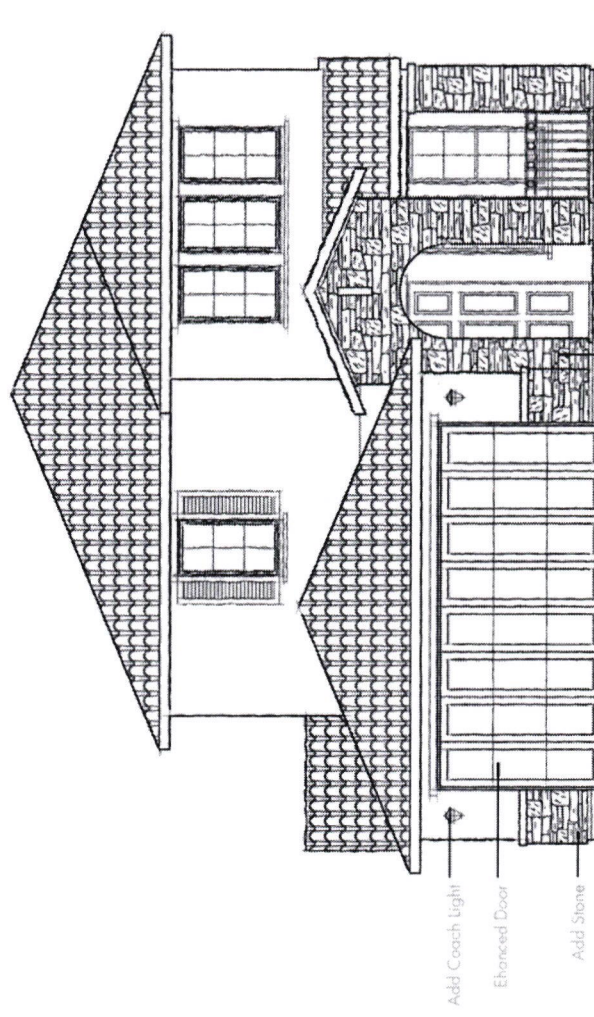


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Original Submittal



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Add Coach Light
Enhanced Door
Add Stone

Add Full
Height Stone

More Ornate Rail

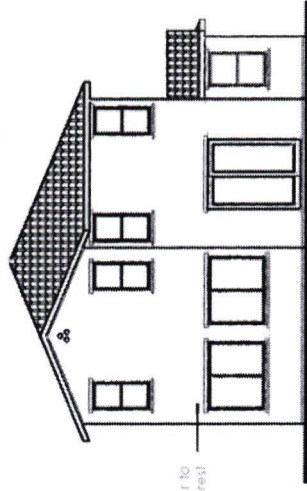
ELLENWOOD

Plan 2 Italian Country Front



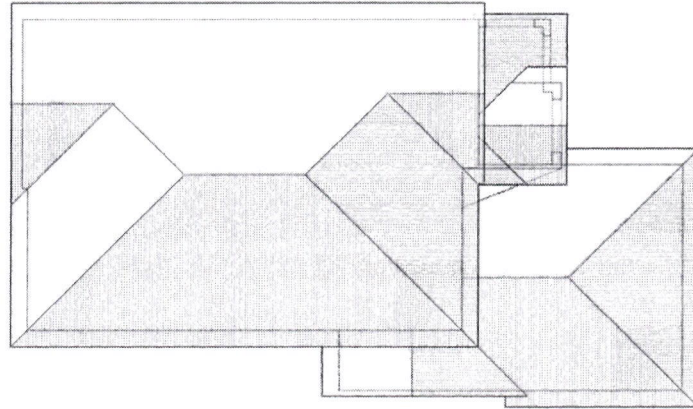
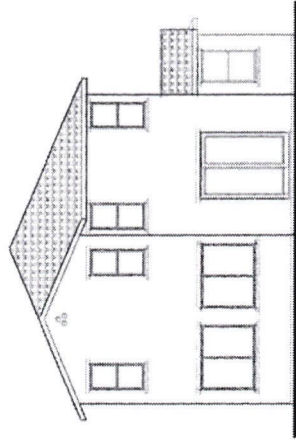
Architects and Planners, Inc.

Bloodgood Sharp Buster



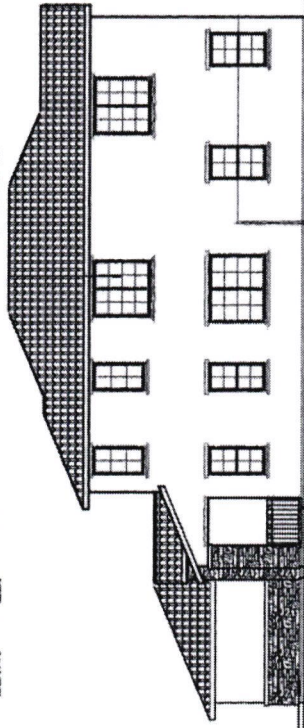
Rear Elevation - B
Revised

Rear Elevation - B
Original



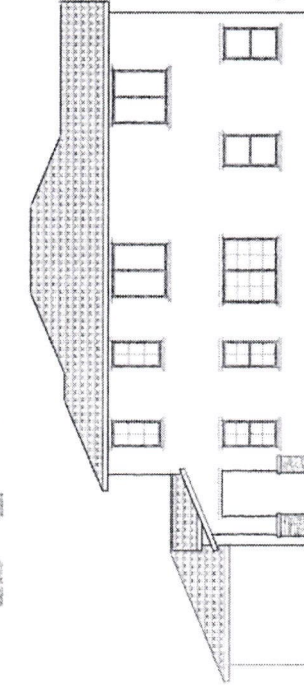
Roof Plan - B
Revised

Add Window Grids at Corner Lot



Rear Elevation - B
Revised

Rear Elevation - B
Original



Add Stone and Extended to Porch



Right Elevation - B
Revised

Right Elevation - B
Original

Add Rail



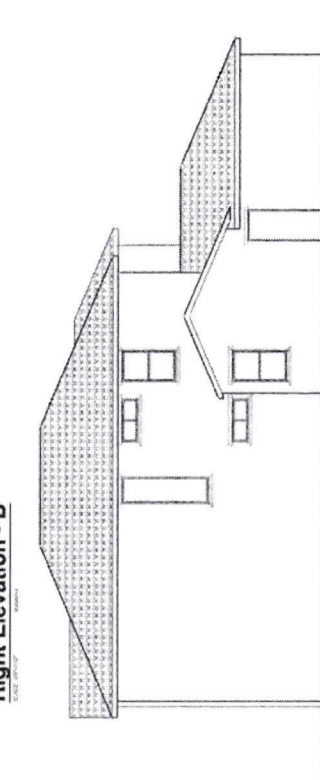
Right Elevation - B
Revised

Right Elevation - B
Original



Left Elevation - B
Revised

Left Elevation - B
Original



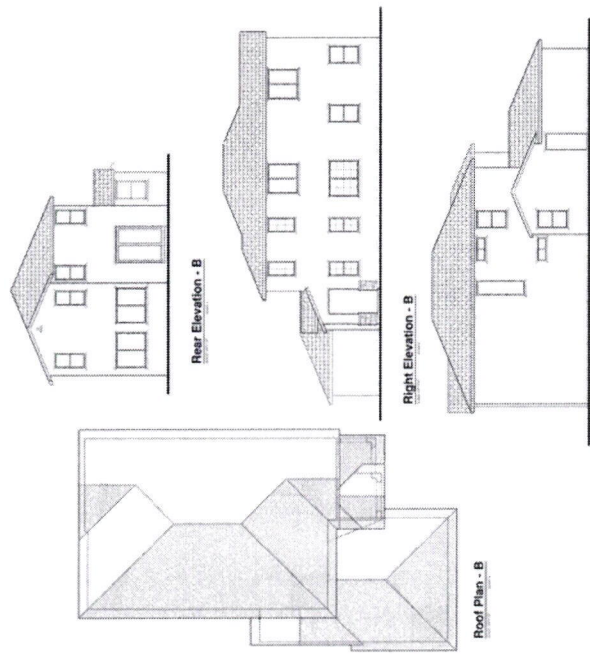
Add Stone and Extended to Fence Line

Left Elevation - B
Revised

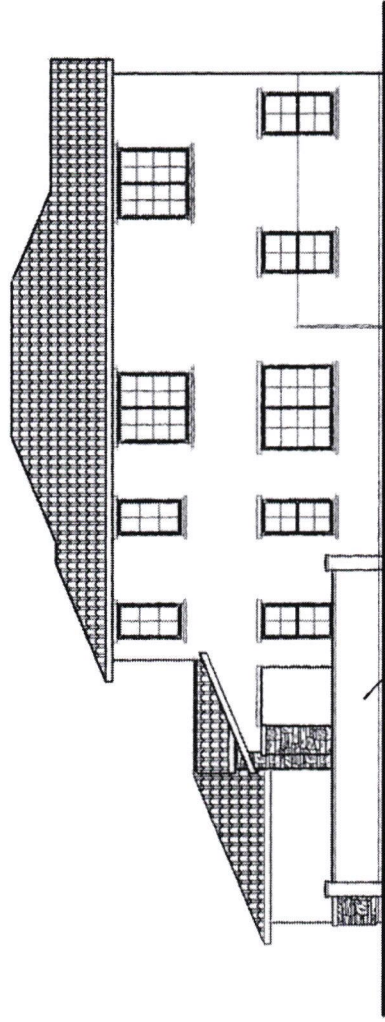
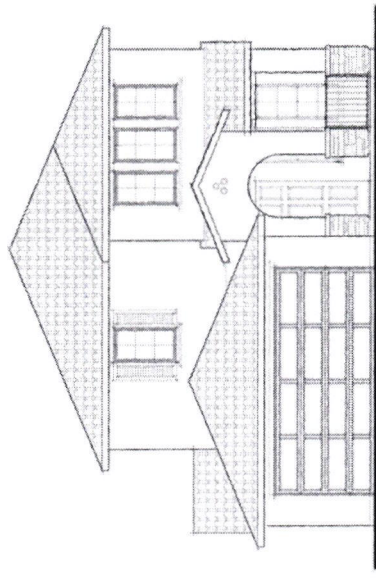
Left Elevation - B
Original

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Original Submittal

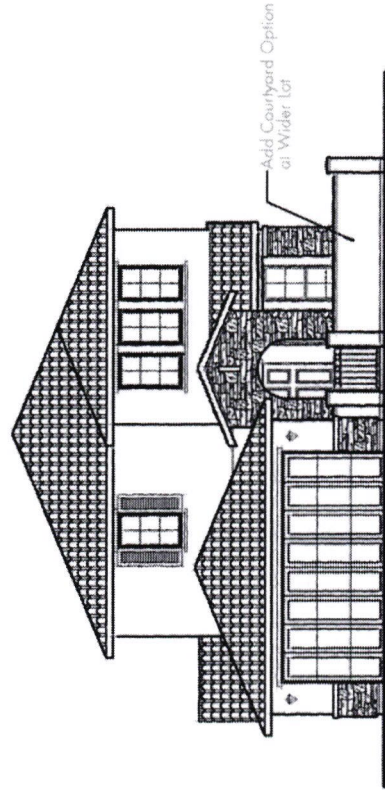


Original Submittal

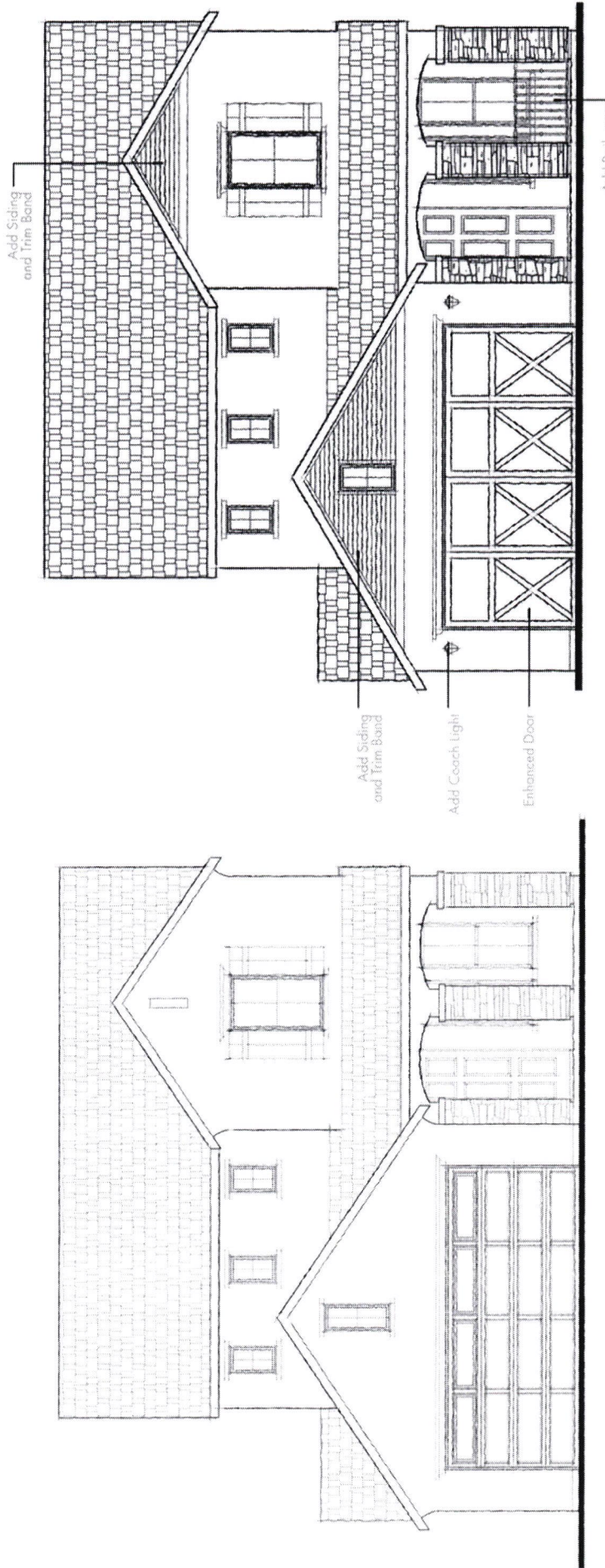


ITALIAN-VILLA TILE
Right Elevation - B Courtyard
SCALE: 1/8" = 1'-0"

Per Council Meeting on Dec. 6



ITALIAN-VILLA TILE
Front Elevation - B Courtyard
SCALE: 1/8" = 1'-0"



Per Council Meeting on Dec. 6

Original Submittal

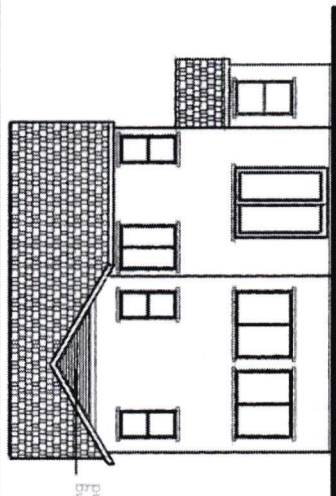
ELLENWOOD

Plan 2 French Front

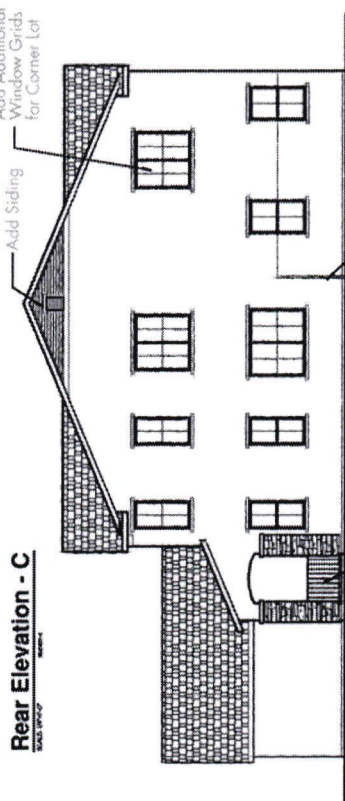


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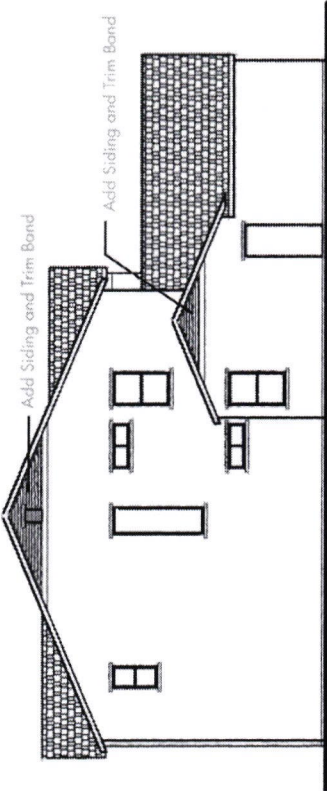
Bloodgood Sharp Buster



Rear Elevation - C
SCALE 1/8" = 1'-0"

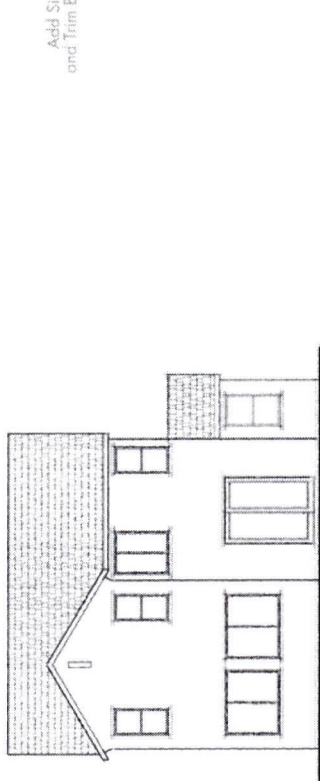


Right Elevation - C
SCALE 1/8" = 1'-0"

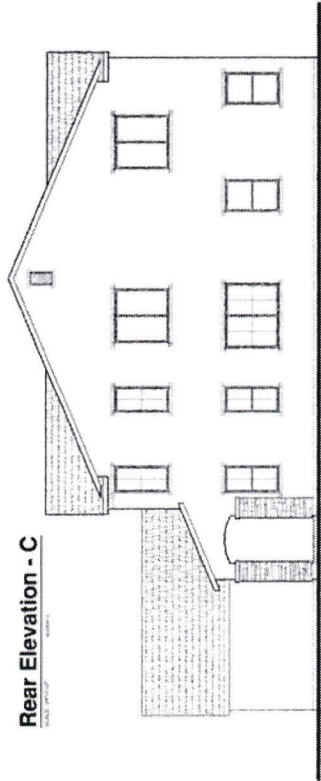


Left Elevation - C
SCALE 1/8" = 1'-0"

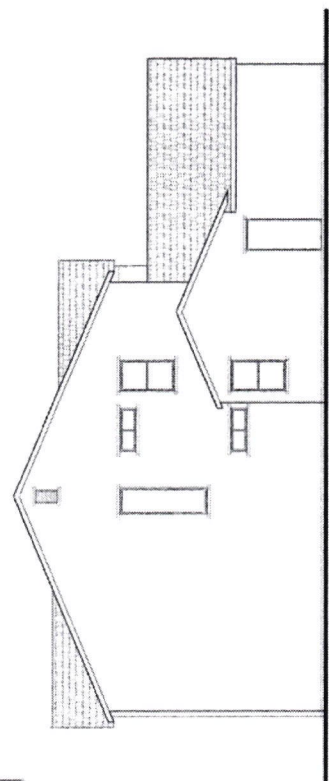
Per Council Meeting on Dec. 6



Rear Elevation - C
SCALE 1/8" = 1'-0"

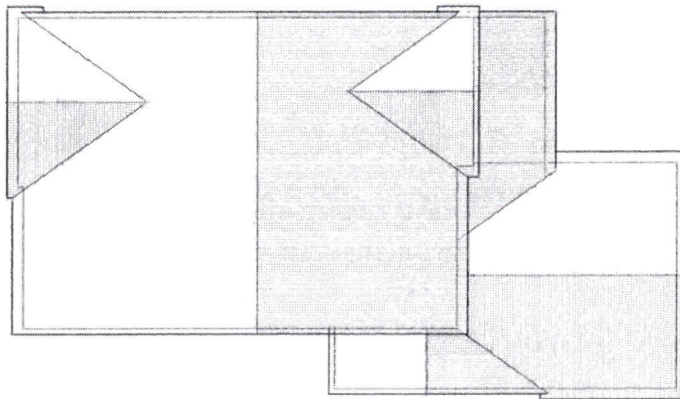


Right Elevation - C
SCALE 1/8" = 1'-0"



Left Elevation - C
SCALE 1/8" = 1'-0"

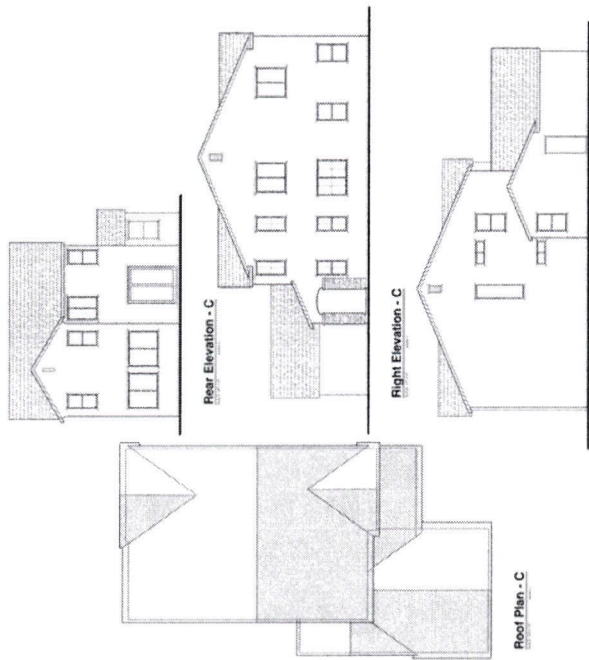
Original Submittal



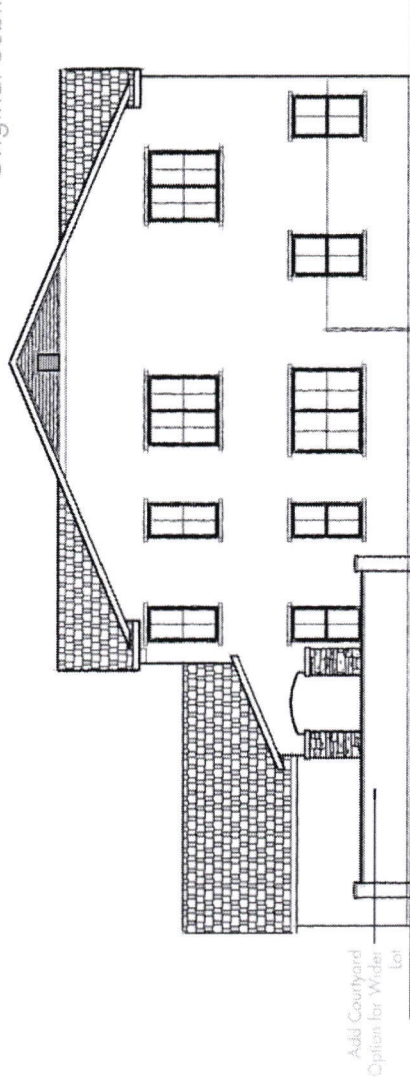
Roof Plan - C
SCALE 1/8" = 1'-0"

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Plan 2 French Elevations

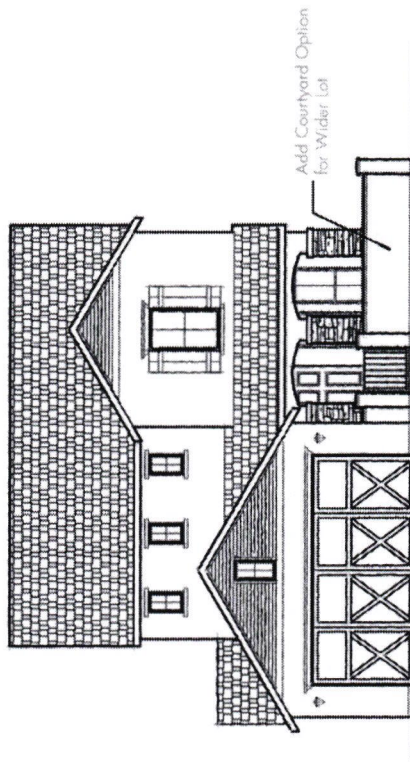
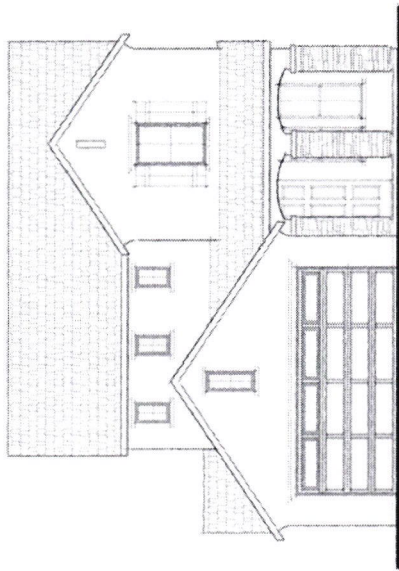


Original Submittal



FRENCH-SLATE TILE
Right Elevation - C Courtyard
SCALE: 1/4" = 1'-0"

Add Courtyard
Option for Wider
Lot



FRENCH-SLATE TILE
Front Elevation - C Courtyard
SCALE: 1/4" = 1'-0"

Add Courtyard Option
for Wider Lot

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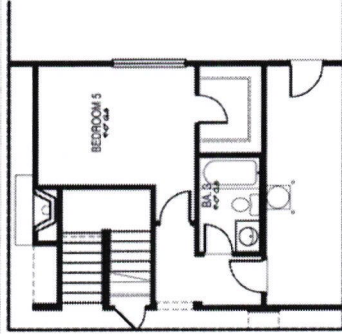
ELLENWOOD

Plan 2 French Courtyard

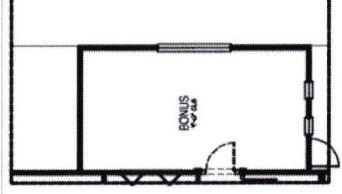
Architects and Planners, Inc.



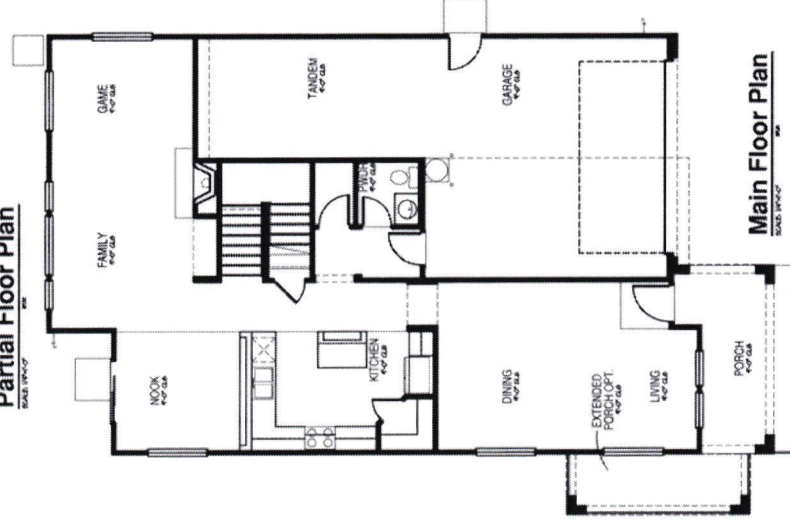
Bloodgood Sharp Buster



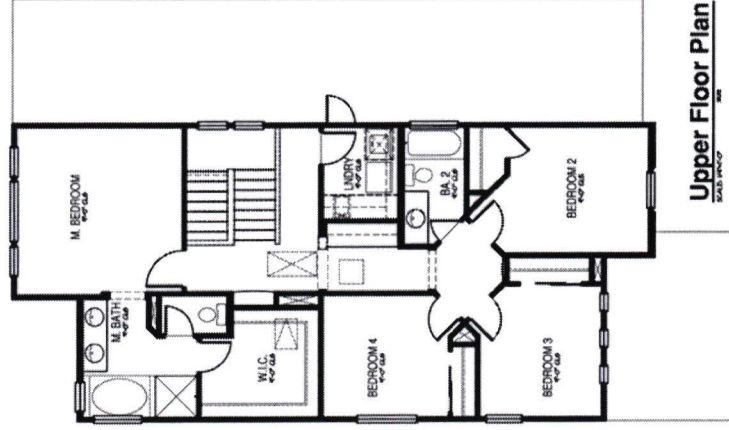
ELEVATION B-EXTENDED PORCH
Partial Floor Plan
SCALE: 1/8" = 1'-0"



ELEVATION B-EXTENDED PORCH
Partial Floor Plan
SCALE: 1/8" = 1'-0"



Main Floor Plan
SCALE: 1/8" = 1'-0"



Upper Floor Plan
SCALE: 1/8" = 1'-0"

Per Council Meeting on Dec. 6

ELLENWOOD

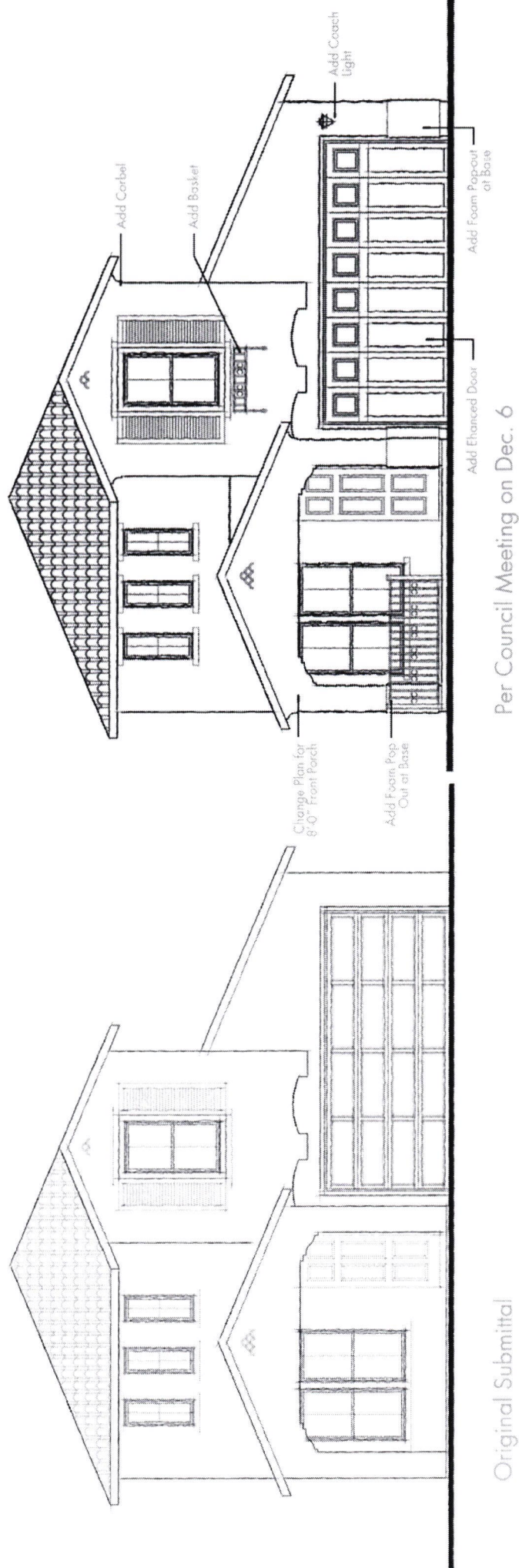
Plan 3 Floor Plan

Architects and Planners, Inc.



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Per Council Meeting on Dec. 6



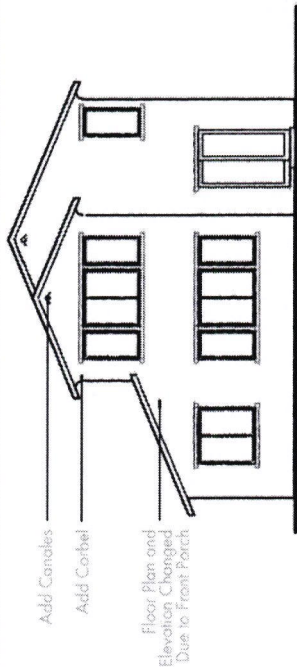
ELLENWOOD

Plan 3 Spanish Colonial Front

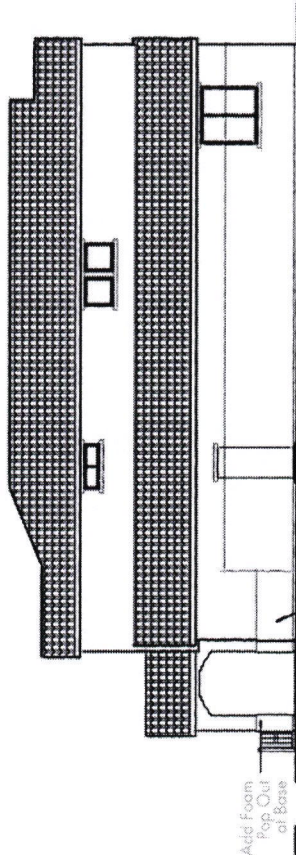


Architects and Planners, Inc.

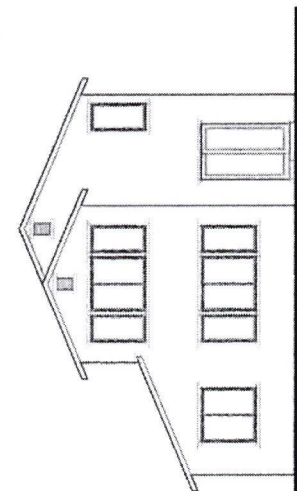
Bloodgood Sharp Buster



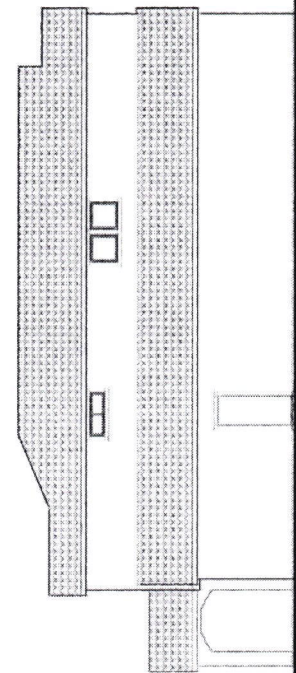
Rear Elevation - A
ORIGINAL



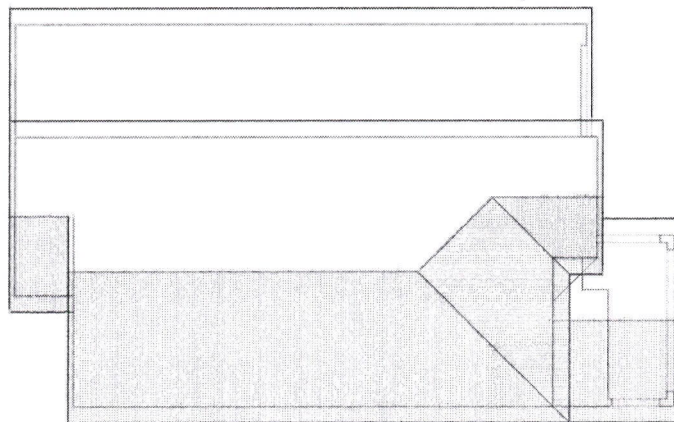
Rear Elevation - A
REVISED



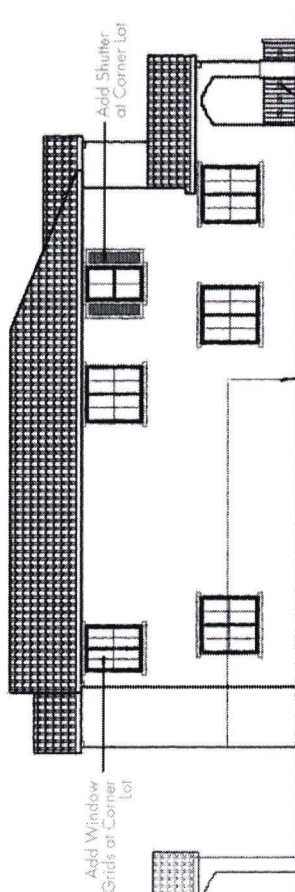
Rear Elevation - A
ORIGINAL



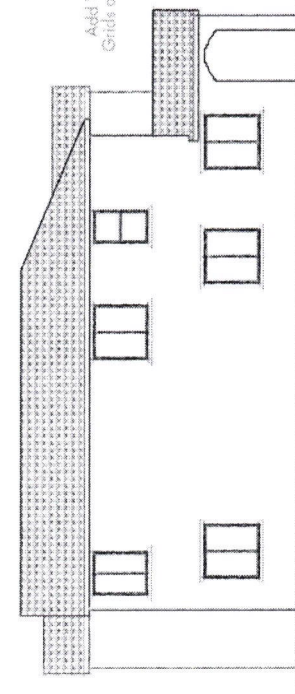
Rear Elevation - A
REVISED



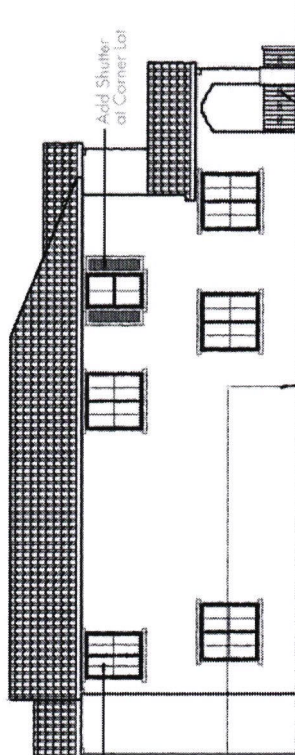
Roof Plan - A
REVISED



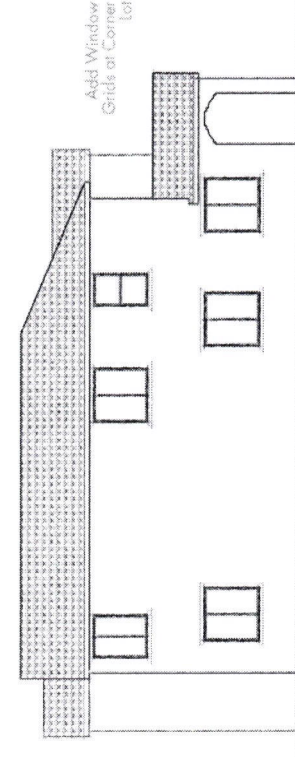
Left Elevation - A
ORIGINAL



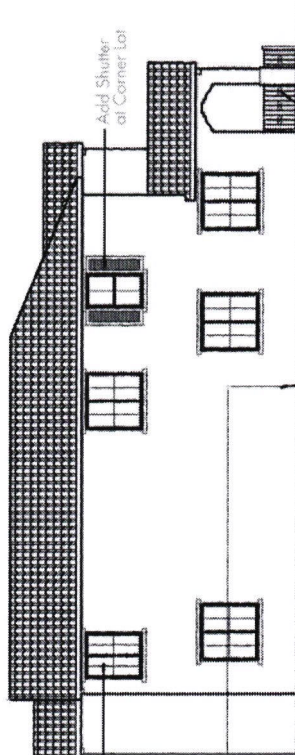
Left Elevation - A
REVISED



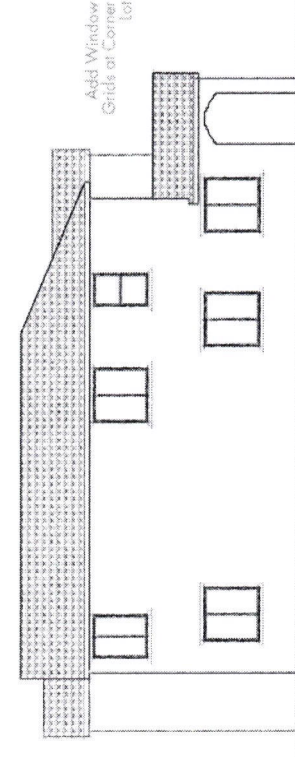
Left Elevation - A
ORIGINAL



Left Elevation - A
REVISED

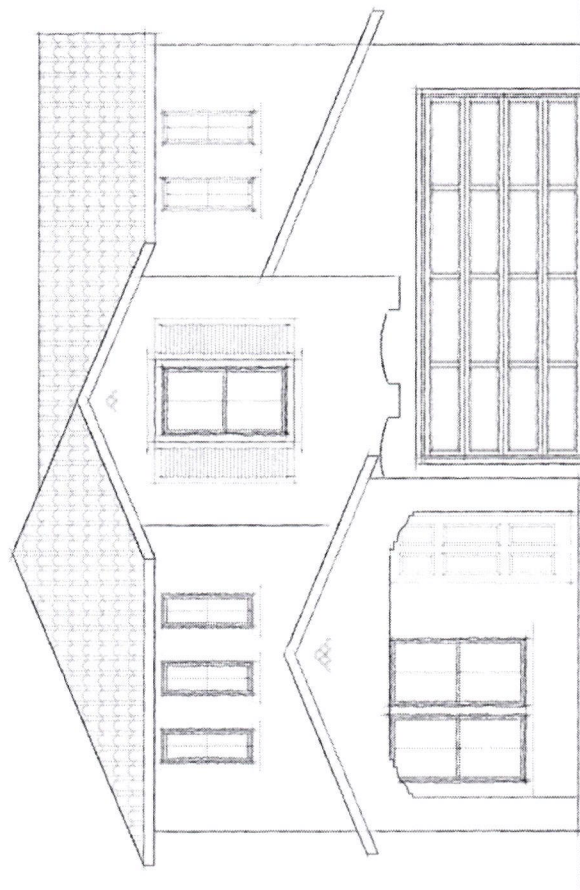


Left Elevation - A
ORIGINAL

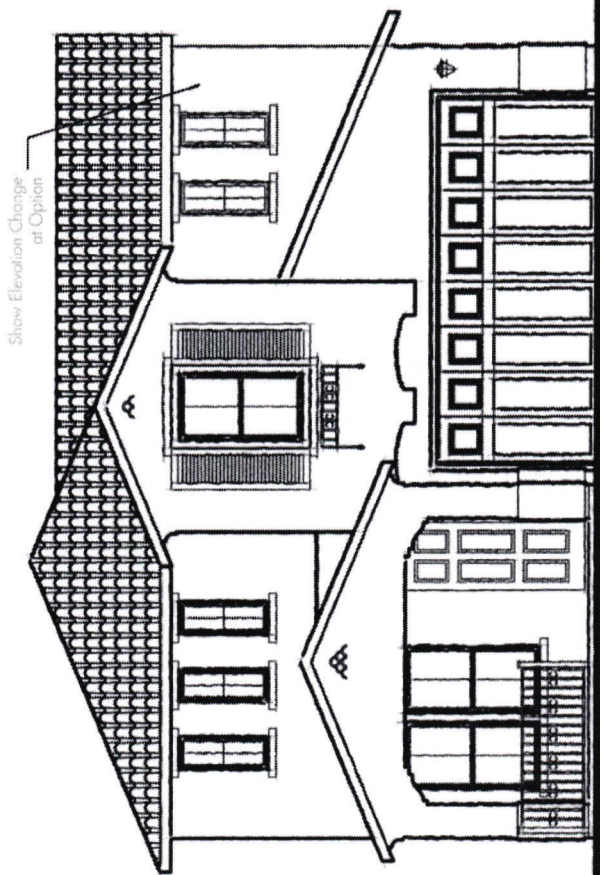


Left Elevation - A
REVISED

Per Council Meeting on Dec. 6

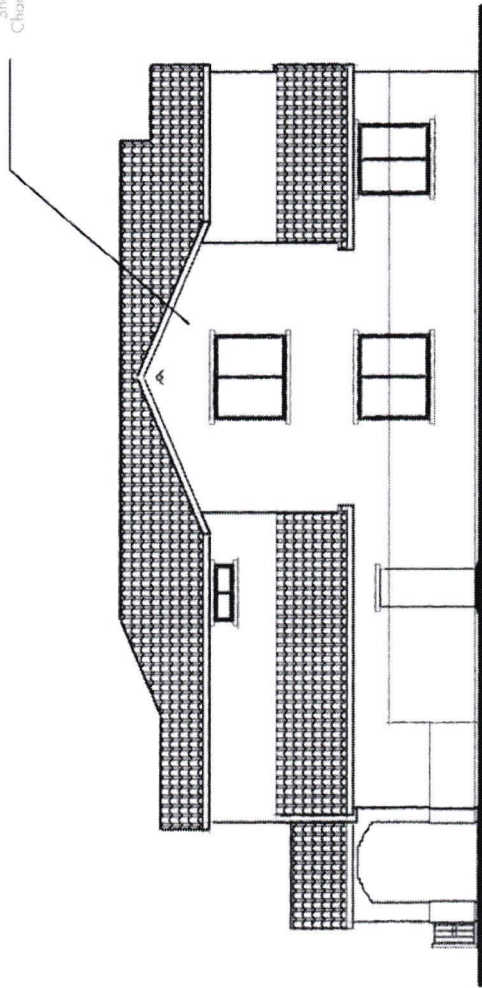


Original Submittal

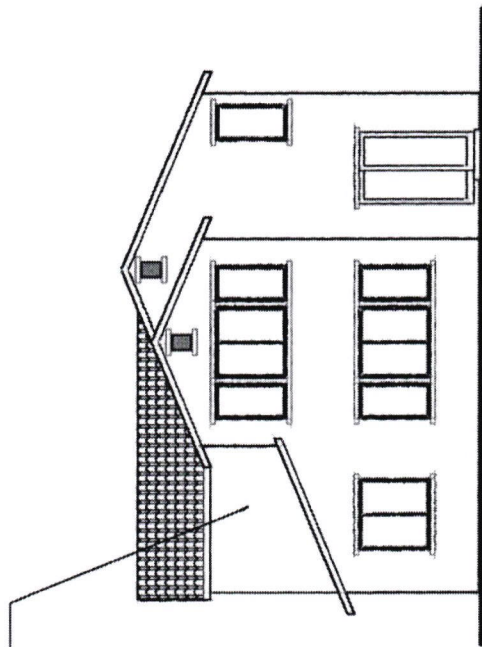


Per Council Meeting on Dec. 6

Show Elevation
Changes at Option



Right Elevation - A
SCALE 1/8"=1'-0"

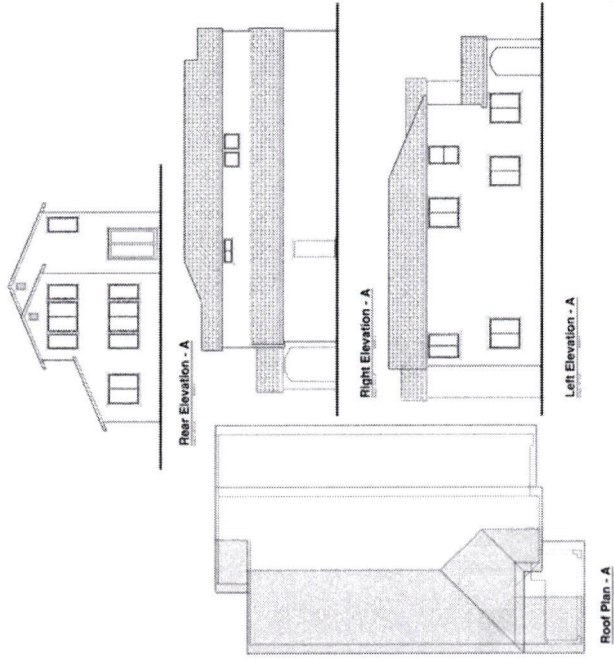


Rear Elevation - A Option
SCALE 1/8"=1'-0"

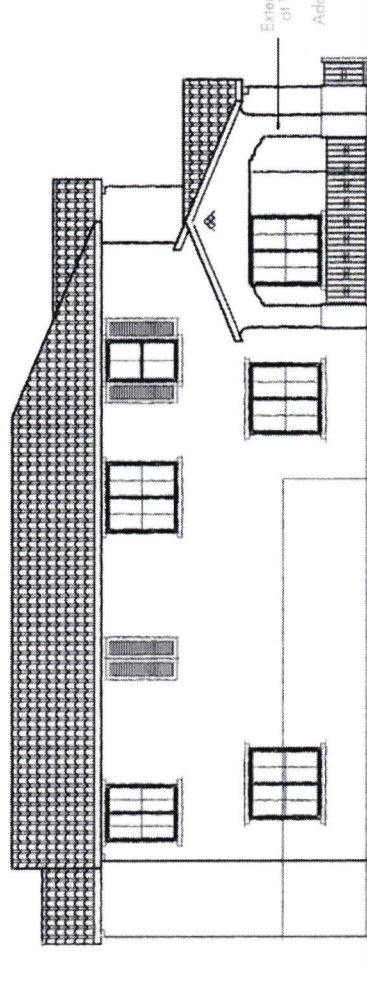
Per Council Meeting on Dec. 6
(Elevation Not Shown in Previous Package)

ELLENWOOD

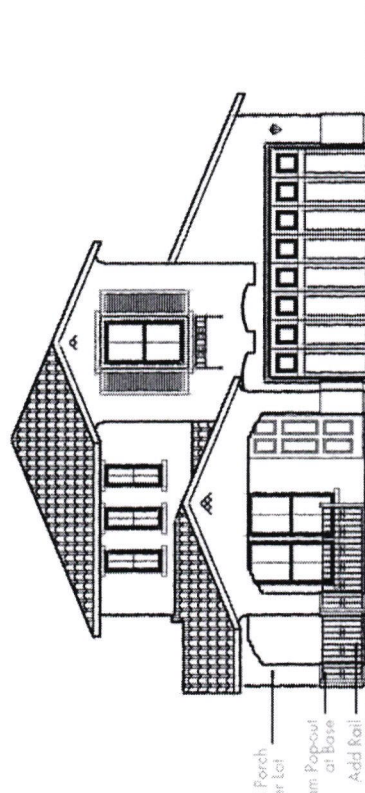
Plan 3 Spanish Colonial Elevations Option



Original Submittal



Spanish Colonial-Villa Tile
Left Elevation - A Extended Porch
SCALE 1/8"=1'-0"

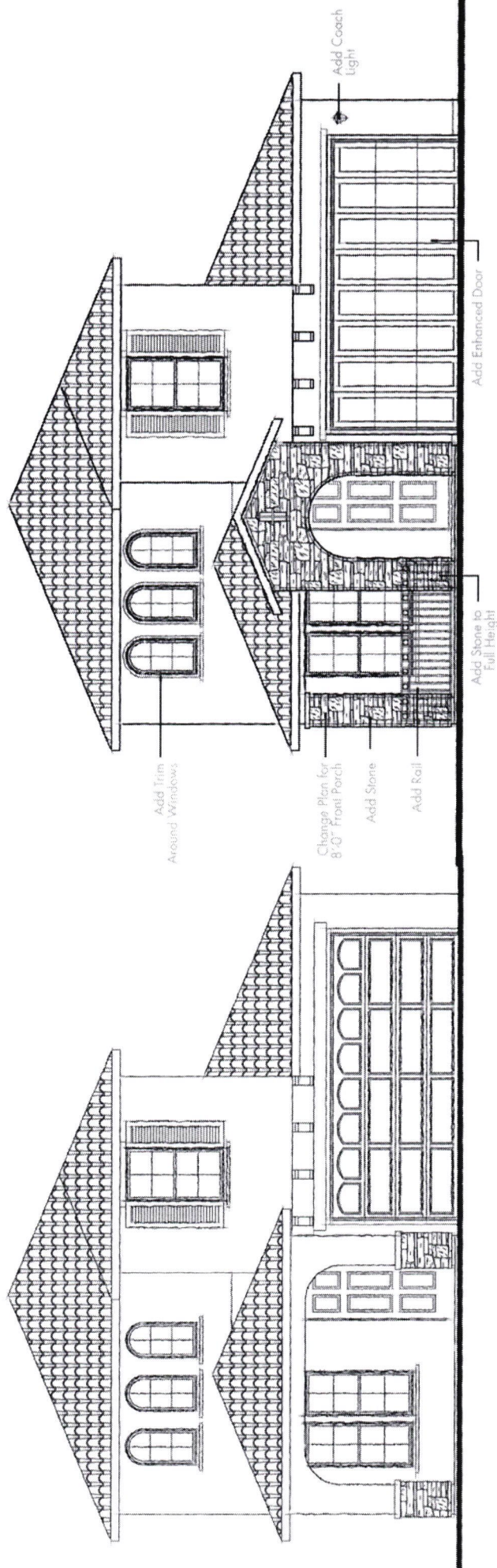


Spanish Colonial-Villa Tile
Front Elevation - A Extended Porch
SCALE 1/8"=1'-0"

Per Council Meeting on Dec. 6

ELLENWOOD

Plan 3 Spanish Colonial Extended Porch



Original Submittal

Per Council Meeting on Dec. 6

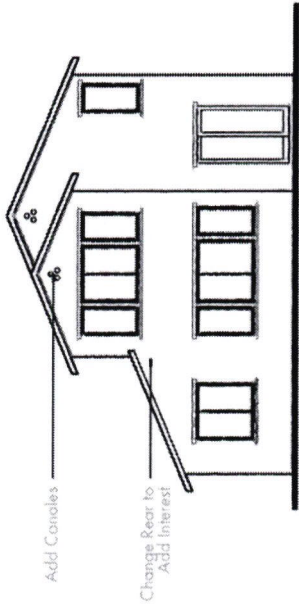
ELLENWOOD

Plan 3 Italian Country Front

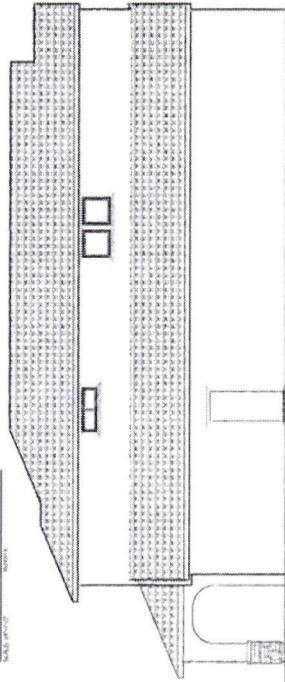


Architects and Planners, Inc.

Bloodgood Sharp Buster

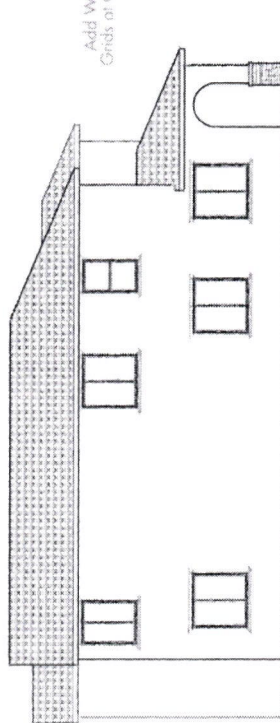


Rear Elevation - B
SCALE 1/8" = 1'-0"



Add Stone

Right Elevation - B
SCALE 1/8" = 1'-0"

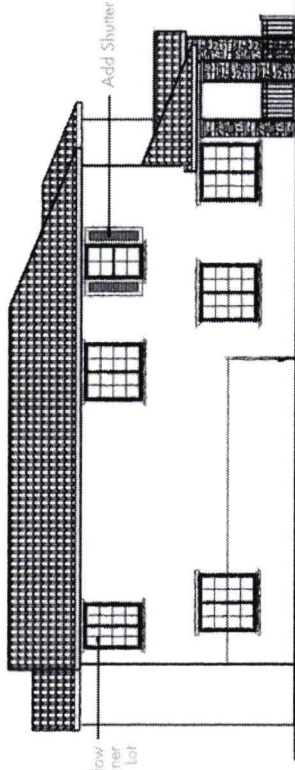


Add Window
Grills at Corner
Lot

Left Elevation - B
SCALE 1/8" = 1'-0"

Original Submittal

Right Elevation - B
SCALE 1/8" = 1'-0"

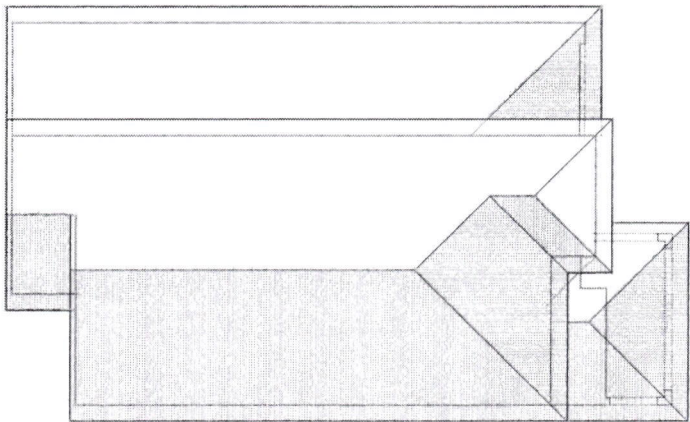


Add Shutter

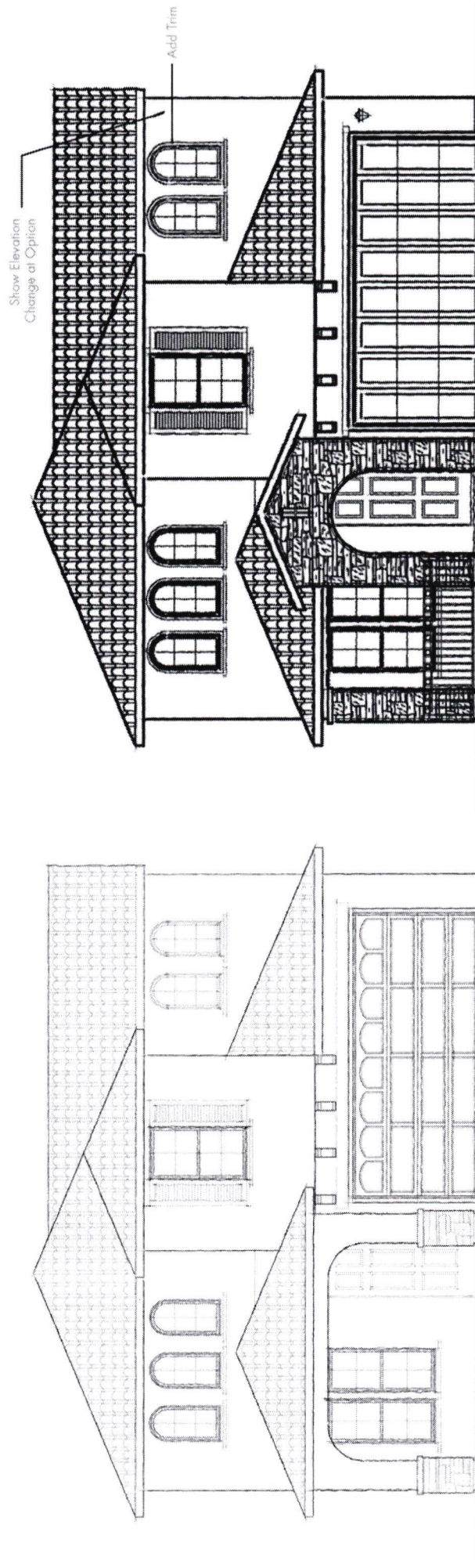
Move Back Fence Line
at Corner Lot and Increase
Landscape

Left Elevation - B
SCALE 1/8" = 1'-0"

Per Council Meeting on Dec. 6

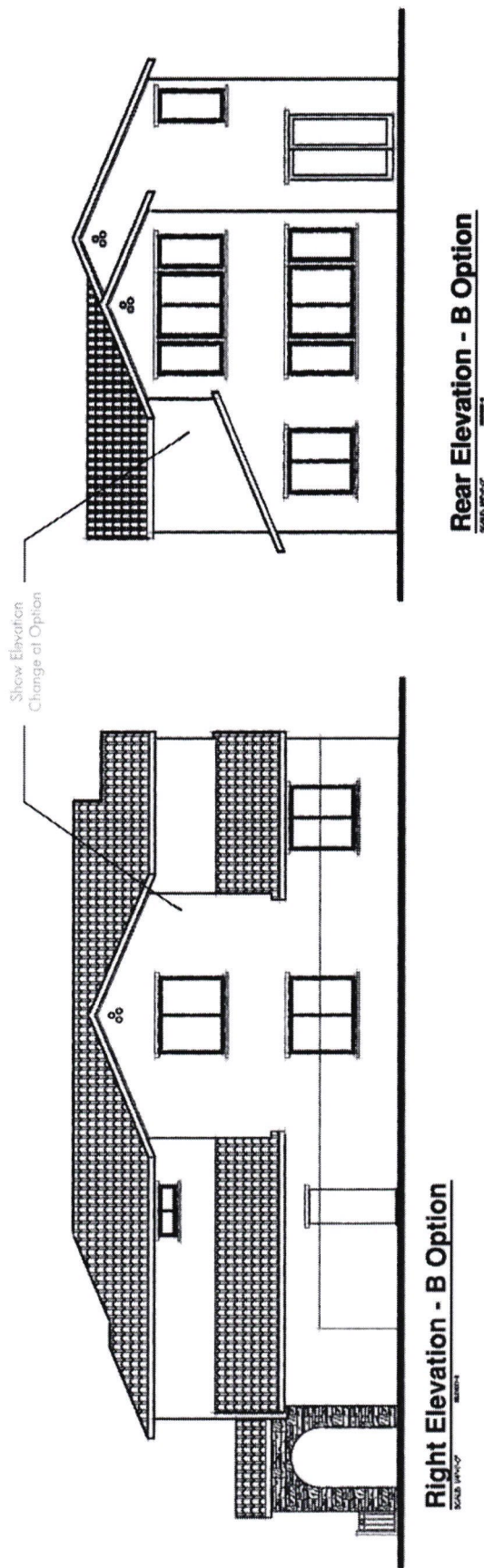


Roof Plan - B
SCALE 1/8" = 1'-0"



Original Submittal

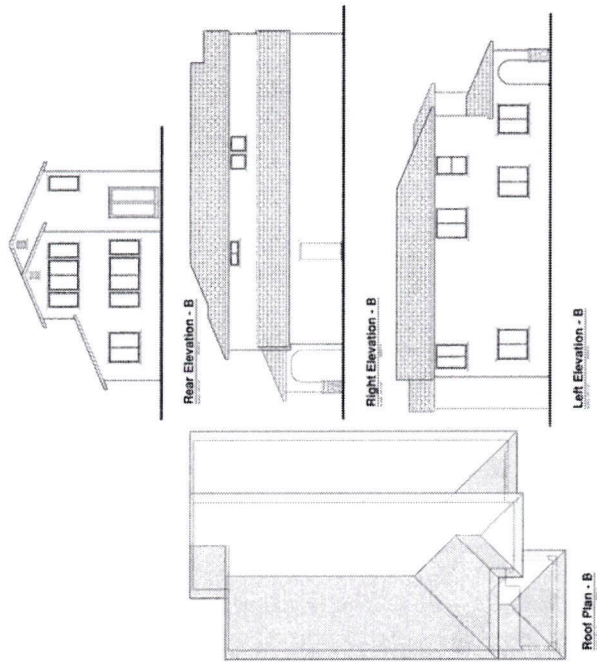
Per Council Meeting on Dec. 6



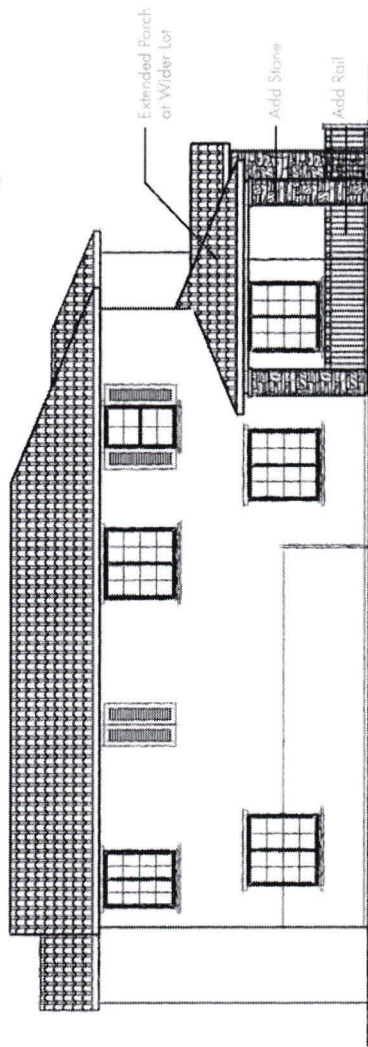
Per Council Meeting on Dec. 6
(Elevation Not Shown in Previous Package)

ELLENWOOD

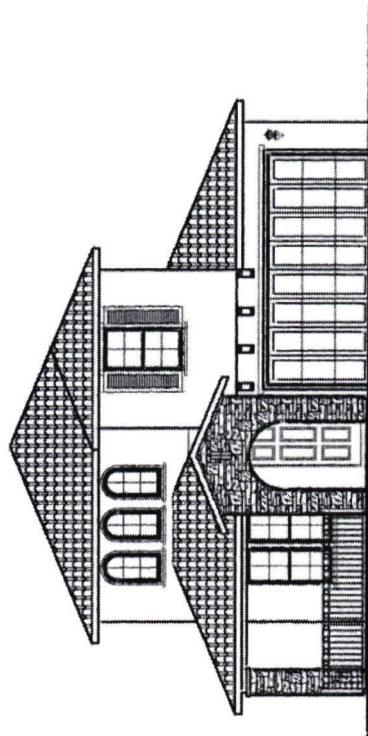
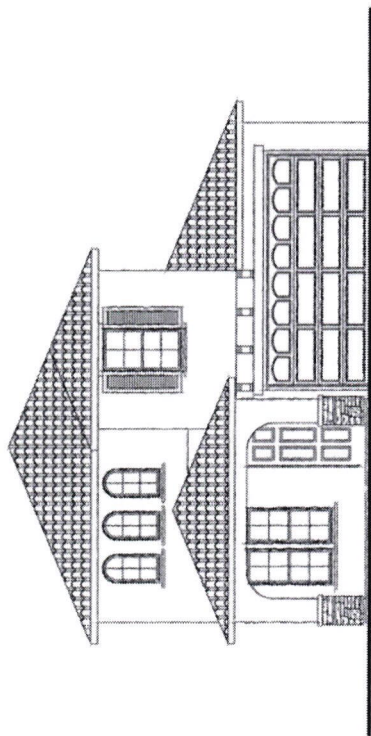
Plan 3 Italian Country Elevations Option



Original Submittal



Left Elevation - B
SCALE: 1/8" = 1'-0"

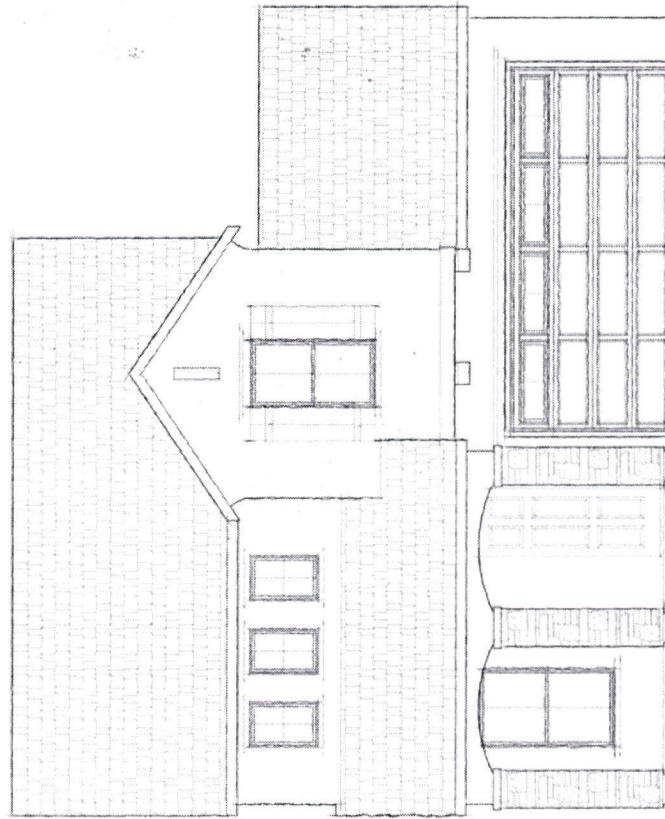


**Italian Country-Villa Tile
Front Elevation - B**
SCALE: 1/8" = 1'-0"

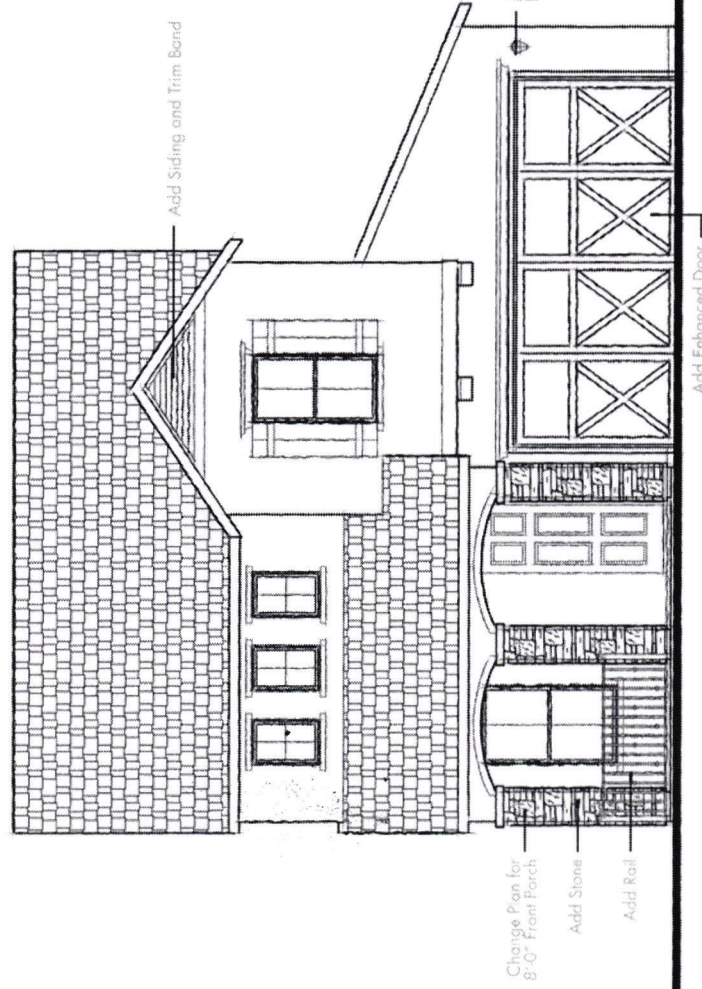
Per Council Meeting on Dec. 6

ELLENWOOD

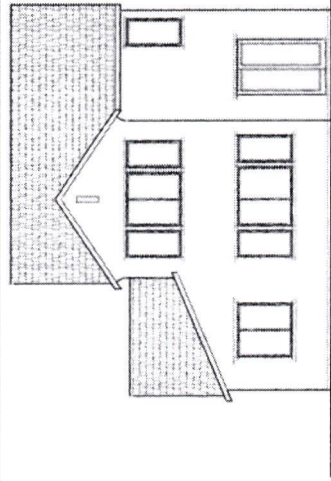
Plan 3 Italian Country Extended Porch



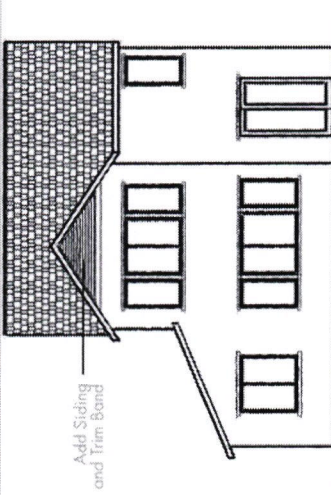
Original Submittal



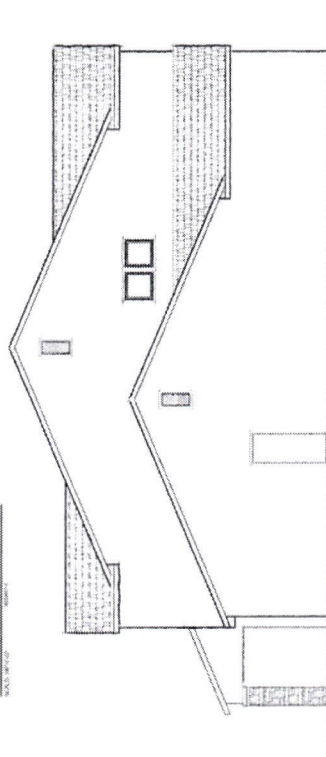
Per Council Meeting on Dec. 6



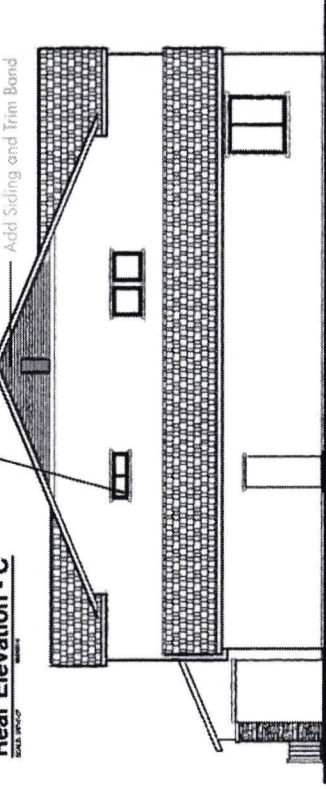
Rear Elevation - C
Original Submittal



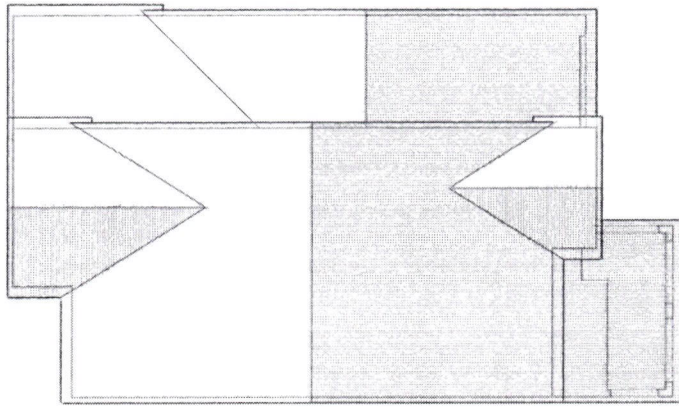
Rear Elevation - C
Revised



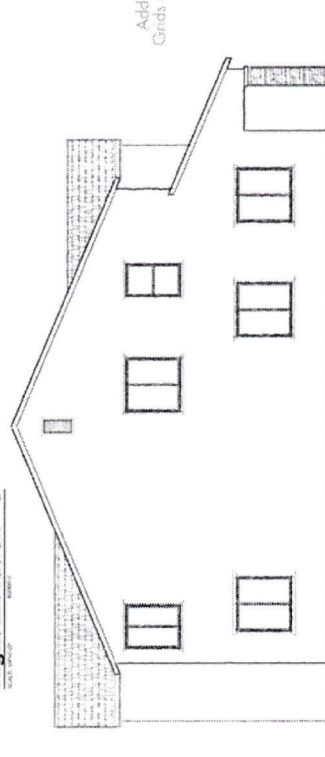
Right Elevation - C
Original Submittal



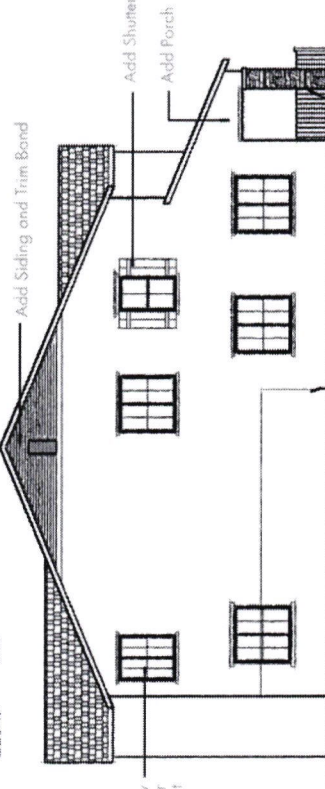
Right Elevation - C
Revised



Roof Plan - C

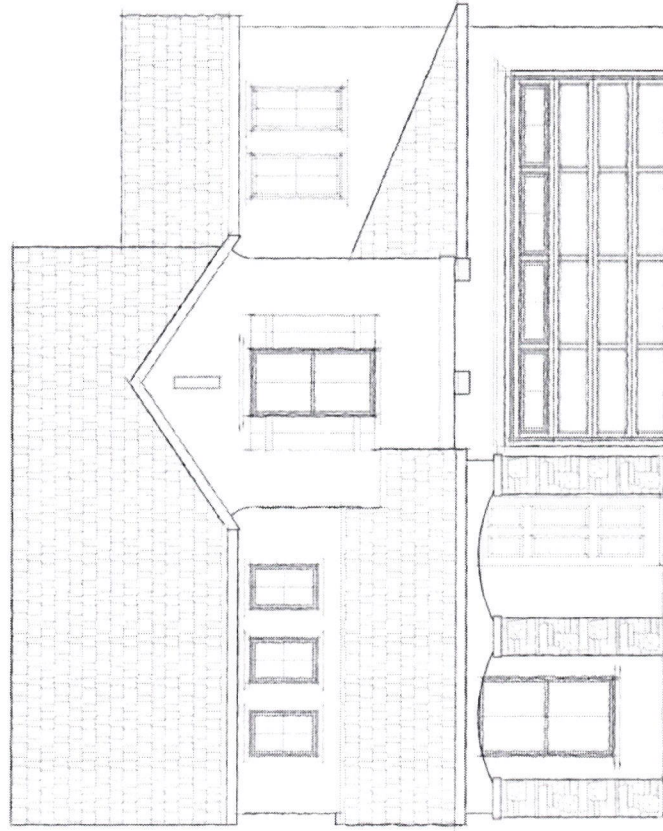


Left Elevation - C
Original Submittal



Left Elevation - C
Revised

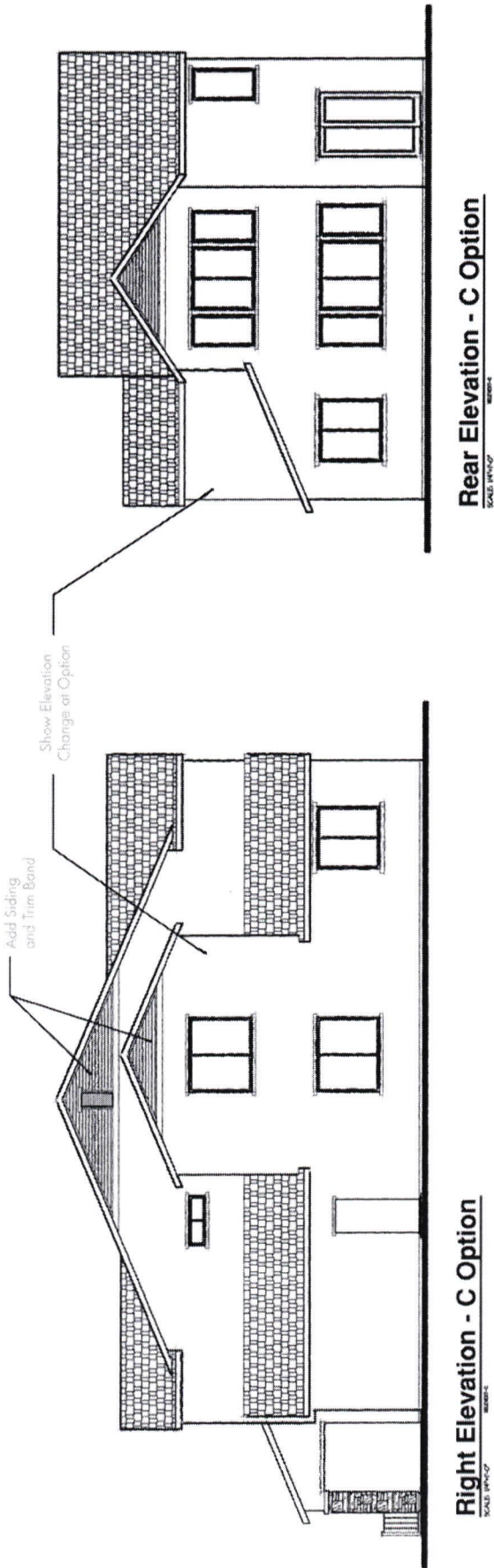
Per Council Meeting on Dec. 6



Original Submittal



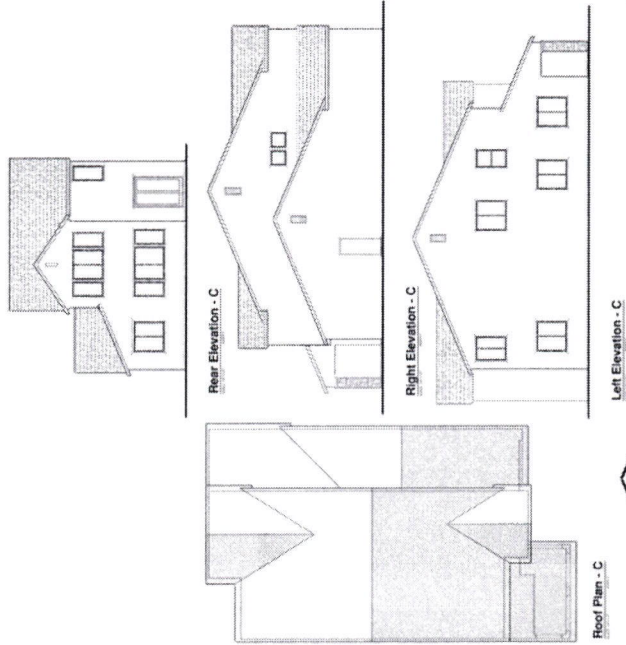
Per Council Meeting on Dec. 6



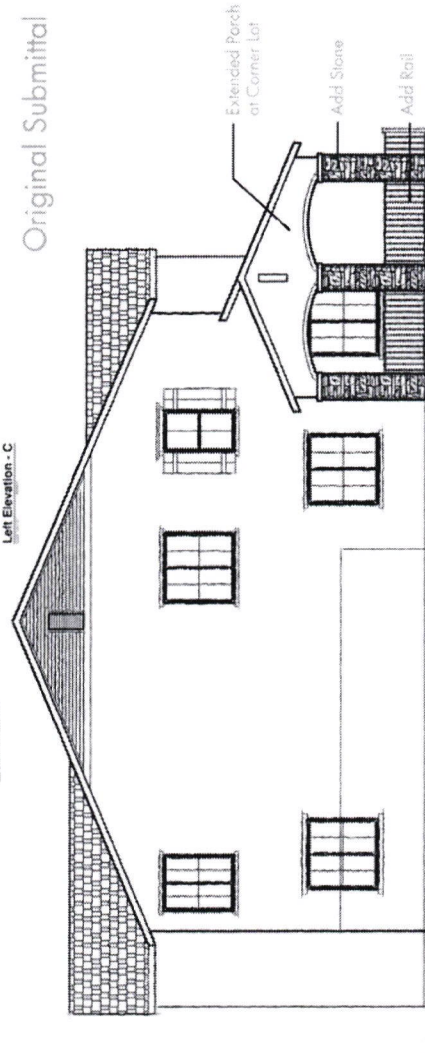
Per Council Meeting on Dec. 6
(Elevation Not Shown in Previous Package)

ELLENWOOD

Plan 3 French Elevations Option

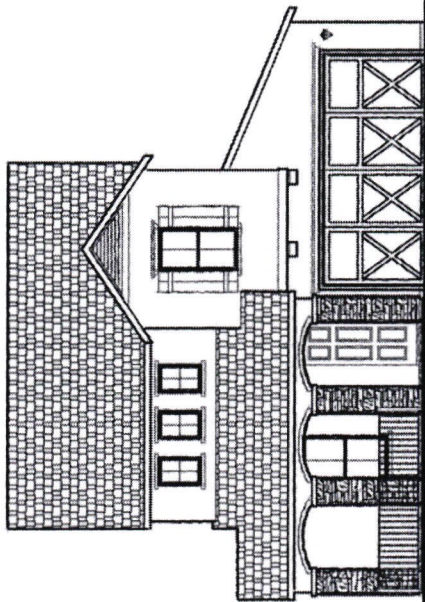


Original Submittal



FRENCH-SLATE TILE
Left Elevation - C Extended Porch
SCALE: 1/4" = 1'-0"

Per Council Meeting on Dec. 6

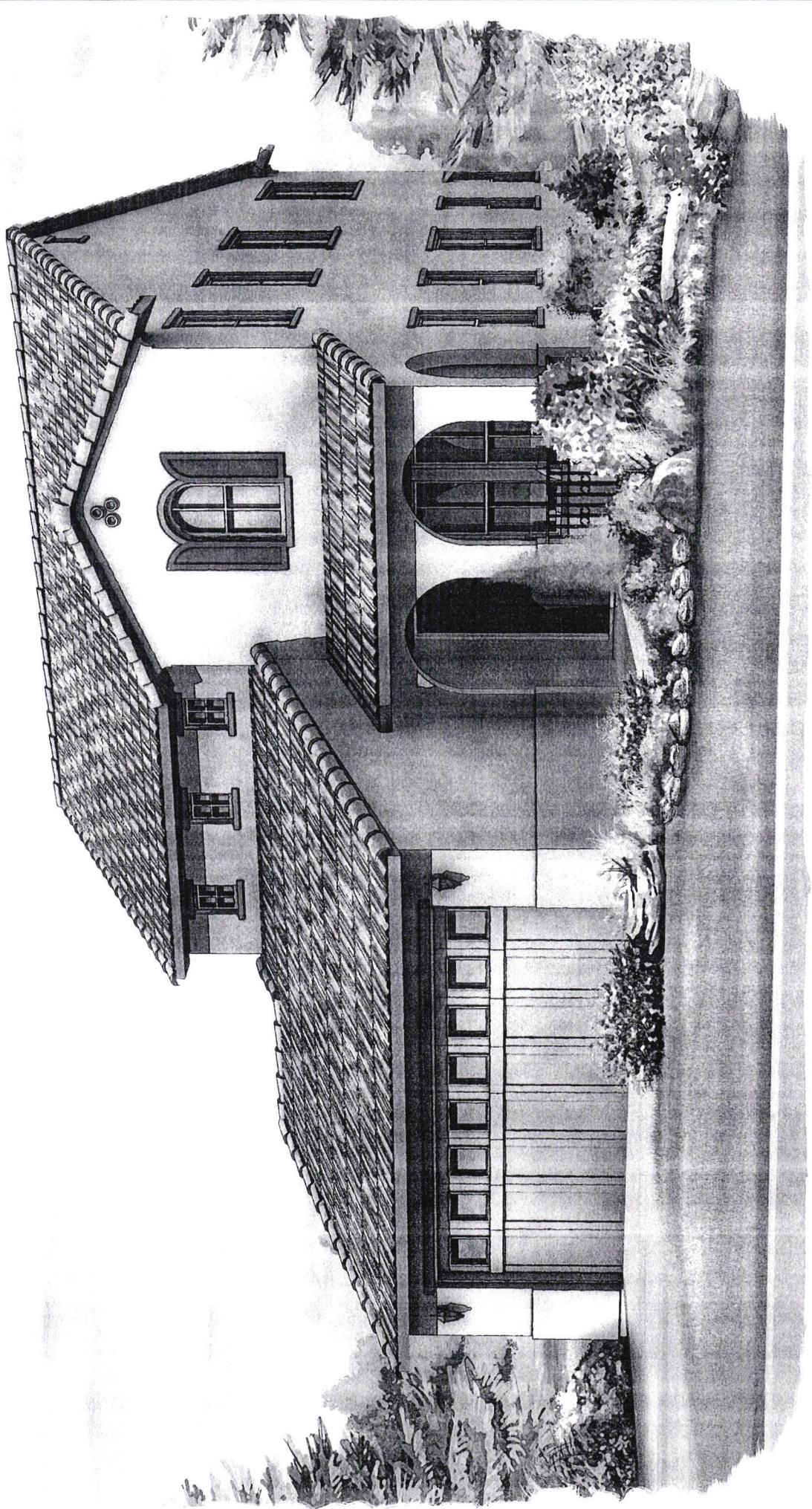


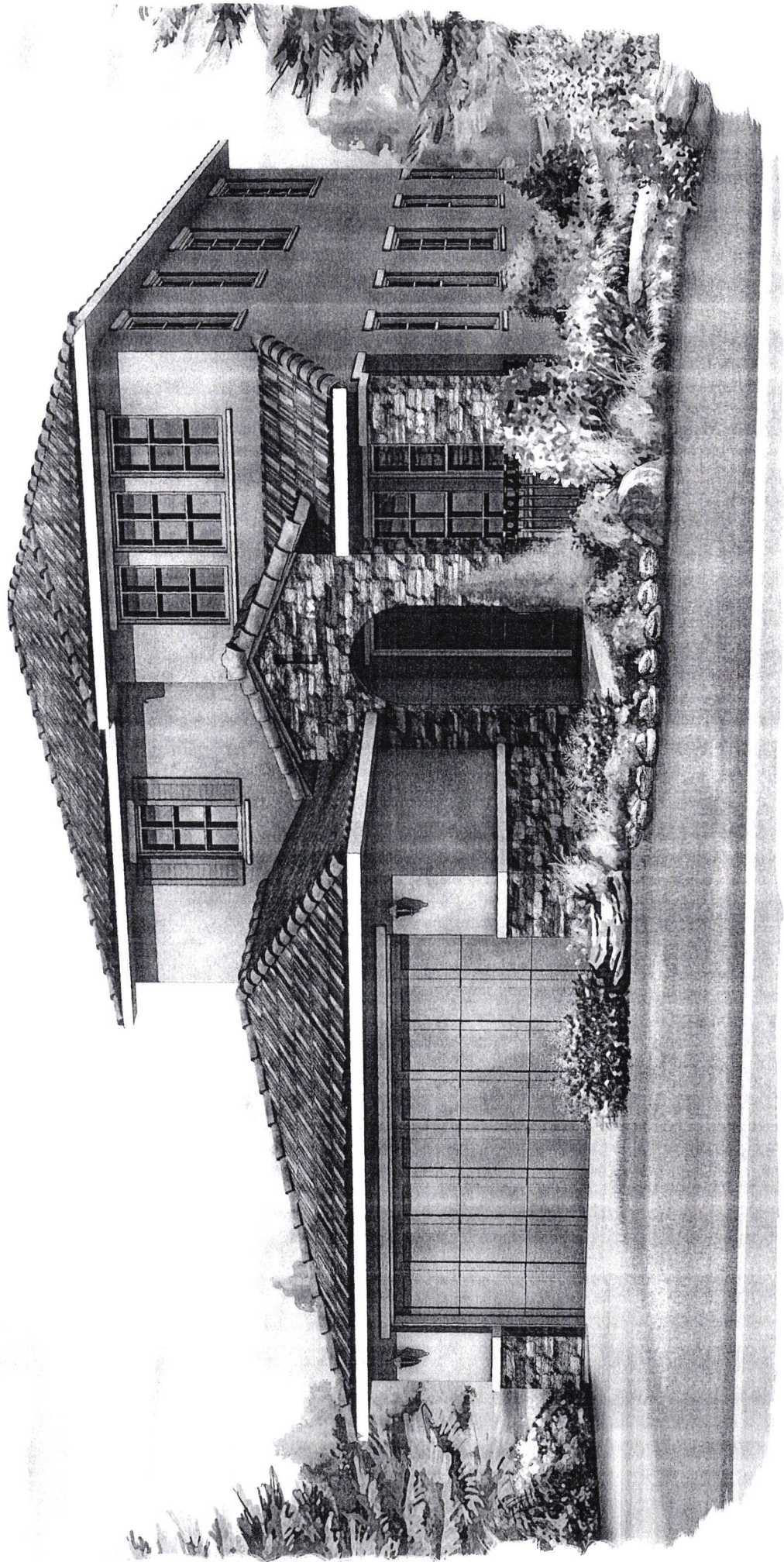
FRENCH-SLATE TILE
Front Elevation - C Extended Porch
SCALE: 1/4" = 1'-0"

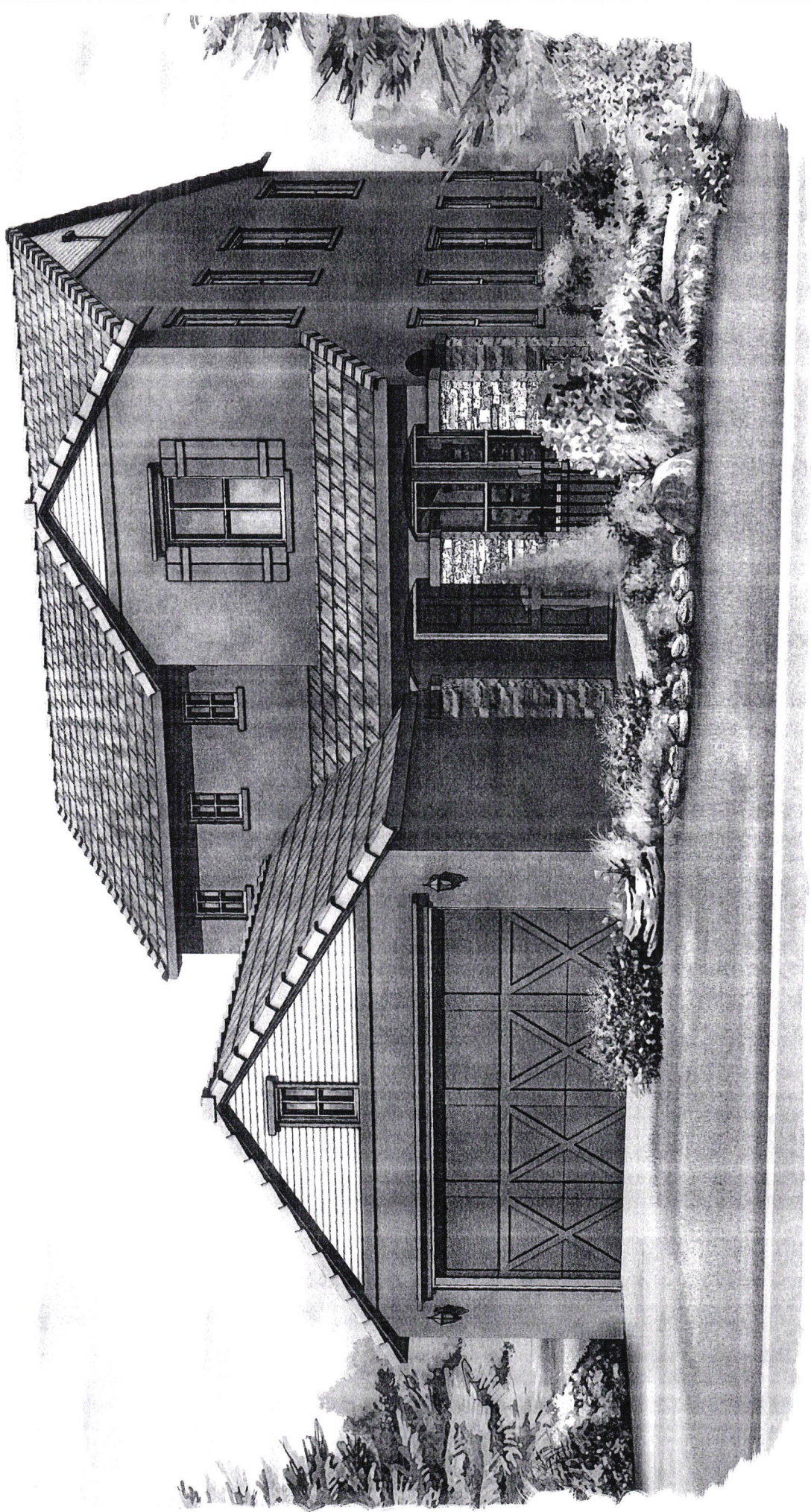




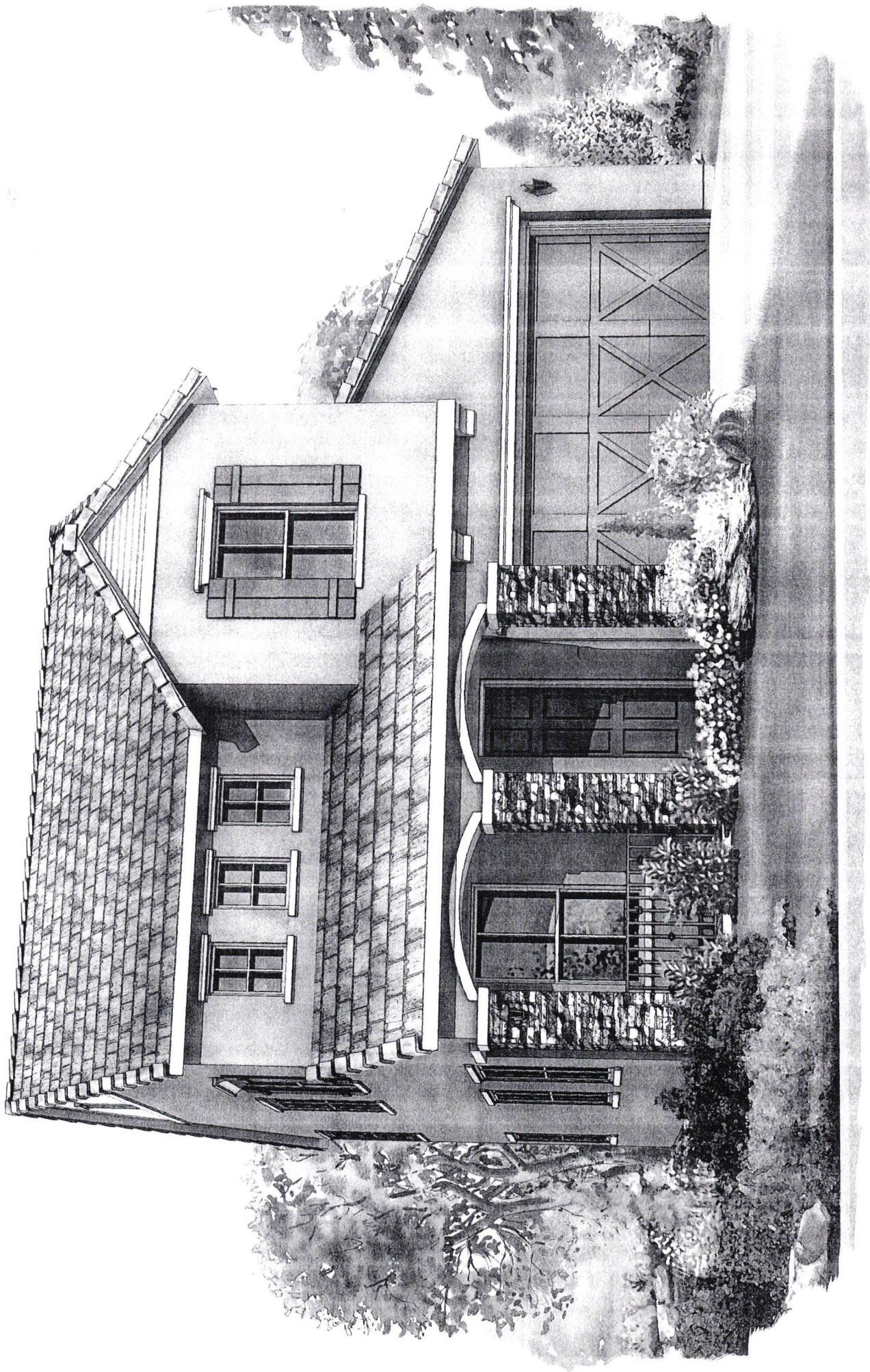


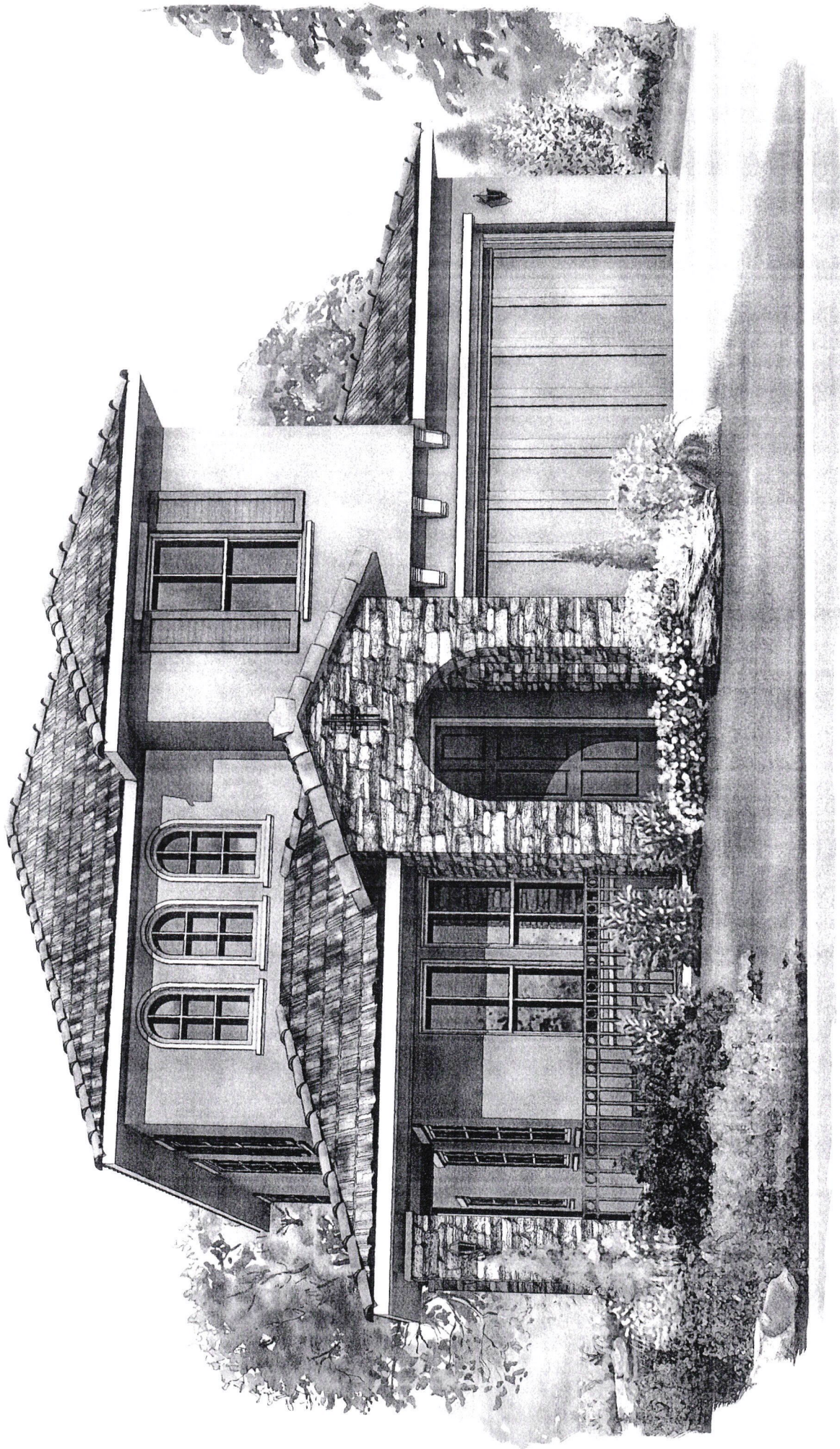












Conditions of Approval

EXHIBIT B

		<u>Timing/ Implementation</u>	<u>Enforcement / Monitoring</u>	<u>Verification (date and Signature)</u>
1.	The project shall be constructed in substantial compliance with the Design Package (Exhibit A) recommended by the Planning Commission dated February 7, 2005.	On-Going	Planning	
2.	The Applicant shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	On-Going	Planning	
	Prior to Issuance of Building Permits			
3.	The buildings shall be reviewed for architectural consistency with the approved plans by the Planning Director. The developer will install full window and door treatments on all four elevations of the proposed residential buildings. All subsequent phases shall be reviewed and approved by the Planning Director.	Prior to Building Permit	Planning	
4.	Landscape and fence plans shall be submitted to the Planning Department for approval prior to issuance of building permits.	Prior to Building Permit	Planning	

Conditions of Approval

EXHIBIT B

	Prior to Final Inspection and Utility Release		
5.	Submit final site landscaping and fence plans for review and approval by the Planning Director prior to installation. Landscaping shall be installed prior to final inspection.	Prior to Final Inspection	Planning
6.	All street trees shall be approved by the City Engineer and Planning Director.	Prior to Final Inspection	Planning
7.	Obtain appropriate permit from Public Works and provide adequate drain facilities into the established flood control system, in accordance with the Sacramento County Improvement Standards.	Prior to Final Inspection	Water Resources

The exhibit (s) or attachment (s) for this item is (are) on file in the City Clerk's Office for review by the public.

Attachment 2 - (A) Design Review Package; (B) Color Renderings – Front Elevations

Council Members, please find above item(s) attached to your agenda packet.

Agenda Item: 11

MEMORANDUM

DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Kathleen Franklin, Assistant Planner
SUBJECT: ELLENWOOD ESTATES DESIGN REVIEW – RC-04-125



A Condition requiring lighted house address numbers has been added to the Conditions of Approval. The revised conditions are being distributed for your review. The applicant has also received a revised copy.

Conditions of Approval

EXHIBIT B

	<u>Timing/ Implementation</u>	<u>Enforcement/ Monitoring</u>	<u>Verification (date and Signature)</u>
1.	The project shall be constructed in substantial compliance with the Design Package (Exhibit A) recommended by the Planning Commission dated February 7, 2005.	On-Going	Planning
2.	The Applicant shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	On-Going	Planning
	Prior to Issuance of Building Permits		
3.	The buildings shall be reviewed for architectural consistency with the approved plans by the Planning Director. The developer will install full window and door treatments on all four elevations of the proposed residential buildings. All subsequent phases shall be reviewed and approved by the Planning Director.	Prior to Building Permit	Planning
4.	Landscape and fence plans shall be submitted to the Planning Department for approval prior to issuance of building permits.	Prior to Building Permit	Planning

Conditions of Approval

EXHIBIT B

Prior to Final Inspection and Utility Release			
5.	Submit final site landscaping and fence plans for review and approval by the Planning Director prior to installation. Landscaping shall be installed prior to final inspection.	Prior to Final Inspection	Planning
6.	Internally illuminated address numbers shall be displayed on all residential units within the project site. The following standards shall apply: • The house number shall be displayed on the closest architectural element facing the street. • Address numbers shall be a minimum of four inches in height. • The internally illuminated numbers shall be from a common electrical source using low-voltage electrical current. The house numbering plate shall be equipped with a photocell on-off switch. • The numbers shall be from the same manufacturer and with the same model number used on each residential unit. Instructions on how to change the bulb should be provided to the homeowner		
7.	All street trees shall be approved by the City Engineer and Planning Director.	Prior to Final Inspection	Planning
8.	Obtain appropriate permit from Public Works and provide adequate drain facilities into the established flood control system, in accordance with the Sacramento County Improvement Standards.	Prior to Final Inspection	Water Resources

MEMORANDUM

DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Kathleen Franklin, Assistant Planner
SUBJECT: WORDING FOR ADDRESS LIGHTING



Councilmember Skoglund has asked that the language for the Condition regarding the address lighting be distributed to the Council. He would like to discuss the wording of the Condition.

ADDRESS LIGHTING WORDING

Internally illuminated address numbers shall be displayed on all residential units within the project site. The following standards shall apply:

- **The house number shall be displayed on the closest architectural element facing the street.**
- **Address numbers shall be a minimum of four inches in height.**
- **The internally illuminated numbers shall be from a common electrical source using low-voltage electrical current. The house numbering plate shall be equipped with a photocell on-off switch.**
- **The numbers shall be from the same manufacturer and with the same model number used on each residential unit.**

Instructions on how to change the bulb should be provided to the homeowner

MEMORANDUM

DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Kathleen Franklin, Assistant Planner
SUBJECT: ELLENWOOD ESTATES DESIGN REVIEW – RC-04-125



On February 1, 2005 the Planning Department received the attached pre-plot exhibit as requested by the Sub-Committee.

ELEENWOOD AVENUE



MEMORANDUM

DATE: February 7, 2005

TO: Mayor and Council Members

FROM: Kathleen Franklin, Assistant Planner

SUBJECT: ZINFANDEL SQUARE SHOPPING CENTER – RC-04-133 –
DESIGN REVIEW FOR A REMODEL/FACELIFT OF EXISTING
SHOPPING CENTER WITH SOME MODIFICATION &
ENHANCEMENT TO THE EXISTING LANDSCAPE

Location: 11009, 10947, and 10981 Olson Drive

APN: 072-0280-023, 072-0280-020 and 072-0280-018



OWNER/ APPLICANT:
Patterson Properties, Inc.
Jamie Horton
2270 Douglas Blvd. #111
Roseville, CA 95661

ARCHITECT:
Rauschenback, Marvelli, Becker
Mark Marvelli, AIA
2277 Watt Avenue
Sacramento, CA 95825

Recommendation:

The Planning Commission recommends the City Council determine the project is Categorically Exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act Guidelines (CEQA) and adopt Resolution No. 19-2005 approving the Design Review for the remodel of 11009, 10947, and 10981 Olson Drive, RC-04-133, subject to the attached Design Package, Findings, Evidence and Conditions of Approval.

Background:

The Zinfandel Plaza was constructed approximately 20 years ago and is owned by multiple parties on subdivided lots. The overall center retains much of the original design and architectural features; the Mervyn's building is not a part of the proposed project. The large market area in the middle of this portion of the center has been occupied by the Korean Market and the in-line stores have been occupied by small retail and service users. The other larger lease space on the north end of the center has been vacant for sometime. The most recent event to affect this center is the extension of the light rail service from Sunrise Blvd to downtown Sacramento. The light rail extension is anticipated to be a positive marketing step for the center and the proposed remodel is timely.

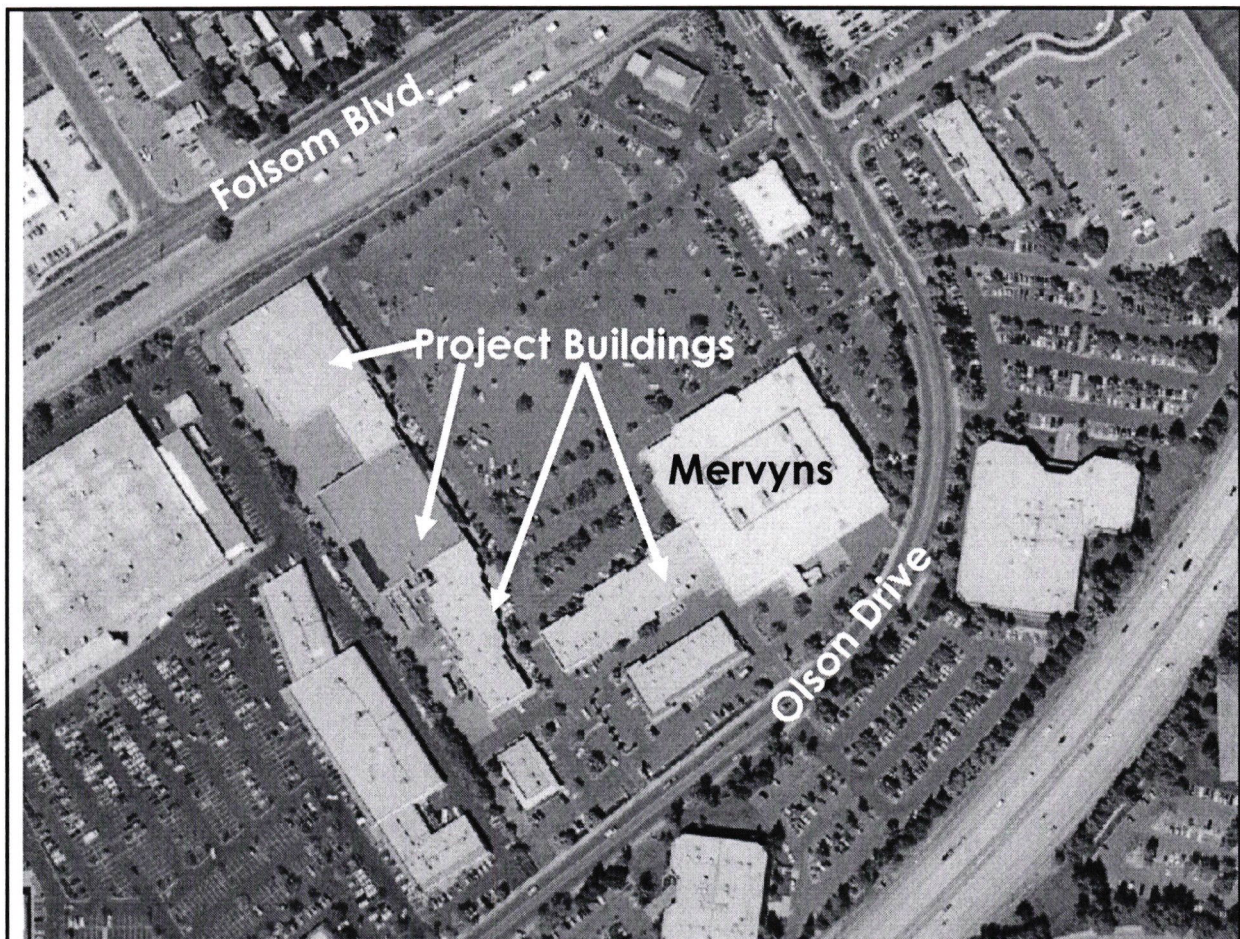


FIGURE 1 – SITE LOCATION

Land Use Relationships with Adjacent Properties:

	General Plan Land Use Designation	Zoning and Community Plan Designations	Existing Land Use
Subject Property	Commercial/Office	General Commercial	Commercial
North	Commercial/Office	General Commercial	Commercial
East	Commercial/Office	General Commercial	Commercial
South	Commercial/Office	General Commercial	Office
West	Commercial/Office	General Commercial	Commercial

Analysis:

The City of Rancho Cordova received an application for Design Review to remodel the existing Zinfandel Plaza Shopping Center. The applicant has submitted elevations providing changes in the architecture, which will upgrade the existing buildings to reflect a more contemporary looking center. The use of columns, canopies, cornice, archways, aluminum store front windows and a mixture of hip and gable roofs will enhance the area and provide interest to the existing buildings.

The following Design Concepts apply to non-residential (commercial, office, industrial, and public/quasi-public) development. The basis for the review of this project is provided in the City's Design Review Ordinance and the Planning Commission reasons for recommending approval are as follows:

The City Design Concepts encourage:

- a) High quality building designs that consist of durable and maintainable materials and that provide visual interest and diversity to the community.
- b) Building designs that maintain human scale and interest.
- c) Use of an architectural style and or/theme for new non-residential development that is consistent for building elevations of a single structure or consistent among all buildings within an integrated development.
- d) Design of buildings or structures that is sensitive to the neighborhood character with regard to scale, architectural style, use of materials and bulk.
- e) Interesting and attractive architecture which includes varied relief of the facade elements and detailed articulation of the building features.
- f) Incorporate quality site design, including landscaping, signage and other elements of site design.

The following analysis supports the findings above:

- a) The new improvements will feature greater building articulation and detail by providing a new cornice feature to the roof line, stone veneer on the base of the columns, fabric awnings and roof tiles. The proposed architecture and use of materials blend well together to provide the interest and diversity required under the design guidelines.
- b) The project provides human scale with the use of covered walkways, awnings, variations in the roof design, materials, colors and landscaping.
- c) The architecture proposes varying the plane of the exterior walls through recessing and projections of the elements; the heights of the walls are varied so that the mass of the building is broken into smaller distinct "massing" elements; reveals, recesses, projections, cornices, trim elements and other architectural features have been incorporated to provide visual interest to the buildings. The freestanding building, labeled as "shops 3" on the site plan, has been designed to be consistent with the architectural character of the rest of the buildings in the center.
- d) Same as "c" above.
- e) The proposed design provides varied relief to the building façade. The building mass has design elements; which have improved the buildings articulation, though the use of varying roof lines, changes in surface texture with stucco and stone veneers, wall color and awning.

- f) The applicant is proposing an extensive upgrade to the existing landscaping with new trees, shrubbery and installation of interlocking pavers used as a "finish" to the existing planter areas.

Planning Commission Hearing:

The Planning Commission reviewed the project at its December 22, 2004 meeting. The Planning Commission had numerous questions (Attachment 2) for the applicant and staff; the main issues being the connectivity between the existing light rail station and the shopping center and the need for additional architectural features on the north elevation.

Pedestrian Connectivity with Light Rail

Regarding the issue with connectivity between the existing light rail station and the shopping center, staff contacted the Sacramento Regional Transit District and discussed the modifications proposed for the Cordova Town Center station. David Solomon met with staff and provided the project plans showing the access points from the light rail station; one into the shopping center and one to connect with Olson Drive (Attachment 3). The walkway will move pedestrians from the light rail station to the north end of the existing shopping center.

Staff spoke with Dave Conover from Regional Transit on January 31, 2005 to obtain an update on the project. Mr. Conover stated that the closing date for the construction bids on the project was January 28, 2005. Regional Transit staff will be presenting the bids to its Board sometime in February and construction on the project should begin by mid to late March.

North Elevation Revision

The applicant has proposed modifications to the previously submitted elevations for the north end of the building facing light rail and Folsom Blvd (Attachment 4). The applicant has continued the architecture from the front elevations, addition columns, archways and an additional area for signage. Staff believes the applicant has offered an acceptable alternative and is recommending the City Council approve the revisions.

Conclusion:

The project is well designed and will provide a much needed upgrade to the existing shopping center. The proposed project includes a variety of architectural features, materials, colors, enhancement of the landscape in the parking field, variations in the roof line and articulations to the façade in order to meet the intent of the City's Design Guidelines for commercial development; therefore, the Planning Commission has forwarded a recommendation of approval to the City Council.

Environmental Analysis:

This project is Categorically Exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

Financial Implications to City:

There are no significant cost implications to the City for this development.

Recommended Motion:

1. "I move the City Council determine the project is Exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act Guidelines (CEQA).
2. "I move the City Council adopt Resolution No. 19-2005 approving the Design Review for Zinfandel Plaza Shopping Center, RC-04-133 subject to the Findings Design Review Package (Exhibit A) and Conditions of Approval (Exhibit B)."

Attachments:

1. Resolution 19-2005 with Design Review Package (Exhibit A) and Conditions of Approval (Exhibit B).
2. December 22, 2005 Planning Commission Minutes
3. (A) Sacramento Regional Transit District plans for Cordova Town Center; (B) North Elevation Plan Revision; (C) Color Elevations; (D) Design Review Package

RESOLUTION No. 19-2005

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA
APPROVING DESIGN REVIEW FOR
ZINFANDEL SQUARE SHOPPING CENTER
PROJECT # RC-04-133**

WHEREAS, Rauschenbach, Marvelli, and Becker Architects (hereinafter referred to as Applicant) filed an application with the City of Rancho Cordova (hereinafter referred to as City) for Design Review for the remodel/face lift to an existing shopping center located at 11009, 10947 and 10981 Olson Drive (Assessor's Parcel Number 072-0280-023, 072-0280-020, and 072-0280-018); and

WHEREAS, the City Council is the appropriate authority to hear and take action on this project; and

WHEREAS, a the project is Categorically Exempt under Section 15301, Existing Facilities of the California Environmental Quality Act (CEQA); and

WHEREAS, the City Council of the City of Rancho Cordova has conducted a property noticed public hearing pursuant to Government Code Section 65090 and has duly considered all written and verbal testimony presented during the hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA HEREBY RESOLVES AS FOLLOWS:

Approve the Design Review based on the following findings:

1. CEQA

Finding:

The project is an in-fill project and is Categorically Exempt under Section 15332 of the California Environmental Quality Act (CEQA).

Evidence:

The project meets the Class 32 conditions of CEQA which state: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations; (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses; (c) The project site has no value as habitat for endangered, rare or threatened species; (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (e) the site can be adequately served by all required utilities and public services.

2. DESIGN REVIEW

Approve the Design Review subject to the Design Package (see Exhibit A) and the Conditions of Approval (see Exhibit B) based on the following findings:

Findings

- a) High quality building designs that consist of durable and maintainable materials and that provide visual interest and diversity to the community.
- b) Building designs that maintain human scale and interest.

- c) Use of an architectural style and or/theme for new non-residential development that is consistent for building elevations of a single structure or consistent among all buildings within an integrated development.
- d) Design of buildings or structures that is sensitive to the neighborhood character with regard to scale, architectural style, use of materials and bulk.
- e) Interesting and attractive architecture which includes varied relief of the facade elements and detailed articulation of the building features.
- f) Incorporate quality site design, including landscaping, signage and other elements of site design.

Analysis

- a) The new improvements will feature greater building articulation and detail by providing a new cornice feature to the roof line, stone veneer on the base of the columns, fabric awnings and roof tiles. The proposed architecture and use of materials blend well together to provide the interest and diversity required under the design guidelines.
- b) The project provides human scale with the use of covered walkways, awnings, variations in the roof design, materials, colors and landscaping.
- c) The architecture proposes varying the plane of the exterior walls through recessing and projections of the elements; the heights of the walls are varied so that the mass of the building is broken into smaller distinct "massing" elements; reveals, recesses, projections, cornices, trim elements and other architectural features have been incorporated to provide visual interest to the buildings. The freestanding building, labeled as "shops 3" on the site plan, has been designed to be consistent with the architectural character of the rest of the buildings in the center.
- d) Same as "c" above.
- e) The proposed design provides varied relief to the building façade. The building mass has design elements; which have improved the buildings articulation, though the use of varying roof lines, changes in surface texture with stucco and stone veneers, wall color and awning.
- f) The applicant is proposing an extensive upgrade to the existing landscaping with new trees, shrubbery and installation of interlocking pavers used as a "finish" to the existing planter areas.

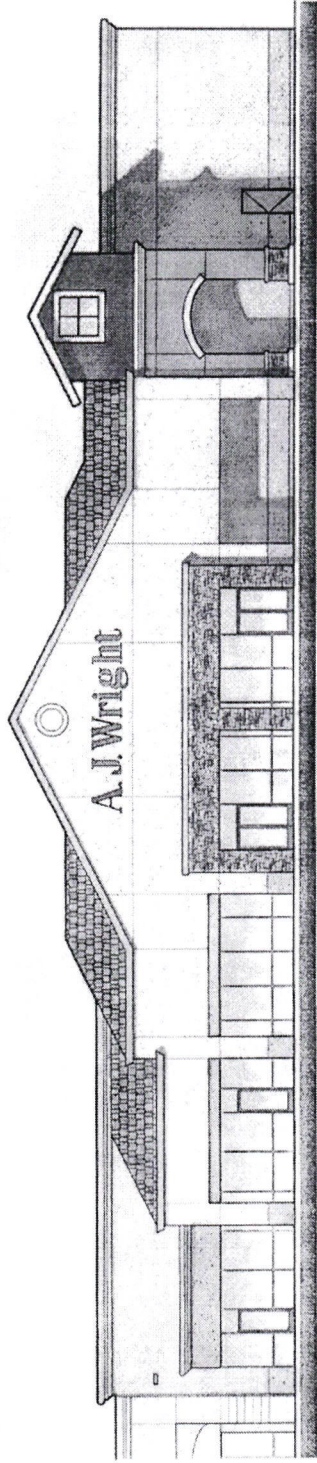
PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 7th day of February, 2005.

AYES:
NOES:
ABSENT:
ABSTAIN:

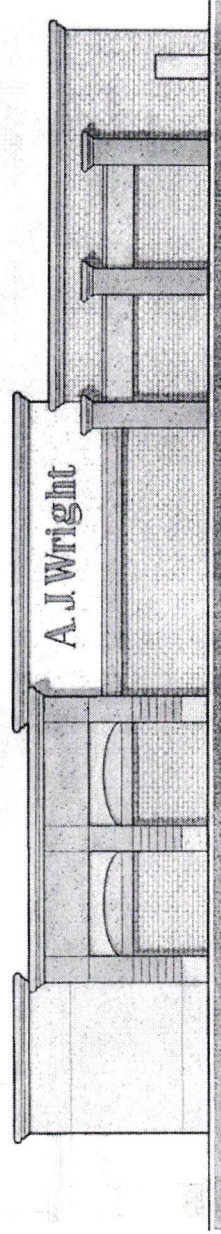
KEN COOLEY, MAYOR of the
CITY OF RANCHO CORDOVA

ATTEST:

LILLIAN HARE
CITY CLERK



FRONT (EAST) ELEVATION
SCALE 1/16"=1'-0"

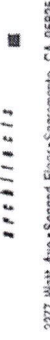


NORTH ELEVATION
SCALE 1/16"=1'-0"

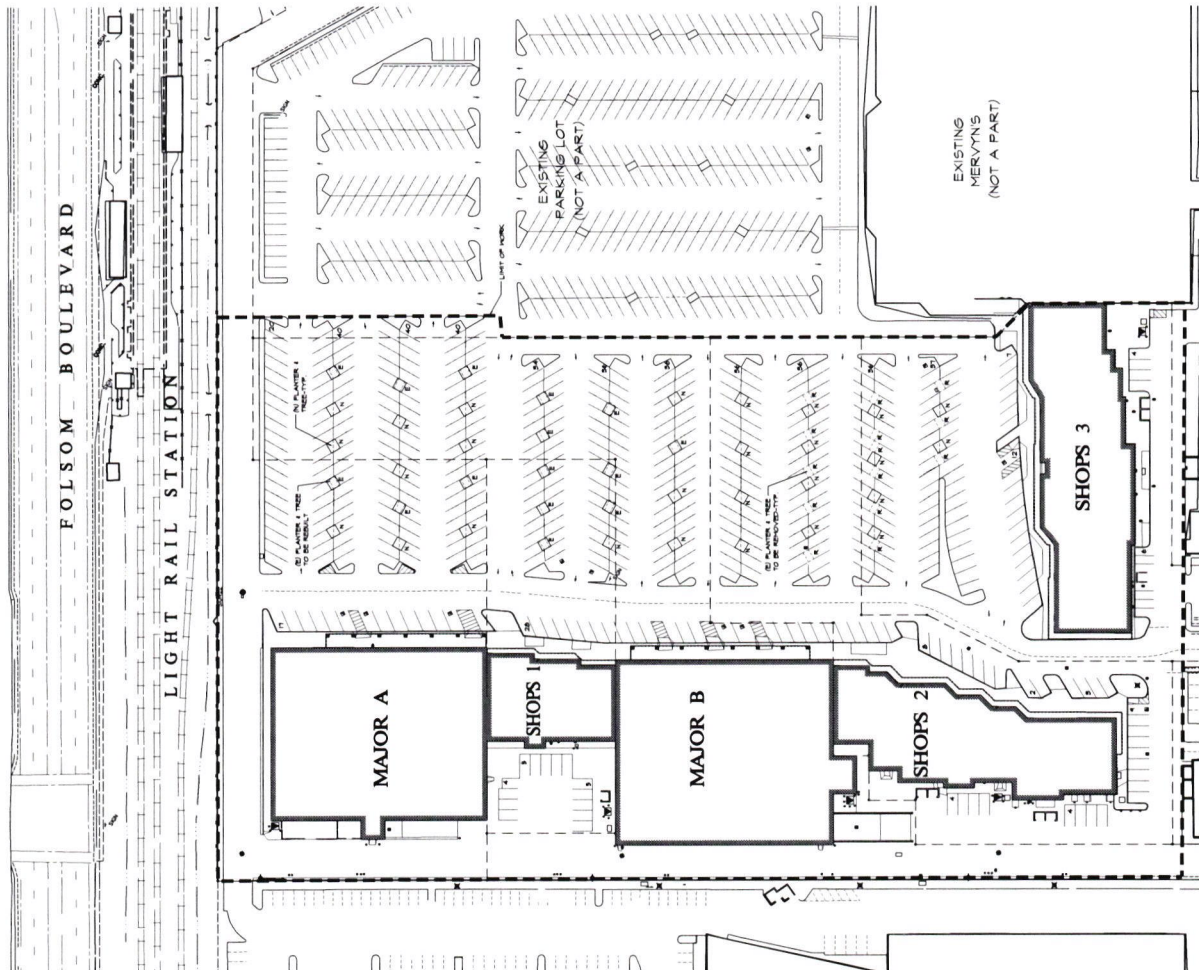
ZINFANDEL SQUARE
RANCHO CORDOVA, CALIFORNIA

98073F 011105 RAS

Rauschenbach
Marvelli
Becker

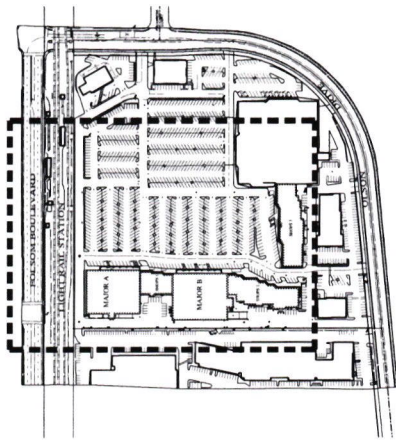


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ZINFANDEL SQUARE

RANCHO CORDOVA, CALIFORNIA



VICINITY MAP
SCALE: 1" = 200'

- LEGEND:
- N = NEW PLANTER
 - E = EXISTING PLANTER TO REMAIN
RECONSTRUCT CURB AS NEEDED
 - R = EXISTING PLANTER TO BE REMOVED

PRELIMINARY SITE PLAN

SCALE: 1" = 50'

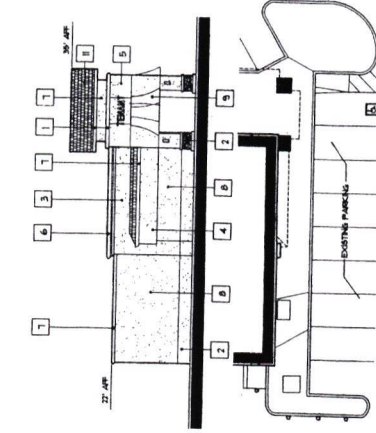
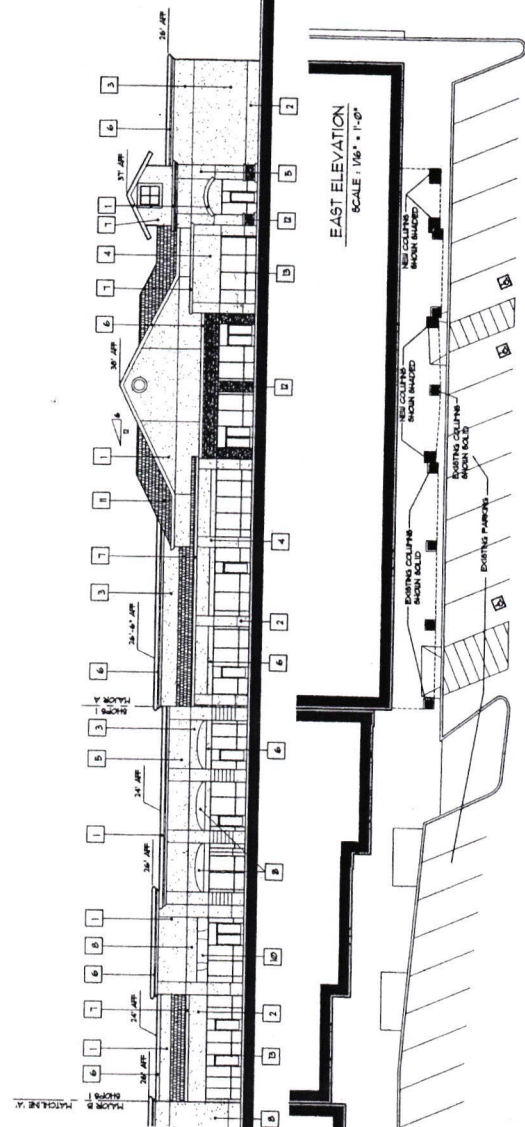
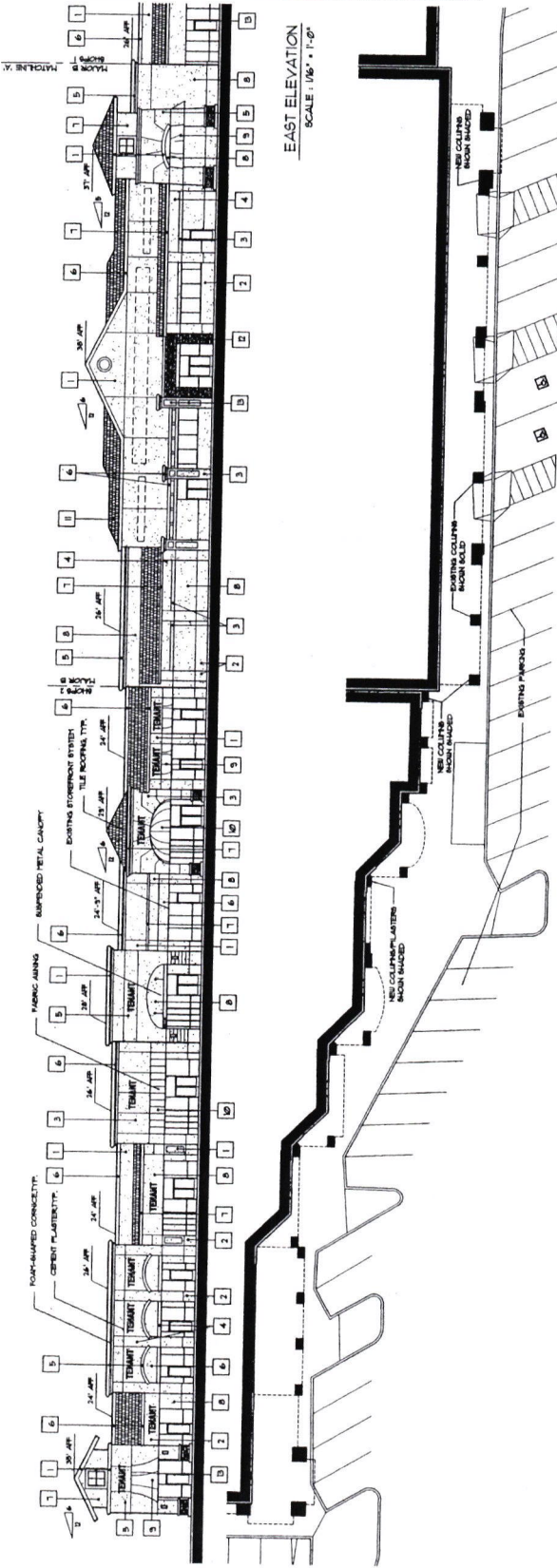


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Date	08/24/04	Drawn	WAS
Revised	08/27/04	of	3

**Rauschenbach
Marvelli
Becker**

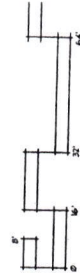
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MATERIALS/COLOR SCHEDULE	
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PRELIMINARY ELEVATIONS

SCALE: 1/8" = 1'-0"



Job Number
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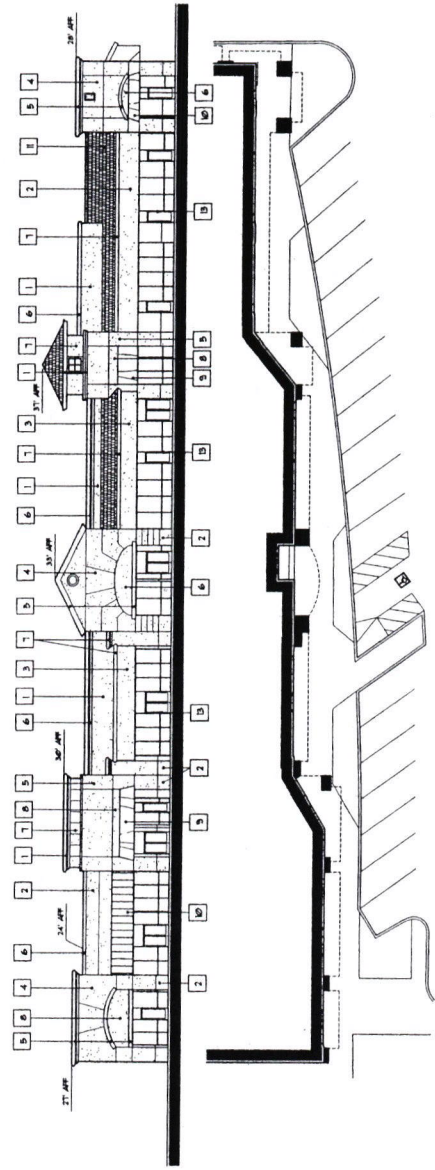
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Marvelli
Becker

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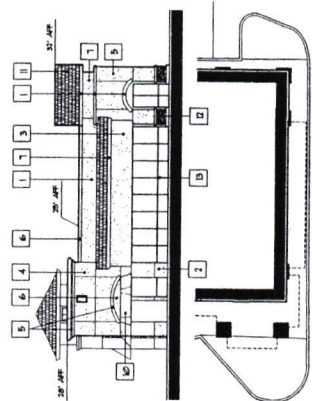
ZINFANDEL SQUARE RANCHO CORDOVA, CALIFORNIA

MATERIALS/COLOR SCHEDULE

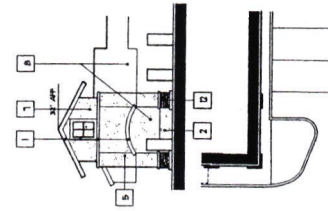
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13	CEMENT PLASTER	BLACK BURGUNDY
14	CEMENT PLASTER	"C" PAINTS 402
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100	CEMENT PLASTER	"MARBLELLA" TREASURE



SHOPS 3 - NORTH ELEVATION
SCALE: 1/8" = 1'-0"



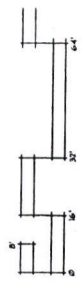
SHOPS 3 - WEST ELEVATION
SCALE: 1/8" = 1'-0"



SHOPS 3 - PARTIAL SOUTH ELEVATION
SCALE: 1/8" = 1'-0"

**PRELIMINARY
ELEVATIONS**

SCALE: 1/8" = 1'-0"

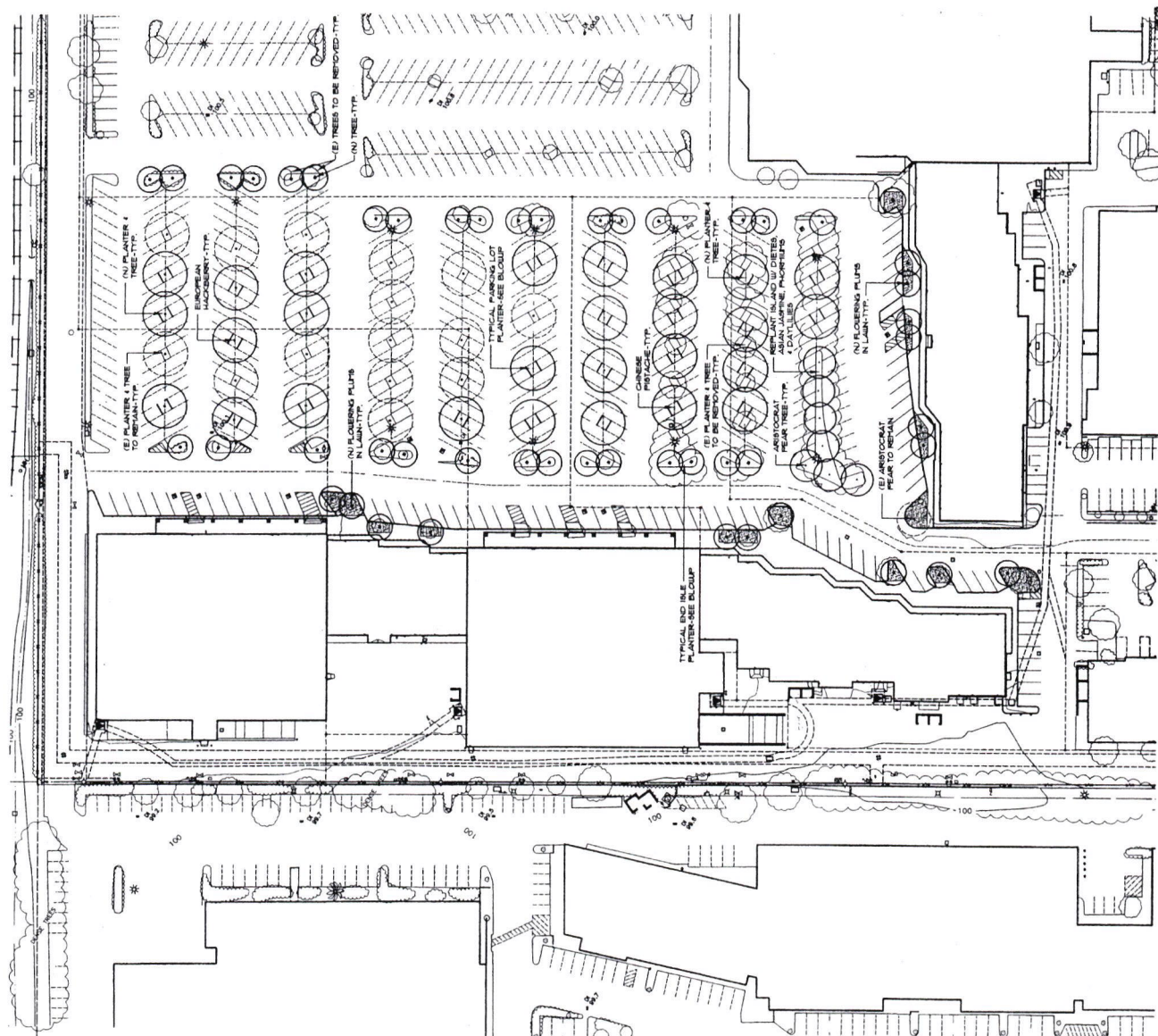


Job Number _____ Sheet _____
Date _____ ORIGINATOR _____
Drawn _____ RAS _____
Revised _____ ORIGINATOR _____ of _____

**Rauschenbach
Marvelli
Becker**

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**ZINFANDEL SQUARE
RANCHO CORDOVA, CALIFORNIA**



PARKING LOT SHADE CALCULATIONS

TOTAL PARKING AREA PAVING: 84,286 SF
(PAVING + BACKUP)

TOTAL PARKING AREA SHADE PROVIDED: 66,276 SF (79%)

CONCEPTUAL
LANDSCAPE
PLAN
SCALE: 1"=40'

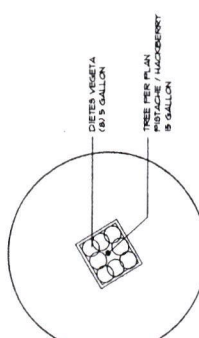


STRAYER ASSOCIATES
LANDSCAPE ARCHITECTURE
304 MOCKINGBIRD PLACE
DAVIS, CA 95616
PHONE: (530) 758-9020
FAX: (530) 758-9095

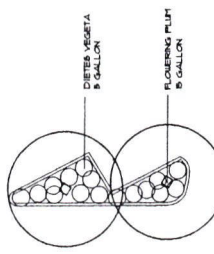
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Rauschenbach
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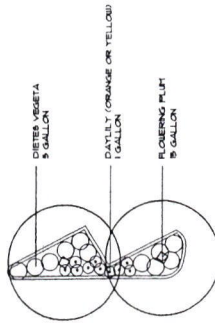
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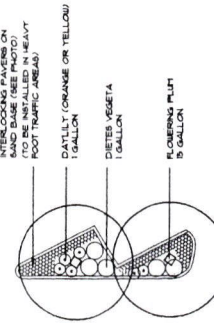
TYPICAL PARKING LOT PLANTER



TYPICAL END ISLE PLANTER
ALT. A SCALE: 1"=10'



TYPICAL END ISLE PLANTER



INTERLOCKING PAVING ON SAND BASE (SEE PHOTO)
(TO BE INSTALLED IN HEAVY FOOT TRAFFIC AREAS)

CONDITIONS OF APPROVAL

Exhibit B

		<u>Timing/ Implementation</u>	<u>Enforcement/ Monitoring</u>	<u>Verification (date and Signature)</u>
1.	The project shall be constructed in substantial compliance with the approved Design Review plans (Exhibit A) for the Zinfandel Plaza Shopping Center Buildings located at 11009, 109477, and 10981 Olson Drive, APN 072-0280-023, 072-0280-020, 072-0280-018, project number RC-04-133.	On-Going	Planning	
2.	The Applicant shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	On-Going	Planning	
	Prior to Issuance of Building Permits			
3.	The exterior building elevations shall be reviewed for architectural consistency with the approved plans by the Planning Director.	Prior to Building Permits	Planning	
	Prior to Issuance of Occupancy Permit			
4.	An inspection of the finished building, colors, site amenities and parking lot improvements shall be conducted by the Planning Director.	Prior to final inspection	Planning	

applicant, which will change the parameters of the Design Review concerns, staff and the applicant have agreed to request a continuance of this project to the January 13, 2005 Regular Planning Commission Meeting. This will allow additional time to re-notice the project and address the necessary changes in the staff report to reflect the smaller number of lots being reviewed.

Request: Applicant is requesting Design Review for the construction of 103 single-family dwellings and a Special Development Permit to allow a front yard setback reduction to 13 feet in the RD-5 (Residential) zone.

Project Applicant: Pulte Home Corporation, Jay Pawlek, 4196 Douglas Blvd., Ste. 100, Granite Bay, CA, 95746.

Project Location: APN: 067-0030-009, East side of Sunrise Blvd. and South of Douglas Road.

Assistant Planner Kathleen Franklin recommended the Planning Commission continue this item to the January 13, 2005 Regular Planning Commission Meeting.

The Commissioners had the following concerns and comments:

- There were no comments from the Planning Commissioners.

Action:

Motion: Commissioner Wentz moved, seconded by Commissioner Burke to recommend the Planning Commission continue this item to the January 13, 2005 Regular Planning Commission Meeting.

Vote on the Motions:

AYES:	Burke, Konarski, Smith, Vance, Wentz
NOES:	NONE
ABSTAIN:	NONE
ABSENT:	Moe, Savorn

There being 5 Ayes, 0 Noes, 0 Abstains and 2 Absentees, the motions are hereby declared to be passed.

B. Consideration of the Design Review for ZINFANDEL SQUARE SHOPPING CENTER – Project No. RC-04-133

Request: Applicant is requesting Design Review for the remodel/facelift of existing shopping center with some modification & enhancement to the existing landscape in the GC (General Commercial) zone.

Project Applicant: Patterson Properties, Inc., Jamie Horton, 2270 Douglas Blvd., #111, Roseville, CA, 95661

Project Location: APN: 072-0280-023, 072-0280-020 and 072-0280-018, 11009, 10947 and 10981 Olson Drive

Assistant Planner, Kathleen Franklin and Principal Planner, Bill Campbell presented the staff report and recommended the Planning Commission forward a recommendation to the City Council to determine the project is Categorically

Exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines and adopt a resolution approving the Design Review for Project No. RC-04-133, subject to the Design Package, Findings, Evidence and Conditions of Approval. Chair Smith opened the public hearing and took testimony from Mark Marvelli, project architect.

The Commissioners had the following concerns and comments:

- Will Mervyn's blend into this project. No, it will stand alone; however, it may cause Mervyn's to improve their building as well.
- Will other businesses be built within the center to reduce the surplus of parking? It's not likely due to the fact that the newly remodeled buildings might possibly bring in more patrons; this will require additional parking.
- Are there signed leases for each pad yet? No.
- Is there a break in the fence from the rail line to the shopping center? Yes.
- Is there a planned walkway to connect the Light Rail to the Shopping Center? Yes.
- Commissioner Konarski was concerned that there was not enough connectivity or access between the shopping center and the Light Rail Station.
- Would Light Rail have an opportunity to use some of the surplus parking and bring in a new Connector Station? Yes, there is a possibility of having a café or waiting area.
- Will there be a stamped concrete sidewalk used for a pedestrian connection between the Light Rail Station and the Shopping Center? Yes, there will be a stronger connection that will be designed to complement the center.
- Are there any ideas of having walkways between the parking spaces for pedestrian safety? No.
- Commissioner Wentz is concerned that the north elevation wall facing Folsom Blvd. appears to be blank and should be enhanced somehow.

The Commissioners felt staff and the representative for the project adequately addressed the above concerns and comments.

Action:

Motion 1: Commissioner Wentz moved, seconded by Commissioner Burke, to recommend the Planning Commission forward a recommendation to the City Council to determine the project is Categorically Exempt under Section 15301, Existing Facilities, of the California Environmental Quality Act (CEQA) Guidelines.

Motion 2: Commissioner Burke moved, seconded by Vice Chair Vance, to recommend the Planning Commission forward a recommendation to the City Council to adopt a resolution approving the Design Review for Project No. RC-04-133, subject to the Design Package, Findings, Evidence and modified Conditions of Approval to enhance the north elevation wall that faces Folsom Blvd.

Vote on the Motions:

AYES: Burke, Smith, Vance, Wentz
NOES: Konarski
ABSTAIN: NONE
ABSENT: Moe, Savorn

There being 4 Ayes, 1 Noes, 0 Abstains and 2 Absentees, the motions are hereby declared to be passed.

C. Consideration of the PROPOSED ORDINANCE RELATING TO THE LOCATION AND OPERATION OF ADULT-ORIENTED BUSINESSES:

Project Location: City Wide.

Associate City Attorney Joe Chapman and Special Projects Manager Eric Norris presented the staff report for the consideration of an ordinance amending the Rancho Cordova Municipal and Zoning Codes relating to the location and operation of adult-oriented businesses. Chair Smith opened the public hearing and took testimony from concerned citizens listed below.

The Commissioners had the following concerns and comments:

- Was the Sheriff's Department solicited regarding crime records or criminal activities near the businesses within the City? There were no comprehensive reviews by the Sheriff's Department as to crimes near or around these specific businesses within the City.
- How long will the appeal process be before a license can be revoked or suspended? There is an immediate right to appeal, but the business can still run until a decision is made.
- Commissioner Konarski addressed George Mull if his staff has identified areas of concern within the Ordinance? Yes, but Mr. Mull would like to address staff with the concerns before bringing them back to the Commission.
- Commissioner Konarski was concerned about the regulation of renting motels or hotels once per day for more than 10 hours. Is this occurring now within our community? There is no conformation that this is occurring in our City currently; however, it has been problematic in other communities and can be addressed if needed in our community. Commission Konarski encourages that staff be aware of what's happening in our community now and address those issues if there are any.
- Commissioner Wentz is concerned that staff has not addressed the Sheriff or other Agency comments well enough to obtain proper information before presenting these concerns to the Commission.
- Vice Chair Vance would prefer the ordinance be written so that Rancho Cordova has the same restrictions and percentages of businesses allowed in other communities.
- Commissioner Wentz would like more statistics from the appropriate Agencies as to how many of these businesses exist within Rancho Cordova and surrounding communities or Cities. He would prefer more community input and feels staff and the attorneys to further work together on this item.

The exhibit (s) or attachment (s) for this item is (are) on file in the City Clerk's Office for review by the public.

Attachment 3 - (A) Sacramento Regional Transit District plans for Cordova Town Center; (B) North Elevation Plan Revision; (C) Color Elevations; (D) Design Review Package

Council Members, please find above item(s) attached to your agenda packet.

Agenda Item: 12

Staff Report

Date: February 7, 2005
To: Honorable City Council
From: Steven R. Meyers, City Attorney
Subject: Tobacco Licensing Ordinance and AB 71



RECOMMENDATION

It is recommended that the City Council waive the first reading and introduce the attached Tobacco Retailer License Ordinance to allow the City to enforce laws prohibiting the sale of tobacco to minors, as well as other local, state and federal laws related to tobacco.

BACKGROUND

At the December 21, 2004, City Council Meeting, the Council directed the City Attorney to draft a tobacco licensing ordinance for the purpose of regulating tobacco sales to minors. Several neighboring jurisdictions have adopted similar licensing programs in the past year (City of Sacramento, County of Sacramento, and City of Elk Grove). Tobacco licensing ordinances provide cities with the authority to enforce laws prohibiting sale of tobacco products to minors and allow for the suspension or revocation of a license if the merchant sells tobacco to minors, or violates other local, state or federal laws related to tobacco. For many merchants, tobacco sales make up a substantial portion of their revenue, thus a local tobacco retail ordinance creates a significant financial deterrent and discourages retailers from violating the law.

The California Grocers Association ("CGA") wrote to the Council on December 21, 2004, indicating that a local tobacco licensing ordinance would pose an undue financial burden to local retailers, particularly in light of Assembly Bill 71 (AB 71). The CGA contends that a local licensing ordinance would create a secondary licensing scheme, and asks that if the City decides to adopt a tobacco licensing ordinance, to provide "reasonable protections for responsible retailers." The CGA cited to ordinances passed by other local jurisdictions (Orinda, Concord, Martinez, Pleasant Hill, and Richmond) that require licensing fees *only* if a retailer has been found to be in violation of any applicable state or federal laws.

As explained below, a local tobacco licensing ordinance would not create a secondary or "duplicate" licensing scheme in light of the requirements of AB 71. AB 71 is specifically designed to reduce cigarette smuggling and the resulting loss of tobacco tax revenues to the state. AB 71 provides no additional funding for enforcement to reduce illegal tobacco sales to minors. In contrast, the proposed ordinance will use licensing and penalty fees to fund compliance checks of local

retailers, which will ensure that the laws prohibiting sale of tobacco products to minors are enforced.

ASSEMBLY BILL 71

Assembly Bill 71 sets up a new statewide program that requires retail stores, as well as tobacco wholesalers, distributors, manufacturers and importers to get a license. (See Exhibit B.) A retailer must apply for the license and pay a one time fee of \$100. There are no maintenance or renewal fees in this state licensing program. Moreover, the retailer licensing fees only pay for an enforcement program to catch smugglers and tobacco tax stamp fraud. AB 71 has no public health component, and does not fund programs to enforce laws prohibiting the sale of tobacco products to minors.

AB 71 sets up a system for suspending or revoking a tobacco retailer's license if they are convicted a certain number of times for selling tobacco to minors. Under AB 71, the provision allowing for license suspension or revocation only goes into effect in years when the statewide sale of tobacco to minors is greater than 13 percent. Currently, this trigger mechanism is not activated because the 2003 statewide illegal sales rate was 12.2 percent. And, even in years when the state's illegal sales rate is greater than 13 percent, a retailer is at little to no risk of losing their license. Under AB 71, a retailer would have to be convicted of selling to minors four times in one (1) year before risking a license suspension. Under the proposed ordinance, the City Manager has the authority to suspend a local retailer license for up to 30 days upon a finding of a first license violation, and the City Manager may revoke a retailer license upon a finding of a third violation in a five (5) year period.

AB 71 includes anti-preemption language that allows local governments to adopt and enforce licensing programs with a public health emphasis. Thus, local governments are free to adopt tobacco retailer licensing ordinances, including ordinances that are more protective of minors than AB 71.

ALTERNATIVE TOBACCO RETAIL LICENSING SCHEMES

In light of the concerns expressed by the CGA, the City Attorney reviewed the ordinances passed by Orinda, Pleasant Hill and Richmond that provide "reasonable protections for responsible retailers." In sum, these ordinances only require a tobacco licensing permit fee if a retailer has been found to be in violation of state or federal laws governing the sale and distribution of tobacco. Ordinances with "responsible retailer" provisions are not endorsed by the American Lung Association or the Technical Assistance Legal Center ("TALC"), as they fail to provide a proactive means to enforce tobacco laws through compliance check programs. Rather than regulate only those retailers found to have already violated the law, the proposed ordinance requires all tobacco retailers to obtain a license and therefore provides a more effective regulatory scheme for ensuring compliance with the law and discouraging the illegal purchase of tobacco products by minors.

DRAFT ORDINANCE

The City Attorney recommends that the Council adopt the proposed ordinance as drafted. This Ordinance is similar to the tobacco retailer ordinances adopted by the Sacramento County, the City of Sacramento, and the City of Elk Grove.¹

Specifically, the proposed ordinance will allow the City to:

- Require all tobacco retailers to apply for and pay a licensing fee to the City. This license must be renewed each year. The Ordinance allows the Council to establish the licensing fee by resolution. The amount of the fee shall be determined on the basis of the costs incurred in the administration of the Ordinance.²
- Suspend or revoke a tobacco retailer license if the merchant sells tobacco to minors or violates other local, state, or federal laws related to tobacco;
- Impose fines on tobacco retailers for violation of local, state or federal laws related to tobacco;
- Conduct compliance checks to enforce laws prohibiting sale of tobacco products to minors; and
- Provide an appeal procedure to retailers who are found to be in violation of the Ordinance. This includes a due process hearing for denial of license, revocation of license, and imposition of fines.

The licensing fees and civil penalties required by the ordinance may offset the costs associated with implementation of the Ordinance.

Attachments:

1. Draft Ordinance Establishing A Licensing Program for Tobacco Retailers
2. Assembly Bill 71

728652v1; 841-001

¹ These ordinances are also consistent with the model ordinance adopted by the Technical Assistance Legal Center (TALC), a project of the Public Health Institute

² The tobacco retail licensing fee assessed by neighboring jurisdictions is as follows: 1) Sacramento County--\$287; 2) City of Sacramento --\$300; and 3) City of Elk Grove--\$270.

CITY OF RANCHO CORDOVA

ORDINANCE No. 03-2005

**AN ORDINANCE FOR THE CITY OF RANCHO CORDOVA
ESTABLISHING A LICENSING PROGRAM FOR TOBACCO RETAILERS**

Section 1. Recitals

WHEREAS, the City of Rancho Cordova has a substantial interest in promoting compliance with federal, state, and local laws intended to regulate tobacco sales and use; in discouraging the illegal purchase of tobacco products by minors; in promoting compliance with laws prohibiting sales of cigarettes and tobacco products to minors; and in protecting children from being lured into illegal activity through the misconduct of adults;

WHEREAS, for the reasons set forth in Section 2 of this ordinance the City Council finds and determines that it is in the public interest and necessary to protect the public health safety and welfare for this tobacco retailer license program to be adopted;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA DOES
ORDAIN AS FOLLOWS:

Title 4, Chapter 4.07 is hereby added to the Rancho Cordova Municipal Code as follows:

Section 2. Ordinance Establishing the Tobacco Retailer License Program

Title 4 BUSINESS LICENSES AND REGULATIONS

Chapter 4.07 Tobacco Retailer License

4.07.010 Legislative Findings

4.07.020 Purpose

4.07.030 Definitions

4.07.040 Requirement for Tobacco Retailer License

4.07.050 Application Procedure

4.07.060 Issuance and Renewal of License

4.07.070 Display of License

4.07.080 License Fee

4.07.090 License Nontransferable

4.07.100 License Violation

- 4.07.110 Administrative Fine
- 4.07.120 Suspension or Revocation of License
- 4.07.130 Denial, Suspension and Revocation-Appeals
- 4.07.140 Hearings – Generally
- 4.07.150 Conduct of Hearing
- 4.07.160 Form and Contents of Decision-Finality of Decision
- 4.07.170 Enforcement
- 4.07.180 Severability
- 4.07.190 Effective Date and Publication

4.07.010 Legislative Findings.

The City Council of the City of Rancho Cordova finds and determines that:

- A. The United States Surgeon General has declared nicotine, a key ingredient of cigarettes and tobacco products, as addictive as cocaine or heroin; yet no other addictive product or drug is as accessible to minors or as heavily advertised and promoted to minors as tobacco products. Once addicted, minors necessarily have great difficulty in complying with laws regulating access by minors to tobacco.
- B. Since 1971, federal law has banned the advertising of tobacco products on radio and television, in part, because of substantial evidence showing that the most persuasive advertising was being conducted on radio and television, and these broadcasts were particularly effective in reaching a large audience of young people.
- C. Studies show an association between tobacco use and use of alcohol and illicit drugs. The National Institute on Drug Abuse found that teenagers who smoke are 14 times more likely to abuse alcohol, 100 times more likely to smoke marijuana and 32 times more likely to use cocaine, than their nonsmoking peers.
- D. Eighty-eight percent (88%) of adults who have ever smoked, tried their first cigarette by the age of eighteen (18), and the average age at which smokers try their first cigarette is fourteen and a half (14½).
- E. Although the tobacco industry insists the sole purpose of advertising is to convince current smokers to switch brands, it spends over \$5 billion a year in advertising and promotion costs, to aggressively recruit new smokers. To replace smokers who quit or die

prematurely (some 3,000 smokers a day) the tobacco industry must attract approximately two million new smokers each year. Most new smokers are children and adolescents. The tobacco industry sells \$1.26 billion in tobacco products (over 947 million packs of cigarettes and twenty-six million containers of smokeless tobacco) each year to children under 18. Thus, the tobacco industry earns \$1.5 billion annually from the illegal sale of tobacco to children.

- F. Based upon the foregoing facts and findings, the City has a substantial interest in promoting compliance with state laws prohibiting sales of cigarettes and tobacco products to minors, in promoting compliance with federal, state and local laws intended to discourage the purchase of tobacco products by minors, and in protecting children from being lured into illegal activity through the misconduct or illegal acts of adults.
- G. State law prohibits the sale or furnishing of cigarettes, tobacco products and smoking paraphernalia to minors, as well as the purchase, receipt, or possession of tobacco products by minors. (Penal Code § 308).
- H. State law requires that tobacco retailers check the identification of tobacco purchasers who reasonably appear to be under eighteen (18) years of age (Business & Professions Code § 22956) and provides procedures for using persons under eighteen (18) years of age to conduct onsite compliance checks of tobacco retailers. (Business & Professions Code § 22952).
- I. State law requires that tobacco retailers post a conspicuous notice at each point of sale stating that selling tobacco products to anyone under eighteen (18) years of age is illegal. (Business & Professions Code § 22952, Penal Code §308).
- J. State law prohibits the sale or display of cigarettes through a self-service display and prohibits public access to cigarettes without the assistance of a clerk. (Business & Professions Code § 22962).
- K. State law prohibits the sale of "bidis" (hand-rolled filterless cigarettes imported primarily from India and Southeast Asian countries) except at those businesses that prohibit the presence of minors. (Penal Code § 308.1).
- L. State law prohibits the manufacture, distribution, or sale of cigarettes in packages of less than twenty (20) and prohibits the manufacture, distribution, or sale of "roll-your-own" tobacco in packages containing less than six tenths of an ounce of tobacco. (Penal Code § 308.3).
- M. State law prohibits public school students from smoking or using tobacco products while on campus, while attending school-sponsored activities, or while under the supervision or control of school district employees. (Education Code § 48901(a)).
- N. Section 4.61.040 of the City's Municipal Code prohibits the sale or distribution of tobacco

products from vending machines.

- O. Despite these restrictions, minors continue to be exposed to and influenced by tobacco advertising, and to purchase or steal or otherwise obtain cigarettes and other tobacco products at alarming rates. Studies show that nearly one-quarter of all teenagers in this country are smokers.
- P. California courts in *Cohen v. Board of Supervisors*, 40 Cal. 3d 277 (1985), and *Bravo Vending v. City of Rancho Mirage*, 16 Cal. App. 4th 383 (1993), have affirmed the power of local jurisdictions to regulate business activity in order to discourage violations of law.
- Q. State law authorizes local tobacco retailer licensing laws to provide for the suspension or revocation of the local tobacco retailer license for any violation of a state tobacco control law. (Business & Professions Code § 22971.3).
- R. A requirement for a tobacco retailer license will not unduly burden legitimate business activities of retailers who sell or distribute cigarettes or other tobacco products to adults. It will, however, allow the City to regulate the operation of lawful businesses to discourage violations of federal, state, and local tobacco laws. (Ord. __-2005)

4.07.020 Purpose. The purpose of this Chapter is to encourage responsible tobacco retailing and to discourage violations of tobacco-related laws, especially those that prohibit or discourage the sale or distribution of tobacco products to minors, but not to expand or reduce the degree to which the acts regulated by federal or state law are criminally proscribed or to alter the penalty provided for violations. (Ord. __-2005)

4.07.030 Definitions. As used in this chapter, the following words and phrases shall have the meaning given them in this Section, unless the context clearly requires otherwise:

"City" means the City of Rancho Cordova.

"City Manager" means the City Manager of the City of Rancho Cordova or his or her designee.

"Itinerant tobacco retailing" means engaging in tobacco retailing at other than a fixed location.

"License" means a tobacco retailer license issued by the City pursuant to this Chapter.

"Licensee" means any proprietor holding a license issued by the City pursuant to this Chapter.

"Person" means any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

"Proprietor" means a person with an ownership or managerial interest in a business. An ownership interest shall be deemed to exist when a person has a ten (10) percent or

greater interest in the stock, assets, or income of a business other than the sole interest of security for debt. A managerial interest shall be deemed to exist when a person has, or can have, sole or shared control over the day-to-day operations of a business.

"Tobacco product" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis or any other preparation of tobacco.

"Tobacco paraphernalia" means cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines and any other item designed or used for the smoking or ingestion of tobacco products.

"Tobacco retailer" means any person who sells, offers for sale, exchanges, or offers to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange.

"Tobacco retailing" means selling, offering for sale, exchanging, or offering to exchange for any form of consideration, tobacco, tobacco products, or tobacco paraphernalia without regard to the quantity sold, offered for sale, exchanged, or offered for exchange. (Ord. __-2005)

4.07.040 Requirement for Tobacco Retailer License.

- A. It shall be unlawful for any person to act as a tobacco retailer without first obtaining a license for each location at which tobacco retailing is to occur. No license will be issued to authorize tobacco retailing at other than a fixed location. No license will be issued for itinerant tobacco retailing or tobacco retailing from vehicles.
- B. Nothing in this Chapter shall be construed to grant any person obtaining a license any status or right other than the right to act as a tobacco retailer at the location in the City identified on the face of the license, subject to compliance with all other applicable laws, regulations, and ordinances. Nothing in this Chapter shall be construed to render inapplicable, supersede, or apply in lieu of any other provision of applicable law, including, without limitation, any condition or limitation on indoor smoking made applicable to business establishments by Labor Code § 6404.5. (Ord. __-2005).

4.07.050 Application Procedure. All applications for a license shall be submitted to the City Manager in the name of each proprietor proposing to conduct tobacco retailing and shall be signed by each proprietor or an authorized agent thereof. A proprietor proposing to conduct tobacco retailing at more than one location shall submit a separate application for each location. Every application shall be submitted on a form supplied by the City Manager and shall contain the following information:

- A. The name, address, and telephone number of each proprietor; and
- B. The business name, address, and telephone number of the fixed location for which a license is sought; and

- C. Whether or not any proprietor has previously been issued a license pursuant to this Chapter that is, or was at any time, suspended or revoked and, if so, the dates of the suspension period or the date of revocation; and
- D. Such other information as the City Manager deems necessary for the administration or enforcement of this Chapter. (Ord. __-2005).

4.07.060 Issuance and Renewal of License.

- A. Upon the receipt of an application for a license and the applicable license fee, the City Manager shall issue a license unless:
 - 1. The application is incomplete or inaccurate;
 - 2. The application seeks authorization for tobacco retailing at an address that appears on a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings for violation of any of the provisions of this Chapter; provided, however, this subparagraph shall not constitute a basis for denial of a license if either or both of the following apply:
 - a. The applicant provides the City with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For the purposes of this subparagraph, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this Chapter that occurred at the location, is presumed not to be an "arm's length transaction";
 - b. It has been more than five years since the most recent license for that location was revoked;
 - c. The application seeks authorization for tobacco retailing that is unlawful pursuant to this Code, or that is unlawful pursuant to any other local, state, or federal law;
 - d. The City Manager has information that the applicant or his or her agents or employees has violated any local, state or federal tobacco control law at the location for which the license or renewal of the license is sought within the preceding thirty-day (30) period;
 - e. There are grounds for denial pursuant to Chapter 4.06 of this Code; or,

3. No General Business License has been granted for the enterprise pursuant to Chapter 4.06 of this Code.
- B. A license shall be valid for one (1) year and an application for renewal must be filed not later than thirty (30) days prior to the expiration of the license, but no earlier than sixty (60) days prior to the expiration of the license. Unless revoked on an earlier date, all licenses shall expire one (1) year after the date of issuance. A license may be renewed for additional periods of one (1) year by submitting an application to the Tax and License Collector and payment of the applicable license fee; provided, however, a license that is suspended, has been revoked, or is subject to suspension or revocation proceedings shall not be renewed. The application and license fee shall be submitted at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the current valid license. The applicant shall follow all of the procedures and provide all of the information required by Section 4.07.050, the Tax and License Collector shall process the application according to the provisions of this Section. Provided that an application is made within the time period required by this subdivision, a licensee may continue the sale of tobacco products pending a determination of the Tax and License Collector to renew or disapprove the license.
 - C. Where the City Manager does not approve a license or renewal of a license, the procedures for denial, including appeals therefrom, of Section 4.07.120 of this Code shall apply. (Ord. __-2005)

4.07.070 Display of License. Each license shall be prominently displayed in a publicly visible location at the licensed premises. (Ord. __-2005).

4.07.080 License Fee. The fee for issuance or renewal of a license shall be established by resolution of the City Council and shall be in addition to the City's business operation tax and any other license or permit fee imposed by this Code upon the applicant. The license fee shall be paid to the City at the time the license application is submitted. The amount of the fee shall be determined on the basis of the costs incurred in the enforcement of tobacco retailing laws together with the costs, including the costs of counsel, incurred in the administration of this Chapter. (Ord. __-2005).

4.07.090 License Nontransferable. A license is nontransferable. If a licensee changes business location, that licensee must obtain a new license prior to acting as a tobacco retailer at the new location. If a business licensed to conduct tobacco retailing is sold, the new owner must obtain a license for that location before acting as a tobacco retailer. (Ord. __-2005).

4.07.100 License Violation. It shall be a violation of a license for a licensee or his or her agents or employees to violate any local, state, or federal tobacco-related law. (Ord. 2005-).

4.07.110 Administrative Fine

- A. If the City finds, based on substantial evidence, that any unlicensed Person, including a Person named on a revoked or suspended license, has engaged in Tobacco Retailing in violation of Section 4.07.040, the City shall fine that person as follows:
 1. a fine not exceeding one hundred dollars (\$100) for a first violation in any twelve-month (12) period; or

2. a fine not exceeding two hundred dollars (\$200) for a second violation in any twelve-month (12) period; or
3. a fine not exceeding five hundred dollars (\$500) for a third or subsequent violation in any twelve-month (12) period.

Each day that such a Person engages in Tobacco Retailing shall constitute a separate violation.

- B. A notice of violation and of intent to impose a fine shall be personally served on, or sent by certified mail to, the Person or Persons subject to the fine. The notice shall state the basis of the City's determinations and include an advisement of the right to request a hearing to contest the fine. Any request for a hearing must be in writing and must be received by the City within ten (10) calendar days of personal service of the notice on the Person or Persons subject to a fine or within fifteen (15) calendar days if the Person or Persons subject to a fine are served by mail.
- C. If no request for a hearing is timely received, the City's determination on the violation and the imposition of a fine shall be final and payment shall be made within thirty (30) calendar days of written demand made in the manner specified above for a notice of violation. If the fine is not paid within that time, the fine may be collected, along with interest at the legal rate, in any manner provided by law. In the event that a judicial action is necessary to compel payment of the fine and accumulated interest, the Person or Persons subject to the fine shall also be liable for the costs of the suit and attorney's fees incurred by the City in collecting the fine.
- D. If a hearing is requested pursuant to subsection (B) of this section, the City shall provide written notice, within forty-five (45) calendar days of its receipt of the hearing request, to the Person or Persons subject to a fine of the date, time, and place of the hearing in the manner specified above for a notice of violation.
- E. The hearing shall be conducted in accordance with the procedures set forth in Sections 4.07.140-4.07.160 of this Chapter.
- F. If no timely notice of appeal to the superior court is filed, or the City is not timely served with a copy of a notice of appeal, the hearing officer's decision and findings shall be deemed confirmed and the fine shall be collected pursuant to subsection (C) of this Section.

4.07.120 Suspension or Revocation of License.

- A. In addition to any other remedy authorized by law, a license shall be suspended or revoked as provided in this section, if the City Manager finds that the licensee or his or her agents or employees has or have violated any of the provisions of this Chapter; provided, however, violations by a licensee at one location may not be accumulated against other locations of that same licensee, nor may violations accumulated against a prior licensee at a licensed location be accumulated against a new licensee at the same licensed location.
 1. Upon a finding by the City Manager of a first license violation within any five-year period, the license shall be suspended for thirty (30) days.

2. Upon a finding by the City Manager of a second license violation within any five-year period, the license shall be suspended for ninety (90) days.
 3. Upon a finding by the City Manager of a third license violation within any five-year period, the license shall be suspended for one year.
 4. Upon a finding by the City Manager of a fourth license violation within any five (5) year period, the license shall be revoked.
- B. Notwithstanding Section 4.07.110(A), a license shall be revoked if the City Manager finds that either one or both of the following conditions exist:
1. One or more of the bases for denial of a license under Section 4.07.060(A) existed at the time application was made or at anytime before the license issued.
 2. The information contained in the license application, including supplemental information, if any, is found to be false in any material respect.
- C. In the event the City Manager suspends or revokes a license, written notice of the suspension or revocation shall be served upon the licensee within five (5) days of the suspension or revocation. The notice shall contain:
1. A brief statement of the specific grounds for such suspension or revocation;
 2. A statement that the licensee may appeal the suspension or revocation by submitting an appeal, in writing, in accordance with the provisions of Section 4.07.130, to the City Manager, within ten (10) calendar days of the date of service of the notice; and
 3. A statement that the failure to appeal the notice of suspension or revocation will constitute a waiver of all right to an administrative appeal hearing, and the suspension or revocation will be final.
- D. A licensee for whom a license suspension is in effect must remove all tobacco products and tobacco paraphernalia from public view at the address that appears on the suspended license. (Ord. 2005-).

4.07.130 Denial, Suspension and Revocation-Appeals.

- A. Any applicant or licensee aggrieved by the decision of the City Manager in denying, suspending, or revoking a license, may appeal the decision by submitting a written appeal to the City Manager within ten (10) calendar days from the date of service of the notice of denial, suspension, or revocation. The written appeal shall contain:
1. A brief statement in ordinary and concise language of the specific action

protested, together with any material facts claimed to support the contentions of the appellant;

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside;
 3. The signatures of all parties named as appellants and their official mailing addresses; and
 4. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. The appeal hearing shall be conducted in accordance with Sections 4.07.140-4.07.160 of this Municipal Code.
- C. Upon receipt of any appeal filed pursuant to this Section, the City Manager shall transmit said appeal to the secretary of the hearing examiner who shall calendar the matter for hearing within forty-five (45) days.
- D. Written notice of the time and place of the hearing shall be given at least ten (10) calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy thereof, postage prepaid, addressed to the appellant at the address shown on the appeal.
- E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and a final adjudication of the notice and order, or any portion thereof.
- F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.
- G. Any suspension or revocation of a license shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section. (Ord. 2005-).

4.07.140 Hearings-Generally.

- A. The City Manager shall appoint a hearing examiner to hear appeals brought pursuant to this Chapter.
- B. The City Manager shall promulgate rules and procedures as necessary for the use of the hearing examiner.
- C. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the City Manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

- D. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.
- E. The hearing examiner may, upon request of the appellant or upon request of the City Manager, grant continuances from time to time for good cause shown, or upon his or her own motion.
- F. In any proceedings under this Chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts. (Ord. 2005-).

4.07.150 Conduct of Hearing.

- A. Hearings need not be conducted according to the technical rules relating to evidence and witnesses. Government Code § 11513, subsections (a), (b) and (c) as presently written or hereinafter amended shall apply to hearings under this Chapter.
- B. Oral evidence shall be taken only upon oath or affirmation.
- C. Irrelevant and unduly repetitious evidence shall be excluded.
- D. Each party shall have these rights, among others:
 - 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
 - 2. To introduce documentary and physical evidence;
 - 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
 - 4. To impeach any witness regardless of which party first called the witness to testify;
 - 5. To rebut the evidence presented against the party; and
 - 6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.
- E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the City or any of its departments. (Ord. 2005-)

4.07.160 Form and Contents of Decision-Finality of Decision.

- A. If it is shown, by a preponderance of the evidence, that one or more bases exist to deny, suspend, or revoke the license, the hearing examiner shall affirm the City Manager's decision to deny, suspend, or revoke the license. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

- B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure § 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section. (Ord. 2005-).

4.07.170 Enforcement.

- A. The remedies provided by this Chapter 4.07 are cumulative and in addition to any other remedies available at law or in equity.
- B. Any violation of this chapter may be remedied by a civil action brought by the City Attorney, including, for example, administrative or judicial nuisance abatement proceedings, civil or criminal enforcement proceedings, and suits for injunctive relief. The City may recover reasonable attorneys' fees and costs of suit in any civil action brought by the City Attorney to remedy any violation of this Chapter.
- C. Violations of this Chapter are hereby declared to be public nuisances subject to abatement by the City. (Ord. 2005-).

4.07.180 Severability

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrase hereof be declared invalid or unenforceable.

4.07.190 Effective Date and Publication

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Grapevine Independent, a newspaper of general circulation printed and published in Rancho Cordova City and circulated in the City of Rancho Cordova, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

* * * * *

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova this ____ day of _____, 200__.

AYES:

NOES:

ABSENT:

ABSTENTIONS:

APPROVED:

Mayor

ATTEST:

City Clerk

728615-1

BILL NUMBER: AB 71 CHAPTERED
BILL TEXT

CHAPTER 890
FILED WITH SECRETARY OF STATE OCTOBER 12, 2003
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PASSED THE ASSEMBLY SEPTEMBER 10, 2003
PASSED THE SENATE SEPTEMBER 9, 2003
AMENDED IN SENATE SEPTEMBER 8, 2003
AMENDED IN SENATE SEPTEMBER 4, 2003
AMENDED IN SENATE AUGUST 25, 2003
AMENDED IN SENATE JULY 24, 2003
AMENDED IN SENATE JULY 14, 2003
AMENDED IN SENATE JUNE 19, 2003
AMENDED IN ASSEMBLY MAY 21, 2003
AMENDED IN ASSEMBLY MAY 19, 2003
AMENDED IN ASSEMBLY APRIL 10, 2003

INTRODUCED BY Assembly Member Jerome Horton

DECEMBER 13, 2002

An act to add and repeal Division 8.6 (commencing with Section 22970) of the Business and Professions Code, to add Section 15618.5 to the Government Code, to amend Section 104557 of the Health and Safety Code, to amend, repeal, and add Section 830.11 of the Penal Code, and to amend Sections 30436, 30449, 30471, 30473.5, 30474, and 30481 of, to add Sections 30019, 30165.1, 30166.1, 30177.5, and 30482 to, to add and repeal Sections 30435 and 30474.1 of, to add and repeal Article 2.5 (commencing with Section 30210) of Chapter 4 of Part 13 of Division 2 of, and to add and repeal Article 5 (commencing with Section 30355) of Chapter 5 of Part 13 of Division 2 of, the Revenue and Taxation Code, relating to cigarettes and tobacco products, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 71, Jerome Horton. Tobacco products: state and local government.

(1) The Cigarette and Tobacco Products Tax Law requires distributors and wholesalers of cigarette and tobacco products to be licensed by the State Board of Equalization. The Cigarette and Tobacco Products Tax Law also requires a tax imposed by that law with respect to distributions of cigarettes to be paid by distributors through the use of stamps or meter register settings, and requires that these stamps or meter register settings be affixed to each package of cigarettes sold. Existing law further provides that the possession, selling, or buying of false or fraudulent stamps or meter register settings with a tax value greater than \$750 is a crime.

This bill would create the California Cigarette and Tobacco Products Licensing Act of 2003 to provide for the licensure by the State Board of Equalization of manufacturers, distributors, wholesalers, importers, and retailers of cigarette or tobacco products that are engaged in business in California. The bill would prohibit retailers, manufacturers, distributors, and wholesalers from distributing or selling those cigarette and tobacco products unless they are licensed. The bill would authorize the board to suspend or

revoke the license of any manufacturer, distributor, wholesaler, importer, or retailer of tobacco products that is in violation of the bill's provisions. The bill would prohibit a manufacturer, distributor, wholesaler, importer, retailer, or any other person from selling counterfeit cigarette and tobacco products and would provide that a violation of that prohibition is a crime. The bill would impose specified fines or imprisonment for possessing, selling, or buying false or fraudulent cigarette tax stamps.

The bill also would require manufacturers and importers of cigarette products that provide those products to distributors or wholesalers to pay the board a fee for cigarettes sold in this state.

The bill would require all moneys collected pursuant to its provisions to be deposited in the Cigarette and Tobacco Products Compliance Fund, which would be created in the State Treasury, and all funds therein would be available for appropriation by the Legislature solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003. This bill would appropriate from that fund the amount of \$11,000,000, subject to specified conditions, for the 2003-04 fiscal year for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

This bill would repeal the California Cigarette and Tobacco Products Licensing Act of 2003, effective January 1, 2010.

(2) Existing law provides that all records, with specified exceptions, of the Department of Motor Vehicles are confidential and are not open to public inspection.

This bill would authorize the State Board of Equalization to obtain copies of photographs of California licensees from the Department of Motor Vehicles for the purpose of enforcing California's tax laws.

(3) Existing law requires the State Board of Equalization to administer various taxes and fees, including taxes with respect to cigarettes and tobacco products, alcoholic beverages, motor vehicle fuel, and diesel fuel, among others.

This bill would authorize persons designated by the Executive Director of the State Board of Equalization to exercise the arrest powers of a peace officer in the enforcement of the taxes and fees administered by the State Board of Equalization. This bill would repeal this authorization, effective January 1, 2010.

(4) Under existing law, states' attorneys general and various tobacco product manufacturers have entered into a Master Settlement Agreement (MSA), in settlement of various lawsuits, that provides for the allocation of money to the states and certain territories. The state has entered into a memorandum of understanding providing for the allocation of the state's share of moneys to be received under the MSA between the state and counties and certain cities in the state. Existing law requires any tobacco product manufacturer selling cigarettes to consumers in California to place specified amounts into a qualified escrow fund by April 15 of each year.

This bill would make technical amendments to the provision of the MSA that governs the release of money placed in qualified escrow funds.

This bill would require the Attorney General to develop and post on the Attorney General's Internet Web site a list of tobacco product manufacturers that have provided current and accurate certifications in accordance with the requirements of the bill. This bill would require the Attorney General's Web site to also include all brand families, as defined, that have been listed in the certifications.

The bill would prohibit any tax stamp or meter impression to be affixed unless the tobacco product manufacturer and brand family in question is included on the Attorney General's list. The bill would give the Attorney General and the board specified authority and duties in this regard. This bill would impose specified penalties, applicable to a tobacco product manufacturer or distributor, for failure to comply with the various provisions of the bill, including civil penalties. The bill would also make it a misdemeanor for a tobacco product manufacturer to make specified false representations, or for any person to (a) sell or otherwise distribute cigarettes in violation of the bill, or (b) acquire, hold, own, possess, transport, import, or cause cigarettes to be imported in violation of the bill, thus creating a state-mandated local program. The bill would deem it to be unfair competition for any person to affix any tax stamp or meter impression, or to pay any tax in violation of the requirements of the bill. The bill would provide for disgorgement of any profits, gains, gross receipts, or other benefits from a violation of the bill, as specified. The bill would require those moneys to be paid as restitution, with any residue to be paid into the Tobacco Control Special Fund created by the bill.

(5) Existing law requires that certain cigarette and tobacco products be forfeited to the state under specified circumstances, upon seizure by the board.

This bill would add to the forfeiture list cigarette and tobacco products to which cigarette tax stamps or meter impressions are affixed in violation of the specified prohibitions under the MSA.

(6) This bill would also establish procedures under the Cigarette and Tobacco Products Tax Law for imposing taxes on sellers of black-market cigarettes and tobacco products, and procedures for the seizure and sale of property secured by liens for delinquencies under the Cigarette and Tobacco Products Tax Law. This bill would repeal the provisions authorizing those procedures, effective January 1, 2010.

(7) This bill would provide that this act does not preempt or supersede any local tobacco control laws or ordinances other than those laws or ordinances that are related to the collection of the taxes imposed under the Cigarette and Tobacco Products Tax Law.

(8) This bill would provide that all revenues and expenses generated by this act with respect to the taxes imposed under the Cigarette and Tobacco Products Tax Law shall be allocated in the same manner as those revenues and expenses are allocated under the existing Cigarette and Tobacco Products Tax Law.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Division 8.6 (commencing with Section 22970) is added to the Business and Professions Code, to read:

DIVISION 8.6. CALIFORNIA CIGARETTE AND TOBACCO PRODUCTS
LICENSING ACT OF 2003
CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

22970. This division shall be known as and may be cited as the Cigarette and Tobacco Products Licensing Act of 2003.

22970.1. The Legislature finds and declares all of the following:

(a) The State of California has enacted excise taxes on the distribution of cigarettes and tobacco products to provide funding for local and state programs, including health services, antismoking campaigns, cancer research, and education programs.

(b) Tax revenues have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products conducted by organized crime syndicates, street gangs, and international terrorist groups.

(c) The enforcement of California's cigarette and tobacco products tax laws is necessary to collect millions of dollars in lost tax revenues each year.

(d) The licensing of manufacturers, importers, wholesalers, distributors, and retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.

22970.2. The board shall administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products.

22970.3. The board may create a Tobacco Tax Compliance Task Force for the purpose of advising the board on cigarette and tobacco products tax compliance issues that may include, but not be limited to, representatives from the following:

(a) The board.

(b) The office of the Attorney General.

(c) The Franchise Tax Board.

(d) The Department of Alcoholic Beverage Control.

(e) The State Department of Health Services.

(f) Federal agencies necessary to coordinate programs to combat tobacco tax evasion, smuggling, and counterfeiting.

(g) One person from each of the categories of persons required by this division to have a license.

(h) Other states engaged in tobacco tax compliance efforts.

(i) Local law enforcement agencies.

22971. For purpose of this division, the following terms shall have the following meanings:

(a) "Board" means the State Board of Equalization.

(b) "Importer" means an importer as defined in Section 30019 of the Revenue and Taxation Code.

(c) "Distributor" means a distributor as defined in Section 30011 of the Revenue and Taxation Code.

(d) "Manufacturer" means a manufacturer of cigarettes sold in this state.

(e) "Retailer" means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.

(f) "Retail location" means both of the following:

(1) Any building from which cigarettes or tobacco products are sold at retail.

(2) A vending machine.

(g) "Wholesaler" means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.

(h) "Cigarette" means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.

(i) "License" means a license issued by the board pursuant to this

division.

(j) "Licensee" means any person holding a license issued by the board pursuant to this division.

(k) "Sale" or "sold" means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(l) "Tobacco products" means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(m) "Unstamped package of cigarettes" means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked "Not for sale in the United States."

(n) "Person" means a person as defined in Section 30010 of the Revenue and Taxation Code.

(o) "Package of cigarettes" means a package as defined in Section 30015 of the Revenue and Taxation Code.

(p) (1) "Control" or "controlling" means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) "Law enforcement agency" means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

22971.1. Commencing January 1, 2006, the Bureau of State Audits shall conduct a performance audit of the licensing and enforcement provisions of this division, and shall report its findings to the board and the Legislature by July 1, 2006. The report shall include, but not be limited to:

(a) The actual costs of the program.

(b) The level of additional revenue generated by the program compared to the period before its implementation.

(c) Tax compliance rates.

(d) The costs of enforcement at the varying levels.

(e) The appropriateness of penalties assessed in this division.

(f) The overall effectiveness of enforcement programs.

22971.2. The board shall administer and enforce the provisions of this division and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this division.

22971.3. Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection

of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

CHAPTER 2. LICENSE FOR RETAILERS OF CIGARETTES AND TOBACCO PRODUCTS

22972. (a) Commencing June 30, 2004, a retailer shall have in place and maintain a license to engage in the sale of cigarettes or tobacco products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses.

(b) The retailer shall conspicuously display the license at each retail location in a manner visible to the public.

(c) A license is not assignable or transferable. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

(d) A license shall be valid for a 12-month period, and shall be renewed annually.

22973. (a) An application for a license shall be filed on or before April 15, 2004, on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of such licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application. The board may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that

same location.

(c) The board shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one hundred dollars (\$100) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars (\$100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid.

22973.1. (a) The board shall issue a license to a retailer upon receipt of a completed application and payment of the fees prescribed in Section 22973, unless any of the following apply:

(1) The retailer, or if the retailer is not an individual, any person controlling the retailer, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for violation of any of the provisions of this division, unless:

(A) It has been more than five years since a previous license for the retail location was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this division that occurred at the retail location, is presumed not to be made at "arm's length."

(3) The retailer, or if the retailer is not an individual, any person controlling the retailer, has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(4) The retailer does not possess all required permits or licenses required under the Revenue and Taxation Code.

(b) (1) Any retailer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that retailer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22973.2. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22974. A retailer shall retain purchase invoices that meet the requirements set forth in Section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. The records shall be kept at the retail location for at least one year after the purchase. Invoices shall be made available upon request during normal business hours for review inspection and copying by the board or by a law enforcement agency. Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22974.3. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize unstamped packages of cigarettes at the retail, or any other person's location.

Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless the cigarettes will be destroyed by that law enforcement agency, or unless the cigarettes are otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the inventory of unstamped packages of cigarettes of a retailer or of any other person that is subject to forfeiture and seizure, the possession, storage, ownership, or retail sales of unstamped packages of cigarettes by a retailer or other person, as applicable, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of

less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving a seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) but not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) but not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of tobacco products on which tax is due but has not been paid to the board, the board or law enforcement agency is authorized to seize such tobacco products at the retail, or any other person's location. Any tobacco products seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a retailer or of any other person until the contrary is established by a proof of payment to the board or by a purchase invoice that shows that the retailer or other person, as applicable, paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the retailer or the other person, as applicable, in possession thereof. Possession of untaxed tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the retailer or other person, as applicable, to the actions described in Section 22981.

22974.4. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any retailer or any person controlling the retailer that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22974.5. Any retailer who fails to display a license as required in Section 22972 shall, in addition to any other applicable penalty, be liable for a penalty of five hundred dollars (\$500).

22974.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products.

(2) Five thousand dollars (\$5,000).

22974.8. (a) (1) The board shall take action against a retailer, convicted of a violation of either the Stake Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, according to the schedule set forth in subdivision (b).

(2) Convictions of violations by a retailer at one retail location may not be accumulated against other locations of that same retailer.

(3) Convictions of violations accumulated against a prior retail owner at a licensed location may not be accumulated against a new retail owner at the same retail location.

(4) Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the board shall notify the retailer. The notice shall include instructions for appealing the license suspension or revocation.

(b) (1) Upon the first conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code, the retailer shall receive a warning letter from the board that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees shall receive training on tobacco control laws from the Department of Health Services upon a first conviction.

(2) Upon the second conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of five hundred dollars (\$500).

(3) Upon the third conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of one thousand dollars (\$1,000).

(4) Upon the fourth to the seventh conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the board shall suspend the retailer's license to sell cigarette and tobacco products for 90 days.

(5) Upon the eighth conviction of a violation of the STAKE Act (Division 8.5 (commencing with Section 22950) or Section 308 of the Penal Code within 24 months, the board shall revoke the retailer's license to sell cigarette and tobacco products.

(c) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.

(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the

results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the Federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.

CHAPTER 3. LICENSE FOR WHOLESALERS AND DISTRIBUTORS OF CIGARETTES AND TOBACCO PRODUCTS

22975. (a) In addition to licenses required pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, commencing June 30, 2004, every distributor and every wholesaler shall annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products.

(b) Licenses shall be valid for a calendar year period upon payment of the fee prescribed in Section 22977.1, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

(c) A license is not assignable or transferable. A person who obtains a license as a distributor or as a wholesaler who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

22976. A distributor or a wholesaler that, at the time of application, holds a valid license issued by the board pursuant to Section 30140 or 30155 of the Revenue and Taxation Code may be issued a license without further investigation.

22977. (a) An application for a license shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each location where cigarettes or tobacco products will be sold. For applicants who control more than one location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office, shall also be included in the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit numbers for such licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a

statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) Signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

22977.1. (a) Every distributor and every wholesaler shall file an application, as prescribed in Section 22977, on or before April 15, 2004. Each application shall be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to meeting the requirements of this section and Section 22977.2, the board shall issue a license.

(b) Every distributor and every wholesaler who commences business after the last day of May 2004, or who commences selling or distributing cigarettes or tobacco products at a new or different place of business in this state after the last day of May 2004, shall file with the board an application as prescribed in Section 22977 at least 30 days prior to commencing such business or commencing such sales or distributions; and all distributors and all wholesalers that fail to timely file an application for a license under subdivision (a) shall file with the board an application as prescribed in Section 22977. Each application shall be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to Section 22977.2, the board, within 30 days after receipt of an application and payment of the proper fee shall issue a license.

(c) For calendar years beginning on and after January 1, 2005, every distributor and every wholesaler shall file an application for renewal of the license prescribed in Section 22977, accompanied with a fee of one thousand dollars (\$1,000) for each location where cigarettes and tobacco products are sold, in the form and manner as prescribed by the board.

22977.2. (a) The board shall issue a license to a distributor or a wholesaler upon receipt of a completed application and payment of the fee prescribed in Section 22977.1, unless any of the following apply:

(1) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a distributor or a wholesaler, whose license is revoked or revocation is pending, unless:

(A) It has been more than five years since a distributor's or a wholesaler's previous license was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale of the business between relatives, related

companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of state tobacco control laws that were committed by the distributor or wholesaler is presumed not to be made at "arm's length."

(3) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) (1) Any distributor or any wholesaler who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that distributor or that wholesaler of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the distributor or the wholesaler has so requested in the petition, shall grant the distributor or wholesaler an oral hearing and shall give the distributor or the wholesaler at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the distributor or the wholesaler at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22978. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to distributors and wholesalers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22978.1. All distributors and all wholesalers shall retain purchase records that meet the requirements set forth in Section 22978.5 for all cigarettes or tobacco products purchased. The records shall be maintained for a period of one year from the date of purchase on the distributor's or the wholesaler's premises

identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any distributor or any wholesaler found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22978.2. (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a distributor possesses, stores, owns, or has made a sale of an unstamped package of cigarettes bearing a counterfeit California state tax stamp or that a wholesaler possesses, stores, owns, or has made a sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize the unstamped packages of cigarettes at the distributor's or the wholesaler's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement investigation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the distributor's or wholesaler's inventory of unstamped packages of cigarettes being subject to seizure and forfeiture, the possession, storage, ownership or sale by a distributor or wholesaler of the unstamped package of cigarettes in the manner described above, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) but not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) but not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a distributor or a wholesaler possesses, stores, owns, or has made a sale of tobacco products on which tax is due but has not been paid to the board, or its designee, the board or law enforcement agency is authorized to seize such tobacco products at the distributor or wholesaler location. Any tobacco products seized by a law enforcement agency shall be delivered to the board within seven days,

unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a distributor or a wholesaler until the contrary is established by the distributor's proof of payment to the board or by a purchase invoice that shows that the wholesaler paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the distributor or wholesaler in possession thereof. Possession by a distributor or a wholesaler of tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the distributor or wholesaler to the actions described in Section 22981.

22978.4. (a) Each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22978.5. (a) Each distributor and each wholesaler of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a the board or a law enforcement agency.

(b) Failure of a distributor or a wholesaler to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22978.6. The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any distributor or any wholesaler or any person controlling any distributor or any wholesaler that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22978.7. In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any

wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products.

(2) Five thousand dollars (\$5,000).

CHAPTER 4. LICENSE AND ADMINISTRATION FEE FOR MANUFACTURERS AND IMPORTERS

22979. (a) Commencing on January 1, 2004, every manufacturer and every importer, as defined in subdivision (b) of Section 22971, shall obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(1) Submit to the board a list of all brand families that they manufacture or import.

(2) Update the list of all brand families that they manufacture or import whenever a new or additional brand is manufactured or imported, or a listed brand is no longer manufactured or imported.

(3) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(b) In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer that is a "tobacco product manufacturer" in subdivision (i) of Section 104556 of the Health and Safety Code, shall do all of the following in the manner specified by the board:

(1) Certify to the board that it is a "participating manufacturer" as defined in subsection II(jj) of the "Master Settlement Agreement" (MSA), or is in full compliance with paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(2) Submit to the board a list of all brand families that fit under the category applicable to the manufacturer or importer, in accordance with the following:

(A) Brand families that are to be counted, in the unit volume and market shares determined pursuant to subsections II(z) and II(mm) of the MSA and Exhibit E thereto, in calculating the manufacturer's annual payments under the MSA.

(B) Brand families that are to be counted in calculating the manufacturer's escrow deposits under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code.

(C) The manufacturer or importer shall update the list whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) The board may not grant or permit the maintenance of a license

to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with subdivision (b) of Section 30163 of the Revenue and Taxation Code, and that the cigarettes contained in those packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13355a et seq.) for the reporting of ingredients added to cigarettes.

(d) (1) Any manufacturer or any importer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that manufacturer or that importer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the manufacturer or the importer has so requested in the petition, shall grant an oral hearing and shall give the manufacturer or the importer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the manufacturer or the importer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

22979.1. (a) An application for a license by a manufacturer or by an importer shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. The business name, address, and telephone number of the corporate offices. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) License number for any other valid licenses or permits issued by the board.

(3) Signature of the applicant under oath to verify application information.

(4) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(5) Any other information the board may require.

(b) The board may conduct an inquiry to determine whether the applicant complies with the provisions of this division.

(c) The board shall provide electronic means for applicants to download and submit applications.

22979.2. (a) On or before January 1, 2004, every manufacturer and every importer shall pay to the board an administration fee. The amount of the administration fee shall be one cent (\$0.01) per package of cigarettes (1) manufactured or imported by the manufacturer or the importer and (2) shipped into this state during the 2001 calendar year as reported to the board. The board shall notify each manufacturer and each importer of the amount due under this section.

(b) This section shall apply to every manufacturer and every importer required to be licensed pursuant to Section 22979. All manufacturers and all importers that may become eligible for licensure on or after December 1, 2003, shall be notified by the board of the appropriate fee due and shall pay that fee within 90 days of notification.

(c) All manufacturers and all importers that begin operations in the state after enactment of this division shall be charged a fee commensurate with their respective market share of (1) cigarettes manufactured or imported by the manufacturer and (2) sold in this state during the next calendar year as estimated by the board. The fee shall be at an amount not less than that paid pursuant to subdivision (a) by the smallest manufacturer, but may not be more than that paid by the eighth largest manufacturer.

(d) The board shall administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

22979.3. The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to manufacturers and importers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

22979.4. All manufacturers and importers shall retain purchase records that meet the requirements set forth in Section 22979.5 for all cigarettes or tobacco products purchased and other records required by the board. The records shall be maintained for a period of one year from the date of purchase on the manufacturer's or importer's premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any manufacturer or importer found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

22979.5. (a) Each manufacturer and each importer of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these

records available upon request by a representative of the board or a law enforcement agency.

(b) Failure of a manufacturer or an importer to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22979.6. (a) Each manufacturer and each importer shall include the following information on each invoice for the sale for distribution, wholesale, or retail sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the manufacturer, or importer.

(2) The license number of the manufacturer or importer as provided by the board.

(3) The name, address, and license number of the person to whom cigarettes or tobacco products are sold.

(4) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22979.7. In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(2) Five thousand dollars (\$5,000).

CHAPTER 5. INSPECTIONS, PROHIBITIONS, AND PENALTIES

22980. (a) (1) Any peace officer, or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

(2) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(3) Inspections may be at any place at which cigarettes or tobacco products are sold, produced, or stored or at any site where evidence of activities involving evasion of cigarette or tobacco products tax may be discovered.

(4) Inspections shall be requested or conducted no more than once in a 24-hour period.

(b) Any person that refuses to allow an inspection shall be subject to the penalties imposed pursuant to Section 22981.

22980.1. (a) No manufacturer shall sell cigarettes to a distributor, wholesaler, importer, retailer, or any other person who is not licensed pursuant to this division or whose license has been

suspended or revoked.

(b) No distributor, wholesaler, or importer shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(c) No retailer, distributor, wholesaler, or importer shall purchase packages of cigarettes from a manufacturer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) No retailer, distributor, wholesaler, or importer shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

22980.2. (a) A person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) Each day after notification by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this act offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

22980.3. (a) Licenses issued pursuant to this division shall be subject to suspension or revocation for violations of the provisions of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation, a licensee shall receive a written notice from the board detailing the suspension and revocation provisions of this act. At its discretion, the board may also suspend a license for up to 30 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the board only after judicial conviction or final adjudication of a violation. Upon updating a record for a violation triggering a suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products.

(c) Upon notice of suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products. Continued sales after the notification of suspension shall constitute a violation of the licensing provisions of this division and shall result in the revocation of a license.

(d) Upon completion of a suspension period, a license shall be reinstated by the board upon certification that all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for the purchase of cigarette and tobacco products are paid.

(e) After a revocation, a previously licensed applicant may apply for a new license after six months. The board may, at its discretion, issue a new license.

(f) Upon updating a license record for a violation, suspension, or revocation to a license of a person or entity that owns or controls more than one location, the board shall send notice in writing of the violations, suspensions, or revocations within 15 days of the board's action to the address included in the application and listed on the license for receipt of correspondence or notices from the board.

(g) Upon suspension or revocation of a license pursuant to this section, the board shall notify all licensed distributors and wholesalers by electronic mail within 48 hours of the suspension or revocation of that license. All licensed distributors and wholesalers shall provide the board and shall update, as necessary, an electronic mail address that the board can use for purposes of making the notifications required by this subdivision.

(h) Violations by a licensee at one location may not be accumulated against other locations of that same licensee. Violations accumulated against a prior owner at a licensed location may not be accumulated against a new owner at the same licensed location.

(i) For purposes of this section, a violation includes violations of the Revenue and Taxation Code relating to cigarettes and tobacco products, and violations of this division. Only one violation per discrete action shall be counted towards a suspension or revocation of a license.

22981. Any violation of this division by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

22982. Any prosecution for a violation of any of the penal

provisions of this division shall be instituted within four years after the commission of the offense.

CHAPTER 6. DISPOSITION OF FUNDS

22990. (a) All moneys collected pursuant to this division shall be deposited in the Cigarette and Tobacco Products Compliance Fund, which is hereby created in the State Treasury. No moneys in the Cigarette and Tobacco Products Compliance Fund shall be used to supplant state or local General Fund money for any purpose.

(b) All moneys in the Cigarette and Tobacco Products Compliance Fund are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

22991. The amount of eleven million dollars (\$11,000,000) is appropriated from the Cigarette and Tobacco Products Compliance Fund during the 2003-04 fiscal year to the State Board of Equalization for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003, subject to the following provisions:

(a) Spending under the appropriation made by this subdivision is limited solely to revenues in the fund that are derived from fees imposed on cigarette and tobacco product manufacturers, wholesalers, distributors, importers, and retailers.

(b) Of the total amount appropriated under this subdivision, five million four hundred thousand dollars (\$5,400,000) is available for reimbursement to the Department of Justice through an interagency agreement with the board for investigation and enforcement assistance.

(c) The expenditure of any funds from the appropriation made by this subdivision shall require the prior approval of the Director of Finance. The amounts appropriated may be approved for expenditure on an allotment basis and shall be limited to the amounts necessary to carry out the operating and staffing plans for the implementation of the California Cigarette and Tobacco Products Licensing Act of 2003 as approved by the Department of Finance. The Department of Finance shall notify the Joint Legislative Budget Committee of its approval of any expenditure authorization 30 days prior to that approval.

CHAPTER 7. DURATION OF DIVISION

22995. This division shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 2. Section 15618.5 is added to the Government Code, to read:

15618.5. Notwithstanding Section 1808.5 of the Vehicle Code, the board, as a board, individually, or through its staff, may obtain copies of fullface engraved pictures or photographs of licensees directly from the Department of Motor Vehicles for the purposes of enforcing the Revenue and Taxation Code.

SEC. 3. Section 104557 of the Health and Safety Code is amended to read:

104557. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the date of enactment of this article shall do one of the following:

(1) Become a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and generally

perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) For 1999: \$0.0094241 per unit sold during that year, after the date of the enactment of this article.

(B) For 2000: \$0.0104712 per unit sold during that year.

(C) For each of 2001 and 2002: \$0.0136125 per unit sold during the year in question.

(D) For each of 2003 through 2006: \$0.0167539 per unit sold during the year in question.

(E) For each of 2007 and each year thereafter: \$0.0188482 per unit sold during the year in question.

(b) Any tobacco product manufacturer that places funds into escrow pursuant to paragraph (2) of subdivision (a) shall receive the interest or other appreciation on the funds as earned. The funds, other than the interest or other appreciation, shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under that judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the agreement including after the final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) To the extent not released from escrow under paragraph (1) or (2) of subdivision (b), funds shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) shall annually certify to the Attorney General that it is in compliance with paragraph (2) of subdivision (a), and subdivision (b). The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a

civil penalty to be paid to the General Fund in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) Each failure to make an annual deposit required under this section shall constitute a separate violation.

SEC. 4. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(6) (A) Persons employed by the State Board of Equalization, Investigations Division, who are designated by the board's executive director, provided that the primary duty of these persons shall be the enforcement of laws administered by the State Board of Equalization.

(B) Persons designated pursuant to this paragraph are not entitled to peace officer retirement benefits.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included

as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

(d) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 5. Section 830.11 is added to the Penal Code, to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed as investigators and investigator supervisors of the Consumer Services Division or the Rail Safety and Carrier Division of the Public Utilities Commission who are designated by the commission's executive director and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section may not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

(d) This section shall become operative on January 1, 2010.

SEC. 6. Section 30019 is added to the Revenue and Taxation Code, to read:

30019. "Importer" means any purchaser for resale in the United States of cigarettes manufactured outside of the United States.

SEC. 7. Section 30165.1 is added to the Revenue and Taxation Code, to read:

30165.1. (a) The following definitions shall apply for purposes of this section:

(1) "Board" means the State Board of Equalization.

(2) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(3) "Cigarette" has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.

(4) "Distributor" has the same meaning as in Section 30011.

(5) "MSA" means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.

(6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(7) "Participating manufacturer" has the same meaning as in subsection II(jj) of the MSA.

(8) "Qualified escrow fund" has the same meaning as in subdivision (f) of Section 104556 of the Health and Safety Code.

(9) "Tobacco product manufacturer" has the same meaning as in subdivision (i) of Section 104556 of the Health and Safety Code.

(10) "Units sold" has the same meaning as in subdivision (j) of Section 104556 of the Health and Safety Code.

(b) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the Attorney General a certification to the Attorney General no later than the 30th day of April each year that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer, or is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including all installment payments

required by that article and this section, and any regulations promulgated pursuant thereto. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(1) A participating manufacturer shall include in its certification a complete list of its brand families. The participating manufacturer shall update the list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(2) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, in accordance with the following requirements:

(A) Separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

(B) Separately listing all of its brand families that have been sold in the state at any time during the current calendar year.

(C) Indicating by an asterisk any brand family sold in the state

during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(D) Identifying by name and address any other manufacturer, including all fabricators or makers of the brand families in the preceding or current calendar year in a form, manner, and detail as required by the Attorney General. The nonparticipating manufacturer shall update the list 30 days prior to any change in a fabricator for any brand family or any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify all of the following:

(A) That the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice thereof as required by subdivision (f).

(B) That the nonparticipating manufacturer has done all of the following:

(i) Established and continues to maintain a qualified escrow fund as that term is defined in subdivision (f) of Section 104556 of the Health and Safety Code and implementing regulations.

(ii) Executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund.

(iii) If the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement, certification, reports, and any other forms required by Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and implementing regulations are signed by the company that fabricates or makes the cigarettes and in the manner required by the Attorney General.

(C) That the nonparticipating manufacturer is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto.

(D) That the manufacturer has provided all of the following:

(i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(ii) The account number of the qualified escrow fund and subaccount number for the State of California.

(iii) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any confirming evidence or verification as may be deemed necessary by the Attorney General.

(iv) The amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(4) (A) A tobacco product manufacturer may not include a brand family in its certification unless either of the following is true:

(i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its

cigarettes for purposes of calculating its payments under the MSA for the relevant year, in the volume and shares determined pursuant to the MSA.

(ii) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, and any regulations promulgated pursuant thereto and this section.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the MSA or for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto.

(5) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a longer period of time.

(c) Not later than June 30, 2004, the Attorney General shall develop and publish on its Internet Web site a directory listing of all tobacco product manufacturers that have provided current, timely, and accurate certifications conforming to the requirements of subdivision (b) and all brand families that are listed in the certifications, except as specified below.

(1) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subdivision (b), unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes that either of the following is true:

(A) In the case of a nonparticipating manufacturer, any escrow deposit required pursuant to Section 104557 of the Health and Safety Code for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully deposited into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

(B) Any outstanding final judgment, including interest thereon, for violations of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto, has not been fully satisfied for the brand family and the manufacturer.

(3) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall promptly provide distributors with written notice of each tobacco product manufacturer and brand family that the Attorney General has added to, or excluded or removed from the list.

(4) Every distributor shall provide to the Attorney General and update, as necessary, an electronic mail address for the purpose of receiving any notifications as may be required by this section.

(5) The Attorney General shall provide each tobacco product manufacturer that has provided all certifications and other

information required by this section with a written acknowledgment of receipt within seven business days after receiving the certifications and other materials. Each tobacco product manufacturer shall provide to each distributor to whom it sells or ships cigarettes, or any tobacco product defined as a cigarette under this section, a copy of each acknowledgment of receipt provided to the manufacturer by the Attorney General. Upon request, the Attorney General shall provide any distributor with a copy of the most recent written acknowledgment of receipt provided to the tobacco product manufacturer.

(d) (1) The Attorney General may exclude or remove from the list required by subdivision (c) a tobacco product manufacturer or any of its brand families, based on a determination that the manufacturer is not a participating manufacturer and has not made all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, in accordance with that subdivision, or has not complied with this section. Before the exclusion or removal may take effect, the Attorney General shall notify the manufacturer of this determination.

(2) Upon receiving notice from the Attorney General pursuant to paragraph (1), the manufacturer may challenge the Attorney General's determination as erroneous, and may seek relief from the determination, by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure for that purpose in the Superior Court for the County of Sacramento, or as otherwise provided by law. The filing of the petition shall operate to stay the Attorney General's determination, if the manufacturer has paid into escrow the full amount of any deficiency in the escrow payments that the Attorney General has determined the tobacco product manufacturer was required to have made under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, including any installment payments required under subdivision (h), pending final resolution of the action.

(e) (1) No person shall affix, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes pursuant to subdivision (a) of Section 30163, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the list posted by the Attorney General pursuant to subdivision (c).

(2) No person shall sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) No person shall do either of the following:

(A) Sell or distribute cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(f) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning

or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent, as provided in Section 2105 of the Corporations Code, and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State pursuant to this provision as the agent for service of process does not satisfy the condition precedent specified in paragraph (1) to having its brand families listed or retained in the directory.

(g) (1) Not later than 25 days after the end of each calendar quarter, and more frequently if so directed by the board or the Attorney General, each distributor shall submit any information as the board or Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll your own, the total ounces for which the distributor affixed stamps during the previous calendar month or otherwise paid the tax due for those cigarettes. The distributor shall maintain, and shall make available to the board and the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the board and the Attorney General for a period of five years.

(2) Notwithstanding Section 30455, the board is authorized to disclose to the Attorney General any information received under this part for purposes of determining compliance with and enforcing the provisions of this section and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto. The board and Attorney General shall share with each other the information received under this section, and may share that information with other federal, state, or local agencies, only for purposes of enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, or corresponding laws of other states.

(3) At any time, the Attorney General may require from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and

Safety Code, and any regulations promulgated pursuant thereto, of the amount of money in the fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates thereof.

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto, the board or the Attorney General may require a retailer, wholesaler, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section, or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto.

(h) To promote compliance with this section, the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of paragraph (2) of subdivision (a) of Section 104557 to make the escrow deposits required in quarterly or other specified installments during the year in which the sales covered by the deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(i) (1) In addition to any other civil or criminal penalty provided by law, upon a finding that a distributor has violated subdivision (e), or paragraph (1) of subdivision (g), the board may take the following actions:

(A) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor pursuant to the procedures applicable to the revocation of a license set forth in Section 30148.

(B) In the case of a second or any subsequent offense, in addition to the action authorized under subparagraph (A), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(i) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(ii) Five thousand dollars (\$5,000).

(2) A distributor in any action for a violation of subdivision (e) shall have a defense provided that either of the following is true:

(A) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list required by subdivision (c).

(B) At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list required by subdivision (c).

(3) The defense described in subparagraph (B) of paragraph (2) is not available to a distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list required by subdivision (c), or the distributor failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail as required by paragraph (4) of subdivision (c).

(4) A violation of paragraph (3) of subdivision (e) shall

constitute a misdemeanor.

(j) If a distributor affixes a stamp or meter impression to a package of cigarettes under subdivision (a) of Section 30163, or pays the tax levied under Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list required by subdivision (c) and the date on which the distributor received notice of the exclusion or removal under paragraph (4) of subdivision (c), then both of the following shall apply:

(1) The distributor shall be entitled to a credit for the tax paid by the distributor with respect to the cigarette or tobacco product to which the stamp or meter impression was affixed, or the tax paid during that period. The distributor shall comply with regulations prescribed by the board regarding refunds and credits that are adopted pursuant to Section 30177.5. If the distributor has sold the cigarette or tobacco product to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor shall provide the credit to the wholesaler or retailer.

(2) The brand family may not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco product to which the stamp or meter impression was affixed, or the tax paid, during that period.

(k) Any tobacco product manufacturer that falsely represents any of the following to any person shall be guilty of a misdemeanor for each false representation:

(1) Any information required under subdivision (b).

(2) That the tobacco product manufacturer is a participating manufacturer.

(3) That the tobacco product manufacturer or any other person has made any or all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, if applicable to the manufacturer.

(4) That it has complied with subdivision (b), or with paragraph (1) of subdivision (g), if applicable to the manufacturer.

(l) A violation of subdivision (e) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

(m) No person shall be issued a distributor's license, pursuant to Section 30140, unless that person has certified in writing that the person will comply fully with this section. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(n) For the year 2003, if the effective date of the act that added this section is later than March 16, 2003, the first report of distributors required by paragraph (1) of subdivision (g) shall be due 30 days after that effective date, the certifications by a tobacco product manufacturer described in subdivision (b) shall be due 45 days after that effective date, and the directory described in subdivision (c) shall be published or made available within 90 days after that effective date.

(o) The Attorney General may adopt rules and regulations to implement this section. The rules and regulations may establish procedures for including in the list described in subdivision (c) tobacco product manufacturers that are not participating manufacturers and were not required to make escrow payments under

paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, for sales made during any preceding calendar year, and brand families of those manufacturers. The rules and regulations may also establish procedures for seizure and destruction of cigarettes forfeited to the state pursuant to Section 30436 or Section 30449, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes. Nothing in this section shall affect the authority of local law enforcement and local government officials to seize and destroy contraband under existing state or local law. The regulations adopted to effect the purposes of this section are emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that chapter, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(p) In any action brought by the state to enforce this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(q) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

SEC. 8. Section 30166.1 is added to the Revenue and Taxation Code, to read:

30166.1. No later than July 1, 2005, the board shall submit a report to the Legislature that evaluates the average actual costs, including labor for applying indicia or impressions, bonding, warehousing, and leasing stamping equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages. This report shall be updated every two years.

SEC. 9. Section 30177.5 is added to the Revenue and Taxation Code, to read:

30177.5. (a) The board shall credit to a distributor that is entitled to the credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the denominated value, less any discounts authorized by this part, of the stamps or meter impressions purchased and affixed to those packages of cigarettes that are subject to the provisions of subdivision (j) of Section 30165.1.

(b) The board shall credit to a distributor that is entitled to a credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the amount of taxes paid by that distributor, pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131), with respect to the tobacco products that are subject to the provisions of subdivision (j) of Section 30165.1.

SEC. 10. Article 2.5 (commencing with Section 30210) is added to Chapter 4 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 2.5. Payment by Unlicensed Persons

30210. If any person becomes a cigarette or tobacco products distributor without first securing a license, the tax, and applicable penalties and interest, if any, become immediately due and payable on account of all cigarettes or tobacco products distributed. All

cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the unlicensed distributor, are considered to have been distributed.

30211. The board shall forthwith ascertain as best it may the amount of the cigarettes or tobacco products distributed and shall determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, and shall issue a jeopardy determination to the unlicensed person pursuant to Section 30241 and give the unlicensed person notice per Section 30244 of the Cigarette and Tobacco Products Tax Law. However, where the board determines that the failure to secure a license was due to reasonable cause, the penalty may be waived. Sections 30242 and 30243 shall be applicable with respect to the finality of the determination and the right of the unlicensed person to petition for a redetermination.

Any person seeking to be relieved of the penalty shall file with the board a signed statement setting forth the facts upon which he or she bases the claim for relief. Any person who signs a statement pursuant to this section that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

30212. The board shall forthwith collect the tax, penalty, and interest due from the unlicensed person by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

30213. In the suit, a copy of the jeopardy determination certified by the board shall be prima facie evidence that the unlicensed person is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 30223.

30214. The foregoing remedies of the state are cumulative.

30215. No action taken pursuant to this article relieves the unlicensed person in any way from the penal provisions of this part.

30216. This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 11. Article 5 (commencing with Section 30355) is added to Chapter 5 of Part 13 of Division 2 of the Revenue and Taxation Code, to read:

Article 5. Seizure and Sale

30355. Whenever any person is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

30356. Notice of the sale and the time and place thereof shall be given in writing at least 20 days before the date set for the sale to the delinquent person and to all persons who have an interest of record in the property seized. The notice shall be personally served or enclosed in an envelope addressed to the person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general

circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property. The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the person, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

30357. At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

30358. If upon any sale the moneys received exceed the amount due to the state from the taxpayer, the board shall return the excess to the taxpayer and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold payment of any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the taxpayer, his or her heirs, successors, or assigns.

30359. This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 12. Section 30435 is added to the Revenue and Taxation Code, to read:

30435. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 13. Section 30436 of the Revenue and Taxation Code is amended to read:

30436. The following property, upon seizure by the board, is

hereby forfeited to the state:

(a) Cigarettes or tobacco products transported upon the highways, roads, or streets of this state in violation of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored, or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, that has been loaded, in whole or in part, with packages of cigarettes that do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.

(e) Cigarettes or tobacco products to which are affixed California cigarette tax stamps or meter impressions, or for which tax is paid pursuant to Sections 30123 and 30131.2, in violation of Section 30165.1, regardless of whether the violation is subject to the defense described in paragraph (2) of subdivision (i) of Section 30165.1.

SEC. 14. Section 30449 of the Revenue and Taxation Code is amended to read:

30449. (a) Except as provided in subdivision (b), (c), or (d), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of the sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable, it may destroy that property.

(b) Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.

(c) Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.

(d) Any cigarettes or tobacco products forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.

(e) A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

SEC. 15. Section 30471 of the Revenue and Taxation Code is amended to read:

30471. Any person who fails or refuses to file any report required to be made, or who fails or refuses to furnish a supplemental report or other data required by the board, or who fails or refuses to allow an inspection by the board, pursuant to Section 30435, or who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

SEC. 16. Section 30473.5 of the Revenue and Taxation Code is amended to read:

30473.5. (a) Any person who possesses, sells, or offers to sell,

or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of less than 2,000 is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

(b) Any person who possesses, sells, or offers to sell, or buys or offers to buy any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2,000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

(c) The board shall destroy any stamps seized under this section.

SEC. 17. Section 30474 of the Revenue and Taxation Code is amended to read:

30474. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed one thousand dollars (\$1,000) or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both the fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

SEC. 18. Section 30474.1 is added to the Revenue and Taxation Code, to read:

30474.1. (a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer shall result in the seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

(1) A violation with a total quantity of less than two cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not to exceed one year in a county jail, or both the fine and the imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesale license.

(2) A violation with a quantity of two cartons of cigarettes or more shall be a misdemeanor punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation by the board of the manufacturer,

distributor, or wholesaler license.

(b) A court shall consider a defendant's ability to pay when imposing fines pursuant to this section.

(c) For the purposes of this section, counterfeit cigarette and tobacco products include cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof.

(d) The board shall seize and destroy any cigarettes or other tobacco products forfeited to the state under this section.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

SEC. 19. Section 30481 of the Revenue and Taxation Code is amended to read:

30481. Any prosecution for violation of any of the penal provisions of this part shall be instituted within six years after commission of the offense.

SEC. 20. Section 30482 is added to the Revenue and Taxation Code, to read:

30482. Any person convicted of a crime under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the board under this part shall be transmitted to the Treasurer who shall deposit it into the State Treasury and credit it to the Cigarette Tax Fund.

SEC. 21. Nothing in this act preempts or supersedes any local tobacco control law or ordinance other than those laws or ordinances that are related to the collection of state taxes. Local licensing laws or ordinances may provide for the suspension or revocation of licenses issued by a local government or agency for a violation of the laws imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code).

SEC. 22. All revenues and expenses generated by this act with respect to the taxes imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code), shall be allocated in the same manner as those revenues and expenses are allocated under the Cigarette and Tobacco Products Tax Law as that law read on the effective date of this act.

SEC. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 24. If the amendments to paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code made by Section 3 of this act are held by a court of competent jurisdiction to be unconstitutional, Section 3 of this act shall be deemed repealed, and paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code shall be deemed to be in the form as it existed prior to the amendments made to that section by Section 3 of this act. Neither a holding of unconstitutionality of the provisions of Section 3 of this act, nor an implied repeal of the amendments to paragraph (2) of subdivision (b) of Section 104557 of the Health and Safety Code made by Section 3 of this act shall affect, impair, or invalidate any other portion of Section 104557 of the Health and Safety Code, or the application of that section to any other person or circumstance, and those remaining portions of Section 104557 of the Health and Safety Code shall at all times continue in full force and effect.

SEC. 25. No reimbursement is required by this act pursuant to

Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



Date: February 7, 2005
To: Honorable City Council
From: Yvonne DeHaan, Code Enforcement Program Manager
Subject: Property Maintenance Ordinance Presentation

Staff Recommendation

The City Council use the information presented to provide staff specific direction in order to prepare an ordinance that will best meet the needs of the Council and the City.

Background

When the city incorporated, we adopted a majority of the codes in use by the County of Sacramento. After using these codes for a more than a year, we find that there are still areas of concern that do not seem to be sufficiently addressed. The most common of these involve the maintenance of commercial properties, vacant lots and poorly maintained residences that affect the property value of the area. Developing a clear and concise ordinance describing the minimum standards of our community will be a key tool in changing the way the city looks and feels about itself.

Analysis

The key element of this presentation will be a series of photos indicating different levels of property maintenance. Provided with it will be a checklist to assist you in determining the specifics you want in your ordinance. In considering the categories to present, IN-SHAPE staff drove through the city gathering examples of what we felt looked "Nice", "Bad" and a lot of "In-Between". Certain characteristics were identified that contributed to the above conditions. Additional research was also done regarding property maintenance ordinances in other jurisdictions. Codes from more than 15 other cities, in 6 different states were examined in order to offer a wider choice of categories. Attached to this document are key parts of some of the ordinances researched. Sections in bold type are examples of ideas or wording we may want to consider.

The most commonly addressed concern found in other jurisdictions was the maintenance of fencing and landscaping. One quick glance down a street will often tell someone if they want to live here or not, with yards and fencing being the most visually compelling evidence. While the existence of a fence is not required on single family homes, the working premise of a property maintenance ordinance is: If you are going to have it, you must take care of it.

The same rule was applied to landscaping. Some jurisdictions allow options other than the basic lawn/shrubbery combinations, but still require diligent care. All jurisdictions indicated that vacant properties must be maintained, but the standards were varied and somewhat less specific. There are also situations less visible, but still affecting the quality of life that should be considered, such as whether running and registered cars can be stored in back yards (and whether or not public visibility affects this decision) and whether sheds and other accessory structures that are often partly visible should be regulated.

One of the most troublesome concerns we are experiencing here are commercial properties that are poorly maintained. Broken or missing signs, exteriors that need paint or repair, parking lots that border on unsafe – the type of blight that hurts everyone including the businesses themselves. While few other ordinances specifically pointed this out as a concern, they all contained wording addressing the exterior of buildings. This is an area where we need to be very specific about what we will demand from the business community.

There are other less predominant areas of concern that should be included in the discussion. These are all questions or concepts that have come to the attention of code enforcement over the last year, although none were demanding enough to be brought forward individually. These include whether trash cans should be visible from the front of a home, setbacks for oversized RV's, the composition and condition of windows, and occupancy limits. There are even the occasional odd instances that come up very seldom – such as portable toilets at sites not currently experiencing construction, laundry being hung in public view, or commercial dumpsters on residential lots – that might be included in a list of items to consider as the ordinance is being prepared.

Conclusion:

Many options are being offered to help design an ordinance that will successfully assist us in improving the feel and image of our city. A basic ordinance, addressing the obvious, such as broken fences, cracked and peeling exteriors and poor landscaping, will be a strong tool for enforcement purposes, but may stop short of changing public perception. Additional regulations about landscaping, accessory structures, storage of recreational equipment and vehicles, etc., will allow us to paint a broader picture, but may also require dedicated efforts to educate and encourage the community so they can fully appreciate the possibilities of your vision.

The City of Rancho Cordova is striving to improve our image. Giving a clear signal to the public about what we want people to see (and not see) when they come here will make it easier for everyone to take part in helping the city achieve its potential.

Recommended Action:

Provide staff with clear direction on the nature and scope of a Property Maintenance Ordinance.

SAVANNAH, GA

Property Maintenance Ordinance

The Property Maintenance Ordinance explains how buildings and yards must be kept. It is important for the health, safety, and appearance of the community that all properties be kept clean and well maintained.

All owners or occupants of property in the City are responsible for keeping their premises clean.

Premises: Yards and shrubs must be properly cut. This includes front, side, and rear yards and porches; areas underneath houses or any accessory building; and that portion of the sidewalks, grass-strips, streets, and lanes next to their property. All of the premises must be kept clean and free of litter, debris, garbage or animal waste.

Owners and occupants must acquire a garbage container from the City of Savannah Sanitation Department. There is a one-time charge for the container.

Trash: All trash (such as glass, paper, dust, leaves, yard clippings, straw, wood, and metal) should be put into a garbage container for pickup by the Sanitation Department. The only exception to this requirement are small tree branches, or other small items that are not easily containerized.

Fallen trees or tree limbs are not allowed anywhere on public or private property.

Objects such as junk materials, machinery, and equipment, appliances, or other household items, building materials, or piles of dirt are not allowed on front yards or front porches. Such objects are also not allowed on side or rear yards or on side or rear porches if they can be seen from the street or lane. All such materials must be kept covered or enclosed in a shed.

Grass and Weeds: These are considered overgrown when they reach 10 inches in height and must be cut. Shrubbery and other vegetation should be kept neatly trimmed.

Owners must keep their vacant lots cut and free of litter and debris. A vacant lot is the same as a front yard; therefore, vehicles can not be parked on a vacant lot.

Storage Buildings: These are not allowed on the front yard. They are permitted on rear and side yards only and must be kept in good repair, Dilapidated storage buildings are not allowed anywhere.

Vehicles, Boats, Trailers: These objects must not be placed on the front yard except on an established driveway or parallel and within 5 feet of an established driveway. Vehicles, boats, or trailers in good condition may be placed on the side or rear yard.

A derelict vehicle left on public property will be towed after 10 days. A derelict vehicle left on private property will be towed after 30 days. An abandoned vehicle left on public property will be towed after five days. An abandoned vehicle left on private property will be towed after 30 days.

Derelict vehicles, boats, trailers, or parts are not allowed anywhere except in an enclosed accessory building.

Fences: All fences must be constructed or repaired using materials specifically designed for fence construction. Tin or plastic roofing material and doors are not allowed.

Rats: Rats are attracted by trash piles, open garbage, unkempt vegetation, and derelict vehicles. Do not pile coal, wood, etc. near or against walls. Keep stored materials (firewood, building materials) up 12 to 18 inches off the ground on cement blocks.

ASHLAND, WISC

EXTERIOR PROPERTY AREAS.

(1) SANITATION. All exterior property areas shall be maintained in a clean and sanitary condition free from any accumulation of rubbish, garbage, discarded construction materials or feces. **All furniture, furnishings, appliances and household goods shall be stored within a completely enclosed structure or properly disposed of within 7 days, unless such furniture, furnishings, appliances and household goods are designed for outdoor use.**

(2) GRADING AND DRAINAGE. All premises shall be properly graded and maintained so as to divert water away from buildings and to prevent the accumulation of stagnant water on or within any building or structure located thereon. No owner or agent may alter the existing drainage in such a way as to cause or create drainage problems on adjoining properties.

(3) VEGETATION. General requirements- Except as provided in par.(c) below, the owner or occupant of any lot or parcel in the City which is 5 acres or less in area shall install and maintain landscaping, plantings and other decorative surface treatments, including turf grass, so as to present an attractive appearance in all court and yard areas in accordance with generally accepted landscaping practices. **Lawns shall be maintained to a height not to exceed 10 inches.** Plantings shall be maintained so as not to present hazards to adjoining properties or to persons or vehicles traveling on public ways and shall be maintained so as to enhance the appearance and value of the property on which located and thereby the appearance and value of the neighborhood and the City.

Natural Lawn Exception- Any owner or occupant of a lot or parcel of less than 5 acres desiring a natural lawn may register for a natural lawn permit from the City Community Development Office provided that such plantings meet the requirements of this subsection. Failure to meet these requirements will cause such permit to be revoked and the vegetation will be deemed a nuisance which shall be abated within 7 days of receipt of the written notice. Such permits shall be valid for a period not to exceed 2 years at which time a new application shall be submitted.

a. Maintenance of setbacks and drainage swales- A 10 foot setback on any street frontage and a 5 foot side and rear yard setback of all natural lawns shall be maintained in accordance with the General Requirements. Adjacent neighbors may agree to waive setbacks for encroachment on setbacks outside drainage swales; such waivers shall be in writing and filed with the Community Development office.

b. Weeds and plants prohibited- The owners and occupants of all approved natural lawns shall destroy all of the following weeds and plants and shall not allow such weeds and plants to grow to a height greater than 10 inches:

1. Canada thistle and all other thistle varieties
2. Leafy spurge
3. Field bindweed
4. Purple loostrike
5. Multiflora rose
6. Burdock
7. Ragweed
8. Garlic mustard
9. All weeds enumerated in Sec. 66.955 and 66.96, Wis. Stats.
10. Turf grass, except in setback areas and designated paths.

(4) **LANDSCAPING AND GROUND COVER.** All exterior property areas shall be seeded with a common species of grass, sodded or improved with some form of landscaping or plantings. The exterior property areas shall be maintained to present an attractive appearance and to prevent soil erosion into adjacent storm sewers, sidewalks, driveways or streets. Plantings shall be maintained so as to prevent hazards to persons on adjoining properties and to persons and vehicles on public ways.

(5) **INSECT AND RODENT HARBORAGE.** The owner shall be responsible for extermination of insects, rodents vermin or other pests in all exterior areas of the owner's premises, except that a nonowner occupant shall be responsible for such extermination in the exterior areas of a single-family dwelling. Whenever infestation exists in shared or public parts of structures and premises, other than a single-family dwelling, extermination shall be the responsibility of the owner.

(6) **ANIMALS AND ANIMAL PENS-** All animal pens, runs, exercise areas, fenced areas, houses, structures and enclosures shall be kept clean, sanitary, free from odor and excrement, insects and other unsightly or objectionable matter which constitutes a public nuisance or is otherwise detrimental to the public health, safety, or welfare. No animals shall be regularly chained or kept in the front yard, or in the case of a corner lot, along the side yard adjacent to the abutting street which cause the destruction of the surrounding vegetation or allows the animal to approach to within 20' of the City right-of-way unless fully contained within an approved fence.

(7) **ACCESSORY STRUCTURES.** All accessory structures, including detached garages, carports, awnings, patio covers, sheds, storage buildings, benches, tree forts, playhouses, fences and other accessory structures, shall be maintained by the owner in structurally sound condition and in good repair. All accessory structures shall be protected from the elements by periodic painting, staining or other waterproofing or surface protection and shall be designed, constructed and

placed so as to not create a safety hazard or an aesthetic nuisance to adjoining properties and the City.

(8) MISCELLANEOUS STORAGE- Firewood, building and construction materials, trampolines, accumulations of yard toys, inoperable bicycles and other similar items may not be stored or kept in any front yard, or in the case of a corner lot, along the side yard adjacent to the abutting street.

(9) DUMPING AND LITTERING- Dumping of any residential or commercial garbage, rubbish, furniture or furnishings, brush, junk, stone, construction materials, appliances, grease, solvents, petroleum products, vehicle and vehicle parts, in any place and in any manner is prohibited unless such dumping is within an approved landfill or recycling center.

(10) FILL MATERIAL- Any clean fill placed on private property, and any ditching or excavating shall not affect existing drainage patterns of adjoining property without the written consent of the adjoining property owner. Any fill in excess of 50 yards shall have the written approval of the Public Works Director or his/her representative through the issuance of a fill permit.

(11) SNOW REMOVAL AND STORAGE- It shall be unlawful to throw or plow any snow onto adjacent properties without the written consent of the adjoining property owner. Snow may not be piled or stored in such a way as to create runoff or drainage problems for adjacent properties. Snow may not be stored in such a way as to create safety hazards for motorists or pedestrians. It shall be the responsibility of the property owner to remove any accumulation of snow within 48 hours, on all sidewalks adjacent to their property, which are regularly used by pedestrians.

GLENDAL, AZ

Sec. 25-20. Property maintenance.

- (a) **General.** All exterior property including yards, ground covers, trees, shrubs or other landscaping; and any exterior surfaces of any buildings or structures including but not limited to fences, walls, or roofs, or appurtenances including but not limited to windows, window frames, window screens, doors, door frames, canopies, awnings, cornices, porches, stairways, railings or similar items shall be properly maintained and shall not otherwise present a blighted or deteriorated appearance.
- (b) *Exterior windows, doors, and screens.* All exterior doors, door frames, windows and window frames shall be maintained in sound condition, securely fit in their frames, be substantially weather tight and shall not otherwise present a deteriorated or blighted appearance. **Window screens, if present, shall be free from excessive tears or holes or bent or broken frames.** Boarded window or door openings on an occupied structure are prohibited.
- (c) *Fences, screen walls, and retaining walls.* All fences, screen walls and retaining walls on the property shall be maintained in a safe and structurally sound condition; and shall not otherwise present a deteriorated or blighted appearance. **This includes but is not limited to leaning or damaged fences, fences missing slats or blocks or any other materials that are otherwise broken or damaged in such amounts as to present a deteriorated or blighted appearance.** All materials shall be uniform, compatible, and consistent with the design thereof.
- (d) *Landscaping.* All property shall be free from any conditions that contribute to visual blight including but not limited to dirt yards, vegetation of any kind that is substantially dead or damaged or characterized by uncontrolled growth or lack of maintenance or any similar conditions. Ground cover consisting of crushed rock, gravel or similar materials shall be one quarter (1/4) inch or larger in size and be maintained at a sufficient depth that covers all exposed areas of dirt.
- (e) *Protective treatment.* All exterior wood surfaces exposed to weather, except decay resistant woods, shall be protected with paint or other protective covering.
- (f) *Painted surfaces.* All exterior painted surfaces shall be maintained in sound condition. **Painted surfaces that represent a blighted or deteriorated appearance including but not limited to excessive peeling, flaking, chipping, or cracking shall be eliminated and surfaces repainted.**
- (g) *Roofs and roof coverings.* Roofs and all appurtenances shall be structurally sound and maintained in a safe condition. Roof coverings shall be substantially

free from broken, rotted, split or curled materials and shall not otherwise present a deteriorated or blighted appearance. All materials shall be uniform, compatible and consistent with the design thereof.

Sec. 25-21. Land maintenance.

The following acts, omissions, conditions, and things in or upon any land, building or structure in the city constitute public nuisances, the existence which are hereby prohibited and declared to be unlawful:

- (a) No person shall place any personal property, materials, goods, wares, merchandise or similar items of any kind in or upon any public street, sidewalk, alleyway or rights-of-way. Items placed by or approved by the city are exempt from this subsection.
- (b) No person shall attach or place any sign, placard, poster, banner or any other advertising device to any tree, public utility structure, traffic control device, streetlight standard, or any other device upon the public streets, alleyways, sidewalks or rights-of-way. Signs, banners or other devices approved by the city are exempt from this subsection.**
- (c) No person shall place, deposit or leave in or upon any public street, alleyway, sidewalk, rights-of-way, park or other city building or property any bottles, glass, cans, graffiti, handbills, posters, pieces of scrap metal, metal articles, paper or other material or items, except in proper containers for collection.
- (d) No owner or occupant of any property shall allow or permit any trees, shrubs, or other plant growth on the property to impede, obstruct or interfere with the free passage upon any public street, sidewalk, or alleyway; or obstruct the visibility of drivers; or interfere with any traffic control device; or signs or street lighting. Tree limbs must be maintained to hang no lower than twelve (12) feet above any public street or alleyway and seven (7) feet above any public sidewalk. Trees below seven (7) feet, shrubs or other plant growth must be maintained one (1) foot from any public sidewalk.
- (e) No person shall allow the accumulation of items such as but not limited to bottles, glass, cans, pieces of scrap wood, metal, metal articles, paper, plastic, boxes, tires, vehicle parts or other such materials or items in unsheltered areas of private property.
- (f) No person shall place and/or store furniture, except furniture designed and placed for outdoor use, household equipment, appliances, construction or landscape material, cardboard material, plastic material, debris or any similar materials in a location that is visible to a person standing upon any public street or sidewalk.

(g) No person owning or occupying any property fronting on any street, alleyway, or public place in the city including the area between the property line of such property and the street shall allow thereon grass or weeds to exceed a height over six (6) inches when such conditions create a blighting condition or may harbor infestations or are likely to become a hazard to the public health or safety.

(h) No person owning any vacant building or vacant property within the city shall allow thereon grass or weeds to exceed a height over six (6) inches or allow the accumulation of discarded construction materials, construction waste, trash or any other debris when such conditions create a blighting condition, or may harbor infestations or are likely to become a hazard to the public health or safety.

(i) No person shall place any waste materials, trash, weeds, or other accumulation of debris upon any public or private property not owned or under the control of such person, other than placement of refuse for collection in accordance with chapter 18, article III of the Code of the City of Glendale.

(j) The storage of construction materials in unsheltered areas of the yard in which insects may breed or multiply or which provides harborage for rodents or which constitutes a hazard to the public health or safety is prohibited. This paragraph shall not apply to any construction material when a valid building permit exists for the property on which the construction material is located and the construction material is intended to be incorporated in the project for which the permit is issued.

(k) No person shall allow any palm tree to have an excessive accumulation of dead or dry fronds that descend downward from the base of the lowest living frond more than four (4) feet or dry fronds longer than four (4) feet and closer than seven (7) feet to the ground that may result in insect or other infestations or result in other conditions that adversely affect the public health or safety.

(l) Any person owning any vacant property that has been subject to illegal dumping on more than three (3) occasions within a twelve (12) month period must effectively secure the area where the illegal dumping has occurred and place "no dumping" signs. Methods such as, but not limited to permanent fencing, ditch and/or berm or four (4) foot posts at four (4) foot intervals may be used to secure the area where the illegal dumping has occurred.

(1) All required signage must be a minimum of twelve by eighteen (12 (18) inches in size with two-three (2-3) inch lettering mounted on durable grade vinyl, aluminum, fiberglass or similar substrate. The signage must be mounted on a steel support post a minimum of one and one-half (1-1/2) inch diameter and the support must be placed a minimum of eighteen (18) inches in ground. Metal fasteners must be used to anchor the signage to the support post.

(2) If the owner fails or refuses to effectively secure the area where the illegal dumping has occurred and/or place no dumping signs, the city may, at the expense of the owner, complete the work by contract and the owner shall be liable for all costs incurred.

(Ord. No. 1325, § 1(13-2), 12-4-84; Ord. No. 2186, § 6, 2-27-01)

Editor's note: Prior to amendment by Ord. No. 2186, § 6, 2-27-01, § 25-21 concerned definitions of nuisances, as derived from Ord. No. 1325, § 1(13-2), 12-4-84.

Sec. 25-22. Vehicles.

(a) No person shall park or permit to be parked any vehicle for the purpose of sale upon any property or vacant property except where the sale of a vehicle is customary and incidental to the principal use of the property and in accordance with the Glendale zoning ordinance, article 5. Zoning district regulations. A violation of this paragraph shall constitute a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00).

(1) The display of one (1) vehicle for sale is permitted at a residence when the vehicle is titled to the owner or occupant of the property, is parked on an improved parking surface on the property and is not being sold in connection with an automobile sales business.

(2) No more than three (3) vehicles may be displayed for sale at the same residence within a twelve (12) month period and only one (1) vehicle shall be displayed for sale at one (1) time.

(b) No person shall park or permit to be parked any vehicle, including but not limited to semi-tractors, semi-tractor trailers, or limousines on any property or vacant property except where the parking of such vehicles is customary and incidental to the principal use of the property and in accordance with the Glendale zoning ordinance, article 5, zoning district regulations. A violation of this paragraph shall constitute a misdemeanor punishable by a fine of not less than fifty dollars (\$50.00).

(c) Vehicle covers placed on any vehicle that is visible from any public street or sidewalk must be properly maintained and made exclusively for covering vehicles. A proper cover does not include bed linen, paper, cardboard, plastic sheeting, tarps or any other item or material not manufactured specifically as a vehicle cover. The use of a vehicle cover on any abandoned or inoperable vehicle as defined in section 25-1 is limited to a vehicle that is stored in a carport.

(d) The unsheltered storage of any abandoned or inoperable vehicle, including any vehicle being repaired or restored, that is visible from any public street or sidewalk for a period of fifteen (15) days or more is prohibited except where the storage, repair or restoration is customary and incidental to the principal use of

the property and in accordance with the Glendale zoning ordinance, article 5, zoning district regulations.

(e) An abandoned or inoperable vehicle, including any vehicle being repaired or restored, may be stored in a carport if the vehicle is covered with a properly maintained vehicle cover made exclusively for covering vehicles as described in section 25-22(c).

(f) Within any residential zoned district any vehicle undergoing repair must be titled to the owner or occupant of the property and not more than three (3) such fifteen (15) day repairs shall be permitted in any twelve (12) month period.

(g) Within any residential zoned district no person shall park or store any vehicle such as but not limited to watercraft, camper shell, truck camper, or utility trailer in any portion of the side yard unless screened from the street or the surface area is improved with gravel, concrete, asphalt or paving bricks.

(h) No person shall leave, place or park any abandoned vehicle or inoperable vehicle upon any public street, alleyway, parking lot or other city property.

AGOURA HILLS, CA

5605. Substandard property.

The existence or maintenance of substandard property is prohibited, unlawful and constitutes a public nuisance. Any one (1) or more of the following conditions shall constitute substandard property.

- (1) Substandard buildings;
- (2) Unpainted buildings causing dry rot, warping and termite infestation;
- (3) Broken, missing or inoperable windows or doors;
- (4) Overgrown vegetation which is detrimental to public health, safety or welfare or which detracts from the appearance or property values of the immediate neighborhood. Overgrown vegetation is defined to include, without limitation:
 - a. Vegetation likely to harbor rats, vermin and/or pestilence.
 - b. Vegetation hanging over, or obstructing, public rights-of-way or creating a pedestrian or vehicular hazard in the use of public property.
 - c. Vegetation causing or adding to a fire hazard, including, without limitation, plants, hedges, shrubs or trees growing on or upon the roof of any structure, or within such close proximity of a roof structure or utility line so as to constitute a fire code violation.
- (5) Dead vegetation which is detrimental to public health, safety or welfare. Dead vegetation shall mean, without limitation, decayed, diseased or hazardous vegetation, and shall include neglected, poorly watered or unwatered, or otherwise uncared for, trees, weeds, ground cover, shrubs, hedges, plants and other vegetation that cause or contribute to any one (1) of the following conditions:
 - a. A danger to public health, safety and welfare.
 - b. A detriment to nearby property, or the value thereof.
 - c. Causing or adding to a fire hazard.
 - d. The creation or promotion of dust or soil erosion.
 - e. Unattractive or unsightly appearance that is contrary to community standards as established by surrounding or nearby properties.
 - f. The absence of any vegetation where approved or required by the City of Agoura Hills.
- (6) Trailers, campers, recreational vehicles, boats and other related apparatus placed or stored in an area that is visible from a public street;**
- (7) Trailers, campers, recreational vehicles, trucks, and boats that exceed six (6) feet in height and that are parked for more than forty-eight (48) hours within five (5) feet of any side property line.**
- (8) Inoperable or abandoned motor vehicles or parts thereof placed or stored in an area that is visible from a public street;
- (9) Abandoned, broken, discarded, or neglected equipment, machinery or furniture placed or stored for a period of more than forty-eight (48) hours in an area that is visible from a public street;
- (10) Clothesline in front yard areas;**

(11) Garbage cans placed or stored in front or side yards and visible from a public street except when placed in places of collection at the times permitted;

(12) Packing boxes, paper products or other debris placed, accumulated, or stored in yard areas visible from a public street or adjacent private property;

(13) Maintenance of premises in such condition as to be detrimental to the public health, safety or welfare or in such manner as to constitute a public nuisance as defined by Civil Code Section 3480.

(14) Property, including, but not limited to, building exteriors which are visible from a public right-of-way or adjacent private property and maintained in such condition as to become so defective, unsightly, or in such condition of deterioration or disrepair that the same detracts from the appearance of the immediate neighborhood. This includes, but is not limited to, the keeping or disposing of or the scattering over the property or premises of any of the following:

a. Lumber, junk, trash or debris;

b. Abandoned, discarded or unused objects of equipment such as automobiles, furniture, stoves, refrigerators, freezers, cans or containers;

c. Stagnant water, or excavations;

d. Any device, decoration, design, fence, structure, clothesline or vegetation which is unsightly by reason of its condition or its inappropriate location;

(15) Grading which does not meet the minimum standards set forth in the building code of the City of Agoura Hills or which is done in violation of this Code or any other city or state law regulating grading.

(16) Any other condition or activity on real property that violates any local, state or federal law or regulation, or that is contrary to any public agency approval, permit, or condition thereof.

(Ord. No. 03-318, § 1, 4-9-2003)

CITY OF LEMORE, CA

4-4-2: FINDINGS: The city council finds and determines as follows:

(This section is very nice overall!!!)

A. The city has a history and reputation for well-kept properties, and property values and general welfare of the community are founded, in part, upon the appearance and maintenance of private property;

B. Owners and occupants of some properties within the city have permitted visual blight, including, but not limited to, deteriorated buildings, the accumulation of overgrown, rank and noxious vegetation and the accumulation of broken or discarded personal property in front yards;

C. The existence of such conditions as described in this chapter is injurious and inimical to the public health, safety and welfare of city residents and contributes to the deterioration of residential, commercial and industrial areas;

D. Abatement of these conditions is in the best interest of the health, safety and welfare of the citizens of the city because maximum use and enjoyment of properties in close proximity to one another depends upon a minimum standard of sightliness. The beneficial effects of maintaining a minimum standard of sightliness for properties in the city include, but are not limited to, appreciation of property values, physical improvements of residential, commercial and industrial zones, attraction of capital investors to residential, commercial and industrial zones, increase in commercial trade and industrial productivity and increase in the tax base of the city;

E. The abatement of such conditions will improve the general welfare, health, safety, and image of the city;

F. The abatement procedures set forth in this chapter are reasonable and afford due process to all affected persons;

G. The uses and abuses of property, as described in this chapter, reasonably relate to the proper exercise of police power to protect the health, safety and welfare of the public. (Ord. 9606, 5-21-1996)

4-4-3: **PROPERTY STANDARDS:** Unless expressly allowed by the zoning regulations, it is unlawful for any landowner or person leasing, occupying or having charge or possession of any real property in the city to keep, maintain, deposit or perform on such property any of the following and existence of any of the following is hereby declared a public nuisance:

- A. Attractive nuisances dangerous to children and other persons, including, but not limited to, hazardous pools, ponds and excavations, and abandoned, broken or neglected household appliances, equipment and machinery, unless located behind a screened fence preventing access to the area.
- B. Overgrown, dead, diseased, decaying or hazardous trees, shrubs, ground cover or weeds likely to harbor vermin, restrict or impede access to or public use of adjacent sidewalks and streets, obstruct traffic-control signs and devices and fire hydrants, pose a risk of physical injury to the public or constitute an unsightly appearance.
- C. Used or damaged lumber, junk, trash, debris, scrap metal, concrete, sand, asphalt, cans, bottles, tires, salvage materials, boxes, containers, bins, and abandoned, discarded, inoperative or unusable furniture, stove, refrigerator, freezer, sink, toilet, cabinet or other household fixture, yard waste or equipment stored so as to be visible from a public street, alley or from an adjoining property for a period in excess of one week, except nothing herein shall preclude the placement of stacked firewood for use on the premises in the side or rear yards of the premises.
- D. Any wall, fence, or hedge in such condition of deterioration or disrepair as to constitute a hazard to persons or property or cause depreciation in the value of any adjacent or nearby property.
- E. Broken windows or doors constituting hazardous conditions and inviting trespassers or malicious mischief.
- F. Buildings that are bearded up, partially destroyed, not properly secured or partially constructed or incomplete after the building permit authorizing its construction has expired.
- G. Maintenance of the premises so out of harmony and conformity with the maintenance quality of adjacent or nearby properties as to cause substantial diminution in the enjoyment, use or property values of such adjacent or nearby properties.
- H. Storage of automobile, motorcycle, boat or other watercraft, and trailer or parts thereof on residential properties within the front or side yard, unless parked on a paved driveway or screened from view by a minimum six foot (6') high solid fence.
- I. Accumulate, store, abandon, dismantle, repair or otherwise locate inoperative trailer, camper, boat or other watercraft, motor vehicle or parts thereof on private property for a period in excess of fourteen (14) consecutive days, unless stored within an entirely enclosed garage or screened by a minimum six foot (6') high solid fence.

J. City-provided garbage cans or other trash receptacles stored within the front yard or on street, except when placed in locations of collection at times of collection, not extending more than twenty four (24) hours. Any other garbage cans or receptacles visible from the street.

K. Placement of satellite dish antennas over two feet (2') in diameter within the front or side yards abutting a street unless behind a solid fence of minimum six feet (6') high.

L. Fountains, pools and ponds unmaintained such that they harbor algae, bacteria or mosquitoes.

M. Cracked walkways or driveways if the cracks are such that weeds and growth come up through the cracks where an area is in overall poor condition.

N. Construction equipment and machinery and building supplies and materials stored in areas visible from public rights of way or neighboring properties unless part of an active and approved construction project.

O. Disposal of oil, gasoline, other petroleum products, noxious chemicals, pesticides, or other gaseous, liquid or solid wastes in such a manner as to constitute a health hazard or degrade the appearance of or detract from the aesthetic and property values of neighboring properties.

P. Buildings in disrepair with wall cracks in excess of one-fourth inch (1/4") width, leaking roofs, defective electric wiring or otherwise not in compliance with building codes to the extent it presents a dangerous situation or effect on property values. (Ord. 9606, 5-21-1996)

HUBER HEIGHTS, OHIO

(Very straightforward and down to earth!!)

PROPERTY MAINTENANCE

It is to everyone's benefit that properties in our city be maintained in accordance with the City's Property Maintenance Code, and any other ordinances that contribute to the safety and general well being of the residents, and the maintenance of property values.

No matter if you rent or own, this is where you live, this is where you are raising your children. Many of us have raised our kids in this city and plan to enjoy our retirement here. We can do this and enjoy a more secure lifestyle if we work together for better neighborhoods.

Huber Heights Property Code Requirements

- The exterior of a property and every structure on the property, including but not limited to; walls, roofs, cornices, chimneys, drains, towers, porches, windows, doors, awnings, and stairs, must be in good repair.
- All land shall be properly maintained with lawns, hedges, bushes, trees, and other vegetation to be trimmed and kept from becoming overgrown and unsightly where exposed to public view or such vegetation may constitute a blighting influence on adjoining property.
- **All property shall be maintained free from weeds or plant growth in excess of 8 inches.**
- All fences, retaining walls, or similar structures shall be constructed in a workmanlike manner and maintained in the same manner so that they are always in a state of good repair. All fences shall be treated periodically so as to retard deterioration including the painting of chain link fences.
- All accessory buildings shall be kept in good repair and not harbor rats, termites or other vermin.
- **Each building to which a street number has been assigned shall have the number displayed in a position easily observed and readable from the street.**

Safe and Decent Housing is Everyone's Responsibility

As a **PROPERTY OWNER**, you have certain obligations to meet. Protect your investments and the health of the occupants by maintaining your property in good repair.

1. Do all repairs in an approved manner, using proper materials in accordance with all applicable codes.
2. Maintain exterior structure free of broken glass, loose shingles, peeling paint, and crumbling stone or brick.
3. Maintain doors and windows, including storm doors and screen, in
4. Maintain driveways and walkways in a proper state of repair, free of hazardous conditions.
5. Maintain property free of rodents and roaches.

Maintain all yards or lots free of unsightly materials not appropriate to the area and debris that may cause a fire hazard or may act as a breeding place for vermin or insects.

As a **TENANT**, you also have responsibilities. Maintain your home in a neat and sanitary manner and contact the owner when repairs are needed.

1. Maintain dwelling in a clean and sanitary condition, free of conditions that might encourage rodent or cockroach infestations.
2. Properly dispose of garbage and rubbish in containers with lids.
3. Maintain yard in a neat and sanitary manner, free of litter, junk cars, and animal wastes.
4. Cut grass and trim shrubs maintaining landscaping on the lot.
5. Take care of pets. Don't allow them to run free or become a nuisance. Clean up waste daily.
6. Control trees, weeds, and other vegetation. Don't allow any plant or tree to overhang any public sidewalk by less than eight feet.
7. Don't place garbage or trash receptacles at the curb prior to 5:00 P.M. on the day preceding the pickup and all containers must be returned to their original storage place within 24 hours after the pickup.
8. Notify owner when repairs are needed and allow reasonable time to complete repairs before contacting officials.

General Thoughts on Property Maintenance

Raise your neighborhood to a higher standard of living. Become partners with your neighbors to make necessary improvements in your neighborhood.

We all have a vested interest in this city. We must work together to make and keep our city decent, clean and safe.

GWINNET COUNTY, GA

Property Maintenance Ordinance Summary

DIVISION 2 PROPERTY

Section 14-301 Fences and Walls

Fences and walls shall be maintained in a structurally sound condition and in good repair. Fences shall be free from loose or rotting materials and shall have braces and supports attached or fastened in accordance with common building practices.

Section 14-302 Grass, Weeds and Uncultivated Vegetation

Premises and exterior property shall be maintained free from grass, weeds or uncultivated vegetation in excess of 12 inches in height.

Exceptions:

1. Property one (1) acre or greater in size;
2. Property zoned RA-200 (agriculture-residence district).

Section 14-303 Junk Vehicles

Junk vehicles shall not be kept, permitted, parked, stored or maintained on any premises or public street right-of-way.

Exceptions:

1. Junk vehicles, limited to a maximum of two (2), which are kept within a fully enclosed building on property in residential zoning districts provided the owner or occupant of the property is in the process of reconditioning the junk vehicles for personal use;
2. Junk vehicles which are kept on property in zoning districts authorized by the Zoning Resolution for repairing, reconditioning or remodeling junk vehicles and provided that such junk vehicles are not stored for the purpose of salvage of parts but is in the continual process of repair, reconditioning or remodeling;
3. Junk vehicles which are kept on property in zoning districts as authorized by the Zoning Resolution for a junk or salvage yard;
4. Junk vehicles which are kept on residentially zoned property five (5) acres or greater in size.

Section 14-304 Open or Outdoor Storage

The open or outdoor storage of appliances, building materials or rubbish, equipment, garbage, goods, glass, materials, merchandise, rubbish, trash or similar items shall not be permitted, maintained or stored on any premises for more than 24 hours.

Exceptions:

1. Property where outdoor storage is authorized by the Zoning Resolution;
2. Cut wood which is neatly stacked in lengths not to exceed 3 feet for the personal use of the owner or occupant;
3. Residentially zoned property five (5) acres or greater in size.

Section 14-305 Trees

1. Hazardous Trees

Dead, dying, damaged or diseased trees shall not be allowed to exist or to be maintained on any premises which are hazardous to persons on adjacent property or to adjacent property. A finding by a registered forester or certified arborist shall constitute prima-facie evidence that a tree is in danger of falling upon adjacent lots or public streets due to the death or impending death of the tree, or due to damage by weather conditions or due to disease infestation.

2. Tree Stumps

Tree stumps greater than 12 inches in height above ground level shall not be permitted or maintained on any premises for more than 30 days after the tree has been cut.

Exceptions:

- a. Property covered by a valid land disturbing permit;
- b. Property one (1) acre or greater in size;
- c. Property zoned RA-200 (agriculture-residence district).

3. Tree Debris

Felled trees, slash, removed tree limbs, or other portions of any tree shall not be permitted or maintained on the ground on any premises for more than 30 days.

Exceptions:

- a. Property covered by a valid land disturbing permit;
- b. Cut wood which is neatly stacked in lengths not to exceed 3 feet;
- c. Property one (1) acre or greater in size;
- d. Property zoned RA-200 (agriculture-residence district).

Section 14-306 Swimming Pools

Stagnant water in swimming pools conducive to the breeding or harboring of mosquitoes or other insects shall not be permitted or maintained on any premises. A finding by a health official of the Gwinnett County Environmental Health Department shall constitute prima-facie evidence that stagnant water in a swimming pool is conducive to the breeding or harboring of mosquitoes or other insects.

DIVISION 3 BUILDINGS

Section 14-321 Exterior Surface Treatment

All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches and trim shall be maintained in good repair. Exterior wood surfaces, other than decay resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints shall be maintained weather resistant and watertight.

Section 14-322 Exterior Walls

Exterior walls of buildings shall be maintained free from holes, breaks, loose or rotting materials; and shall be maintained weatherproof and properly surface coated as needed to prevent deterioration.

Section 14-323 Roofs

Roofs of buildings shall be maintained so that they are structurally sound and in a safe condition and have no defects which might admit rain or cause dampness in the interior portions of a building. All portions, additions or sections of a roof including, but not limited to, the fascia, eave, soffit, sheathing, rafter tail, barge rafter, vent screening, gutter, downspout, roof jack, lead or metal flashing, shall be complete with all trim strips, moldings, brackets, braces and supports attached or fastened in accordance with common building practices.

Section 14-324 Exterior Stairways, Decks, Porches and Balconies

Exterior stairways, decks, porches and balconies, and all appurtenances attached thereto, of buildings shall be maintained so that they are structurally sound, in good repair, with proper anchorage and capable of supporting the imposed loads.

Section 14-325 Windows

Windows of buildings shall be fully supplied and maintained with glass window panes or with a substitute approved by the director of the Department of Planning and Development, which are without open cracks or holes. Screens, if provided, shall be securely fastened to the window.

Section 14-326 Exterior Doors and Frames

Exterior doors of buildings shall be maintained so that they fit reasonably well within their frames so as to substantially prevent rain and wind from entering a building. Exterior door jambs, stops, headers and moldings shall be securely attached to the structure and maintained in good condition without splitting or

deterioration. Additionally, exterior doors shall be provided with proper hardware and maintained in proper working condition.

Section 14-327 Decorative Features

Cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

Added section restricting occupancy

- **Residential Occupancy Limitations (Sections 14-341 through 14-347):**

Occupancy limits established as follows:

- **Bedroom Area (Section 14-344):**

1 occupant bedroom - 70 square feet

2 or more occupant bedrooms - 50 square feet
per person

- **Living Room Area (Table 4.5):**

1 to 2 occupants - no requirement

3 to 5 occupants - 120 square feet

6 or more occupants - 150 square feet

- **Dining Room Area (Table 4.5):**

1 to 2 occupants - no requirement

3 to 5 occupants - 80 square feet

6 or more occupants - 100 square feet

- **Kitchen Area (Table 4.5):**

1 to 5 occupants - 50 square feet

6 or more occupants - 60 square feet

MAQUOKETA, IOWA

6-21-4 NUISANCES.

A failure to satisfy any one or more of the following provisions shall constitute a nuisance:

1. *General.* All structures, equipment and exterior property, whether occupied or vacant, shall be maintained in good repair and in structurally sound and sanitary condition as provided herein, so as not to cause or contribute to the creation of a blighted area or adversely affect the public health or safety.

2. *Rodents and vermin.* All structures, equipment and exterior property shall be kept free from rodent and vermin harborage and infestation. Where rodents and vermin are found, they shall be promptly exterminated by approved processes that will not be injurious to human health. After extermination, proper precautions shall be taken to eliminate rodent and vermin harborage and prevent re-infestation.

3. *Accessory structures.* All accessory structures, including, but not limited to, detached garages, fences, storage sheds, fences and walls shall be maintained in structurally sound condition and in good repair.

4. *Protective treatment.* All exterior surfaces, including, but not limited to, doors, door and window frames, cornices, porches and trim, shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or application of other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors, and skylights, shall be maintained weather resistant and watertight.

5. *Foundation walls.* All foundation walls shall be maintained plumb and free from open cracks and breaks, and shall be kept in such condition so as to prevent the entry of rodents or vermin.

6. *Exterior walls.* All exterior walls shall be maintained plumb unless otherwise designed or engineered; free from cracks, holes, breaks, and loose or rotting materials; and maintained weatherproof and properly surface coated where required to prevent deterioration.

7. *Roofs and drainage.* All roofs and flashing shall be sound, tight, and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the structure. Roof drains, gutters

and down spouts shall be maintained in good repair, with proper anchorage and free from obstructions.

8. *Stairways, decks, porches and balconies.* Every exterior stairway, deck, porch, or balcony, and all appurtenances thereto, shall be maintained in structurally sound condition, in good repair, and proper anchorage, and capable of supporting the imposed loads.

9. *Chimneys and towers.* All chimneys, cooling towers, smoke stacks, and similar appurtenances shall be maintained in structurally sound condition and in good repair. All exposed surfaces of metal or wood shall be protected from the elements and against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.

10. *Handrails and guardrails.* Every handrail and guardrail shall be firmly fastened and capable of supporting normally imposed loads, and shall be maintained in good condition.

11. *Basement entrances.* Every basement hatchway or exterior basement entrance shall be maintained to prevent entry of rodents or vermin, and shall be maintained so as not to allow rain or surface drainage water to enter.

SAN JOSE, CA

17.72.520 State of Disrepair

Any building or structure that is in a state of disrepair constitutes property blight.

A building or structure is in a state of disrepair when any of the following conditions exist:

- A. Exterior walls or roof coverings have become deteriorated, do not provide adequate weather protection, or show evidence of the presence of termite infestation or dry rot; or
- B. Broken or missing windows or doors that create a hazardous condition or a potential attraction to trespassers; or
- C. Building exteriors, walls, fences, retaining walls, driveways, or walkways that are broken or deteriorated to the extent that the disrepair is visible from a street or neighboring properties; or
- D. Any part of the property, including any building or structure located on the property that is visible from a street or neighboring property, that is defaced with Graffiti.

17.72.525 Exterior Property Conditions

The existence of any one or more of the following exterior property conditions constitutes property blight:

- A. The property contains overgrown, diseased, dead or decayed trees, weeds or other vegetation that:
 - 1. Constitutes a fire hazard or other condition that is dangerous to the public health, safety, welfare; or
 - 2. Creates the potential for the harboring of rats, vermin, vector, or other similar nuisances; or
 - 3. Substantially detracts from the aesthetic and property values of neighboring properties; or

- 4. Is overgrown onto a public right-of-way at least twelve (12) inches; or
 - 5. Is completely dead, over twelve (12) inches in height, and covers more than fifty percent (50%) of the front or side yard visible from any street.
- B. The property fails to comply with applicable development permit requirements with respect to any landscaping requirements.

17.72.530 Single Family Dwelling Landscaping Requirements

- A. A single family dwelling subject to a development permit shall be landscaped in accordance with the requirements of the development permit.
- B. Subject to the paved surface limitations set forth in Section 20.30.440 of this Code, a single family dwelling, not subject to a development permit, shall have landscaping installed in the nonpaved portions of the front and side yards that are visible from any street. For purpose of this subsection only, "landscaping" means live trees, shrubs, lawns, other live plant materials or Decorative Landscaping, have been installed.**
- C. If only Decorative Landscaping is used to meet the requirements of this Section, Weed Block shall also be used.**
- D. Failure to meet the landscaping requirements of this Section constitutes property blight.

(This actually came up in another recently incorporated city – hence the larger type – we should consider it!)

- A. Any airplane or other aircraft, or any parts thereof in the front or side yard.**

17.72.225 Household Item

“Household Item” means any item, including any part of the item, typically used in the interior of a dwelling. By way of example and not limitation, the term Household Item includes washing machines, sinks, stoves, heaters, boilers, tanks, mattresses, sofas, couches or futons, upholstered chairs, and indoor carpets. The term Household Item excludes furniture expressly designed for outdoor use and refrigerators.

17.72.570 Storing or Maintaining Household Items

- A. No Household Item shall be stored or maintained in an area visible from any street for a period of time in excess of seventy-two (72) consecutive hours.
- B. The storage or maintenance of a Household Item in a side or rear yard shall either be:
 - 1. In an accessory building constructed in accordance with the provisions of this Code; or
 - 2. In an area that provides for a five-foot (5') setback from any property line and, which is not visible from any street. In addition to the setback requirement, at least one thousand five hundred (1,500) square feet, or at least sixty percent (60%) of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.
- C. No Household Item shall be stored, or maintained within five feet (5') of any required building exit, including exit windows.

ROSSMOOR, CA

Sec. 3-13-7. Standards for developed property.

All developed real property in county territory shall be maintained at a level not less than the following standards.

- a. Condition of structures. Structures shall not be partially destroyed, abandoned, unsecured, or permitted to remain in a state of partial construction for more than 30 days. Buildings or structures shall not be boarded up for a period in excess of 10 days without a valid demolition or building permit on file, except in compliance with Sections 7-1-18 and following of this Code.
- b. Building exteriors and roofs. Exterior building surfaces and roofs shall be maintained free of significant surface cracks, missing materials, warping, dry rot which either threaten the structural integrity, or result in a dilapidated, decaying, disfigured, or partially ruined appearance.
- c. Use of tarps. **Excluding emergency repairs, it is prohibited to use tarps for roof and building repairs. Additionally, the use of tarps for vehicle covers, or temporary canopies, enclosures, and/or awnings is prohibited in any outdoor area visible from any public right-of-way.**
- d. Paint. Painted surfaces on buildings, trash enclosures, walls, retaining walls, fences, and structures shall be maintained in order to prevent decay, excessive checking, cracking, peeling, chalking, dry rot, warping, or termite infestation.
- e. Graffiti. All structures, equipment, walls, and fencing on the property shall be maintained free of graffiti pursuant to Division 16 of Title 3 of this Code.
- f. Lighting. **All exterior light fixtures shall be maintained in good working order free of broken lamps, lens, and light bulbs. Furthermore, the structural integrity of all supporting poles and mounting fixtures shall be**

maintained. All insulation and connections shall be intact and free of exposed wire.

g. Windows. Broken windows and glass doors and the use of materials other than glass as a replacement or covering of windowpanes are prohibited.

h. Window screens. All window and glass door screens shall be maintained free of tears, rips, and holes. On residential rental properties, window screens are required on all windows.

i. Trash bins. Trash bins or dumpsters shall be kept within an enclosed building, trash enclosure, or screened from public view to the maximum extent feasible. Overflowing trash bins or dumpsters due to inadequate number of bins and/or request for service from the trash hauler is prohibited.

Use of commercial trash bins for residential uses in the R-1 zone is prohibited

j. Walls, fences, and trash enclosures. All walls, retaining and crib walls, and fences abutting public rights-of-way (including alleys), and trash enclosures, shall be maintained free of significant surface cracks, dry rot, warping, deterioration, leaning, missing panels or blocks which either threaten the structural integrity, or result in a dilapidated, decaying, disfigured, or partially ruined appearance.

k. Parking areas, sidewalks. Parking areas, private alleys, driveways, sidewalks, and walkways shall be maintained free of potholes, cracks, breaks, lifting, and other deteriorated conditions.

l. Signs. All signs shall be maintained in order to prevent deterioration, disrepair, and unsightliness.

m. Excavations. Excavations, abandoned wells, shafts, basements, and other holes shall be properly secured to prevent access by unauthorized persons.

- n. Landscaping. With the exception of R-1 properties, all landscaping on the property shall be maintained pursuant to Section 7-9-132 and following of this Code. For R-1 properties, all landscaping visible from public rights-of-way shall be maintained in a healthy condition free of dying, dead, diseased, decayed, discarded and/or overgrown vegetation.
- o. Parkway landscaping. In residential areas, the public parkway shall be landscaped and maintained by the adjacent property owner(s). The landscaping shall be maintained in a healthy condition free of dying, dead, diseased, decayed, discarded and/or overgrown vegetation.
- p. Drainage. Onsite drainage improvements shall be maintained in order to prevent deterioration, disrepair, and ineffectiveness.
- q. Rodent and vermin control. All property, including landscaped areas, buildings, and structures, shall be maintained free of rodents and other vermin.
- r. Outdoor drying. **In all residential zones or residential developments, the outdoor airing and/or drying of laundry, clothes, other household linens, or food is permitted only in rear or side yards, provided that the items are not visible from public rights-of-way.**
- s. Pools. Barrier fencing and gates for swimming pools and spas shall be maintained as required by the California Building Code. Swimming pools and spas shall not contain unfiltered or stagnant water.

PASADENA, CA

14.50.040 Prohibited activities or conditions.

It is declared unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any property in this city to maintain such property, regardless of whether such property contains a conforming or legal nonconforming use or structure, in a manner that any of the following conditions or activities are found to exist thereon:

1. The accumulation of dirt, litter, junk, salvage materials, lumber or other debris visible from a street, sidewalk, alley or neighboring property, or verified through other lawful means.

2. Clotheslines or clothes hanging in front yards, on front porches, or balcony railings and visible from a public street.

3. Unconcealed trash can stored in the front, corner or side yard visible from a street, sidewalk, or alley. Trash can stored in the front, corner or side yard shall be concealed by the use of the following materials singly or in combination, and shall be architecturally consistent with the materials used in the surrounding buildings:

a. Masonry, such as exterior wall brick or finished precast concrete block, such as striated or fluted block. Unfinished cinder block shall not be permitted in the front yard. Masonry walls and fences constructed in the front or side yards, or visible rear yards in a landmark district, the central district, or on property designated as a landmark or historic monument, or listed in the National Register of Historic Places, or eligible for designation or listing, shall be subject to review under Chapter 17.52 or Chapter 17.92 of the Zoning Code.

b. Wood, provided that the wood is cedar, redwood or pine and at least five-eighths of an inch thick. If cedar, redwood, or pine is used to conceal a trash can, it shall be weather-protected from possible rot or decay by the application of a preservative on a regular basis by the party responsible for the maintenance of the subject premises;

c. Evergreen shrubbery consisting of permanent, living material which is continuously maintained in a sound, healthy and vigorous condition, free of plant diseases, insect pests, weeds, refuse and debris. Shrubby shall be maintained so as to create a continuous barrier and must effectively conceal the trash can;

d. Earthen berm or recession with an embankment so as to achieve a continuous barrier.

4. Any trash can, refuse container, or recycling bin placed in a front yard or near the street curb for more than 24 hours before or after the time for collection of garbage or other materials from said container.

5. Broken or discarded furniture, household or business equipment, shopping carts or similar items, placed outdoors for more than 24 hours.
6. Attractive nuisances dangerous to children, including but not limited to: abandoned, broken or neglected equipment, machinery, dilapidated structures, refrigerators and freezers, excavations and hazardous pools, whether or not they contain any water or liquid.
7. Any sidewalk or driveway on private property which is broken, damaged or raised to such a degree as to be hazardous to persons using said sidewalk or driveway.
8. Overgrown vegetation likely to harbor rats, or other vermin, or which attain such growth as to become a fire menace when dry or which are otherwise noxious, dangerous or unsightly.
9. Dead, decayed, diseased or hazardous trees which constitute an unsightly appearance, or present a danger to public safety and welfare, or are detrimental to neighboring properties or property values.
10. Trees or other vegetation obstructing visibility at an intersection, or which restrict or impede access to public use of adjacent sidewalks or streets, obstruct official traffic-control devices, or prevent access by city street sweepers cleaning streets. Sidewalk access is impeded when encroaching shrubbery, ground cover, tree branches and other such vegetation cause less than a minimum clear area of 5 feet in width, and 7 feet 6 inches in height to be available for sidewalk traffic.
11. Gross lack of maintenance of grounds on which a structure exists where the grounds are visible from a public street, sidewalk, or from neighboring properties, and where such condition would have a tendency to substantially depreciate the aesthetic environment or property values of surrounding properties.
12. Graffiti or other words, letters or drawings which remain on the exterior of any building or fence for a period of 48 hours and are visible from a street, sidewalk or alley.
13. Residential or commercial buildings left in a state of incomplete construction, partial demolition, damaged by vandalism, fire, earthquake or other acts for a period of 6 months (excluding such time when work is in progress pursuant to a valid building or other construction permit).
- 14. Fence, wall or vegetation surrounding a vacant or unoccupied building which is maintained in a state of unsightliness or visual blight for a period of 30 days.**
15. Any structure in a state of substantial deterioration, including but not limited to: peeling paint on a facade, broken windows, roof in disrepair, damaged porch, broken steps or other deterioration or disrepair, visible from a public street, sidewalk, or from

neighboring properties, where such condition would have a tendency to depreciate substantially the aesthetic environment or property values of surrounding properties.

16. Failure to secure all doorways, windows or other openings into a vacant structure, or provide fencing for the entire parcel containing the vacant structure, to prevent persons from gaining unauthorized access.

17. Dirt, sand, gravel, concrete, scrap metal, wood, building materials or other similar materials kept, stored, deposited or accumulated on property for a period of 30 days (excluding such time when work is in progress pursuant to a valid building or other construction permit).

18. The accumulation of dirt, litter or debris in any vestibule or doorway or on the adjoining sidewalk of a commercial building.

19. Any sign and/or sign structure relating to a use no longer conducted or product no longer sold on the property more than 45 days after a change in use or after the structure upon which the sign and/or sign structure is placed has been abandoned.

20. Signs and/or sign structures maintained in a deteriorated condition.

21. Any sign or advertising structure which was unlawfully erected on public or private property, or declared to be hazardous or unsafe by the city building official.

22. Any sign legally erected which later became nonconforming as a result of the adoption of an ordinance on which the amortization period provided by the ordinance or other law has expired, and for which conformance has not been accomplished.

23. Failure to park or store in a garage inoperative vehicles, or vehicles placed on blocks, or otherwise immobilized which are in a residential zone.

24. Parking or storage of commercial or construction vehicles or equipment in areas zoned for residential use.

25. Repair and/or dismantling of any vehicle or boat in a residential zone where such activity can be seen from the street or sidewalk, except where such repair and/or dismantling is completed and any evidence of repair, including tools, equipment, motor oils and other fluids, rags, spills, parts, and debris is removed within 3 days after the repair or dismantling was begun. All major vehicle repair must be conducted within a garage. No vehicle repair may be conducted in a customer parking lot serving an auto part or other store.

26. Property maintained in such a manner as to constitute a public nuisance as defined in Civil Code Section 3480.

27. Any dangerous, unsanitary, blighted or unsightly condition which is detrimental to the health, safety or welfare of the public.

28. Any other condition or activity recognized in law or in equity as constituting a public nuisance.

29. Oversized vehicles (including but not limited to motor homes, recreational vehicles, trailers, camper shells, slide-in campers, boats, or parts thereof) parked or stored other than in covered parking or on a paved area at the rear of the property. Such prohibition shall not apply if the rear yard is inaccessible to the vehicle, in which case parking may be permitted on a paved driveway subject to the following restrictions:

a. The vehicle shall be parked at least 5 feet beyond the front yard property line if there is a sidewalk between the property and the street. If there is no sidewalk between the property and the street curb, the vehicle must be parked at least 5 feet from the paved edge of the street.

b. If the oversized vehicle owner's driveway adjoins a driveway of neighboring property, the location of the oversized vehicle in the driveway shall not create a safety hazard or obstruct the view within 15 feet of the sidewalk or edge of the roadway of that neighbor when entering or leaving his/her driveway.

c. An oversized vehicle parked in the driveway shall not prevent the parking spaces in the garage from being readily accessible. "Readily accessible" means that the oversized vehicle does not have to be moved in order for a second vehicle to enter or exit the garage or carport.

d. Parking in the front yard shall be only upon a driveway leading to covered parking.

e. An oversized vehicle parked in the driveway shall be fully operational, completely assembled, supported only by inflated tires, in good repair, neat and clean. Wrecked, dismantled, unregistered or inoperative vehicles shall not be parked in the driveway or in the rear yard, subject to other sanctions as set forth in this code.

f. An oversized vehicle parked in the driveway shall be moved out of the driveway periodically (i.e., at least once every 30 days) to permit the surface underneath to be cleaned.

g. No vehicle shall be parked on the grass, dirt or other landscaped areas surrounding a residence.

h. Vehicle shall be owned or leased by the residents of the property and licensed with a current registration.

i. An oversized vehicle shall not be used for storage, living or sleeping while parked in the driveway and shall not be connected to water or sewer lines for more than 72 hours.

j. An oversized vehicle may be parked in the driveway for up to 72 hours for the purpose of loading or unloading supplies, or preparing the vehicle for a trip.

30. Storage of abandoned, wrecked, dismantled, unregistered or inoperative automobile, trailer, camper, recreational vehicle, boat or other such vehicles or equipment on residential property.

31. Parking recreational vehicles, campers, boats, cars, or other mobile equipment on the grass, dirt or other landscaped areas surrounding a house.

32. Any condition or activity which adversely affects the health, peace or safety of persons residing or working on the premises or in the surrounding area.

33. Any condition or activity which jeopardizes or endangers the public health or safety of persons residing or working the premises or in the surrounding area.

34. "Repeated nuisance activities" defined as activities occurring on at least two or more occasions within a twelve (12) month period, and including but not limited to disturbances of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sales of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, loitering, excessive littering, illegal parking, loud noises particularly in late night or early morning hours, traffic violations, curfew violations, lewd conduct, or police detentions and arrests related to such activities.

35. Any violation of any provision of any city, state or federal regulation, ordinance or statute. (Ord. 6936 § 4, 2003; Ord. 6630 § 3, 1995; Ord. 6421 § 1, 1991; Ord. 6402 § 2 (part), 1990)

LAKEWOOD, CA

Municipal Code Property Standards Amended by Ordinance 2001-5

4323. UNSIGHTLY PROPERTY. It is unlawful for any owner, lessee or occupant of any building, grounds or lot to keep or maintain or allow to grow or to accumulate any materials, growth or things which, because of its proximity to and view from neighboring or other property in the vicinity, depreciates the value of surrounding property or is injurious to the public health, safety or welfare, or to neighboring property, or the health or welfare of residents of the vicinity. These unsightly conditions are as follows:

A. ABANDONED OR DESTROYED OR PARTIALLY FINISHED BUILDING. Any building which is in an unsightly condition because of abandonment or lack of occupancy for a period of one (1) year or abandoned and unoccupied for a period of sixty (60) days because of partial destruction or failure to complete construction with the time authorized by a building permit or any extension thereof.

B. UNSIGHTLY AND DEFICIENT EXTERIOR MATERIALS. Any building which has peeling, cracked, faded, chipped, torn or missing exterior surface materials, including, but not limited to, paint, stucco, siding, shingles and roof shingles so as to make the same unsightly. "Exterior surface materials" include roofing, building walls, doors, garage doors, porches, patios, awnings, screens, windows, window frames and casements, ledges, fascias, eaves and any wood or vinyl trim.

C. ACCUMULATION OF LITTER AND DEBRIS. Any accumulation of dirt, litter, debris, rubbish, trash, discarded items, including, but not limited to, discarded household items and vehicle part, accumulated to such an extent and left in yard areas, vestibules, doorways in open view to surrounding property.

D. GROUND COVER. In connection with a building, the failure to maintain a ground cover in a condition to eliminate an unsightly appearance by failure of the owner or occupant to prevent erosion, excessive dust, or the accumulation of water and mud. Ground area is that area appurtenant to and non-occupied by buildings, accessory structures, walkways, pools and spas, driveways, decks or similar architectural or decorative device. Such ground areas shall be maintained with a reasonable ground cover to eliminate the aforementioned detrimental features, including, but not limited to, grass, plants, shrubs and flowers or artificial or decorative features including bark, rock, cement and other vegetation.

E. FENCES AND WALLS. Any fence or wall or accompanying gate which is torn, leaning or tilting in an unsafe manner, dilapidated, deteriorated, rotted or missing parts or materials thereof.

F. GARAGE DOORS. Any garage access door open to public view, either from the street or alley which is inoperable, broken, lacking paint or missing visible parts or materials. Lack of a garage door where the open garage is visible from the street or alley so as to be unsightly.

H. REFUSE CONTAINER STORAGE. Any refuse container stored in the front yard or side yard of a corner lot adjacent to a street and visible from the public street, except where placed in places of collection at the times and manner permitted in this Code.

I. OVERGROWN VEGETATION. Any vegetation in any and all yard areas adjacent to a building or structure which is so overgrown or lacking in maintenance to be unsightly to neighboring property or potentially, because of size and lack of maintenance, is dangerous to the public health, safety and welfare. Vegetation includes trees that, because of size and lack of maintenance or disease, may be injurious to neighboring structures and inhabitants.

MEMORANDUM

DATE: February 7, 2005 (cont.'d from 1/18/05)
TO: Mayor and Council Members
FROM: Lillian Hare, HR Director/City Clerk
**SUBJECT: CONSIDER APPOINTMENT OF A DIRECTOR AND AN
ALTERNATE TO THE SACRAMENTO METROPOLITAN AIR
QUALITY MANAGEMENT DISTRICT BOARD**



RECOMMENDATION

Appoint a Director and Alternate and Adopt Resolution 15-2005.

BACKGROUND

Recent efforts to expand the Board of Directors of the Sacramento Metropolitan Air Quality Management District have resulted in an invitation to the cities of Citrus Heights, Elk Grove and Rancho Cordova to appoint a Director to sit on the District Board. Once the initial appointment has been made by the City Council, the City Selection Committee will confirm the appointment. Subsequent appointments will not require the City Selection Committee ratification.

The Board of the Sacramento Metropolitan Air Quality Management District typically meets on the fourth Thursday of the month at 9:30 a.m. in the Sacramento County Board of Supervisors Chambers.

Larry Greene, Air Pollution Control Officer, is staff to the District.

Attachment: Resolution 15-2005

RESOLUTION NO. 15-2005

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO MAKING AN APPOINTMENT TO THE SACRAMENTO METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT

Whereas, the Sacramento Metropolitan Air Quality Management District jurisdiction is comprised of the County of Sacramento and its incorporated cities, and is part of the Sacramento Federal Nonattainment Area, which is classified as a “serious” nonattainment area for the federal eight-hour ozone standard with an attainment deadline of 2013; and

Whereas, the City of Rancho Cordova recognizes that it has an important role in helping the nonattainment area improve air quality to protect the public health; and

Whereas, Health and Safety Code §40980(c) states that the SMAQMD Board of Directors shall include one or more members who are mayors or city council members, and that the number and composition of the Board shall be determined by Sacramento County and the cities within the County; and

Whereas, the SMAQMD Board of Directors is currently composed of the following members:

- All five members of the Sacramento County Board of Supervisors
- Three members of the Sacramento City Council
- One member representing Folsom, Isleton and Galt; and

Whereas, since the SMAQMD Board of Directors expanded in 1994 to accommodate all of the incorporated cities in existence at that time, three additional cities have incorporated:

- Citrus Heights, incorporated January 1, 1997
- Elk Grove, incorporated July 1, 2000
- Rancho Cordova, incorporated July 1, 2003; and

Whereas, the City of Rancho Cordova agrees that the composition of the SMAQMD Board of Directors should be expanded to accommodate the additional cities and shall be comprised of a 14-member Board that reflects, to the extent feasible and practicable, the geographic diversity of the SMAQMD and the variation in population of the incorporated cities and the unincorporated portion of Sacramento County; and

Whereas, the 14-member Board shall be comprised of:

- Five members of the Sacramento County Board of Supervisors
- Four members of the Sacramento City Council
- One member of the Citrus Heights City Council
- One member of the Elk Grove City Council
- One member of the Folsom City Council
- One member of the Rancho Cordova City Council

- One council member representing the Cities of Galt and Isleton;
- and

Whereas, Health & Safety Code §40980(e)(1) requires that the members of the governing Board who are mayors or city council members shall be selected by the City Selection Committee if the District only contains one county; and

Whereas, Health & Safety Code §40980(e)(2) requires that subsequent appointments to represent a single city within the district on the SMAQMD Board shall be made by the city council of that city at a regularly scheduled city council meeting, consistent with state notice requirements.

Now, Therefore, be it Resolved that the City of Rancho Cordova approves, as required by Health and Safety Code §40980(c) (2), the number and composition of the re-constituted SMAQMD Board of Directors; and

Be it Further Resolved that the City of Rancho Cordova's appointment to the SMAQMD Board of Directors shall be _____ ; and

Be it Further Resolved that the City of Rancho Cordova requests that the City Selection Committee, comprised of the mayors of the seven incorporated cities within Sacramento County, be convened at its earliest convenience to confirm the appointment of the new council members on the SMAQMD Board of Directors.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on February 7, 2005 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Ken Cooley, Mayor

ATTEST:

Lillian E. Hare, City Clerk

Memorandum

Date: February 1, 2005

To: Mayor and Council Members

From: William J. Thomas, Finance Director



Subject: Resolution Approving the Formation of the Financing Corporation

RECOMMENDATION

Adopt Resolution No. 22-2005 approving the formation of the City of Rancho Cordova Financing Corporation

BACKGROUND AND DISCUSSION

The Council's action tonight will approve the formation of a non-profit corporation controlled by the City officials for municipal purposes, including assisting the City in financing municipal facilities. The corporation is expected to be named the "Rancho Cordova Financing Corporation.

The City Attorney and the City's bond counsel have advised that the most desirable structure for the potential Kilgore property and potential City Hall property acquisitions is through a "Certificates of Participation" lease financing structure, which is very similar to the issuance of long-term bonds but better fits the subject matter of the financing and the desired time frame for issuance. Under a Certificates of Participation issue, investors purchase the right to receive lease payments made by the City. In order the create the lease payment stream to be marketed to investors, the City needs a party to lease the property from. The Corporation will serve this purpose, and will be in a position to assist in other financings of the City or the redevelopment agency in the future.

The Resolution authorizes and approves the formation of the Corporation under the Nonprofit Public Benefit Corporation Law of the State of California (California Corporations Code Section 5110 *et seq.*) by authorizing the filing by the City Attorney of Articles of Incorporation with State officials. It is expected that the members of the City Council will serve as the Board of Directors Corporation.

The actual approval of the financing documents for the Kilgore property is expected to occur at the next scheduled Council date, where the Council, acting as the Board of the newly formed Corporation, will be asked to approve the Corporation's participation in the financing.

Attachment: Resolution No. 22-2005

RESOLUTION NO. 22-2005

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO
CORDOVA APPROVING THE FORMATION OF THE
RANCHO CORDOVA FINANCING CORPORATION**

RESOLVED, by the City Council of the City of Rancho Cordova (the "City"):

WHEREAS, the City Council is considering proceedings to finance the acquisition and improvement of facilities for City offices and other municipal facilities;

WHEREAS, a lease financing requires the participation of an entity which will lease a site and facilities located thereon to the City, and the City Council wishes at this time to approve the formation of a nonprofit corporation to be known as the Rancho Cordova Financing Corporation (the "Corporation"), which will act in such capacity;

NOW, THEREFORE, the City Council resolves as follows:

Section 1. Formation of Corporation. The City Council hereby authorizes and approves the formation of the Corporation under the Nonprofit Public Benefit Corporation Law of the State of California (California Corporations Code Section 5110 *et seq.*), for the purpose of assisting the City generally in financing the acquisition, construction and improvement of municipal facilities. The Corporation shall be formed pursuant to Articles of Incorporation in substantially the form on file with the City Clerk. The City Attorney is hereby authorized and directed to cause such Articles of Incorporation to be executed and filed as required to establish the Corporation.

Section 2. Governing Board of the Corporation. The Corporation shall be governed by a Board of Directors consisting of the members of the City Council. Following the formation of the Corporation, the Board of Directors shall hold a special meeting to consider the adoption of Bylaws and other organizational matters.

Section 3. Effective Date. This Resolution shall take effect upon its adoption by the City Council.

PASSED and ADOPTED this 7th day of February, 2005, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Ken Cooley, Mayor

ATTEST:

Lillian E. Hare, City Clerk

Memorandum

Date: February 1, 2005

To: Mayor and Council Members

From: William J. Thomas, Finance Director



Subject: ISSUANCE OF BONDS - RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTIFICATES OF PARTICIPATION (COP'S)

RECOMMENDATION

Adopt Resolution No. 23-2005 that provides the issuance of bonds to purchase the Kilgore property (Geremia and Kilgore Cemetery)

BACKGROUND AND DISCUSSION

The Council's action tonight will approve the documents necessary to accomplish the financing of the Kilgore property acquisition. The City's underwriter and bond counsel have advised that the most desirable structure for the financing is "Certificates of Participation" which is very similar to the issuance of long-term bonds but better fits the subject matter of the financing and the desired time frame for issuance. Under a Certificates of Participation issue, investors purchase the right to receive payments made by the City under a Lease Agreement under which the City leases the property from the Ranch Cordova Financing Corporation, which is expected to be formed prior to the closing date of the financing.

The Council action requested at this time approves the documents which have been prepared to complete the financing: the Site Lease, which provides for the lease from the City to the Corporation of the 4 parcels to be financed, the Lease Agreement, which provides for the lease back to the City from the Corporation, the Assignment Agreement, under which the Corporation's rights to the Lease Payments are assigned over to a trustee, the Trust Agreement, under which the trustee receives the Lease Payments and pays amounts over to investors, the Preliminary Official Statement, which describes to potential purchasers of the Certificates the nature of the Certificates and their security, and finally, the Certificate Purchase Agreement, under which the City agrees to sell the Certificates to the City's selected underwriter. The details of these documents will be finalized prior to the sale date and provisions may be added or modified to reflect bond insurance and/or ratings, which the underwriter is currently evaluating for feasibility on behalf of the City. Jones Hall will serve as Special Counsel for the financing and Brandis Tallman LLC will serve as Underwriter.

FINANCIAL IMPACT

The Lease payments are payable from any legally available funds of the City, but are in consideration for use of the Leased Property in that particular year. As with any other lease, if the City does not have use of the project for a period of time (e.g. due to flooding or earthquake damage), its payments are abated until use is restored. The California courts have held that this type of mechanism is not debt, and therefore it is not subject to Constitutional debt limits. In this structure, no deed of trust is given as security for the obligation, and in the event of default, the Trustee can either sue each year for the lease payment, which is due, or take action to cancel the lease with the City and return the property.

Attachment: Resolution No. 23-2005

RESOLUTION NO. 23-2005

**RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF NOT TO EXCEED
\$6,500,000 CERTIFICATES OF PARTICIPATION, AUTHORIZING AND DIRECTING
EXECUTION OF RELATED LEASE FINANCING DOCUMENTS, TRUST AGREEMENT, AND
CERTIFICATE PURCHASE AGREEMENT, APPROVING OFFICIAL STATEMENT AND
AUTHORIZING OFFICIAL ACTIONS**

RESOLVED, by the City of Rancho Cordova, California (the "City"), as follows:

WHEREAS, the City has determined that it is in the best financial interests of the City at this time to provide for the acquisition of certain parcels of property located within the City, including what is sometimes referred to as the "Kilgore Business Park", improved with an office building and adjacent property (the "Project") to facilitate office space needs of the City;

WHEREAS, in order to provide funds for such purpose, the City desires to lease the Project (also, the "Leased Premises"), to the Rancho Cordova Financing Corporation as provided in a Site Lease, as defined herein, and has further agreed to sublease the Leased Premises back from the Corporation pursuant to a Lease Agreement, as defined herein, expected to be dated as of February 1, 2005, by and between the Corporation as sublessor and the City as sublessee (the "Lease Agreement"); and

WHEREAS, the City proposes to assign and transfer certain of its rights under the Lease Agreement to a financing trustee and, in consideration of such assignment and the execution of a Trust Agreement expected to be dated as of February 1, 2005 among the City, the Corporation and a trustee to be designated by the City (the "Trustee"), the City desires the Trustee to execute and deliver 2005 Certificates of Participation (City Operations Facility Acquisition Project) in the aggregate principal amount of not to exceed \$6,500,000 (the "Certificates"), each evidencing a direct, undivided fractional interest in the lease payments to be paid by the City pursuant to the Lease Agreement; and

WHEREAS, for purposes of the sale of the Certificates, Disclosure Counsel, as hereinafter defined, has caused to be prepared an Official Statement describing the Certificates, the preliminary form of which is on file with the City Clerk and the Members of the City Council, with the aid of their staff, have undertaken such review of the Official Statement as hereinafter described as is necessary to assure proper disclosure of all material facts relating to the Certificates that are within the personal knowledge of Council members and the staff;

NOW, THEREFORE, it is hereby ORDERED as follows:

Section 1. Execution and Delivery of Certificates. The City hereby authorizes the execution and delivery of the Certificates, representing the right to receive lease payments under the Lease Agreement (as described below), in the aggregate principal amount of not to exceed \$6,500,000, and the execution and delivery of the following agreements (collectively, the "Agreements"):

- (a) the Site and Facility Lease expected to be dated as of February 1, 2005 (the "Site Lease") between the City, as lessor, and the Corporation, as lessee;
- (b) the Lease Agreement; and

(c) the Trust Agreement.

The City hereby approves and separately authorizes the City Manager or the Finance Director (each, an "Authorized Officer") to execute the Agreements, and the City Clerk is hereby authorized and directed, if required, to attest and affix the seal of the City to said Agreements, in substantially the forms on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by the Authorized Officers, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. Such changes or additions may include, but is not limited to, providing that payment of the Certificates be insured by a financial guaranty policy from a bond insurance company, if in the judgment of the City Manager or the Finance Director such insurance is in the best interest of the City.

Section 2. Sale of Certificates. The Council hereby approves the sale of the Certificates by negotiation with Brandis Tallman LLC, as Underwriter (the "Underwriter"), pursuant to the Purchase Contract, by and between the City and the Underwriter, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto approved by the Authorized Officers, whose execution thereof shall be conclusive evidence of approval of any such additions and changes. The Purchase Contract shall be executed in the name and on behalf of the City by an Authorized Officer, each of whom are hereby separately authorized and directed to execute and deliver said form of Purchase Contract on behalf of the City upon submission of a proposal by the Underwriter to purchase the Certificates, which proposal is acceptable to the Authorized Officers. The purchase price received by the City for the Certificates from the Underwriter shall be not less than ninety-eight and three-quarters percent (98.75%) of the par amount thereof, exclusive of any original issue discount and bond insurance premium, and the interest rate on the Certificates shall not exceed six and one-half percent (6.5%).

Section 3. Official Statement. The City hereby approves, and hereby deems nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934, the preliminary Official Statement describing the Certificates, in the form on file with the Finance Director. The Underwriter is hereby authorized to distribute the Official Statement in connection with the sale of the Certificates. The Authorized Officers, each acting alone, are hereby authorized and directed to (a) execute and deliver to the purchaser of the Certificates a certificate deeming the preliminary Official Statement to be nearly final as of its date, (b) approve any changes in or additions to cause such Preliminary Official Statement to be put in final form, and (c) execute said final Official Statement for and in the name and on behalf of the City.

Section 4. Appointment of Special Counsel and Disclosure Counsel. Jones Hall, A Professional Law Corporation, is hereby appointed special counsel and disclosure counsel in connection with issuance of the Certificates and the Authorized Officers, each acting alone, are hereby authorized to execute agreements for services with said firm relating to the Certificates.

Section 5. Official Actions. The Mayor, the City Manager, the Finance Director, the City Clerk and all other officers of the City are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents (including specifically a continuing disclosure undertaking), which they or any of them might deem necessary or appropriate in order to consummate any of the transactions contemplated by the documents approved pursuant to this Resolution. Whenever in this resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution,

countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

Section 6. Effective Date. This resolution shall take effect from and after the date of approval and adoption thereof.

PASSED and ADOPTED this 7th day of February, 2005, by the following vote::

AYES:
NOES:
ABSENT:
ABSTAIN:

Ken Cooley, Mayor

ATTEST:

Lillian E. Hare, City Clerk

Memorandum

Date: February 7, 2005

To: Mayor and Council Members
Ted Gaebler, City Manager

From: William J. Thomas, Finance Director



Subject: NOTIFICATION OF CREDIT RATING FROM STANDARD & POOR (S&P)

Standard and Poors have advised the City that they will provide a credit rating for the upcoming Certificates of Participation (COPs) that will be issued for the upcoming Kilgore Office Park acquisition.

Following a presentation by the City (Finance Director), PFM (Peter Miller, Financial Consultant) and member of the underwriters (Brandis & Talliman) on Monday, January 31st, the rating analysts took their recommendation to the full rating committee. We have been advised that the City's transaction will have a "BBB+" rating while the City's overall credit rating has been established at "A-". This is extremely good news in that the City most likely will be able to obtain insurance on our two upcoming COPs which will lower the overall interest cost.

"BBB+" rating provides that a debt obligation exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the City to meet its financial commitment on the obligation.

"A-" rating provides that a debt obligation is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations that are rated higher (AA or AAA). However, the City's capacity to meet its final commitment on the obligation is still strong.

Plus or minus ratings modify the rating to show relative standing within the major rating categories. Therefore the BBB+ rating is closer to the A rating while the A- rating is closer to the BBB rating. S&P ratings are shown on the attached.

S&P analysts identified that the Financial and Budget policies that are included in our adopted budget document was the major reason for the City receiving these ratings. Generally, S&P is hesitant to provide ratings to agencies without three (3) years of financial data. The fact that they were able to provide a rating with only one (1) year of data bodes well for the City. S&P indicated that they would be willing to reexamine our financial standing of the City in the next few years.



Credit Ratings

[Print](#)

Long-term Issue Credit Ratings

Publication Date: May 17, 2002 12:00 AM EDT

Long-term Issue Credit Ratings

Issue credit ratings are based in varying degrees, on the following considerations:

- Likelihood of payment—capacity and willingness of the obligor to meet its financial commitment on an obligation in accordance with the terms of the obligation;
- Nature of and provisions of the obligation; and
- Protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditors' rights.

The issue ratings definitions are expressed in terms of default risk. As such, they pertain to senior obligations of entity. Junior obligations are typically rated lower than senior obligations, to reflect the lower priority in bankruptcy noted above.

AAA

An obligation rated 'AAA' has the highest rating assigned by Standard & Poor's. The obligor's capacity to meet its financial commitment on the obligation is extremely strong.

AA

An obligation rated 'AA' differs from the highest-rated obligations only in small degree. The obligor's capacity to meet its financial commitment on the obligation is very strong.

A

An obligation rated 'A' is somewhat more susceptible to the adverse effects of changes in circumstances and economic conditions than obligations in higher-rated categories. However, the obligor's capacity to meet its financial commitment on the obligation is still strong.

BBB

An obligation rated 'BBB' exhibits adequate protection parameters. However, adverse economic conditions or changing circumstances are more likely to lead to a weakened capacity of the obligor to meet its financial commitment on the obligation.

BB, B, CCC, CC, and C

Obligations rated 'BB', 'B', 'CCC', 'CC', and 'C' are regarded as having significant speculative characteristics. 'B' indicates the least degree of speculation and 'C' the highest. While such obligations will likely have some quality protective characteristics, these may be outweighed by large uncertainties or major exposures to adverse conditions.

BB

An obligation rated 'BB' is less vulnerable to nonpayment than other speculative issues. However, it faces major ongoing uncertainties or exposure to adverse business, financial, or economic conditions, which could lead to the obligor's inadequate capacity to meet its financial commitment on the obligation.

B

An obligation rated 'B' is more vulnerable to nonpayment than obligations rated 'BB', but the obligor currently has adequate capacity to meet its financial commitment on the obligation. Adverse business, financial, or economic conditions likely impair the obligor's capacity or willingness to meet its financial commitment on the obligation.

CCC

An obligation rated 'CCC' is currently vulnerable to nonpayment and is dependent upon favorable business, financial, and economic conditions for the obligor to meet its financial commitment on the obligation. In the event of adverse business, financial, or economic conditions, the obligor is not likely to have the capacity to meet its financial commitment on the obligation.

commitment on the obligation.

CC

An obligation rated 'CC' is currently highly vulnerable to nonpayment.

C

The 'C' rating may be used to cover a situation where a bankruptcy petition has been filed or similar action has taken, but payments on this obligation are being continued.

D

An obligation rated 'D' is in payment default. The 'D' rating category is used when payments on an obligation are made on the date due even if the applicable grace period has not expired, unless Standard & Poor's believes that such payments will be made during such grace period. The 'D' rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized.

Plus (+) or minus (-)

The ratings from 'AA' to 'CCC' may be modified by the addition of a plus or minus sign to show relative standing within the major rating categories.

c

The 'c' subscript is used to provide additional information to investors that the bank may terminate its obligation to purchase tendered bonds if the long-term credit rating of the issuer is below an investment-grade level and/or if the issuer's bonds are deemed taxable.

p

The letter 'p' indicates that the rating is provisional. A provisional rating assumes the successful completion of the project financed by the debt being rated and indicates that payment of debt service requirements is largely or entirely dependent upon the successful, timely completion of the project. This rating, however, while addressing credit risk subsequent to completion of the project, makes no comment on the likelihood of or the risk of default upon failure of such completion. The investor should exercise his own judgment with respect to such likelihood and risk.

Continuance of the ratings is contingent upon Standard & Poor's receipt of an executed copy of the escrow agreement or closing documentation confirming investments and cash flows.

r

The 'r' highlights derivative, hybrid, and certain other obligations that Standard & Poor's believes may experience volatility or high variability in expected returns as a result of noncredit risks. Examples of such obligations are securities with principal or interest return indexed to equities, commodities, or currencies; certain swaps and options and interest-only and principal-only mortgage securities. The absence of an 'r' symbol should not be taken as an indication that an obligation will exhibit no volatility or variability in total return.

N.R.

Not rated.

Debt obligations of issuers outside the United States and its territories are rated on the same basis as domestic corporate and municipal issues. The ratings measure the creditworthiness of the obligor but do not take into account currency exchange and related uncertainties.

Bond Investment Quality Standards

Under present commercial bank regulations issued by the Comptroller of the Currency, bonds rated in the top four categories ('AAA', 'AA', 'A', 'BBB', commonly known as investment-grade ratings) generally are regarded as eligible for bank investment. Also, the laws of various states governing legal investments impose certain rating or other standards for obligations eligible for investment by savings banks, trust companies, insurance companies, and fiduciaries in general.

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MEMORANDUM

DATE: February 7, 2005
TO: Mayor and Council Members
FROM: Beverly Howard, Sr. Management Analyst
SUBJECT: FY 2006 LEGISLATIVE PROGRAM



RECOMMENDATION

Review projects for the FY 2006 Appropriations cycle and set legislative priorities.

BACKGROUND

See attached memorandum from Legislative Advocate Len Simon.

Attachment: Memo from Len Simon dated January 28, 2005

SIMON AND COMPANY

INCORPORATED

Intergovernmental Relations and Federal Affairs

1660 L Street, NW • Suite 1050 • Washington, D.C. 20036
(202) 659-2229 • Fax (202) 659-5234 • e-mail: len.simon@simoncompany.com

MEMORANDUM

TO: Ted Gaebler
Beverly Howard

FROM: Len Simon
Kevin DeGood

SUBJECT: Selecting Projects for the FY06 Appropriations Cycle

DATE: January 28, 2005

It was great meeting with you, the Council and staff earlier this week. Our meetings were very productive and I believe we developed a number of good ideas for possible appropriations projects for the FY06 appropriations cycle.

Earlier today we met with **Congressman Lungren's** staff to brief them on Rancho Cordova's Folsom Boulevard TEA-21 submission, on some appropriations possibilities for the year ahead for the City and how we will look forward to working with them on behalf of the City. We also let them know that Rancho Cordova officials will be Washington at least twice this year.

As we previously discussed, even with the passing of **Congressman Matsui**, the Office of California's 5th Congressional District continues to serve constituents and receive **legislative** proposals so that when a successor is chosen in the special election (presumably Mrs. Matsui) the new representative can hit the ground running. For example, today their office received Rancho Cordova's resubmission of the Folsom Boulevard project for the surface transportation reauthorization bill. Separately, that office has also set a March 1 deadline for their FY06 appropriations requests. **Senator Feinstein** has also set a March 1 deadline for appropriations project submissions and we expect that **Senator Boxer's**, when she establishes a deadline, will be around the same time. In summary, as we approach the beginning of the legislative season Rancho Cordova is in good shape with its Congressional delegation staff who are ready, willing, and able to assist the City to achieve results this year.

As I indicated in our conversation on Tuesday, I have prepared a listing of some of the appropriations ideas that emerged during my conversations with City staff and members of the Council. (Some of the appropriations ideas suggested by staff not included in this list will make excellent candidates for grant opportunities and we will be sure to be forwarding those notices of grant availability to you in the future.) The work that Cyrus did last year in preparing transportation ideas was very helpful as most of those projects are still quite relevant.

My recommendation is that given the various options available Rancho Cordova should have three or four projects that span several individual appropriations bills available to the delegation.

After you have had an opportunity to review this information with the Council and determine which are the ones that we will seek funding for this year, as indicated in our memos dated November 9, 2004 and January 10, 2005, we will begin to work with City staff to develop specific details on individual projects ensuring that we have all the information that the Congressional delegation will need, as well as any specific information required by appropriations subcommittees. When this information is prepared and submitted, it will form the basis for the **Fiscal Year 2006 Rancho Cordova Legislative Agenda** and will be a useful tool for you and City staff during your Washington meetings in March and April and for our efforts throughout the year.

We look forward to following up with you early next week to move forward on the next steps. Please let us know if you have any questions.

We look forward to talking with you soon.

Potential FY06 Rancho Cordova Appropriations Priorities

Category (Source)	Project	Bill	Program	Amount
Transportation (Cyrus Abhar)	Folsom Boulevard Enhancements	Transportation	Highways Section-- Appropriations Simultaneously with TEA21	\$10,000,000
[Choose One]	Street Name Signs	Transportation	Transportation Community Systems Preservation	\$550,000
	Coloma Road Enhancements	Transportation	Highways	\$5,000,000
	ITS Master plan for Rancho Cordova	Transportation	Intelligent Transportation Systems	\$2,000,000
	Sunrise Boulevard Improvements	Transportation	Highways	\$2,800,000
	Job Access Transit- Neighborhood Shuttles	Transportation	Job Access Reverse Commute	\$400,000
	Don Juan Pedestrian Traffic Signal	Transportation	Intelligent Transportation Systems	\$150,000
	ADA Transition Plan	Transportation	Highways	\$8,000,000
	Olson Road/RT50	Transportation	Highways	\$4,000,000
	Neighborhood Traffic Management- Speed Control	Transportation	Transportation Community Systems Preservation	\$2,000,000
Community and Economic Development (Linda Budge)	Senior Housing- Funding for Initial Development	VA-HUD	Economic Development Initiative Account	\$1,000,000
Environment (Tom Trimberger)	Water and Wastewater Infrastructure Improvements	EPA	State and Tribal Assistance Grants	\$1,000,000
	Water Conservation/ Gray Water Systems	EPA	State and Tribal Assistance Grants	\$1,000,000
Labor (Tom Trimberger)	Construction Training- Integrate Job Training and Local Employment Opportunities	Labor	Pilots and Demonstrations	\$750,000
Justice	Public Safety Interoperability/ Law Enforcement Technologies	Justice	COPS Technology	\$1,500,000
	Youth Crime Prevention	Justice	Juvenile Justice	\$700,000
Education (Yvonne Dehaan)	City Hall on Wheels- Mobile Educational Vehicle Flexible for Video, Audio, Viewing and Recording	Education	Fund for the Improvement of Education	\$1,400,000

**Nothing has been provided
in the Agenda Packet for
Item 19.**

Memorandum

Date: February 7, 2005

To: Mayor and Council Members

From: William J. Thomas, Finance Director



Subject: INTEGRATED SOFTWARE PACKAGE

Recommendation

Adopt the resolution authorizing the City Manager to sign an agreement with Hansen Technologies to acquire an Integrated Software Package.

Background

The City initially established a need to obtain a financial management software program to provide a professional level program to adequately manage the City's financial needs. To that end, staff released a "Request for Proposals" (RFP) in early March 2004. As a result of that RFP, the City interviewed three providers (Pentamation, HTE and New World) and selected Pentamation as the preferred vendor. The City Council authorized the City Manager to negotiate a contract with Pentamation (Resolution No. 162-2004). Subsequent to that action, the City entered into negotiations with Pentamation but those discussions were delayed due to discussions centering around software ownership and the cost of the software if the City delayed the purchase and opted for an ASP system. Additionally, the solutions that they were offering for the "Enterprise" (business licensing, permits, customer response system, cashiering, and public works related products) related requirements were considered to be inferior to products offered by other vendors. Finally, I was hesitant to enter into an agreement for the financial software piece without understanding how the City would handle the "enterprise" portion of the overall management system. For these reasons the City has not entered into an agreement with Pentamation.

In the interim, Hansen Technologies approached the City to discuss their products in the "Enterprise" area. These products were used by our Public Works Director and are in use by Sacramento County at this time. Initially, Hansen Technologies was interested in providing only the enterprise solutions but expanded their discussions to include financial management software programs. Based on the review of those products, staff felt that having a fully integrated software system would provide the City with the optimum economies both in overall cost as well as providing the highest level of services to the public. The real stumbling block to Hansen Technologies was the price which initially was in excess of \$1.5 million.

At the same time Hansen Technologies had purchased an office building at 11092 Sun Center in Rancho Cordova and were going to move their corporate headquarters to that building. Currently tenant improvements are ongoing and Hansen Technologies expects

to occupy the building by March 15th. Due to this move and their presence in Rancho Cordova, they were motivated to adjust their pricing to reflect not only their desire to do business with the City but also to form a partnership with the City that they are relocating to. As a result of discussions with Hansen Technologies, including Chuck Hansen the CEO, the cost of the entire project was reduced to \$775,000. A summary of their proposal is as follows:

Financial Management	\$	300,000
Great Plains Financial Management		
Payroll and Human Relations		
Operations Management:	\$	175,000
Customer Response System		
Land Management System:		
Construction and Use Permits		
Licensing		
Code Enforcement		
Web Based Portal for:		
Customer Service		
Permits		
Licensing		
Cashiering		
GEO Administrator		
GIS Licensing		
Payment and Roadway Management System	\$	300,000
Visual survey and Condition plus GIS.GPS images		
Roadway (includes streets)		
Pavement Management System		
Total for Software	\$	775,000
Support Costs:		
Hosting Set-up Fee	\$	20,000
Annual Service and Maintenance	\$	65,000

Staff feels that this proposal is very competitive and will provide a long-term solution to the needs of this City as it grows. A decision on selecting a software vendor to provide all of the above solutions is a long-term decision and is very important that the City select a vendor that not only will exist in the long-term but also has the capability of growing with the City and its needs. Hansen Technologies, it is felt, meets those needs. Their location within the City will make it very attractive to them as well as the City to establish the City's system as a hallmark of their product line. The Company itself has been in business since 1983.

The entire project will be implemented over two fiscal years (FY 2005 and FY 2006). Therefore the cost of the project will be spread over at least two fiscal years and it is anticipated that it will be spread over a variety of funding sources. Since the majority of the software will be related to development, various funding sources will be used. Staff intends to incorporate the cost of the software into the overall cost of services study that is currently being completed as well as developing a "technology fee" that would cover the cost of the permit and pavement management programs. FY 2005 provides an appropriation of \$220,000 that is earmarked for financial software acquisition and implementation. Additional appropriations will be requested in FY 2006 to cover the up-

front costs associated with this product. Again, it should be noted, that it is the intent of staff to recover the majority of the software costs through user charges, wherever possible.

Initially, the City intends to implement the General Ledger, Cashiering, Permitting and Customer Response System. These are expected to be functional by July 1st. Phased implementation of the remaining systems will be scheduled for late FY 2005, FY 2006 and beyond.

Summary

The City has an opportunity to purchase a fully integrated software system that will provide a broad range of solutions for the City. This includes financial, operational and public work components that will provide an integrated management system for the City. With the partnership of a local company, the availability of their resources and their commitment to this project it will provide a win-win situation for the City.

The City will, prior to initiating the contract, conduct due diligence which will include client reference checking and possibility visiting a current site that is fully operational.

Attachments:

Resolution

Hansen Technologies Fact Sheet

RESOLUTION NO. 24-2004

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO
CORDOVA AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT BETWEEN HANSEN INFORMATION TECHNOLOGIES AND
THE CITY TO PROVIDE AN INTEGRATED MANAGEMENT SOFTWARE
SYSTEM**

WHEREAS, the City Council wants the City to have an integrated management software system and more fully described in the staff report dated February 7, 2005.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Rancho Cordova does hereby authorize the City Manager to negotiate contract terms, not to exceed \$775,000, and execute an agreement, subject to approval by the City Attorney, for an Integrated Management System with Hansen Technologies.

I HEREBY CERTIFY that the foregoing resolution was introduced and passed at a regular meeting of the City Council of the City of Rancho Cordova, held on the 7th day of February 2005, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Ken Cooley, Mayor

ATTEST:

Lillian Hare, City Clerk

Company Fact Sheet

Year Founded	1983
Headquarters	Sacramento, California
Employees	250
International Offices	Auckland, New Zealand; Melbourne, Perth, and Sydney, Australia; Mississauga, Canada; London, England
Domain Expertise	Advanced Enterprise Resource Planning (ERP) Solutions for the State and Local Government Market
Solutions	Integrated Constituent Relationship Management (CRM), Asset Management, Building Permit, Business Licensing, Code Enforcement, Dispatching, Incident Management, Property Tax, Service Requests, Timesheet Reporting, Utility Billing, Warehouse and Work Management
Unique Applications	Hansen <i>Dynamic</i> PORTAL (Web), Hansen Enterprise Dashboard, Hansen Mobile Solution (HMS), Citizen-Centric Call Center
Licensed Seat Count	105,852
Customer Base	States of California and Maryland; City governments including 12 of the top 15 cities in the United States; County governments, including Cobb, Fairfax, Hillsboro, Indianapolis/Marion, Henrico, Louisville/Jefferson, Montgomery, Nashville/Davidson, New Castle, & Riverside

Continued on next page

Company Fact Sheet, Continued

Showcase Sites	• Caltrans – Hansen-PeopleSoft; +5,000 Hansen users • Las Vegas – Enterprise Hansen ERP • New York City – Water & Sewer Call Center average 300,000/yr • Los Angeles – 600,000 inspections/yr; 44,000 enforcement cases • Chicago – Citywide building and health inspection • New Castle County – Enterprise Hansen ERP
Software Architecture	C, C++ and C# Programming Languages, Microsoft .NET
Major Associations	• The Infrastructure Security Partnership (TISP) • Infrastructure for the Built Environment (ISBE)
Industry Affiliations	• American Public Works Association (APWA) • American Society of Civil Engineers (ASCE) • American Water Works Association (APWA) • Government Finance Officers Association (GFOA) • International Building Officials and Code Administration (IBOCA) • International City Manager's Association (ICMA)
Selected Financial ERP Integrations	• SAP – Louisville, KY; Johannesburg Water, SA; San Antonio, TX; Toronto, CA • PeopleSoft – Caltrans, CA; Manakau, NZ; Tempe, AZ • Oracle – Arvada, CO; Chandler, AZ; Las Vegas Valley Water District, NV • J.D. Edwards – Amarillo, TX; Thornton, CO

Continued on next page

Company Fact Sheet, Continued

Selected Metrics of Hansen Customers ¹	Total Assets	24,048,798
	Total Service Requests Initiated	5,093,949
	Total Service Requests Completed	4,531,949
	Total Work Orders Initiated	16,235,361
	Total Work Orders Completed	15,401,421
	Total Billed Revenue	\$1.4 Billion
	Total Activity-Based Costs	\$2.7 Billion
	Total Permits Issued	\$1.2 Million

Note:

1. Results retrieved from Hansen customer databases that voluntarily participated in Hansen's Annual Power User Survey as of April 30, 2002.

General Assets	Buildings	748,530
	Street Signs	702,436
	Street Segments	425,078
	Street Lights	301,684
	Equipment	264,823
	Sidewalks	254,339
	Intersections	204,542
	Trees	169,489
	Bridges	116,225
	Vehicles	35,656
	Facilities	30,075

Water Distribution Assets	Water Treatment Plants	211
	Meters	2,064,985
	Water Mains (including Segments and Nodes)	2,059,887
	Valves	912,038
	Hydrants	445,876
	Backflows	89,195
	Wells and Storage Units	2,244

Continued on next page

Company Fact Sheet, Continued

Wastewater Collection Assets	Wastewater Treatment Plants	253
	Sewer Lift Stations	6,119
	Sewer Mains	2,129,962
	Sewer Manholes	2,078,827
	Storm Mains	829,907
	Sewer CCTV Inspections	820,092
	Sewer CCTV Readings (i.e. Observations)	4,264,033
	Dye Flood Tests	86,448

Catalog #		UNIT COST	Price
FINANCIAL MANAGEMENT			
	Microsoft Great Plains Foundation System for Eight (8) Users		
	Microsoft Great Plains Financial Management		
	(Including FRx Professional Reporting and Hansen CAFR Builder)		
	Hansen Government Suite		
	Featuring Grant, Encumbrance, and Fund Accounting		
	Microsoft Great Plains Payroll and Human Resources Management		
	Microsoft Great Plains Customization Tools for Financials		
	Microsoft SQLServer Database License Fee		
			\$300,000
OPERATIONS MANAGEMENT			
CS-02	Customer Service System	1,000	
	Land Management System:		
LC-01	Construction and Use Permits	1,500	
LL-01	Licensing	1,500	
LP-01	Code Enforcement	1,500	
DYP-CS	Web-Based Dynamic Portal for Customer Service	15,000	
DYP-P	Web-Based Dynamic Portal for Permits	35,000	
DYP-P	Web-Based Dynamic Portal for Licensing	35,000	
CM-01	Cashiering	7,500	
GGs-ADM	GeoAdministrator	15,000	
	GIS Licensing	25,000	
			\$175,000
	Hansen's Pavement and Roadway Management Solution		
	Visual Survey & Condition, plus GIS, GPS, Images		
	and Eligibility for use of Modified Approach for GASB #34	277,000	
TR-01	Roadway (Includes Street)	8,000	
TP-01	Pavement Management System	15,000	
			\$300,000
SUPPORT COSTS			
	One-Time Hosting Set-up Fee		\$20,000
	Monthly Hosting Service Charge (First 6 months)		
	Monthly Hosting Service Charge (\$3,000 Thereafter)		
	Annual Service and Maintenance:		
	Financials		\$40,000
	Operations (Includes SMA for Roadway & PMS at No Charge)		\$20,000
	GIS		\$5,000
TOTAL IMPLEMENTATION COSTS			\$860,000